

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Tekna Corporation

South Carolina Department of
Transportation

Three Awards:

IFB No 5400004664

Grnvl Bridge(S-23-121)Dividing Water
Rd

IFB No 5400004672

Pickens Bridge(S-39-148) Meadow
Ridge

IFB No 5400004674

SPARTANBURG BRIDGE (S-42-114)

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-142

POSTING DATE: September 5, 2012

MAILING DATE: September 5, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest dated August 23, 2012, from Tekna Corporation (Tekna). With these invitations for bids (IFB), the South Carolina Department of Transportation (DOT) attempts to procure concrete bridge components for three upstate counties. Tekna protested the awards, alleging that DOT should not have applied resident vendor and South Carolina end product preferences to determine the low bidder. As the controlling issue in this case is a matter of law, this decision is prepared without the benefit of a hearing.

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 July 19, 2012, DOT issued IFB No. 5400004664. On pages 12 and 13, it included the following provisions:

PREFERENCES - A NOTICE TO VENDORS (SEP 2009)

On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences. ***ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.*** [11-35-1524(E)(4)&(6)] [02-2B111-1]

PREFERENCES - SC/US END-PRODUCT (SEP 2009)

Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the tangible project identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by Section 11-35-1524(A). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, you certify that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law. Post award substitutions are prohibited. See "Substitutions Prohibited - End Product Preferences (Sep 2009)" provision. [02-2B112-1]

PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009)

To qualify for the RVP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must either: (1) maintain at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities for which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars [\$50,000] or the annual amount of the contract; or (2) be a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product being sold is either made or processed from raw materials into a finished end product by that manufacturer or

its affiliate (as defined in Section 1563 of the Internal Revenue Code). [02-2B114-1]

(emphasis in original)

- The Bid Schedule began on page 27 of the IFB. It required pricing for nine separate line items. Following each line item was the following:

Question	Mandatory / Optional	Multiple Responses Accepted?	Response
ARE YOU REQUESTING THE SC RESIDENT VENDOR PREFERENCE? SEE THE SC PROCUREMENT CODE, SECTION 11-35-1524(C)(1)(I)&(II) AND SECTION IIB OF THIS SOLICITATION FOR MORE INFORMATION. FOR A FAQ ON THESE PREFERENCES, PLEASE SEE WWW.PROCUREMENT.SC.GOV/PREFERENCES	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No
SC/US END-PRODUCT PREF. SECTION 11-35-1524, IIB & VIIB. SELECT SC END PRODUCT PREFERENCE IF PRODUCT IS MADE, MANUFACTURED OR GROWN IN SC. SELECT US END PRODUCT IF PRODUCT IS MADE, MANUFACTURED OR GROWN IN THE US. SELECT NO IF NOT CLAIMING A PREFERENCE.	Mandatory	No	<input type="checkbox"/> YES, I AM CLAIMING SC END PRODUCT PREFERENCE <input type="checkbox"/> YES, I AM CLAIMING US END PRODUCT PREFERENCE <input type="checkbox"/> NO, I AM NOT CLAIMING EITHER PREFERENCE

- On July 20, 2012, DOT issued Amendment 1 to the IFB. It made descriptive changes to Items, 1-4 on the bidding schedule, but did not change any of the preference questions following each item.
- On July 20, 2012, DOT issued IFB No. 5400004672. On pages 12 and 13, it included the same provisions regarding preferences as quoted above. The bidding Schedule, beginning on page 27, required pricing for nine line items. Following each item appeared the same preference matrix illustrated above. This IFB was not amended.
- On July 20, 2012, DOT issued IFB No. 5400004674. It included the same preferences paragraphs, on the same pages, as the other two solicitations, and a nine-item bidding schedule with the same preference matrix. This IFB was not amended.
- On August 23, 2012, DOT posted Statements of Award, for IFB Nos. 5400004664 and 5400004672, and an Intent to Award, for No. 5400004672. Florence Concrete Products Inc. was awarded each contract as the low bidder. Each award statement reflected that the preferences described in the solicitations had been applied to determine the lowest bid.

