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EXECUTIVE DIRECTOR

Protest Decision

Matter of: Quintech Solutions, Inc.
File No.: 2020-010
Posting Date: May 7, 2020
Contracting Entity: College of Charleston
Task Order Contract No.: H15-N340-ML
Task Order Description: RSS & Maybank Exterior Painting

DIGEST

Protest dismissed where protest fails to state a claim for which relief can be granted and where the Chief Procurement Officer for Construction (CPOC) lacks jurisdiction. [Exhibit A]

AUTHORITY

The CPOC conducted an administrative review per S.C. Code Ann. §11-35-4210(4). This decision is based on applicable law and precedents.

BACKGROUND

On February 3, 2020, the College of Charleston (the College) awarded task order contracts for Interior and Exterior Painting Construction Services per S.C. Code Ann. §11-35-3320. Quintech Solutions, Inc. (Quintech), First Class Construction, Inc. (FCC), Huss, Inc. (Huss), and S&A Enterprises, Inc. (S&A) were the four awardees.

On March 31, 2020, the College solicited quotes from the four task order contractors to perform exterior painting on “RSS & Maybank” (the Task Order). The contractors were required to submit their quotes on or before noon of April 17, 2020. Two of the four task order contractors,

Quintech and S&A, submitted their quotes before the day for receipt of quotes.¹ FCC submitted its quote at 7:12 AM on April 17, 2020. [Exhibit D] At 7:36 that same morning, the College sent an email to all bidders with a screen shot from Section 9.6.3(B) of the Manual for Planning and Execution of State Permanent Improvements (the Manual). The College circled the following statement in red:

If the lowest quote for a Task Order is below the \$90,000 limit, the Task Order must be withdrawn. The Agency must follow the Small Purchase method found in Chapter 8 to re-quote the project. The TOC Contractors cannot be invited to quote the Small Purchase; however, if the Small Purchase is advertised in SCBO, the Agency may accept a quote from any of their Task Order Contractors.

[Exhibit A]

At 9:07 AM on April 17, FCC submitted a revised quote. [Exhibit E] At 11:33 AM on April 17, Huss submitted its bid. [Exhibit F] Neither S&A nor Quintech revised their quotes before the deadline for receipt of quotes.

Katie L. West conducted the solicitation, the receipt, and the opening of quotes. After the deadline for receipt of quotes, Ms. West opened quotes in a room by herself and prepared a bid tabulation. FCC submitted a low bid of \$90,000, and Ms. West awarded the Task Order to FCC.² [Exhibit A] On April 22, 2020, Quintech protested.

DISCUSSION

A protest must allege a violation of the Consolidated Procurement Code (Code). Moreover, the protestant bears the burden of proving a violation. Quintech's protest fails to allege any violation of the Code. Instead, Quintech speculates that there may have been violations and asks for the CPOC to investigate to determine if in fact there were any.

Quintech wants the CPOC to investigate whether the College viewed any quotes before the deadline for receipt of quotes. Quintech also wants the CPOC to investigate whether the College had *ex parte* communications with FCC regarding bid price before sending out the 7:36 AM email. Finally, Quintech wants to know who witnessed the bid opening per Chapter 6 of the Manual. By asking for an investigation into the first and third items, Quintech confuses the process for solicitation and award of a contract using competitive sealed bidding per S.C. Code Ann. §11-35-1520 and the associated remedies for violations with the process for awarding individual task orders per S.C. Code Ann. §11-35-3320. Task Order contracting is intended to provide an expedited means of awarding limited size projects. For this reason, the rules that

¹ Quintech submitted its quote at 2:45 PM on April 15, 2020. [Exhibit B] S&A hand delivered its bid at 1:20 PM on April 16, 2020. [Exhibit C]

² Though a withdrawn bid is not normally public information, the College still had a copy of FCC's withdrawn bid in its possession. That bid was for \$58,405. The discrepancy between that withdrawn bid and the bid price of the other three bidders suggests FCC may have made a mistake in its initial bid.


apply to an award under competitive sealed bidding do not apply to the award of individual task orders. For example, nothing in the Code or the Manual requires that quotes or bids on an individual task order be sealed. Nor does the law require the preparation of a bid tab signed by one party and witnessed by a second.³ Quintech fails to state a claim.

