

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Coastal Connections, Inc.

Materials Management Office
Invitation for Bid No. 5400003810
Contract Labor Service for S.C. State
Capitol Complex
State Budget and Control Board

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-130

POSTING DATE: July 25, 2012

MAILING DATE: July 25, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Coastal Connections, Inc. (Coastal) filed June 25, 2012, under the provision of Section 11-35-4210(1)(b) of the South Carolina Consolidated Procurement Code (Code). With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure contract labor services for the State Capitol Complex for the South Carolina Budget and Control Board (Board). On June 11, 2012, MMO posted a notice of intent to award the contract to Marathon Staffing, Inc. (Marathon). Coastal challenges that decision. Since the matters to be decided are apparent from the procurement file, the CPO makes this determination without a hearing.

NATURE OF PROTEST

Coastal's letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On December 16, 2011, MMO issued IFB No. 5400003810. (Ex. 1)
2. On February 28, 2012, MMO issued Amendment No. 2. This Amendment replaced the original solicitation document. (Ex. 2)
3. On March 14, 2012, MMO issued Amendment No. 3, which extended the bid opening date to March 27, and the award posting date to April 11, 2012. (Ex. 3)
4. Also on March 14, MMO issued Amendment No. 4, Answers to Questions. (Ex. 4)

5. On June 7, MMO issued Extension of Award Posting #11, which established the award posting date as June 11, 2012. (Ex. 5)
6. On June 11, 2012, MMO posted its intent to award to Marathon. (Ex. 6)
7. On June 25, 2012, Coastal filed its protest of the intent to award with the CPO.

DISCUSSION

MMO has suggested in an email that this protest should be dismissed as untimely. The CPO agrees.

Section 11-35-4210(1)(b) of the Code provides in relevant part:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer...within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code...

In order to be timely, the protest must be in writing and received by the CPO within the above timeframe. Section 11-35-4210(2)(b). The Code defines “days” to mean calendar days and specifies how a period of time prescribed by the Code is to be calculated. Section 11-35-310(13).

In this case, it is undisputed that the notice of intent to award to Marathon was posted on June 11, 2012. Any protest was due to the CPO no later than 5:00 PM on June 21, 2012. However, it is undisputed that Coastal did not file its protest of this intent to award with the CPO until June 25, 2012.¹

The South Carolina Procurement Review Panel (Panel) has repeatedly held that the time for filing cannot be waived. *See Protest of Jones Engineering Sales, Inc.*, Panel Case No. 2001-8

¹ On June 19, 2012, Coastal sent an email to the procurement officer requesting certain documents pursuant to the South Carolina Freedom of Information Act (“FOIA”). The message said nothing about a protest. Requesting documents under FOIA does not extend the time for filing a protest. *Appeal by Technology Solutions, Inc.*, Panel Case No. 1999-6.

(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); *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”); *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:

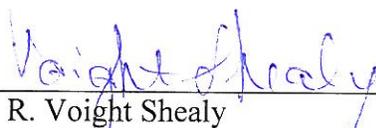
[I]t is essential to the operation of government that challenges its purchasing decisions be limited. If the time for filing protests can be waived, the state will be unable to determine with certainty when it can enter into a contract with one vendor for vital goods and services without the danger of being liable to another vendor.

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

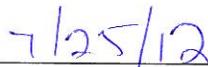
Here Coastal filed its protest beyond the time allowed under the Code. Accordingly, the protest is dismissed as untimely filed.

DETERMINATION

For the aforementioned reasons, the protest is dismissed.



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 July 2012)

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 83.1 of the 2012 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, an incorporated business must retain 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).