7. On August 23, 2012, Tekna filed its protest by email to the Protest-MMO address.

CONCLUSIONS OF LAW

Tekna's protest letter states:

We are in receipt of the award letters for Solicitations 5400004664, 5400004672, and 5400004674. The letters indicate that Florence Concrete has been awarded a contract for these projects even though Tekna Corporation's bid was responsive and lower. The letter also indicates that the Resident Vendor and South Carolina end product preferences have been applied.

Based on 11-35-1524 (E)(5), we understand that these preferences do not apply to supplies or services related to construction. As such, we have not claimed these preferences and do not agree with their application to these projects or their subsequent award to Florence Concrete.

That DOT intended to apply both preferences to these solicitations was clear from their language. All three contained identical provisions explaining the preferences and how a bidder must claim them. All three included space on the bidding schedule for a bidder to claim or disclaim the preferences. Any question about whether preferences applied, then, should have been directed to the solicitation documents.¹

Section 11-35-4210(1)(b) of the Consolidated Procurement Code permits protests of the award of a contract:

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 in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; **except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.**

(emphasis added) Section 11-35-4210(1)(a) requires protests of a solicitation be filed within fifteen days of its issuance.

¹ The CPO takes no position on whether it was appropriate for DOT to apply preferences to these purchases. This decision is made as a matter of law, based on the timing of Tekna's protest.

DOT issued these three solicitations on July 19 and July 20, 2012. The only amendment making any mention of preferences posted July 20. All these documents required bidders to indicate if they were claiming a preference. Any protest over the applicability of preferences to these IFBs should have been filed no later than August 6, 2012. Tekna did not protest until August 23, 2012, weeks later. Its protest is not timely.

DETERMINATION

For the foregoing 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.

Skinner, Gail

From: Protest-MMO <Protest-MMO@mmo.sc.gov>
Sent: Thursday, August 23, 2012 3:48 PM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Tekna Protest - Solicitation 5400004664, 5400004672, and 5400004674
Attachments: Tekna Protest - Solicitation 5400004664 - Contract 4400005619.pdf; Tekna Protest - Solicitation 5400004672 - Contract 4400005620.pdf; Tekna Protest - Solicitation 5400004674 - Contract 4400005621.pdf

From: Jason Moore[SMTP:JASON.MOORE@TEKNAPRECAST.COM]
Sent: Thursday, August 23, 2012 3:47:30 PM
To: Protest-MMO
Subject: Tekna Protest - Solicitation 5400004664, 5400004672, and 5400004674
Auto forwarded by a Rule

To: Chief Procurement Officer

We are in receipt of the award letters for Solicitations 5400004664, 5400004672, and 5400004674. The letters indicate that Florence Concrete has been awarded a contract for these projects even though Tekna Corporation's bid was responsive and lower. The letter also indicates that the Resident Vendor and South Carolina end product preferences have been applied.

Based on 11-35-1524 (E)(5), we understand that these preferences do not apply to supplies or services related to construction. As such, we have not claimed these preferences and do not agree with their application to these projects or their subsequent award to Florence Concrete.

I have attached a copy of each award and the applicable code. Based on our submitted bid, we believe the projects should be awarded to Tekna Corporation.

Please advise at your earliest convenience.

Respectfully,

Jason Moore, VP
Tekna Corporation
P.O. Box 21705
Charleston, SC 29413
(843) 853-9118 ext. 303
(843) 853-8810 Fax

CONFIDENTIALITY NOTICE: The information accompanying this email transmission may contain confidential or legally privileged information that is intended only for the use of the individual or entity named in this message. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or reliance upon the contents of this email is strictly prohibited. If you receive this email in error, please notify the sender immediately.

STATE OF SOUTH CAROLINA
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
PROCUREMENT OFFICE
955 PARK STREET ROOM 101
COLUMBIA SC 29201-3976

Statement of Award

Posting Date: August 23, 2012

Solicitation: 5400004664
Description: Grnvl Bridge(S-23-121)Dividing Water Rd
Agency: SC Dept of Transportation

The State awards the contract(s) noted below. This document is the final Statement of Award, effective **17:00:00, August 23, 2012**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

RESIDENT VENDOR PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.

