

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

In Re: Protest of Shealy Environmental Services, Inc.

Protest of Intent to Award to Pace Analytical Services, Inc. for Analytical Services for the Underground Storage Tank Division for the South Carolina Department of Health and Environmental Control, Solicitation No. #5400007867

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

CASE NO.: 2014-132

POSTING DATE: August 6, 2014

MAILING DATE: August 6, 2014

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation is for Analytical Services for the Underground Storage Tank Division for the South Carolina Department of Health and Environmental Control. (DHEC) Shealy Environmental Services, Inc. (Shealy) protests the intended award of a contract to Pace Analytical Services, Inc. [Attachment 1] The Chief Procurement Officer issues this ruling without a hearing.

**Findings of Fact**

Invitation For Bids Published:	05/14/2014
Addendum 1 Published:	05/28/2014
Intent to Award Posted:	06/19/2014
Protest Received	06/27/2014
Intent to Award Suspended	07/10/2014

**Discussion**

Shealy protests that it should receive the 7% Resident Vendor Preference under Section 11-35-1524(C)(1) and consequently the award. The solicitation was issued on May 14, 2014. The bottom of page two (2) included the following statement:

PREFERENCES DO NOT APPLY TO THIS PROCUREMENT PER SOUTH CAROLINA CONSOLIDATED PROCUREMENT OCDE (SIC) SECTION 11-35-1524, PART (2).

Amendment 1 to the solicitation included a revised note at the bottom of page 2 as follows:

PREFERENCES DO NOT APPLY FOR THIS PROCUREMENT PER THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE SECTION 11-35-1524(E)(2)<sup>1</sup>

Amendment 1 also included the following question from a potential bidder and the State's response:

1. Question: Page two of the solicitation states "PREFERENCES DO NOT APPLY FOR THIS PROCUREMENT PER THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE SECTION 11-35-1524, PART (2)". Can you confirm that there will be no additional discounts or consideration given to responders who qualify as in state vendors?

**Answer:** Confirmed. No Preference discounts apply to this Procurement.

The inclusion of these statements in the solicitation clearly indicates that the agency believed that the total potential value of the contract would exceed \$500,000. According to its letter of protest, Shealy held this contract for the previous three years knew the value of the contract at the time the solicitation was issued.

S.C. Code Ann. § 11-35-1524(E)(4) (2011): "If a solicitation specifies which preferences, if any, apply to a procurement, the applicability of preferences to that procurement is conclusively determined by the solicitation unless the solicitation document is timely protested as provided in Section 11-35-4210."

The South Carolina Procurement Review Panel addressed this same issue IN RE: Appeal by Tekna Corporation, Case 2012-7. The Procurement Review Panel stated:

In other words, when a solicitation's terms indicate that preferences will be applied/ then a bidder who disagrees with the application of preferences must protest the solicitation document as provided by Section 11- 35-4210. Under the facts of this case, the Panel finds that the solicitations and bidding schedules clearly indicated that SCDOT intended to apply the resident vendor and end product preferences. Because these solicitations specified that the preferences would be applied, this provision of the Procurement Code

---

<sup>1</sup> Section 11-35-1524(E)(2) (2) states that:

The preferences provided in subsections (B) and (C)(1)(i) and (ii) do not apply to a single unit of an item with a price in excess of fifty thousand dollars or a single award with a total potential value in excess of five hundred thousand dollars.

required Tekna, who disagreed with their application, to protest the solicitation documents as specified in Section 11-35-4210.

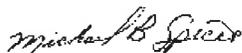
Shealy should have raised its concerns about the application of the preferences as a protest of the solicitation or amendment. An issue that should have been raised as a protest of the solicitation or amendment cannot be raised as a protest of the award.

Section 11-35-4210(1)(b) grants any actual bidder the right to protest the award or intended award of a contract, 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. (emphasis added) The solicitation and amendment put bidders on notice that preferences would not apply to this award.

### **Determination**

The Chief Procurement Officer lacks jurisdiction to address issues related to the solicitation or amendment as a protest of the award. Protest denied.