Further, the CPOC lacks jurisdiction to resolve Quintech's protest. One significant difference between competitive sealed bidding and award of task orders is the availability of administrative review. Administrative review of the award of an individual task order per S.C. Code Ann. §11-35-4210 is not available to a disappointed contractor except for protest on the ground that the award "increases the scope, period, or maximum value of the task order contract under which the order is issued." S.C. Code Ann. §11-35-3320(G). Quintech's protest fails to set forth any such allegations.

The CPOC does agree that contractors must have confidence that the College is acting in good faith and with fair dealing when it awards task orders. See S.C. Code Ann. §11-35-30 ("Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. 'Good faith' means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing."). Therefore, even though Quintech failed to state a valid ground of protest and the CPOC lacks jurisdiction to review its claim, the CPOC on his own accord did investigate the integrity of the process including questioning Ms. West concerning the process. Ms. West assures the CPOC that she did not look at any of the quotes, including FCC's first quote, before she sent out her email at 7:30 AM on April 17, 2002. [Exhibit C] Ms. West also assures the CPOC that she did not have any *ex parte* communications with FCC about price before bid opening. [Exhibit C] Despite the coincidence of timing from the receipt of FCC's first bid to Ms. West's email, the CPOC has no information calling into question Ms. West's veracity. Moreover, the information that Ms. West sent to all contractors on the morning of April 17 was public information readily available in the Manual and the Code.

DECISION

For the foregoing reasons, the protest is dismissed.



John St. C. White
Chief Procurement Officer
For Construction

³ Chapter 6 of the Manual, Procurement of Design-Bid-Build Construction Contractor Competitive Sealed Bidding, applies to competitive sealed bidding, not award of task orders.

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File No. 2020-010
May 7, 2020

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2020 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

-
1. What is your/your company's monthly income? _____
 2. What are your/your company's monthly expenses? _____
 3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

April 22, 2020

Email and Mail
Protest@mmo.sc.gov

Chief Procurement Officer for Construction
Office of State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

**Re: College of Charleston
RSS & Maybank Exterior Painting
H15-N340-ML**

Dear Chief Procurement Officer:

The purpose of this communication is to protest the Intent to Award for Task Order Bid Project #H15-N340-ML.

Quintech Solutions, Inc. (QSI) is raising this protest to the concern that missteps and/or inappropriate communication may have occurred during the procurement process that presented an advantage to the low bidder, First Class Construction. Below is a timeline of this bid process followed by the concerns that gave alert.

TIMELINE

Tuesday March 31, 2020

Bid was provided via email to the Task Order Contract holders by Project Manager, Katie L. West (PM).

Monday, April 6, 2020

Addenda 1 was provided via email by the PM. This included a reminder on how to submit the response. The PM also noted that additional questions would initiate additional addenda as received.

Monday, April 13, 2020

QSI reached out to the PM to with a question concerning which response documents were required to be submitted. The PM answered the inquiry directly to QSI via email response and no associated addenda was issued.

Wednesday, April 15, 2020

After confirming with the PM that there were no additional addenda, QSI submitted our Bid Response. I have since learned that by close of business on this day, the PM was in receipt of 2 qualified bids, one of which was QSI.

FRIDAY, APRIL 17, 2020

Bid Due @ 12:00 pm

Friday, April 17, 2020 (Copy Enclosed)

7:36 am. The PM sent an email to all Task or Contract Holders circling in red a snapshot of Chapter 9.6.3, Section B, #4 of the SCOSE Manual, which states: *"If the lowest quote for a Task Order is below the \$90,000 limit, the Task Order must be withdrawn. The Agency must follow the Small Purchase method found in Chapter 8 to re-quote the project. The TOC Contractors cannot be invited to quote the Small Purchase; however, if the Small Purchase is advertised in SCBO, the Agency may accept a quote from any of their Task Order Contractors."*

Friday, April 17, 2020

12:11 pm. Bid tabulation received, listing First Class Construction as the low bidder at \$90,000.00.