SOUTH CAROLINA / UNITED STATES MADE, MANUFACTURED OR GROWN PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.

CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

- (a) by email to protest-mmo@mmo.sc.gov ,
- (b) by facsimile at 803-737-0639 , or
- (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400005619
Awarded To: FLORENCE CONCRETE PRODUCTS INC
PO Box 5506
FLORENCE SC 29502

Total Potential Value: \$ 99,639.00

Maximum Contract Period: August 23, 2012 through June 30, 2013

Item	Description	Unit Price	Total
00001	CONCRETE BRIDGE, HS 29-44	\$ 4,936.50	\$ 9,873.00
00002	CONCRETE BRIDGE, HS 29-44	\$ 1,645.50	\$ 3,291.00
00003	CONCRETE BRIDGE, HS 29-44	\$ 4,936.50	\$ 49,365.00
00004	CONCRETE BRIDGE, HS 29-44	\$ 1,645.50	\$ 16,455.00
00005	BARRIER RAIL WITH DRAIN SLOTS	\$ 48.60	\$ 4,860.00
00006	BARRIER RAIL WITH DRAIN SLOTS	\$ 16.20	\$ 1,620.00
00007	BARRIER RAIL WITHOUT DRAIN SLOTS	\$ 48.60	\$ 1,944.00
00008	BARRIER RAIL WITHOUT DRAIN SLOTS	\$ 16.20	\$ 648.00
00009	CRANE RENTAL AND OPERATOR	\$ 11,583.00	\$ 11,583.00

Procurement Officer

SHELIA O. WILLIS, CPPB

SECTION 11-35-1524. Resident vendor preference.

(A) For purposes of this section:

(1) "End product" means the tangible product described in the solicitation including all component parts and in final form and ready for the state's intended use.

(2) "Grown" means to produce, cultivate, raise, or harvest timber, agricultural produce, or livestock on the land, or to cultivate, raise, catch, or harvest products or food from the water which results in an end product that is locally derived from the product cultivated, raised, caught, or harvested.

(3) "Labor cost" means salary and fringe benefits.

(4) "Made" means to assemble, fabricate, or process component parts into an end product, the value of which, assembly, fabrication, or processing is a substantial portion of the price of the end product.

(5) "Manufactured" means to make or process raw materials into an end product.

(6) "Office" means a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty-five hours a week each.

(7) "Services" means services as defined by Section 11-35-310(29) and also includes services as defined in Section 11-35-310(1)(d).

(8) "South Carolina end product" means an end product made, manufactured, or grown in South Carolina.

(9) "United States end product" means an end product made, manufactured, or grown in the United States of America.

(B)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by seven percent the price of any offer for a South Carolina end product.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by two percent the price of any offer for a United States end product. This preference does not apply to an item to which the South Carolina end product preference has been applied.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product. A preference must not be applied to an item for which a bidder does not qualify.

(4) If a contract is awarded to a bidder that received the award as a result of the South Carolina end product or United States end product preference, the contractor may not substitute a nonqualifying end product for a qualified end product. A substitution in violation of this item is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the State may terminate the contract for cause and, in addition, the contractor shall pay to the State an amount equal to twice the difference between the price paid by the State and the bidder's evaluated price for a substituted item.

(5) If a bidder is requesting this preference, the bidder, upon request of the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement pursuant to subsection (E)(6).

(C)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by seven percent if the bidder maintains an office in this State and either (i) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract; (ii) is a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product is made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or (iii) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to bidder for those individuals to provide those services exceeds fifty percent of the bidder's total bid price.

(2) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product or work, as applicable. A preference must not be applied to an item for which a bidder does not qualify.

(3) If a bidder is requesting this preference, the bidder, upon request by the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference and, for the preference claimed pursuant to subsection (C)(1)(iii), must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which bidder relies in qualifying for the preference, the services those individuals are to perform, and documentation of the bidder's labor cost for each person identified. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement under subsection (E)(6) below.

(D)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by two percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds twenty percent of bidder's total bid price.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by four percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds forty percent of bidder's total bid price.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of work. A preference must not be applied to an item for which a bidder does not qualify.

