

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Trinity 7 Security, LLC

Materials Management Office
IFB No.: 5400003880
Security Guard Services for
Denmark Technical College

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-141

POSTING DATE: October 12, 2012
MAILING DATE: October 12, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest dated August 21, 2012, from Trinity 7 Security (Trinity 7). With this invitation for bids (IFB), the South Carolina Materials Management Office (MMO) attempts to procure security guard services for Denmark Technical College (DTC). After evaluating the bids received, MMO rejected Trinity 7 as non-responsible and posted an intent to award to Defender Services, Inc. (Defender). Trinity 7 protested the award, contesting MMO's rejection of its bid.

In order to resolve the matter, the CPO conducted a hearing October 2, 2012. Appearing before the CPO were: Trinity 7, represented by Robert McMichael; Defender, represented by Chip Whitaker, Vernon Seibert, and Mike Anthony; DTC, represented by Clarence Barnette; and MMO, represented by John Stevens.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On June 28, 2012, MMO issued IFB No. 5400003880. On pages 24 and 25 it included the following provisions:

VI. AWARD CRITERIA

AWARD CRITERIA -- BIDS (JAN 2006)

Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

(Ex. 1, p. 25)

V. QUALIFICATIONS

QUALIFICATION OF OFFEROR (JAN 2006)

To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810. [05-5005-1]

QUALIFICATIONS -- REQUIRED INFORMATION (JAN 2006)

In order to evaluate your responsibility, offeror shall submit the following information or documentation for the offeror and any subcontractor, if the value of subcontractor's portion of the work exceeds 10% of your price (if in doubt, provide the information):

- (a) Include a brief history of the offeror's experience in providing work of similar size and scope.
 - (b) Your most current financial statement, financial statements for your last two fiscal years, and information reflecting your current financial position. If you have audited financial statements meeting these requirements, you must provide those statements. [Reference Statement of Concepts No. 5 (FASB, December, 1984)]
 - (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which you have performed and the general history and experience of your organization.
 - (d) A list of every business for which offeror has performed, at any time during the past three year(s), services substantially similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, offeror represents that the list is complete.
 - (e) List of failed projects, suspensions, debarments, and significant litigation.
- [05-5015-1]

(Ex. 1, p. 24)

2. On July 10, 2012, MMO conducted a pre-bid conference.

3. On August 2, 2012, MMO opened the bids received. Trinity 7 submitted the lowest bid. (See Ex. 3 for the bid tabulation)
4. On August 15, 2012, Stacy Langdale, MMO Procurement Manager, completed a written determination concluding “Trinity 7 Security, LLC has been determined to be ‘Non-Responsible’ and by state statute may not be awarded the referenced contract.” (Ex. 5)
5. On August 17, 2012, MMO posted its intent to award to Defender. (Ex. 7)
6. On August 21, 2012, Trinity 7 filed its protest by email to the Protest-MMO address.
7. On August 27, 2012, MMO suspended its intent to award by statute.

CONCLUSIONS OF LAW

Only a responsible bidder may be awarded a contract. S.C. Code Ann. § 11-35-1520(10) (2011). The Code defines a responsible bidder as one “who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.” Section 11-35-1410(6). Pursuant to Regulation 19-445.2125(A), factors to be considered include whether a contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the State; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

Moreover, Regulation 19-445.2125(F) permits the State to require bidders to meet special standards of responsibility where unusual or specialized requirements are needed for contract performance.

The Code assigns procurement officers the duty of determining any prospective awardee responsible prior to award. It reads, “Before awarding a contract or issuing a notification of intent to award, whichever is earlier, the procurement officer must be satisfied that the

prospective contractor is responsible. The determination is not limited to circumstances existing at the time of opening.” Reg. 19-445.2125.D.

As prescribed, Ms. Langdale conducting her evaluation of Security 7’s responsibility by evaluating the financial statements Security 7 submitted with its bid as well as a Dun & Bradstreet (D&B) Risk Management report. According to Ms. Langdale’s determination, the D&B report indicated:

The D&B report showed a Financial Stress Class rating of 4 out of 5 due to the following:

- High proportion of slow payment experiences to total number of payment experiences.
- Low proportion of satisfactory payment experiences to total payment experiences.
- Limited time under present management control.

The report showed a Credit Score Class rating of 5 of 5 with a Credit Score Percentile of 1 with the highest risk being 1 and the lowest risk being 100. Their Credit Score rating is 101 with the highest risk being 101 and the lowest risk being 670. The results were based on the following:

- High proportion of past due balances to total amount owing.
- Low number of satisfactory payments.
- Most recent amount past due.
- Insufficient number of payment experiences.
- Evidence of open liens.
- Low proportion of satisfactory payment experiences to total payment experiences.

(See Ex. 5 for Ms. Langdale’s determination and Ex. 6 for the D&B report.)

The report also revealed two known liens placed on Trinity 7 Security, LLC by the State of South Carolina for failure to pay State taxes in 2011 and 2012.