SECURITY CONSULTING ENGINEERING CONSTRUCTION SERVICES

CONCERNS

QSI is aware that the SCOSE Manual *"recommends the Agency remind the Contractors of the dollar limits before requesting the quotes."* In Chapter 9.6.3, Section B, #1.

However, it is the *timing* of the reminder along with the amount of the low bid that raises the concern of a situational trigger that moved the PM to send this email, which we noted is not an all-inclusive reminder email, but one that is specific only to the cost range.

In keeping with the integrity of the procurement process, QSI wants confirmation on the reason for the PM's trigger, therefore this protest raises the following questions:

1. Prior to the cost range reminder email sent on Friday, April 17, 2020, were any bid responses received that were prematurely viewed or withdrawn? Specifically, any bid responses that were below \$90,000.00?
2. Was there any communication (via any channel) with First Class Construction or others, regarding price prior to the cost range reminder sent on Friday, April 17, 2020?
3. Who were the witness on record for this bid open? The witnesses to the bid opening is not provided on the bid tab. Per OSA Manual Chapter 6.7.2, Section C, #2-3, *"2. After declaring the arrival of the bid opening time, the Procurement Officer should publicly give their name and the names of the witnesses and record this information on the bid tabulation sheet. 3. The Procurement Officer should then open timely bids individually and read them in the presence of one or more witnesses. When only one Bidder submits a timely bid, the procurement officer should open the bid and read it aloud."*

In conclusion, QSI would like to have certified whether or not the bid process for College of Charleston's Task Order Contract Bid #H15-N340-ML, RSS & Maybank Exterior Painting was accurate and fair and for action to be taken that will provide just recourse for the Award of this Bid or it's Rebids, if necessary.

Sincere Regards,

A handwritten signature in blue ink, appearing to read 'H. Gillens'.

Harold C. Gillens, PSP, CHS-III
President/CEO

HG:ds

Encs.: 2

From: [West, Katie Lorraine](#)
To: [Alan Sheeley](#); [Richard Huss](#); sbross@fccon.com; hgillens@quintechsolutionsinc.com; saaenterprises2@aol.com; tmeyer@fccon.com; jgibbs@fccon.com; dsmith@quintechsolutionsinc.com
Subject: Re: Addendum #1 for H15-N340-ML RSS and Maybank Exterior Painting
Date: Friday, April 17, 2020 7:36:06 AM

This is not an addendum, just an important note from the OSE Manual.

Please review the attachment. Bids are due by noon today.

Thanks

the project is considered approved, the OSE Project Manager will sign and date the Task Order (SE-690) and then return it to the Agency for their signature and the Contractor's.

5. The Agency will then send OSE a copy of the executed SE-690 issued for the project. The Agency shall include this signed Task Order in the project file for the auditors

B. SOLICITING AND AWARDING A TASK ORDER

1. To award an individual Task Order, the Agency must solicit competitive bids from all four (4) Contractors on the TOC. OSE recommends the Agency remind the Contractors of the dollar limits of the Task Orders before requesting the quotes.
2. The Agency must receive at least two (2) responsive, bona fide bids in response to its solicitation. If one or more TOC Contractors declines to provide a bid, the Agency must document that fact.
3. The Agency must award the Task Order to the Contractor providing the lowest quote as long as the lowest quote is within the Task Order dollar limits.
4. If the lowest quote for a Task Order is below the \$90,000 limit, the Task Order must be withdrawn. The Agency must follow the Small Purchase method found in Chapter 8 to re-quote the project. The TOC Contractors cannot be invited to quote the Small Purchase; however, if the Small Purchase is advertised in SCBO, the Agency may accept a quote from any of their Task Order Contractors.