(4) Subject to other limits in this section, an offeror may benefit from applying for more than one of, or from multiple applications of, the preferences allowed by items (1) and (2).

(5)(a) In its bid, a bidder requesting any of the preferences allowed by items (1) and (2) must identify the subcontractor to perform the work, the work the subcontractor is to perform, and the bidder's factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement.

(b) If a bidder is requesting a preference allowed by items (1) or (2), upon request by the procurement officer, the bidder shall identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which the bidder relies in qualifying for the preference, the services those individuals are to perform, the employer of those persons, the bidder's relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. Bidder's failure to provide this information promptly will be grounds to deny the preference and for enforcement pursuant to subsection (E)(6) below.

(c) If a contract is awarded to a bidder that received the award as a result of a preference allowed by items (1) or (2), the contractor may not substitute any business for the subcontractor on which the bidder relied to qualify for the preference, unless first approved in writing by the procurement officer. A substitution in violation of this subitem is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the procurement officer may terminate the contract for cause. If the contract is not terminated, the procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference.

(E)(1) A business is not entitled to any preferences unless the business, to the extent required by law, has:

(a) paid all taxes assessed by the State; and

(b) registered with the South Carolina Secretary of State and the South Carolina Department of Revenue.

(2) The preferences provided in subsections (B) and (C)(1)(i) and (ii) 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.

(3) The preferences provided in subsections (C)(1)(iii) and (D) do not apply to a bid for an item of work by the bidder if the annual price of the bidder's work exceeds fifty thousand dollars or the total potential price of the bidder's work exceeds five hundred thousand dollars.

(4) A solicitation must provide potential bidders an opportunity to request the preferences that apply to a procurement. By submitting a bid and requesting that a preference be applied to that bid, a business certifies that its bid qualifies for the preference for that procurement. For purposes of applying this section, a bidder is not qualified for a preference unless the bidder makes a request for the preference as required in the solicitation. If a solicitation specifies which preferences, if any, apply to a procurement, the applicability of preferences to that procurement is conclusively determined by the solicitation unless the solicitation document is timely protested as provided in Section 11-35-4210. If two or more bidders are tied after the application of the preferences allowed by this section, the tie must be resolved as provided in Section 11-35-1520(9). Price adjustments required by this section for purposes of evaluation and application of the preferences do not change the actual price offered by the bidder.

(5) This section does not apply to an acquisition of motor vehicles as defined in Section 56-15-10 or an acquisition of supplies or services relating to construction. This section does not apply to a procurement conducted pursuant to Section 11-35-1550(2)(a) or (b), Section 11-35-1530, or Article 9, Chapter 35.

(6) Pursuant to Section 11-35-4220, a business may be debarred if (i) the business certified that it qualified for a preference, (ii) the business is not qualified for the preference claimed, and (iii) the certification was made in bad faith or under false pretenses. If a contractor has invalidly certified that a preference is applicable, the chief procurement officer may terminate the contract for cause, and the chief procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder.

(7) The sum of all preferences allowed by items (D)(1) and (D)(2), when applied to the price of a line item of work, may not exceed six percent unless the bidder maintains an office in this State. Under no circumstances may the cumulative preferences applied to the price of a line item exceed ten percent.

(8) As used in items (C)(1)(iii), (D)(1)(b), and (D)(2)(b), the term "documented commitment" means a written commitment by the bidder to employ directly an individual, and by the individual to be employed by the bidder, both contingent on the bidder receiving the award.

(9) The remedies available in this section are cumulative of and in addition to all other remedies available at law and equity.

HISTORY: 1997 Act No. 153, Section 1; 2002 Act No. 333, Section 10; 2009 Act No. 72, Section 2.

STATE OF SOUTH CAROLINA
SC DEPARTMENT OF TRANSPORTATION
PROCUREMENT OFFICE
955 PARK STREET ROOM 101
COLUMBIA SC 29201-3976

Intent to Award

Posting Date: August 23, 2012

Solicitation: 5400004672
Description: Pickens Bridge(S-39-148) Meadow Ridge
Agency: SC Dept of Transportation

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00:00, September 04, 2012**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

RESIDENT VENDOR PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.

