

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND)	OFFICER FOR CONSTRUCTION
)	
)	
IN THE MATTER OF: PROTEST)	DISMISSAL
)	
UNKNOWN PERSON (ALIAS)	
JIM JONES))	CASE No. 2007-05
)	
vs.)	
SOUTH CAROLINA STATE)	
UNIVERSITY)	
)	POSTING DATE: JULY 25, 2007
ENGINEERING/COMPUTER SCIENCE)	
COMPLEX CONSTRUCTION/)	
RENOVATION)	
STATE PROJECT No. H24-9628-AC)	
_____)	

This matter is before the Chief Procurement Officer for Construction (“CPOC”) pursuant to a request from an unknown person, alias Jim Jones (Mr. Jones), under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review of a Notice of Intent to Negotiate a Contract for Professional Services for the Engineering/Computer Science Complex Construction/Renovation project (the “Project”) at South Carolina State University (State). Pursuant to S.C. Code Ann. §11-35-4210(3) (Supp. 2006), the CPOC conducted an administrative review. This decision is based on that review and the applicable law and precedents.

NATURE OF THE PROTEST

On February 15, 2007, State issued a Request for Qualifications from architectural firms interested in providing architectural services for the design and construction of the Project. State received eighteen Statements of Qualification and selected six firms for interviews. On June 13 and 14, 2007, State conducted interviews of the selected firms. On June 20, 2007, State

posted a Notice of Intent to Negotiate a Professional Service contract stating that it intended to negotiate a contract with The Freelon Group/McMillan Smith (Freelon). On June 29, 2007, the CPOC received a protest of State's intent to negotiate a contract with Freelon from Mr. Jones. (A copy is attached as Exhibit "A"). The CPOC assigned an Office of the State Engineer (OSE) project manager, Allen Carter, to investigate Mr. Jones's allegations and prepare a report. In an attempt to establish the identity of the firm Mr. Jones represented, Mr. Carter e-mailed Mr. Jones requesting additional information to include the name of Mr. Jones's firm, the firm's mailing address, and the firm's telephone number. On July 5, 2007, Mr. Jones responded by e-mail stating that his firm was ADW. Mr. Jones included a Charleston address and telephone number. In his response, Mr. Jones also included an additional item of protest. (A copy is attached as Exhibit "B").

Subsequent to Mr. Jones's response of July 5, Mr. Carter checked the Statements of Qualifications received in response to State's solicitation and determined that a firm named ADW neither responded to the solicitation nor was a part of any design team that responded to the solicitation. After attempting to contact Mr. Jones for additional information at the telephone number he previously provided, Mr. Carter discovered that he was calling an answering service. Additional investigation revealed that the Charleston mailing address was also for a telephone answering service. A review of the Department of Labor, Licensing and Regulation records revealed that the only firm with the name ADW licensed to practice architecture in South Carolina is a Charlotte firm. There is no firm with the Name ADW licensed to practice engineering in South Carolina. Mr. Carter contacted ADW to find out if they had submitted the protest. ADW advised Mr. Carter that it had not protested, that it did not have a Charleston office, and that it did not have an employee named Jim Jones. (A copy is attached as Exhibit "C").

Because of the foregoing, the CPOC had a real concern that the protestant did not have standing to protest. Therefore, On July 13, 2007, the CPOC sent Mr. Jones a letter requiring him to provide proof that he or his firm was an actual offeror with the right to protest pursuant to S.C. Code Ann. § 11-35-4210(1)(b) (Supp. 2006). (A copy is attached as Exhibit "D"). This letter provided Mr. Jones with a deadline of July 23, 2007. On July 17, 2007, Mr. Jones, called the CPOC and stated that he did not want to reveal his name or his firm's name for fear of retaliation and asked the CPOC to permit him to proceed with a statement from his attorney that he had standing. The CPOC advised Mr. Jones that such a statement from his attorney would not be sufficient but actual evidence of standing would be necessary. On July 18, 2007, Mr. Jones e-mailed the CPOC that he was having his attorney contact OSE's attorney to certify that Mr. Jones was an actual offeror without providing the actual name of Mr. Jones or his firm. (A copy is attached as Exhibit "E"). The CPOC again responded that he needed the name of Mr. Jones firm to establish standing. Mr. Jones declined to provide his name or the name of his firm.

