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Protest Decision

Matter of: Protest of Premier Landscape & Design, LLC

Case No.: 2016-118

Posting Date: November 3, 2015

Contracting Entity: Piedmont Technical College

Solicitation No.: 5400010091

Contract No.: 4400011698

Description: Ground Maintenance Services

DIGEST

Under a solicitation for grounds maintenance services at Piedmont Technical College, Premier Landscape & Design, LLC protests an award to Holtzclaw Lawn Care alleging the unauthorized release of actual expenditures under a previous contract for similar services.

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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

DECISION

The protest by Premier Landscape & Design, LLC of the posting of a Notice of Intent to Award to Holtzclaw Lawn Care for grounds maintenance services is denied. Premier's letter of protest is incorporated by reference. [Attachment 1]

DISCUSSION

Premier alleges the unauthorized release of actual expenditures under a previous contract for similar services as follows:

I am requesting a protest for the award of the contract to Hoytzclaw Lawn Care. After investigating the awarded amount, I find that it is quite interesting and coincidental that the price is the same as my last year's price that I charged for last year. I feel and believe that maybe an insider was able to give this information without regard of passing this information to all through a question and amendment process. I also find it is quite interesting that because this contract was up for renewal all services were increased with additional cuts and request for services. There was no deviation in the price to be actually more or less that what my company had charged in previous year.

The previous contract was awarded by the Materials Management Office on behalf of Piedmont Technical College through an Invitation For Bids. The release of information related to a public procurement is governed by Section 11-35-410 which states:

SECTION 11-35-410 Public access to procurement information

(A) Procurement information must be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a request for proposals or any type of bid solicitation that is privileged and confidential need not be disclosed.

(B) Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information.

Examples of this type of information include:

- (1) customer lists;
- (2) design recommendations and identification of prospective problem areas under an RFP;
- (3) design concepts, including methods and procedures;
- (4) biographical data on key employees of the bidder.

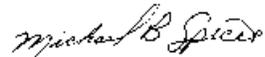
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Expenditures under a public contract are public information and must be made available if requested in accordance with the Freedom of Information Act. The release of this information is required by law and is not a violation of the Code.

RECOMMENDATIONS

The protest is denied.

For the Materials Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer
Chief Procurement Officer

Attachment

From: [Jeffrey M Williamson](#)
To: [Protest-MMO](#)
Cc: livingston@sctechsystem.edu
Subject: 5400010091 - Ground Maintenance Service
Date: Thursday, October 29, 2015 11:12:11 AM

To whom it may concern,

I am requesting a protest for the award of the contract to Hoytzclaw Lawn Care. After investigating the awarded amount, I find that it is quite interesting and coincidental that the price is the same as my last year's price that I charged for last year. I feel and believe that maybe an insider was able to give this information without regard of passing this information to all through a question and amendment process. I also find it is quite interesting that because this contract was up for renewal all services were increased with additional cuts and request for services. There was no deviation in the price to be actually more or less that what my company had charged in previous year.

Please respond that you have received this email and look forward to back from you soon.

Thank you,

Jeffrey M Williamson
Premier Landscape & Design
803-786-5654

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised September 2015)

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 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.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 209, 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.