SOUTH CAROLINA / UNITED STATES MADE, MANUFACTURED OR GROWN PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.

CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35-4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

- (a) by email to protest-mmo@mmo.sc.gov ,
- (b) by facsimile at 803-737-0639 , or
- (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400005620
Awarded To: FLORENCE CONCRETE PRODUCTS INC
PO Box 5506
FLORENCE SC 29502

Total Potential Value: \$ 101,295.00

Maximum Contract Period: August 23, 2012 through June 30, 2013

Item	Description	Unit Price	Total
00001	CONCRETE BRIDGE, HS 29-44	\$ 5,040.00	\$ 10,080.00
00002	CONCRETE BRIDGE, HS 29-44	\$ 1,680.00	\$ 3,360.00
00003	CONCRETE BRIDGE, HS 29-44	\$ 5,040.00	\$ 50,400.00
00004	CONCRETE BRIDGE, HS 29-44	\$ 1,680.00	\$ 16,800.00
00005	BARRIER RAIL WITH DRAIN SLOTS	\$ 48.60	\$ 4,860.00
00006	BARRIER RAIL WITH DRAIN SLOTS	\$ 16.20	\$ 1,620.00
00007	BARRIER RAIL WITHOUT DRAIN SLOTS	\$ 48.60	\$ 1,944.00
00008	BARRIER RAIL WITHOUT DRAIN SLOTS	\$ 16.20	\$ 648.00
00009	CRANE RENTAL AND OPERATOR	\$ 11,583.00	\$ 11,583.00

Procurement Officer

SHELIA O. WILLIS, CPPB

SECTION 11-35-1524. Resident vendor preference.

(A) For purposes of this section:

- (1) "End product" means the tangible product described in the solicitation including all component parts and in final form and ready for the state's intended use.
- (2) "Grown" means to produce, cultivate, raise, or harvest timber, agricultural produce, or livestock on the land, or to cultivate, raise, catch, or harvest products or food from the water which results in an end product that is locally derived from the product cultivated, raised, caught, or harvested.
- (3) "Labor cost" means salary and fringe benefits.
- (4) "Made" means to assemble, fabricate, or process component parts into an end product, the value of which, assembly, fabrication, or processing is a substantial portion of the price of the end product.
- (5) "Manufactured" means to make or process raw materials into an end product.
- (6) "Office" means a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty-five hours a week each.
- (7) "Services" means services as defined by Section 11-35-310(29) and also includes services as defined in Section 11-35-310(1)(d).
- (8) "South Carolina end product" means an end product made, manufactured, or grown in South Carolina.
- (9) "United States end product" means an end product made, manufactured, or grown in the United States of America.

(B)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by seven percent the price of any offer for a South Carolina end product.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by two percent the price of any offer for a United States end product. This preference does not apply to an item to which the South Carolina end product preference has been applied.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product. A preference must not be applied to an item for which a bidder does not qualify.

(4) If a contract is awarded to a bidder that received the award as a result of the South Carolina end product or United States end product preference, the contractor may not substitute a nonqualifying end product for a qualified end product. A substitution in violation of this item is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the State may terminate the contract for cause and, in addition, the contractor shall pay to the State an amount equal to twice the difference between the price paid by the State and the bidder's evaluated price for a substituted item.

(5) If a bidder is requesting this preference, the bidder, upon request of the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement pursuant to subsection (E)(6).

(C)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by seven percent if the bidder maintains an office in this State and either (i) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract; (ii) is a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product is made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or (iii) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to bidder for those individuals to provide those services exceeds fifty percent of the bidder's total bid price.

(2) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product or work, as applicable. A preference must not be applied to an item for which a bidder does not qualify.

(3) If a bidder is requesting this preference, the bidder, upon request by the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference and, for the preference claimed pursuant to subsection (C)(1)(ii), must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which bidder relies in qualifying for the preference, the services those individuals are to perform, and documentation of the bidder's labor cost for each person identified. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement under subsection (E)(6) below.

