

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

American Solutions for Business

Department of Labor, Licensing &
Regulation
IFB # 5400007459

Fire Fighter Turnout Gear

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2014-118

POSTING DATE: May 7, 2014

MAILING DATE: May 7, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by Tina Lewandowski of American Solutions for Business (American Solutions) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the Department of Labor, Licensing, and Regulation (LLR) attempts to procure fire fighter turnout gear. After the bid opening, on March 26, 2014, American Solutions filed its protest of "solicitation number 54007459" with LLR on March 31, 2014. LLR forwarded the protest to the CPO April 1, 2014. American Solutions protested "solicitation number 54007459" alleging "The vendor in which whom (sic) retails the Firefighter Turnout Gear will only supply to one local dealer. This allows the current dealer to price this bid in a way that is not of the best interest to the state and its people." LLR has imposed the automatic stay of the solicitation as required by the Consolidated Procurement Code and has not posted an award.

As the issues to be decided are statutory, the CPO makes this decision without the benefit of a hearing, based upon an administrative review of the protest letter [Exhibit #1 attached], email responses from Ms. Lewandowski of American Solutions [Exhibit #2 attached] and Al Morant, LLR Procurement Manager [Exhibit #3 attached] and the procurement file.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On March 10, 2014, LLR published the IFB. [Ex. 4] In the solicitation, LLR asks for bids for:

Item 1: 34034 - Fire Protection Clothing (Turnout Coats Hoods etc) [Fire Protection Clothing Jacket] – Quantity 85

Item 2: 34034 - Fire Protection Clothing (Turnout Coats Hoods etc.) [Fire Protection Clothing, Trousers] – Quantity 85

LLR issued no amendments to the IFB.

2. On March 19, 2014, LLR closed the period for bidder questions. According to Ms. Lewandowski, American Solutions raised no questions regarding the solicitation.
3. On March 26, 2014, LLR opened the bids. American Solutions did not submit a bid. LLR did receive bids from the following bidders:

<u>Bidder</u>	<u>Bidder's Address</u>
Safe Industries	116 Leader Drive, Piedmont, SC 29672
Newton's Fire & Safety Equipment	2724 Darrell Newton Drive, Swepsonville, NC 27359
Gilbert Emergency Vehicle Sales	705 Hayes Crossing Road, Gilbert, SC 29054

4. On March 31, 2014, American Solutions filed its protest.

CONCLUSIONS OF LAW

The Consolidated Procurement Code, which provides bidders protest privileges, reads:

(1) Right to Protest; Exclusive Remedy.

(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to

have been issued on the date required notice of the issuance is given in accordance with this code.

American Solutions protested “solicitation number 54007459.” Since no award has been posted, the protest relates clearly to the solicitation. LLR issued the IFB March 10, 2014. American Solutions knew the grounds for its protest on or about that date. However, American Solutions did not file its protest until March 31, 2014, well past the fifteen days allowed by law for a protest of a solicitation.

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.

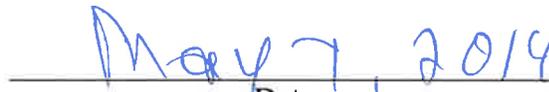
In Re: Protest of Oakland Janitorial Services, Inc., Panel Case No. 1988-13.

DETERMINATION

For the reasons stated above, the protest is denied as a matter of law.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

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

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.



TINA M. LEWANDOWSKI
Account Executive

3501 Iron Horse Road
Ladson, SC 29456
Direct: 843-832-7988
Fax: 843-832-7994
Cell: 843-494-2126
tinam.lewandowski@outlook.com
www.americanbus.com

RECEIVED

MAR 31 2014

March 26, 2014

PROCUREMENT

To Whom it May Concern,

This appeal is to reference solicitation number 54007459 based on the South Carolina Consolidated Procurement Code & Regulations Annotated handbook code 11-35-4210.

American Solutions for Business would like to appeal this solicitation on account of its lack of interest to benefit the State of South Carolina and its citizens. The vendor in which whom retails the Firefighter Turnout Gear will only supply to one local dealer. This allows the current dealer to price this bid in a way that is not of the best interest to the state and its people.

American Solutions for Business is requesting an appeal date in hopes for a solution to this matter.

Thank you for your time in advance.

A handwritten signature in black ink, appearing to read "Tina Lewandowski", is written over a horizontal dashed line.

Tina Lewandowski

Account Executive

Skinner, Gail

From: Tina Lewandowski <tinam.lewandowski@outlook.com>
Sent: Thursday, April 17, 2014 2:43 PM
To: Tina Lewandowski (tina@americanchas.com); Shealy, Voight
Cc: Albert Morant; Richele Taylor; Stephanie Davis; Diane Parker; Stevens, John; Singleton, Delbert; Robertson, Dixon; Skinner, Gail
Subject: Re: FATurnoutSS(1).xlsx-Delegation-Fire Protection Clothing

Mr. Shealy,

Thank you for your response. Following your questions you will find my response.

