

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In Re: Protest of Liberty Fire Protection Inc.

CASE NO.: 2015-121

Protest of Solicitation No. 15.29.NC.B.T5, Maintenance Contract for Fire Extinguisher and Hood Systems for the College of Charleston

POSTING DATE: December 2, 2014

MAILING DATE: December 2, 2014

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract. S.C. Code Ann. § 11-35-4210(1)(a). This solicitation was issued by the College of Charleston for the maintenance of Fire Extinguisher and Hood Systems. Liberty Fire Protection Inc. (Liberty) protests the solicitation as unduly restrictive. (Attachment 1) The College of Charleston's response to Liberty's protest is included as Attachment 2. The College of Charleston cancelled the solicitation under Regulation 19-445.2065(B)(1)(a) citing inadequate or ambiguous specifications. (Attachment 3) The Chief Procurement Officer¹ issues this ruling without a hearing.

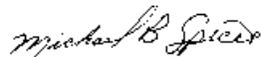
Findings of Fact

Invitation For Bids Published:	11/17/2014
Amendment One Issued	11/24/2014
Protest Received	11/18/2014
Cancellation of Solicitation by CoC	12/01/2014

Determination

The College of Charleston has cancelled the solicitation and intends to reissue with revised specifications. Liberty's protest is moot. Protest denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

¹ The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

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

From: Adam Webb (843) 514-5855

Sent: Tuesday, November 18, 2014 9:56:39 AM (UTC-05:00) Eastern Time (US & Canada)

To: Protest-MMO

Subject: Protest 15.29.NC.B.T5 Maintenance contract for Fire Extinguisher and Hood Systems

November 18, 2014

Attention: Chief Procurement Officer

Materials Management Office

1201 Main Street, Suite 600

Columbia, SC 29201

Good morning Chief Procurement Officer,

This letter is to serve as our formal protest of bid number 15.29.NC.B.T5, titled Maintenance Contract for Fire Extinguisher and Hood Systems per section C.11.12.

We are protesting under the section for Disclosure of Conflicts of Interest or Unfair Competitive Advantage, section (b) preventing an unfair competitive advantage.

Under the Scope of Work / Specifications, Section B Certification: "Contractor and service technician(s) must be certified by Kidde Inc., Ansul Inc, Pyrochem, and Denlar in order to inspect or work on the hood systems listed at Appendix A."

The problem as we see it is twofold:

- First, the Ansul and Pyrochem systems are Tyco Inc. systems and Tyco owns Simplex Grinnell thus Simplex not only automatically received the distribution license due to this fact, but they also receive preferential pricing thus giving them an unfair advantage.
- The second issue lies in the fact that in order to receive a certification from these companies you must be a distributor for them and both Ansul and Pyrochem (both owned by Tyco) have been and continue to be reluctant in allowing us to gain a distribution license for their product lines as they state that our market is currently "oversaturated" with a total of three distributors in the area. Therefore, this clearly causes an unfair competitive advantage against our company.

As this contract is currently written it will not only provide an unfair competitive advantage but it will limit competitive bids to possibly just those three companies that hold Tyco's Ansul and Pyrochem distribution license thus not allowing us to even participate in the bidding process.

The relief we are requesting is to have the Certification section of the Scope of Work / Specifications to be removed from the contract and replaced with: B Licensing: Contractor and service Technician(s) must have a current Pre-engineered Fixed Suppression System Class D license issued by the State of South Carolina. A copy of manufacturer certification or a sworn affidavit attesting to the contractors ability to obtain the proper manufacturer's installation and maintenance manuals and provide testament that all inspections and maintenance shall be performed in compliance with the manufacturer's standard per South Carolina Law Section 23-9-45 shall be included. Copy of the State license and either the manufacturer certification or a Sworn Affidavit must be submitted with quote.

Thank you for your time and consideration in regards to this protest. Please feel free to contact us with any questions or concerns. We look forward to your response shortly.

Kind Regards,

Adam Webb

Adam Webb



Liberty Fire Protection Inc.

Cell: (843) 514-5855

Office: (843) 552-1301

Fax: (843) 552-8018

Email: adam@libertyfireprotectioninc.com

Web: www.LibertyFireProtectionInc.com



Attachment 2

From: [Cabill, Niall P](#)
To: [Skinner, Gail](#)
Cc: [Spicer, Mike](#); [Williams, Wendy F](#)
Subject: RE: Protest 15.29.NC.B.T5 Maintenance contract for Fire Extinguisher and Hood Systems
Date: Tuesday, November 18, 2014 6:03:28 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

Gail,

Thank you for your email and attachment.