(D)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by two percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds twenty percent of bidder's total bid price.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by four percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds forty percent of bidder's total bid price.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of work. A preference must not be applied to an item for which a bidder does not qualify.

(4) Subject to other limits in this section, an offeror may benefit from applying for more than one of, or from multiple applications of, the preferences allowed by items (1) and (2).

(5)(a) In its bid, a bidder requesting any of the preferences allowed by items (1) and (2) must identify the subcontractor to perform the work, the work the subcontractor is to perform, and the bidder's factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement.

(b) If a bidder is requesting a preference allowed by items (1) or (2), upon request by the procurement officer, the bidder shall identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which the bidder relies in qualifying for the preference, the services those individuals are to perform, the employer of those persons, the bidder's relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. Bidder's failure to provide this information promptly will be grounds to deny the preference and for enforcement pursuant to subsection (E)(6) below.

(c) If a contract is awarded to a bidder that received the award as a result of a preference allowed by items (1) or (2), the contractor may not substitute any business for the subcontractor on which the bidder relied to qualify for the preference, unless first approved in writing by the procurement officer. A substitution in violation of this subitem is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the procurement officer may terminate the contract for cause. If the contract is not terminated, the procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference.

(E)(1) A business is not entitled to any preferences unless the business, to the extent required by law, has:

(a) paid all taxes assessed by the State; and

(b) registered with the South Carolina Secretary of State and the South Carolina Department of Revenue.

(2) The preferences provided in subsections (B) and (C)(1)(i) and (ii) 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.

(3) The preferences provided in subsections (C)(1)(iii) and (D) do not apply to a bid for an item of work by the bidder if the annual price of the bidder's work exceeds fifty thousand dollars or the total potential price of the bidder's work exceeds five hundred thousand dollars.

(4) A solicitation must provide potential bidders an opportunity to request the preferences that apply to a procurement. By submitting a bid and requesting that a preference be applied to that bid, a business certifies that its bid qualifies for the preference for that procurement. For purposes of applying this section, a bidder is not qualified for a preference unless the bidder makes a request for the preference as required in the solicitation. If a solicitation specifies which preferences, if any, apply to a procurement, the applicability of preferences to that procurement is conclusively determined by the solicitation unless the solicitation document is timely protested as provided in Section 11-35-4210. If two or more bidders are tied after the application of the preferences allowed by this section, the tie must be resolved as provided in Section 11-35-1520(9). Price adjustments required by this section for purposes of evaluation and application of the preferences do not change the actual price offered by the bidder.

(5) This section does not apply to an acquisition of motor vehicles as defined in Section 56-15-10 or an acquisition of supplies or services relating to construction. This section does not apply to a procurement conducted pursuant to Section 11-35-1550(2)(a) or (b), Section 11-35-1530, or Article 9, Chapter 35.

(6) Pursuant to Section 11-35-4220, a business may be debarred if (i) the business certified that it qualified for a preference, (ii) the business is not qualified for the preference claimed, and (iii) the certification was made in bad faith or under false pretenses. If a contractor has invalidly certified that a preference is applicable, the chief procurement officer may terminate the contract for cause, and the chief procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder.

(7) The sum of all preferences allowed by items (D)(1) and (D)(2), when applied to the price of a line item of work, may not exceed six percent unless the bidder maintains an office in this State. Under no circumstances may the cumulative preferences applied to the price of a line item exceed ten percent.

(8) As used in items (C)(1)(iii), (D)(1)(b), and (D)(2)(b), the term "documented commitment" means a written commitment by the bidder to employ directly an individual, and by the individual to be employed by the bidder, both contingent on the bidder receiving the award.

(9) The remedies available in this section are cumulative of and in addition to all other remedies available at law and equity.

HISTORY. 1997 Act No. 153, Section 1; 2002 Act No. 333, Section 10; 2009 Act No. 72, Section 2.