C. TASK ORDER FORM

1. The Agency shall award a Task Order using the Construction Services Task Order (SE-690).

Katie L. West
Project Manager
Facilities Management
133 Calhoun St, Room 217
WestKL@cofc.edu | Office: 843.953.1597

BID TABULATION SHEET

PROJECT: RSS & Maybank Exterior Painting
OWNER – College of Charleston

DATE: April 17, 2020
TIME: 12:00 PM

GENERAL CONTRACTOR	LICENSE NUMBER	ADD'M REC'D	BID BOND	POWER OF ATTNY	UNIT PRICES	BASE BID AND ALTERNATES
1. Huss Inc	G13773	Yes	N/A	N/A		\$192,947.00
2. First Class Construction	G109056	Yes	N/A	N/A		\$90,000.00
3. Quintech Solutions, Inc	G119370	Yes	N/A	N/A		\$94,200.00
4. S&A Enterprises, Inc	G104664	Yes	N/A	N/A		\$105,000.00
5.						
6.						
7.						
8.						

Recorded by Katie West, CofC Project Manager

Opened by Katie West

Exhibit B

From: [West, Katie Lorraine](#)
To: [Danielle Smith](#)
Subject: RE: TOC Bid Response : H15-N340-ML

Received. Thank you!

Katie L. West

From: Danielle Smith <dsmith@quintechsolutionsinc.com>
Sent: Wednesday, April 15, 2020 2:45 PM
To: West, Katie Lorraine <westkl@cofc.edu>
Subject: TOC Bid Response : H15-N340-ML

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Katie,

Please see attached Quintech's TOC Response for Bid *#H15-N340-ML, RSS & Maybank Exterior Painting*.

Thank you!

Sincerely,
Danielle Smith
Business Development

Quintech Solutions, Inc.

(843) 695-0170 office

(843) 695-0222 fax

www.QuintechSolutionsInc.com

Planning Today. Protecting Tomorrow.

SOUTH CAROLINA OFFICE
102 Sangaree Park Court, Suite 4
Summerville, SC 29486

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GEORGIA OFFICE
2550 Lithonia West Drive
Lithonia, GA 30058



Exhibit C

From: [West, Katie Lorraine](#)
To: [White, John](#)
Subject: Re: [External] RSS/Maybank bid emails
Date: Monday, May 4, 2020 2:43:41 PM
Attachments: [image001.png](#)

On 4/16 around 1:20pm it was hand delivered to my office building.

Katie L. West
Project Manager
Facilities Management
133 Calhoun St, Room 217
WestKL@cofc.edu | Office: 843.953.1597

From: White, John <jswhite@mmo.sc.gov>
Sent: Monday, May 4, 2020 2:21:39 PM
To: West, Katie Lorraine <westkl@cofc.edu>
Subject: RE: [External] RSS/Maybank bid emails

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I think this is my last question. When did you receive the hand delivered bid?

From: West, Katie Lorraine <westkl@cofc.edu>
Sent: Monday, May 4, 2020 2:19 PM
To: White, John <jswhite@mmo.sc.gov>
Subject: Re: [External] RSS/Maybank bid emails

Yes that's correct. I did not look at any of the 3 bids I had already received prior to that email.

Thanks,

Katie L. West
Project Manager
Facilities Management
133 Calhoun St, Room 217
WestKL@cofc.edu | Office: 843.953.1597

From: White, John <jswhite@mmo.sc.gov>
Sent: Monday, May 4, 2020 2:11:21 PM
To: West, Katie Lorraine <westkl@cofc.edu>
Subject: RE: [External] RSS/Maybank bid emails

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Katie,

Thank you. Just to confirm my understanding, you did not look at First Class Construction's first bid before sending out the email at 7:36 AM on April 17 to reminded bidders about the \$90,000, correct?



