

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES
DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

Determination to Lift Automatic Stay

Matter of: TSI, Inc.

Case No.: 2016-217

Date: June 23, 2016

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400008056

Description: Statewide – IT Temporary Services

This matter comes before the Chief Procurement Officer (CPO) upon delegation by the Chief Procurement Officer for the Information Technology Management Office CPO-ITMO of a protest filed by TSI, Inc., on June 23, 2016. The CPO makes this determination following a written request from the head of the using agency, pursuant to S.C. Code Ann. §11-35-4210(7).

DISCUSSION

ITMO issued this Fixed Price Bid on September 2, 2015. The solicitation is designed to allow a Using Governmental Unit (UGU) to augment its information technology staff. The resulting contract will replace an existing contract that expires on August 25, 2016, and cannot be renewed. Between 350 and 400 companies currently hold contracts, and most of them are expected to offer in response to the current solicitation. A timeline of the solicitation is included in the CPO-ITMO's decision in *Protest of TSI, Inc.*, Case No. 2016-212 (posted June 2, 2016).

TSI, Inc. initially filed an untimely protest of the solicitation on October 1, 2015. TSI's appeal to the Panel was denied on November 9, 2015. The solicitation was untimely protested by another potential bidder on December 17, 2015, and the Panel dismissed the appeal on April 11, 2016. *Appeal by J-Kell, Inc.*, Panel Case No. 2016-2. ITMO issued Amendment 10 to restart the solicitation on May 17, 2016. TSI filed another protest on May 31, 2016, raising the same issues that were raised in the two previous protests. This protest was ruled untimely by the CPO-ITMO. On June 10, 2016, TSI appealed that decision to the Panel, which has assigned it Panel Case No. 2016-9. On June 16, 2016, the CPO-ITMO, after consultation with the agency head and in accordance with Section 11-35-4210(7), lifted the automatic stay on the procurement. ITMO subsequently issued Amendment 12 to restart the solicitation. TSI once again filed a protest on June 23, 2016, protesting the date established in Amendment 12 for the receipt and opening of bids and raising the same issues raised in the previous protests.

Section 11-35-4210(7) stipulates that:

In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the State.

On June 23, 2016, the CPO-ITMO received a request from the Executive Director of the South Carolina State Fiscal Accountability Authority, the head of the using agency, to lift the automatic stay based on the attached justification, being in the best interest of the State. [Attachment 1]

DETERMINATION

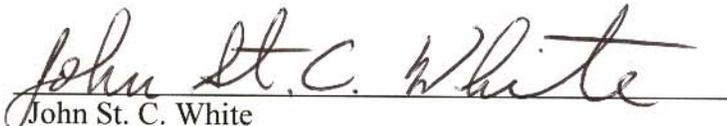
After careful consideration of the request and consultation with the head of the procuring agency, it is my determination that the solicitation of the contract without further delay is necessary to protect the best interests of the State. Accordingly the automatic stay of procurement is lifted pursuant to S.C. Code Ann. § 11-35-4210(7), effective immediately.

Written Determination, page 3

Case No. 2016-217

June 23, 2016

For the Information Technology Management Office

A handwritten signature in cursive script that reads "John St. C. White". The signature is written in black ink and is positioned above a horizontal line.

John St. C. White

Chief Procurement Officer

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JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICE
(803) 737-0600
FAX (803) 737-0639

June 23, 2016

Mr. Michael Spicer
Chief Procurement Officer for Information Technology
State Fiscal Accountability Authority
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Mr. Spicer,

The Information Technology Management Office (ITMO) is requesting the Chief Procurement Officer, Information Technology to lift the current stay on the solicitation process of the IT Temp Staffing/Augmentation Services Fixed Price Bid (5400008056). Technology Solutions, Inc. (TSI) has filed a third protest of this solicitation. The grounds of the protest are the same as the previous two protests which have already been addressed. Time is of the essence for this solicitation. The current contracts for this service expire on August 25, 2016 and have reached a contract period of 7 years. There are currently between 350-400 contractors awarded under the current FPB. It is anticipated that a similar number of contractors will be awarded contracts under the current FPB. These contracts also use the services of a Vendor Manager (Tapfin). The time frame to evaluate the responses, award the contracts, and complete the on-boarding process with the Vendor Manager is 30-60 days.

We have reached the critical point in this solicitation process. To further delay the solicitation will result in the State not having any contracts for IT Temporary Staffing. This is a multi-million dollar contract used by the majority of State agencies along with local political subdivisions.

It is critical the solicitation process continue without further delay for the selection of IT Temporary Staffing contractors for this is in the best interest of the State.

Sincerely,

Grant Gillespie
Director

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
- (b) requests for review of other *written determinations, decisions, policies, and procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) See generally *Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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>

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 111.1 of the 2015 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.