For the Information Technology Management Office



Michael B. Spicer  
Chief Procurement Officer

## 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 2014 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.**

Attachment 1



**Environmental  
Services, Inc.**

106 Vantage Point Drive • West Columbia, South Carolina 29172

Phone. 803.791.9700 • Fax. 803.791.9111 • [www.shealylab.com](http://www.shealylab.com)

June 27, 2014

Voight Shealy  
Chief Procurement Officer  
State of South Carolina  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

RE: Solicitation No. IFB-5400007867

Turn-Key Analytical Services for the SCDHEC Underground Storage Tank Division

Dear Mr. Shealy:

Please consider this letter as Shealy Environmental Services, Inc.'s (Shealy) formal protest of the award of the referenced solicitation to Pace Analytical Services, Inc. (Pace).

Because we have held this contract for the last three years, we have documented data regarding the quantities of each sample analysis by analyte and EPA Method. As reflected in the attached excel spreadsheet, based on Pace's pricing for the subject solicitation that we obtained through FOIA, the potential value of this contract is \$488,944, which is less than the \$500,000 limit (11-35-1524 (E)(1)(2)). Accordingly, Shealy should receive the 7% Resident Vendor Preference (11-35-1524 (C)(1)). Shealy's bid of \$136,650 is less than 2% more than Pace's bid of \$134,750. Additionally, this contract is a one-year contract with two one-year renewals for a possible maximum term of three years so the actual value may be 1/3 of \$488,944 or \$162,981.

Shealy is a South Carolina small business employing over 60 full-time employees that work in our laboratory in West Columbia. It should also be noted that Shealy is highly qualified to perform the work under this solicitation, as we have performed very well on this contract for the last three years, and we are a provider of these same services to the USEPA, the DoD, the DoE, consulting/engineering firms, and many industrial and municipal clients.

We strongly believe that the intent of the Resident Vendor Preference is to allow South Carolina businesses to prevail in these situations to secure jobs and revenue in our state. We respectfully request that SCDHEC reconsider this award in light of the above information. Please contact me at 803-227-2701 if you have questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel J. Wright", is written over a light blue circular stamp.

Daniel J. Wright  
President & CEO

Attachment

cc: Tripp Clark

Analyte	EPA Method	7/1/2011 through 6/30/2012			7/1/2012 through 6/30/2013			7/1/2013 through 6/30/2014		
		sample quantity submitted to Shealy	Pace Cost Per Analysis	Pace Extended Cost	sample quantity submitted to Shealy	Pace Cost Per Analysis	Pace Extended Cost	sample quantity submitted to Shealy	Pace Cost Per Analysis	Pace Extended Cost
Purgeable Aromatics (BTEX, Naphthalene, MTBE, & 1,2-DCA)	5030B/8260B and 5030B/6760 vwy	5135	\$19.00	\$97,565.00	5577	\$19.00	\$105,963.00	4976	\$19.00	\$94,544.00
EDB	8011	3392	\$18.00	\$61,056.00	3788	\$18.00	\$68,184.00	2929	\$18.00	\$52,722.00
Lead (Total, suspended, filtered, or dissolved)	See QAPP 9056	154	\$10.00	\$1,540.00	139	\$10.00	\$1,390.00	317	\$10.00	\$3,170.00
Sulfate	3510C/8270D	0	\$10.00	\$0.00	66	\$10.00	\$660.00	50	\$10.00	\$500.00
PAHs	See QAPP	11	\$40.00	\$440.00	52	\$40.00	\$2,080.00	5	\$40.00	\$200.00
Nitrate	See QAPP	0	\$10.00	\$0.00	0	\$10.00	\$0.00	2	\$10.00	\$20.00
Methane	See QAPP	0	\$35.00	\$0.00	0	\$35.00	\$0.00	2	\$35.00	\$70.00
				\$160,601.00			\$177,617.00			\$150,726.00
				<b>Total</b>			<b>\$488,944.00</b>			