John St. C. White | Materials Management Officer and State Engineer
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-0768 |
jswwhite@mmo.sc.gov

From: West, Katie Lorraine <westkl@cofc.edu>

Sent: Monday, May 4, 2020 1:05 PM

To: White, John <jswwhite@mmo.sc.gov>

Subject: RE: [External] RSS/Maybank bid emails

I was able to find their first bid after some more digging. Remote working and multiple devices sticks emails in too many different folders apparently. Is there anything else that I need to do?

Katie L. West

From: White, John <jswwhite@mmo.sc.gov>

Sent: Monday, May 4, 2020 12:41 PM

To: West, Katie Lorraine <westkl@cofc.edu>

Subject: RE: [External] RSS/Maybank bid emails

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Do you have the acknowledgement of bids received from the other bidders? Also, did you check deleted email for the first FCC bid? Even if you deleted it from your delete folder, it may still be recoverable.

From: West, Katie Lorraine <westkl@cofc.edu>

Sent: Monday, May 4, 2020 12:32 PM

To: White, John <jswwhite@mmo.sc.gov>

Subject: [External] RSS/Maybank bid emails

John,

Please see the attached emails. I can only find my reply, not the first bid email that FCC sent. I know deleted it after they resubmitted so I did not get the two confused and it's no longer in my archive. Do you need to me ask them for the initial bid or what the amount was? I also included the reply email to Quintech's questions that they mentioned not being sent in an additional addendum. I know he also questioned there being no witnesses at the bid opening. I did also happen to take a photo at the opening location at the noon deadline where no one else showed up, I attached that too which has the date and timestamp on it. Please let me know if you need anything else.

Thanks,

Katie L. West

CofC PROJECT MANAGER

FACILITIES MANAGEMENT

329 KING STREET, ROOM 303

WESTKL@COFC.EDU | OFFICE: 843.953.1597

Exhibit D

From: [Tyler Meyer](#)
To: [West, Katie Lorraine](#)
Cc: [Julia Gibbs](#)
Subject: RSS and Maybank Painting Proposal
Date: Friday, April 17, 2020 7:12:11 AM
Attachments: [Doc - Apr 17 2020 - 7-09 AM.pdf](#)
[ATT00001.txt](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning. Please see attached the proposal as requested for the RSS and Maybank exterior painting. Thank you and have a great day.

Exhibit E

From: [Tyler Meyer](#)
To: [West, Katie Lorraine](#)
Cc: [Julia Gibbs](#)
Subject: RSS and Maybank Ext. Paint
Date: Friday, April 17, 2020 9:06:49 AM
Attachments: [Doc - Apr 17 2020 - 9-04 AM.pdf](#)
[ATT00001.txt](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Katie,

Please see attached the revised proposal submitted by First Class Construction. Thank you and have a great day.

Exhibit F

From: [West, Katie Lorraine](#)
To: [Alan Sheeley](#)
Cc: [Richard Huss](#)
Subject: Re: Huss Inc Bid H15-N340-ML RSS and Maybank Exterior Painting

Received. Thank you!

Katie L. West
Project Manager
Facilities Management
133 Calhoun St, Room 217
WestKL@cofc.edu | Office: 843.953.1597

From: Alan Sheeley <adsheeley@hussinc.com>
Sent: Friday, April 17, 2020 11:33:48 AM
To: West, Katie Lorraine <westkl@cofc.edu>
Cc: Richard Huss <RichardHuss@hussinc.com>
Subject: Huss Inc Bid H15-N340-ML RSS and Maybank Exterior Painting

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Katie West
The College of Charleston

RE: Huss Inc Bid H15-N340-ML RSS and Maybank Exterior Painting

Please see Huss Inc bid attached to this email.
Please confirm receipt.

Thanks for the opportunity to bid.

Alan Sheeley
Project Manager, Estimator

Huss, Inc.
Historic Restoration | Project Management & Development
P.O. Box 12339
Charleston, SC 29422
Ph: 843.937.0023
Fax: 843.937.0095
adsheeley@hussinc.com