CPOC FINDINGS

South Carolina Code Ann. § 11-35-4210(1)(b) (Supp. 2006) provides "any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract" with a right of protest. Any such protest for construction related projects must be filed with the CPOC. The language of this statute also limits the CPOC's jurisdiction to protests brought by actual offerors. If Mr. Jones is not an actual offeror, he does not have a right to protest before the CPOC. Mr. Jones has declined to give the CPOC sufficient information for the CPOC to determine he is in fact an actual offeror. Instead, Mr. Jones seeks to proceed with his protest anonymously. If protestants were allowed to protest anonymously, nothing would prevent people who are not actual offerors and who do not have standing from protesting to the CPOC and availing themselves of the remedies of S.C. Code Ann. § 11-35-4210 even

though they do not have a legal right to those remedies. Since the name "Jim Jones" is admittedly an alias, since no one named Jim Jones was an actual offeror, since ADW was not an actual offeror, and since Mr. Jones has declined to provide the actual name of his firm or his own name, the CPOC concludes that Mr. Jones is not an actual offeror and does not have standing. To conclude otherwise would permit abuse of process.

DECISION

It is the decision of the Chief Procurement Officer for Construction that pursuant to SC Code Ann. § 11-35-4210(1)(b), Mr. Jones lacks standing to protest. Therefore, the CPOC has no choice but to dismiss Mr. Jones's protest.

For the foregoing reasons, Protest Dismissed.



John St. C. White
Chief Procurement Officer
For Construction



Date

Columbia, South Carolina

STATEMENT OF THE RIGHT TO APPEAL

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

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

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2005 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(4). . . . 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain 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). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm

EXH. A

From: Mike <boli28@yahoo.com>
To: <protest-ose@mmo.state.sc.us>
Date: Fri, Jun 29, 2007 9:30 AM
Subject: Project H24-9628-AC

Chief Procurement Officer

We are protesting the Project H24-9628-AC for the following reason: the firm selected - The Freelon Group is not licensed to practice and provide Architectural services in South Carolina.

Please look into this matter.

Thanks

Jim Jones

Got a little couch potato?
Check out fun summer activities for kids.

CC: <boli28@yahoo.com>, <drebamba@yahoo.com>

EXH. B

From: jim jones <jim_j2007@yahoo.com>
To: <acarter@mmo.state.sc.us>
Date: 7/5/2007 1:25:39 PM
Subject: Protest of H24-9628-AC

Mr. Carter

In regard to the protest of the Freelon Group not being licensed to practice and provide Architectural services in South Carolina. I am forwarding my information as requested:

ADW
1591 Savannah Highway
Charleston, S. C. 29407
Phone: 843 724-6506
Fax: 800 530-7083
Point of Contact: Jim Jones

The Freelon Group was also allotted more than the designated time to give their presentation.

Please call if you have any questions.

Jim Jones

Park yourself in front of a world of choices in alternative vehicles.
Visit the Yahoo! Auto Green Center.

CC: <jim_j2007@yahoo.com>

EXH. C

From: "Jennifer Iddings" <Jiddings@ADWArchitects.com>
To: "Allen Carter" <ACarter@mmo.state.sc.us>
Date: 7/11/2007 5:23:31 PM
Subject: RE: Protest with SCSU

Jennifer Iddings, SDA
Office Manager
ADW Architects, P.A.
www.adwarchitects.com
704.379.1919

-----Original Message-----

From: Allen Carter [mailto:ACarter@mmo.state.sc.us]
Sent: Wednesday, July 11, 2007 5:22 PM
To: Jennifer Iddings
Cc: John White
Subject: Protest with SCSU

Jennifer,

I appreciate talking with you by telephone this afternoon. My questions are:

1. Does a gentleman by the name of Jim Jones work for ADW?
No
2. Does ADW have an office in Charleston, SC?
No
3. Is there anyone in the Charlotte office that you are aware of that has submitted a protest concerning A/E selection for a project at South Carolina State University.
No

Thank you, in advance for your assistance in answering the above questions. Again thank you for responding to my question by telephone.