The position is that the Chief Fire Marshal (CFE), part of the Office of the President, is concerned that any organization purporting to be capable of undertaking the servicing of fire equipment should not only attest through affidavit to their capability but should also have certified approval from the equipment manufacturers. That manufacturer certification, coupled with State mandated certification, would provide the CFE with absolute assurance and certainty that training and part supplies, conforming with standards that the equipment manufacturers stipulate, would be utilized in maintaining a safe and secure campus for the students, staff and faculty of the College.

Importantly, the CFE is bound by the State's Fire Marshals Rules and Regulations (71-8303.4) which requires at E(4) that:

- "For each additional type of pre-engineered fire extinguishing system, the applicant may submit proof of a manufacturer's certification or an affidavit which shall attest to the ability to obtain the proper manufacturer's installation, maintenance and service manuals and manufacturer's parts or alternative components that are listed for use with the specific extinguishing system and provide testament that all installations and maintenance shall be performed in complete compliance with the manufacturer's installation, maintenance and service manuals and NFPA standards."

It is explicit in this that the applicant, amongst other requirements, must have the ability to obtain the manufacturer's parts. It is because of the obligation to protect the wellbeing of occupants and the immediacy of need for security systems that the College requires that extinguishers be returned within twenty-four (24) hours and that hoods which have been activated be returned to operating mode in two (2) hours. Unquestionably the ready access to manufacturers parts would be a pre-requisite to achieving these objectives.

Critically, because of need to provide safe and secure accommodation, while permitting ongoing occupation of student housing; staff and faculty facilities together with food services, the CFE, who is likewise the *authority having jurisdiction* is also bound by NFPA 17A (7.3.1.1) which requires that

- "The service technician shall possess a certification document confirming the requirements in 7.3.1 and issued by the manufacturer or testing organization that is acceptable to the authority having jurisdiction". (my underlining).

It is understood that NFPA 17A recognizes the various options for training classes, but recommends that training and qualifications be conducted by the manufacturer of the equipment being worked on. This is because each manufacturer has different characteristics and variations, so what might

acceptable for one system might not apply to another.

While the concern of the protester is appreciated, it is nonetheless fundamental that the Chief Fire Marshal, being the authority having jurisdiction and ultimately being responsible for safety of life, must not compromise standards in such circumstances. It therefore remains our strongly held view that all offerors for this solicitation must submit certifications by the manufacturers as specified and that alteration of the solicitation as suggested would run counter to mandated requirements. It is argued, if the protester can meet the legitimate requirements of the solicitation as it stands, that noting debars their participation.

In this solicitation the College is concerned with safety of life has no knowledge of or role in allocation of distributorships by companies providing such goods and services.

I await your deliberations in the matter.

Yours

Niall Cahill
Procurement Officer

From: Skinner, Gail [mailto:GSkinner@mmo.sc.gov]
Sent: Tuesday, November 18, 2014 11:48 AM
To: Cahill, Niall P
Cc: Spicer, Mike
Subject: FW: Protest 15.29.NC.B.T5 Maintenance contract for Fire Extinguisher and Hood Systems
Importance: High

Niall,

We received the below protest for College of Charleston.

Thanks,

Gail Skinner
Materials Management Office
(803) 737-0637

From: Protest-MMO
Sent: Tuesday, November 18, 2014 9:57 AM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Protest 15.29.NC.B.T5 Maintenance contract for Fire Extinguisher and Hood Systems
Importance: High

Attachment 3

From: [Williams, Wendy E](#)
To: [Spicer, Mike](#)
Cc: [Cahill, Niall P](#)
Subject: Cancelling Solicitation
Date: Monday, December 01, 2014 5:18:10 PM

Hi Mike:

The College of Charleston is cancelling solicitation 15.29.NC.B.T5 for Maintenance of Fire Extinguishers and Hood Systems in accordance with 19.445.2065 Paragraph B.(1)(a) inadequate or ambiguous specifications were cited in the invitation.

It is clear to us from the bids received that they are unbalanced, likely due to ambiguity in our bid schedule. Therefore it is in the best interest of the State and the College of Charleston to cancel and reissue the bid.

Thank you and please let me know if there is anything else you need by way of explanation.

Best,

Wendy

Wendy E. Williams, CPPD, C.P.M.

Director of Procurement & Supply
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Charleston, SC 29424
843-953-5506 (V)
843-953-5444 (F)
williams@cofc.edu