

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION/DETERMINATION

In the Matter of Protest of:

Request for Cancellation of Award Prior
to Performance of:

POSTING DATE: March 24, 2014

MAILING DATE: March 24, 2014

State Board of Technical and
Comprehensive Education
IFB No. 5400007226
Radiographic System

This matter is before the Chief Procurement Officer (CPO) pursuant to a request for cancellation of award prior to performance under S.C. Regulation 19-445.2085(C) from the State Board of Technical and Comprehensive Education (State Tech). State Tech solicited bids to procure a Radiographic System and posted its award to Radon Medical, LLC. After posting its Intent to Award, State Tech realized its award was in error due to an administrative error. State Tech suspended the Intent to Award and filed a request that the CPO to cancel the award prior to performance per S.C. Regulation 19-445.2085(C). As justification for its request, Teresa Livingston of State Tech wrote, "I awarded to the incorrect vendor due to an administrative error in applying SC vendor preference to a u/p (unit price) over \$50,000."

Regulation 19-445.2085(C) authorizing cancellation of an award prior to performance reads:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;

- (3) The supplies, services, information technology, or construction being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the purchasing agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.

State Tech invited bids for one radiographic system delivered. In spite of the fact that delivery terms were FOB destination, State Tech listed two items on its bidding schedule - one for the radiographic system and one for delivery – but the Award Criteria stated “Award will be made to one offeror.” [IFB, p, 19] State Tech received the following bids:

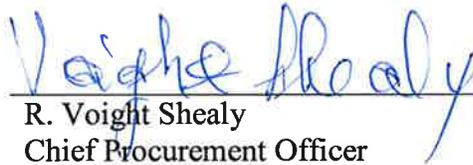
Bidder	Radiographic System	Shipping	Total Bid
Radon Medical	\$64,995.00	\$1,750.00	\$66,745.00
Blue Ox Medical Technologies	\$65,125.00	\$1,000.00	\$66,125.00
GE Walker, Inc.	\$71,375.01	\$0.01	\$71,375.02

State Tech included the South Carolina Resident Vendor Preferences in the IFB. In its bid, Radon Medical answered “Yes” to the question, “Are you requesting the SC Resident Vendor Preference”; State Tech applied that preference, determined Radon Medical the lowest bidder based on its preference request, and posted the Intent to Award.

The Consolidated Procurement Code, which authorizes the resident vendor preferences, reads, “The preferences provided in subsections (B) [South Carolina end product] and (C)(1)(i) and (ii) [Resident Vendor] 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.” [11-35-1524(2)]

DETERMINATION

Clearly, all the unit costs bid for the radiographic system are in excess of \$50,000. The CPO finds State Tech's application of preferences to the bid was an "[a]dministrative error of the purchasing agency discovered prior to performance," and the error resulted in an award in violation of law. The CPO finds cancellation of the award per S.C. Reg. 19-445.2085(C) Cancellation of Award Prior To Performance is necessary. Therefore, State Tech's request to cancel the award to Radon Medical is granted and the solicitation is remanded to State Tech to proceed in accordance with the Consolidated Procurement Code.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW

Written Determination Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
- (b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

Copies of the Panel's decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Requests 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 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**

<hr/> Name of Requestor	<hr/> Address
<hr/> City State Zip	<hr/> 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_____

<hr/> Notary Public of South Carolina	<hr/> 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.

Dr. Darrel W. Staat
System President

BOARD MEMBERS

Ralph A. Odom, Jr.
*Chairman
Fifth Congressional District*

Dan P. Gray
First Congressional District

Wm. Brantley Harvey, Jr.
Second Congressional District

Bettis C. Rainsford
Third Congressional District

Vacant
Fourth Congressional District

Joe W. Pearce, Jr.
Sixth Congressional District

Gwendolyn A. Bright
At-Large

Bruce Herbert Ellis
At-Large

Montez C. Martin, Jr.
At-Large

Vacant
At-Large

Dr. Mitchell M. Zais
Ex Officio

Robert M. Hitt III
Ex Officio

TO: R. Voight Shealy, Chief Procurement Officer
Materials Management Office

FROM: Tracy Hill, Accounting and Procurement Director 
SC Technical College System

DATE: February 6, 2014

RE: Solicitation 5400007226, Item #1 Radiographic System – Contract #4400007861

In accordance with SC Regulation 19-445.2085, C, Cancellation of Awards Prior to Performance, (7), the award of the subject bid was in error.

C. Cancellation of Award Prior to Performance.

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (7) Administrative error of the procuring agency discovered prior to performance

The procurement officer responsible for this procurement applied the SC Residence Vendor Preference of 7% to item # 1 which should have not been applied as the unit price was \$64,995.00. The statement of award was posted on February 4, 2014 and the notice to suspend the statement of award was posted on February 5, 2014.

The above information was discussed with the procurement officer and it was agreed that the awarded offer was not the lowest responsive and responsible offer. The procurement officer has determined the low responsive offeror, Blue Ox Medical Technologies, to be a responsible offeror. This being the case, we request approval to cancel the contract award prior to performance and re-award to the lowest responsive and responsible offer.

Thank you for your review of this request.

Attachments