On August 13, 2012, Ms. Langdale reached Mr. McMichael by telephone and discussed her findings. McMichael confirmed the tax liens stating he needed this contract in order to be able to settle them with the State. After conferring with DTC, Ms. Langdale concluded, “It is

evident from the offer as submitted by Trinity 7 Security, LLC, plus the Dun & Bradstreet report referenced above, that Trinity 7 Security, LLC, does not meet the definition of "Responsible bidder or offeror" as defined in 11-35-1410 (6). Therefore, Trinity 7 Security, LLC, is deemed Nonresponsible and the offer as submitted by Trinity 7 Security, LLC, cannot receive further consideration for award."

Trinity 7 challenges MMO's determination that Trinity 7 was not a responsible bidder for this award. While the Code assigns every procurement officer of the state the duty of determining whether a bidder is responsible before award, the Code also gives deference to that procurement officer's decision once made. It reads, "The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law: ... Section 11-35-1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility)...." S.C. Code Ann. § 11-35-2410(A) (2011). According to the Panel, the procurement officer is obligated to determine responsibility before award and may consider any source of information. Protest of CollegeSource, Inc., Panel Case No. 2008-4; see also S.C. Code Ann. § 11-35-1810(1); Reg.19-445.2125(B). A procurement officer's responsibility determination is a matter of discretion and cannot be overturned unless the protestant shows it was "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A). In Protest of Value Options, Panel Case No. 2001-7, the Panel noted that procurement officers are given broad discretion in making their responsibility determinations because these are a matter of business judgment. The Panel explained that "[t]o prove arbitrary and capricious conduct such as will permit the court to overturn a procurement decision, the aggrieved bidder must demonstrate a lack of reasonable or rational basis for the agency decision or subjective bad faith on the part of the procuring officer or clear and

prejudicial violation of relevant statutes and regulations which would be tantamount to a lack of reasonable or rational basis.” Id., citing Robert E. Derecktor of Rhone Island, Inc. v. Goldschmidt, 516 F.Supp. 1085 (D. R. I. 1981).

The CPO finds no evidence of Ms. Langdale’s determination being clearly erroneous, arbitrary, capricious, or contrary to law.

DETERMINATION

For the foregoing reasons the protest is denied.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

October 12, 2012
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.

Subj: **Attention Chief Procurement Officer, Materials Management Office.**
Date: 8/21/2012 8:36:33 A.M. Eastern Daylight Time
From: Zzaaxxxx@aol.com
To: protest-mmo@mmo.sc.gov

Robert McMichael DBA / Trinity 7 Security hereby officially protest the contract award of solicitation # 540003880 , Security Guard Services Denmark Technical College to the Defender Services Inc (contract number 440005586) for the following reasons :

1. Trinity 7 Security has been providing excellent contract services to Denmark Technical college since receiving the request for services on 6-22-2012. The start date was that very evening but we have been more than responsible from day one ; we are providing an excellent service and will continue to do so for as long as we are there.
2. We have restored order to the campus. Acts of violence have been drastically reduced. Criminal acts have been drastically reduced. The campus is much more secure due to our presence and several people have and will attest to these facts.
3. Trinity 7 Security has invested money in uniforms as well as training for new hires who are dependent upon both the prosperity of this company as well as this company's acquisition of the Denmark Tech award for their own personal prosperity.
4. Officers are paid on time ; we look professional, we behave professionally, we are professional, **WE ARE RESPONSIBLE.**
5. Any issues regarding back taxes to the state are being resolved. The last invoice for services at Denmark tech was for nearly \$9,000.00. The bulk of what's owed to the state for 1605's will be paid to the state liaison on Wednesday morning. Of course we need this contract. Any minority owned business needs every contract that they can get in addition to special assistance because the deck is stacked against us. If it is not the states goal to promote small, minority business's then you should make it known.
6. Your logic that any company who needs the contract shouldn't have it or can't perform well with it is ridiculous. We are already performing well and responsibly.
7. As a minority business owner I have to deal with prejudice and politics on a daily basis which is why it has been so difficult to acquire a contract of this magnitude heretofore. I need this contract in order to have more resources to do greater things for this company and for its loyal, faithful employees and I will contact an attorney concerning this matter if need be. For the record ; Our employees are loyal and faithful because they trust the company. They are paid fairly and on time.
8. Trinity 7 Security is MINORITY OWNED. This certification obviously exists because minority owned company's face greater obstacles. I can attest to the fact that this is true. This contract will allow us to get to a much higher level in this industry which will allow us to employ more people which should be the goal of the state.
9. TRINITY 7 SECURITY WAS THE LOWEST BIDDER. OUR BID WAS \$1.02 LOWER THAN DEFENDER
10. WE ARE THE BEST COMPANY FOR THIS SITE. We provide a great services ; our officers are paid on time ; the uniforms, training and equipment are provided for our officers ; there is no reason that you should take this contract from a responsible minority company who needs it and give it to a company that doesn't.

Tuesday, August 21, 2012 AOL: Zzaaxxxx