1. According to the South Carolina Enterprise Information System (SCEIS), IFB # 5400007459, this solicitation was for firefighter turnout gear. Is that right?
Yes
2. According to SCEIS, Labor, Licensing, and Regulation (LLR) issued the IFB March 10, 2014. Is that correct?
Yes
3. SCEIS does not reflect any amendments to the solicitation. Is that correct?
Yes
4. In SCEIS, I see two lines items listed in the IFB:
Item 1: 34034 - Fire Protection Clothing (Turnout Coats Hoods etc) – Quantity 85
Item 2: 34034 - Fire Protection Clothing (Turnout Coats Hoods etc) – Quantity 85
Am I reading the IFB correctly?
Yes
5. According to the IFB, “QUESTIONS MUST BE RECEIVED BY: **03/19/2014 12:00:00.**” Did American Solutions for Business raise any questions regarding this IFB with LLR?
No
6. According to Mr. Morant, LLR opened the bids received on March 26, 2014.
Yes
7. Did American Solutions for Business submit a bid for this IFB?
No
8. According to your letter attached from Mr. Morant, LLR received your letter March 31, 2014. Do you agree/disagree?
By my estimates that would sound correct
9. According to State of South Carolina vendor registration (*AMERICAN SOLUTIONS FOR BUSINESS (SC Vendor Number 7000187358)*), is located at 3501 IRON HORSE ROAD, Ladson, SC 29456. The vendor registration identifies you as an authorized contact. Since that information matches your letterhead,

may I assume this registration correctly identifies your company. Is that correct? American Solutions for Business is registered with the State of South Carolina to sell the state the following items. Do you agree/disagree?

envelopes, plain (see classes 525, 615, 640, 655, 665, and 966 for other types)

file folders: expanding envelopes, wallets, etc.

stationery w/envelopes (including recycled)

envelopes, plastic and poly.

envelope printing

Yes. Disagree

Sincerely,

Tina Lewandowski

To all copied on this email, please "Copy All" on every communication with me.

From: Albert Morant [<mailto:Al.Morant@llr.sc.gov>]

Sent: Tuesday, April 01, 2014 12:50 PM

To: Shealy, Voight

Cc: Richele Taylor; Stephanie Davis; Diane Parker; Stevens, John; Aycocock, Jimmy; Singleton, Delbert

Subject: RE: FATurnoutSS(1).xlsx-Delegation-Fire Protection Clothing

Hey Sir,

We received this letter from American Solutions for Business(7000187358) in response to the solicitation that was approved above our certification for fire fighter turn out gear, we have not posted the intent to award and have not communicated with anyone concerning this other than you and staff listed. In evaluating this vendor they are on the SCEIS database as a supplier of envelopes and file folders mostly no uniforms are listed as there commodities. I am seeking advice on how to handle this from this point on as this may be an issue brought before you, although this particular company did not bid and the tied bids are from companies that did not seek SC vendor preference. I plan to be at the meeting in the morning if we need to discuss this face to face.

Thanks for your attention to this matter,

Al Morant

Procurement Manager I

Office of Administration

SC Dept. of Labor, Licensing and Regulation

110 Centerview Drive Columbia, SC 29211

Phone: (803) 896-4335

Fax: (803) 896-4310

Email: Al.Morant@llr.sc.gov

Website: www.llronline.com

It's a great day in South Carolina!

Skinner, Gail

From: Albert Morant <Al.Morant@llr.sc.gov>
Sent: Monday, April 28, 2014 12:31 PM
To: Shealy, Voight; Tina Lewandowski; Tina Lewandowski (tina@americanchas.com)
Cc: Richele Taylor; Stephanie Davis; Diane Parker; Stevens, John; Robertson, Dixon; Skinner, Gail
Subject: RE: FATurnoutSS(1).xlsx-Delegation-Fire Protection Clothing
Attachments: FA Trousers Spec.docx; FA Jacket Spec.docx

Voight,

Also see attached that were included with the solicitation as to the Specifications requested.

1. What brand turnout gear did LLR specify, if any? **None**
2. If you specified a brand name, did the solicitation allow bidders to offer other brands? **N/A**
3. Please provide the names, addresses, and vendor numbers for all bidders. **See Below**

<p>Name: SAFE INDUSTRIES Tax ID: 20-2653111 Phone: (864) 845-7175 Contact: WILLIMON, LOUIS</p>	<p>Address: 116 LEADER DRIVE PO Box: City, State, PIEDMONT, SC 29673 Zip: Vendor Number: 7000002273</p>
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<p>Name: NEWTONS FIRE AND SAFETY EQUIPMENT Tax ID: 56-1340046 Phone: (800) 672-5918 Contact: DODSON, JEREMIAH</p>	<p>Address: 2724 DARRELL NEWTON DRIVE PO Box: 13 City, State, SWEPSONVILLE, NC 27359 Zip: Vendor Number: 7000086403</p>
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<p>Name: GILBERT EMERGENCY VEHICLE SALES & Tax ID: 27-4791690 Phone: (803) 556-3889 Contact: PROUSE, JOHN</p>	<p>Address: 705 HAYES CROSSING ROAD PO Box: City, State, GILBERT, SC 29054 Zip: Vendor Number: 7000175354</p>
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