STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

In the Matter of Protest of:

Cromer Food Services, Inc.

Materials Management Office
IFB # 5400006793

Campus Vending Services
Piedmont Technical College

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2014-112

POSTING DATE: May 27, 2014
MAILING DATE: May 27, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed March 12, 2014 by Cromer Food Services, Inc. (Cromer) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure campus vending services for Piedmont Technical College (PTC). After evaluating the bids received, on January 6, 2014, MMO posted its intent to award to Canteen Vending (Canteen). On March 12, 2014, Cromer filed its protest. [1]

As the issues to be decided are clear, the CPO makes this decision without the benefit of a hearing, based upon an administrative review of the protest letter and the procurement file.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

[1] On January 16, 2014, Cromer submitted a letter via Protest-MMO email writing, "We respectfully request the right to inspect all vending equipment installed by Canteen Vending after they have completed the installation at all facilities of Piedmont Technical College so as to verify they are complying with all specifications requested in the RFB." Cromer also wrote, "As stated in the RFB, the selling prices have been established by the College are not subject to change until after the first initial term period of the contract. We would like to verify this is being followed." According to the Code, a protest must "set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided." [S.C. Code 11-35-4210(2)] Cromer's January 16 letter merely requested access to the PTC campus, something the CPO has no control over and Cromer could do itself, without setting forth any grounds of protest or relief requested. It did not meet the legal standard to qualify as a protest.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On January 6, 2014, MMO posted its Intent to Award. [Ex. 1]
2. On March 12, 2014, almost two months later, Cromer filed its protest with the CPO.

CONCLUSIONS OF LAW

The Consolidated Procurement Code which grants bidders the privilege to protest, reads in pertinent part:

> (1) Right to Protest; Exclusive Remedy.
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> ***
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> (b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.
>
> ***
>
> (2) Protest Procedure. (a) A protest pursuant to subsection (1)(a) must be in writing, filed with the appropriate chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the appropriate chief procurement officer within the time provided in subsection (1).

[11-35-4210] [Emphasis added]

The South Carolina Procurement Review Panel ("Panel") has repeatedly held that the time for filing cannot be waived. See In Re: Protest of Jones Engineering Sales, Inc., Panel Case No. 2001-8 (finding that the CPO did not have jurisdiction to rule on the protest issue because the time for filing protests of the solicitation is jurisdictional and may not be waived); In Re: Protest of National Cosmetology Ass'n, Panel Case No. 1996-17 (finding that "where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver");

In Re: Protest of Vorec Corporation, Panel Case No. 1994-9 (finding that a protest of award was untimely when it was filed one day after the deadline established by the Code prior to its amendment). The Panel has explained its rationale for why this time limit is jurisdictional and cannot be waived as follows:

> [I]t is essential to the operation of government that challenges its purchasing decisions be limited. If the time for filing protests can be waived, the state will be unable to determine with certainty when it can enter into a contract with one vendor for vital goods and services without the danger of being liable to another vendor.

In Re: Protest of Oakland Janitorial Services, Inc., Panel Case No. 1988-13.

DETERMINATION

For the reasons stated above, the protest is dismissed.[2]

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

5/27/14
Date

Columbia, S.C.

[2] One of Cromer's issues of protest was, "On Tuesday, March 11, 2014, at Piedmont Technical College, while surveying pricing, it was discovered that crackers were being sold for $.75 instead of $.65. Chips were being sold for $1.00 instead of $.65. Candy was being sold for $1.00 instead of $.85. Pastry was being sold for $1.00 and $1.25, instead of $.85." On November 25, 2013, MMO issued Amendment #3 to the IFB. It read, in part, "The current vending prices for the following items were incorrectly listed. The correct vending prices are: Candy-$1.00, Small Chips/Crackers-.75, Coffee- .75, Pastry – 1.00. [Amendment #3, B. Clarification]

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

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

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 108.1 of the 2013 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
1105 Pendleton Street, Suite 202, Columbia, SC 29201

_____ _____
Name of Requestor Address

_____ _____
City State Zip Business Phone

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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.

CROMER FOOD SERVICES, INC.
P.O. Box 1447 • Anderson, South Carolina 29622
1-800-922-3174 • www.cfsvending.com

March 12, 2014

Theresa L. Watts, CPPB
Procurement Officer
Materials Management Office
1201 Main Street – Suite 600
Columbia, SC 29201

Sent Via E-Mail: twatts@mmo.sc.gov

I am writing in reference to the Piedmont Technical College invitation for bid solicitation #5400006793, that was recently awarded to Canteen Vending. My protest is due to the failure of the State of South Carolina Materials Management Office to enforce the requirements outlined in the Request for Bid for **Pricing and Equipment**.

The pricing for all items was very clear and that **all** pricing was for the duration of this contract. It was also very clear in that last Paragraph on Page 15, that **all** equipment must be installed as listed on **Exhibit A.**

The failure of Canteen Vending to install the correct equipment and to charge the correct prices as required by this Bid, and the failure of the State of South Carolina Materials Management Office to enforce this contract is very disappointing.

On Tuesday, March 11, 2014, at Piedmont Technical College, while surveying pricing, it was discovered that crackers were being sold for $.75 instead of $.65. Chips were being sold for $1.00 instead of $.65. Candy was being sold for $1.00 instead of $.85. Pastry was being sold for $1.00 and $1.25, instead of $.85.

It was also discovered that there was not a sandwich machine installed at the Abbeville Campus as required. At the Newberry Campus, there was not a sandwich machine nor a coffee machine installed as required.

If Cromer Food Services had been given these prices and had not been required to install all of the equipment required by the RFB, then we would have been able to offer a **much** higher % of commission to Piedmont Technical College.

I am sure that as stated in the RFB for the prices to be lowered and the additional vending equipment to be installed may have been an oversight on the part of the Procurement Office and if so, Cromer Food Services, Inc. respectfully requests that the state terminate this contract **in whole** for the convenience of the state as outlined in Paragraph One (1) Termination on page 31 of the RFB.

I hope to hear from your office soon.

Sincerely,

C.T. Cromer
Founder / Chairman

/kcs