Sincerely,

Allen R. Carter, AIA, CBO
The Office of State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201
803-737-0776
Fax 803-737-0639
www.state.sc.us/mmo/ose/osemenu.htm

STATE OF SOUTH CAROLINA
State Budget and Control Board
PROCUREMENT SERVICES DIVISION

MARK SANFORD, CHAIRMAN
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EXECUTIVE DIRECTOR

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-2320

MATERIALS MANAGEMENT OFFICE
1201 MAIN STREET, SUITE 600
COLUMBIA, SOUTH CAROLINA 29201
(803) 737-0600
Fax (803) 737-0639

R. VOIGHT SHEALY
MATERIALS MANAGEMENT OFFICER

July 13, 2007

Mr. Jim Jones
ADW
1591 Savannah Highway
Charleston, S. C. 29407

Re: Project H24-9628-AC
Invitation for Proposals for Architectural and Engineering Services

Dear Mr. Jones:

I am in receipt of your protest of Notice of Intent to Negotiate a Professional Service Contract in the above referenced matter. State law only provides an actual offeror the right to protest an intent to award a contract. SC Code Ann. § 11-35-4210 (1)(b). The Chief Procurement Officer has the authority and obligation to determine jurisdiction before proceeding on a matter.

Because none of the Architect/Engineer teams that responded to the Invitation for Professional Services on this project included a firm with the name of ADW or listed an individual with the name of Jim Jones, we have been attempting to establish your standing to file a protest. After attempting to contact you, this office has learned that the telephone number and mailing address you have provided are for a professional answering service. Moreover, we have not received any response to the messages left at this location.

Our investigation has revealed that the only firm licensed in the State to practice architecture with the name of ADW is ADW Architecture in Charlotte, NC. There is no engineering firm licensed in the state to practice engineering with the name of ADW. ADW Architecture in Charlotte has advised us that they do not have a Charleston Office, they do not have anyone working for them with the name of Jim Jones, and they did not respond to the invitation for proposals on this project.

Before I proceed further with an administrative review of this matter, I must have some confidence that you or your firm has standing to protest the intent to award. Therefore, I must ask that you provide me with documentation showing that you or your firm either submitted a response to the invitation for proposals or were a member of a design team that submitted a response. If I do not receive sufficient documentation within ten days of the date of this letter, I will dismiss your protest for lack of standing.

With kindest regards,

Sincerely,

A handwritten signature in cursive script that reads "John St. C. White". The signature is written in black ink and is positioned above the printed name.

John St. C. White, P.E.
State Engineer
Chief Procurement Officer for Construction

EXH. E

From: jim jones <jim_j2007@yahoo.com>
To: <jwhite@mmo.state.sc.us>
Date: 7/18/2007 1:27:48 PM
Subject: Protest of H24-9628-AC

Mr. White,

It was a pleasure to speak with you yesterday. As requested during our conversation I am having my Attorney contact Keith McCook, the State's Attorney to certify that my firm which in reference to this contract being referred to as ADW (not the actual name of our firm) was on one of the teams that was shortlisted for this contract. As mentioned to you yesterday we will not give the name of the actual firm or person to prevent any retaliation on future projects.

Thanks for your help and understanding in regards to this matter.

Jim Jones

Luggage? GPS? Comic books?
Check out fitting gifts for grads at Yahoo! Search.

CC: <temosley@sc.rr.com>