**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.

Patrick, Cheryl

From: Janice Johnson <janice@mycoastalconnections.com>
Sent: Monday, June 25, 2012 8:59 PM
To: Patrick, Cheryl; Stevens, John; Alston, Vivian
Cc: 'Kevin Kowal'; Singleton, Delbert; Kremlick, Lindsey
Subject: CORRECTED BID PROTEST - Solicitation 5400003810 - Contract Labor Service for S.C. State Capitol Complex

RE: Solicitation 5400003810 - Contract Labor Service for S.C. State Capitol Complex

Ms. Patrick,

This correspondence constitutes the bid protest of Coastal Connections, Inc. ("Coastal") with respect to the above-referenced solicitation. The basis for our protest is that the low bidder, Marathon Staffing, Inc. ("Marathon"), the incumbent contractor, was privy to information that gave it an advantage or benefit not enjoyed by other bidders which affected the price of their bid. While reviewing the pricing information of this contract as compared to others, including previous contract data for Marathon, we found that Marathon's final bid amounts indicated more definitive knowledge regarding the insurance requirement not available to other bidders.

Coastal Connections, Inc. respectfully requests that the State of South Carolina Material Management Office review our bid along with that of Marathon Staffing and perform a comparative analysis based on the actual bid rates less rates offered for the insurance provision. We feel that your review and comparison will render Coastal Connections, Inc. the lowest responsive and responsible bidder and as a consequence, re-bid the solicitation in its entirety.

If you have any questions or need further information, please contact me.

Sincerely,
Janice Johnson
Contracts Administrator

From: Janice Johnson [mailto:janice@mycoastalconnections.com]
Sent: Monday, June 25, 2012 4:06 PM
To: 'Patrick, Cheryl'; 'Stevens, John'; 'Alston, Vivian'
Cc: 'Kevin Kowal'; 'Singleton, Delbert'; 'Kremlick, Lindsey'
Subject: RE: BID PROTEST - Solicitation 5400003810 - Contract Labor Service for S.C. State Capitol Complex

RE: Solicitation 5400003810 - Contract Labor Service for S.C. State Capitol Complex

Ms. Patrick,

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Coastal Connections, Inc. respectfully requests that the State of South Carolina Material Management Office review our bid along with that of Marathon Staffing and perform a comparative analysis based on the actual bid rates less rates offered for the insurance provision.

If you have any questions or need further information, please contact me.

Sincerely,
Janice Johnson
Contracts Administrator

From: Patrick, Cheryl [<mailto:cpatrick@mmo.sc.gov>]
Sent: Wednesday, June 20, 2012 9:12 AM
To: Janice Johnson; Stevens, John; Alston, Vivian
Cc: Kevin Kowal; Singleton, Delbert; Kremlick, Lindsey
Subject: RE: Solicitation 5400003810 - Contract Labor Service for S.C. State Capitol Complex

Janice:

This solicitation (5400003810) is an IFB, not an RFP--therefore no Evaluator scoring documents, scoring scale/factors, etc. apply (as regards #3 in your list below).

Our FOIA coordinator, Vivian Alston, will forward to you within 15 days the documents requested per #1 and #2 in your list.

Regards,

Cheryl D. Patrick, CPPB | Procurement Manager | Procurement Services Division | SC Budget & Control Board

1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-5717 | cpatrick@mmo.sc.gov

From: Janice Johnson [<mailto:janice@mycoastalconnections.com>]
Sent: Tuesday, June 19, 2012 10:05 PM
To: Patrick, Cheryl; Stevens, John; Alston, Vivian
Cc: Kevin Kowal
Subject: Solicitation 5400003810 - Contract Labor Service for S.C. State Capitol Complex

Re: Solicitation 5400003810 – Contract Labor Service for S.C. State Capitol Complex

Dear Ms. Patrick:

Under the rules and guidelines of the South Carolina Freedom of Information Act, we are requesting the following documents on the subject solicitation:

1. Copy of the final bid schedule submitted by all bidders.
2. Copy of complete solicitation submitted, including pricing information, of the intended awardee, Marathon Staffing.
3. Copy of the SC State Evaluators' Scoring Documents showing procedures, scoring scale, and factors relied upon for award decision.

Your prompt response is appreciated.

Janice Johnson

Contracts Administrator
2015 Boundary St.
Beaufort, SC 29902
(843) 379-9544, Ext. 337

(843) 681-8099 – Main Office
(843) 681-5870 – Fax
(843) 812-9719 – Mobile

Coastal Connections
The Lowcountry's Staffing Company

Winner of the Island Packet/Beaufort Gazette
Readers' Choice Award 2010 and 2011

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