STATE OF SOUTH CAROLINA
SC DEPARTMENT OF TRANSPORTATION
PROCUREMENT OFFICE
955 PARK STREET ROOM 101
COLUMBIA SC 29201-3976

Statement of Award

Posting Date: August 23, 2012

Solicitation: 5400004674
Description: SPARTANBURG BRIDGE (S-42-114)
Agency: SC Dept of Transportation

The State awards the contract(s) noted below. This document is the final Statement of Award, effective **17:00:00, August 23, 2012**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

RESIDENT VENDOR PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.

SOUTH CAROLINA / UNITED STATES MADE, MANUFACTURED OR GROWN PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.

CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35-4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

- (a) by email to protest-mmo@mmo.sc.gov ,
- (b) by facsimile at 803-737-0639 , or
- (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400005621
Awarded To: FLORENCE CONCRETE PRODUCTS INC
PO Box 5506
FLORENCE SC 29502

Total Potential Value: \$ 98,673.00

Maximum Contract Period: August 23, 2012 through June 30, 2013

Item	Description	Unit Price	Total
00001	CONCRETE BRIDGE, HS 29-44	\$ 4,833.00	\$ 9,666.00
00002	CONCRETE BRIDGE, HS-29-44	\$ 1,611.00	\$ 3,222.00
00003	CONCRETE BRIDGE, HS 29-44	\$ 4,833.00	\$ 48,330.00
00004	CONCRETE BRIDGE, HS 29-44	\$ 1,680.00	\$ 16,800.00
00005	BARRIER RAIL WITH DRAIN SLOTS	\$ 48.60	\$ 4,860.00
00006	BARRIER RAIL WITH DRAIN SLOTS	\$ 16.20	\$ 1,620.00
00007	BARRIER RAIL WITHOUT DRAIN SLOTS	\$ 48.60	\$ 1,944.00
00008	BARRIER RAIL WITHOUT DRAIN SLOTS	\$ 16.20	\$ 648.00
00009	CRANE RENTAL AND OPERATOR	\$ 11,583.00	\$ 11,583.00

Procurement Officer

SHELIA O. WILLIS, CPPB

SECTION 11-35-1524. Resident vendor preference.

(A) For purposes of this section:

- (1) "End product" means the tangible product described in the solicitation including all component parts and in final form and ready for the state's intended use.
- (2) "Grown" means to produce, cultivate, raise, or harvest timber, agricultural produce, or livestock on the land, or to cultivate, raise, catch, or harvest products or food from the water which results in an end product that is locally derived from the product cultivated, raised, caught, or harvested.
- (3) "Labor cost" means salary and fringe benefits.
- (4) "Made" means to assemble, fabricate, or process component parts into an end product, the value of which, assembly, fabrication, or processing is a substantial portion of the price of the end product.
- (5) "Manufactured" means to make or process raw materials into an end product.
- (6) "Office" means a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty-five hours a week each.
- (7) "Services" means services as defined by Section 11-35-310(29) and also includes services as defined in Section 11-35-310(1)(d).
- (8) "South Carolina end product" means an end product made, manufactured, or grown in South Carolina.
- (9) "United States end product" means an end product made, manufactured, or grown in the United States of America.

(B)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by seven percent the price of any offer for a South Carolina end product.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by two percent the price of any offer for a United States end product. This preference does not apply to an item to which the South Carolina end product preference has been applied.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product. A preference must not be applied to an item for which a bidder does not qualify.

(4) If a contract is awarded to a bidder that received the award as a result of the South Carolina end product or United States end product preference, the contractor may not substitute a nonqualifying end product for a qualified end product. A substitution in violation of this item is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the State may terminate the contract for cause and, in addition, the contractor shall pay to the State an amount equal to twice the difference between the price paid by the State and the bidder's evaluated price for a substituted item.

(5) If a bidder is requesting this preference, the bidder, upon request of the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement pursuant to subsection (E)(6).

(C)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by seven percent if the bidder maintains an office in this State and either (i) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract; (ii) is a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product is made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or (iii) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to bidder for those individuals to provide those services exceeds fifty percent of the bidder's total bid price.

(2) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product or work, as applicable. A preference must not be applied to an item for which a bidder does not qualify.

(3) If a bidder is requesting this preference, the bidder, upon request by the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference and, for the preference claimed pursuant to subsection (C)(1)(iii), must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which bidder relies in qualifying for the preference, the services those individuals are to perform, and documentation of the bidder's labor cost for each person identified. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement under subsection (E)(6) below.

(D)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by two percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds twenty percent of bidder's total bid price.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by four percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds forty percent of bidder's total bid price.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of work. A preference must not be applied to an item for which a bidder does not qualify.

(4) Subject to other limits in this section, an offeror may benefit from applying for more than one of, or from multiple applications of, the preferences allowed by items (1) and (2).

(5)(a) In its bid, a bidder requesting any of the preferences allowed by items (1) and (2) must identify the subcontractor to perform the work, the work the subcontractor is to perform, and the bidder's factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement.

(b) If a bidder is requesting a preference allowed by items (1) or (2), upon request by the procurement officer, the bidder shall identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which the bidder relies in qualifying for the preference, the services those individuals are to perform, the employer of those persons, the bidder's relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. Bidder's failure to provide this information promptly will be grounds to deny the preference and for enforcement pursuant to subsection (E)(6) below.

(c) If a contract is awarded to a bidder that received the award as a result of a preference allowed by items (1) or (2), the contractor may not substitute any business for the subcontractor on which the bidder relied to qualify for the preference, unless first approved in writing by the procurement officer. A substitution in violation of this subitem is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the procurement officer may terminate the contract for cause. If the contract is not terminated, the procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference.

(E)(1) A business is not entitled to any preferences unless the business, to the extent required by law, has:

(a) paid all taxes assessed by the State; and

(b) registered with the South Carolina Secretary of State and the South Carolina Department of Revenue.

(2) The preferences provided in subsections (B) and (C)(1)(i) and (ii) 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.

(3) The preferences provided in subsections (C)(1)(iii) and (D) do not apply to a bid for an item of work by the bidder if the annual price of the bidder's work exceeds fifty thousand dollars or the total potential price of the bidder's work exceeds five hundred thousand dollars.

(4) A solicitation must provide potential bidders an opportunity to request the preferences that apply to a procurement. By submitting a bid and requesting that a preference be applied to that bid, a business certifies that its bid qualifies for the preference for that procurement. For purposes of applying this section, a bidder is not qualified for a preference unless the bidder makes a request for the preference as required in the solicitation. If a solicitation specifies which preferences, if any, apply to a procurement, the applicability of preferences to that procurement is conclusively determined by the solicitation unless the solicitation document is timely protested as provided in Section 11-35-4210. If two or more bidders are tied after the application of the preferences allowed by this section, the tie must be resolved as provided in Section 11-35-1520(9). Price adjustments required by this section for purposes of evaluation and application of the preferences do not change the actual price offered by the bidder.

(5) This section does not apply to an acquisition of motor vehicles as defined in Section 56-15-10 or an acquisition of supplies or services relating to construction. This section does not apply to a procurement conducted pursuant to Section 11-35-1550(2)(a) or (b), Section 11-35-1530, or Article 9, Chapter 35.

(6) Pursuant to Section 11-35-4220, a business may be debarred if (i) the business certified that it qualified for a preference, (ii) the business is not qualified for the preference claimed, and (iii) the certification was made in bad faith or under false pretenses. If a contractor has invalidly certified that a preference is applicable, the chief procurement officer may terminate the contract for cause, and the chief procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder.

(7) The sum of all preferences allowed by items (D)(1) and (D)(2), when applied to the price of a line item of work, may not exceed six percent unless the bidder maintains an office in this State. Under no circumstances may the cumulative preferences applied to the price of a line item exceed ten percent.

(8) As used in items (C)(1)(iii), (D)(1)(b), and (D)(2)(b), the term "documented commitment" means a written commitment by the bidder to employ directly an individual, and by the individual to be employed by the bidder, both contingent on the bidder receiving the award.

(9) The remedies available in this section are cumulative of and in addition to all other remedies available at law and equity.

HISTORY: 1997 Act No. 153, Section 1; 2002 Act No. 333, Section 10; 2009 Act No. 72, Section 2.