

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

CCS of South Carolina, Inc.

Materials Management Office
BVB No. 5400004566
Janitorial Services for Piedmont
Technical College

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-147

POSTING DATE: January 22, 2013

MAILING DATE: January 22, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest dated October 29, 2012, from CCS of South Carolina, Inc. (CCS). With this best value bid (BVB), the South Carolina Materials Management Office (MMO) attempts to procure janitorial services for Piedmont Technical College (PTC). Following the evaluation of the bids received, MMO posted its intent to award to The Budd Group. CCS protested the award, alleging: (1) the evaluators' scoring was biased to keep the incumbent in place, inconsistent between panel members, and inaccurate regarding CCS's staffing and equipment, and (2) CCS's price was lower.

In order to resolve the matter, the CPO conducted a hearing January 10, 2013. Appearing before the CPO were CCS, represented by Martin Smith and Tyrone Dunlap; The Budd Group, represented by Brian Durny and Daniel Cox; PTC, represented by Kevin Wells; and MMO, represented by John Stevens, State Procurement Officer.

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 15, 2012, MMO issued BVB No. 5400004566. (Ex. 1)
2. On June 27, 2012, MMO issued Amendment #1. (Ex. 2)
3. On July 3, 2012, MMO issued Amendment #2 (Ex. 3) as well as Amendment #3(Ex. 4).
4. On July 6, 2012, MMO issued Amendment #4. (Ex. 5)
5. On July 3, 2012, MMO issued Amendment #5. (Ex. 6)¹
6. On July 10, 2012, MMO and PTC conducted a pre-bid conference.
7. On July 23, 2012, MMO issued Amendment #6. (Ex. 7)
8. On August 7, 2012, MMO opened the bids received.
9. On October 19, 2012, MMO posted its intent to award to The Budd Group. (Ex. 8)
10. On October 29, 2012, CCS filed its protest with the CPO. MMO suspended its intent to award. (Ex. 9)

SOLICITATION REQUIREMENTS

MMO solicited bids to provide janitorial services for Piedmont Technical College's main campus and six extension campuses. (Ex. 1, p. 3) The solicitation addressed the general requirements, on-site management, technical support, labor, equipment, chemicals and cleaning products, supplies, paper products, recycling services, and infectious waste management required for the conduct of the janitorial services. (Ex. 1, Scope of Work/Specifications, pp. 15-21)

DISCUSSION – BEST VALUE BIDDING

MMO processed the solicitation as a best value bid. Best value bidding is authorized under the Consolidated Procurement Code, Section 11-35-1528. The Code explains, "The purpose of best value bidding is to allow factors other than price to be considered in the

¹ This date is correct according to the record. According to the state's automated procurement system (SCEIS), this Amendment was actually posted on July 11, 2012.

determination of award for specific supplies, services, or information technology based on pre-determined criteria identified by the State.” (11-35-1528(2) Best Value Bidding) Regarding evaluation, the Code adds, “The best value bid must state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent.” (11-35-1528(5) Evaluation Factors) Award “must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the State, taking into consideration all evaluation factors set forth in the best value bid.” (11-35-1528(8) Award).

CONCLUSIONS OF LAW

CCS challenged the evaluation of the best value bids as well as the price awarded The Budd Group.

(1) The Evaluation

CCS alleged the evaluation was flawed in that “the grading was completely biased to keep the incumbent in place”, the “grading was inconsistent”, and “the staffing numbers and equipment needs that were graded as inaccurate are well planned.”

The BVB identified the award criteria as:

<u>Evaluation Factor</u>	<u>Value/Weight</u>
Total price	60%
Staffing	15%
Equipment	10%
Qualifications/Experience with similar contracts	10%
Qualifications/Experience of personnel	5%

(Ex. 1, Evaluation Factors – Best Value Bid, p. 26)

The BVB announced, “Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State.” (Ex. 1, Award Criteria – Best Value Bids, p. 26)

A team of four evaluators reviewed fourteen offers, scored them, and determined the two highest ranked offers as follows:

<u>Offeror</u>	<u>Total Score</u>
1) Budd Group	351
2) CCS	317

(Ex. 17)

Regarding consistency of the scoring, the evaluators scored CCS’s and The Budd Group’s offers as follows:

<u>Evaluator</u>	<u>CCS’s Score</u>	<u>Budd Group’s Score</u>
Foster	75	85
Copeland	84	90
Wheeler	80	88
Holland	78	88

While the scores reveal some scoring tendencies typical of independent, subjective evaluations, each and every evaluator scored The Budd Group higher than CCS. (See Ex. 15 for evaluator scores of The Budd Group and Ex. 16 for evaluator scores of CCS)

The CPO notes that CCS did not allege The Budd Group’s offer was nonresponsive to the requirements that bidders offer hand soap, vehicles, and pressure washers, but rather that the evaluators scored its offer inaccurately regarding these requirements. Merely for edification, the requirements of the BVB for staffing, vehicles, equipment, and hand soap were as follows.

Regarding staffing, the solicitation required, “The Contractor will furnish the corporate and on-site management, technical support, supervision, labor . . . that will provide a continuous level of high quality janitorial services as indicated.” (Ex. 1, p. 15, General Requirements) Specifically, the solicitation required the contractor to provide one full-time site manager, one working floor supervisor, one working general supervisor, supervisors, and sufficient full-time labor to perform the janitorial services, and three porters, (Ex. 1, p. 17, Labor) as well as, a part-time senior contract manager (Ex. 1, p. 16, On-Site Management), corporate-level technical support and management personnel. (Ex. 1, p. 17, Technical Support) In response to questions from prospective bidders, MMO and PTC offered the following answer regarding labor, “The floor team must consist of a minimum of three (3) full time working members and one (1) working supervisor - (40 hours each member) for a total of four (4) working floor team.” (Ex. 6, Question 20)

CCS addressed staffing on pages 28 and 29 of its proposal. They argued particularly against the scores of Evaluators Foster and Wheeler gave CCS and The Budd Group. Those two evaluators scored staffing offered by CCS and The Budd Group as follows:

Scores for Staffing by Foster and Wheeler

<u>Bidder</u>	<u>Possible Score</u>	<u>Foster</u>	<u>Wheeler</u>
CCS	15	4	4
The Budd Group	15	12	14

CCS combed the evaluator scores and explanation summaries targeting specific annotations on the evaluator explanation summary forms of evaluators Foster and Wheeler as erroneous. Specifically, evaluator Foster wrote of CCS’s offer “hand soap not provided” and “no vehicle” and evaluator Wheeler wrote of CCS’s offer “[t]hey are not providing hand soap as

required, but soap is listed under supplies provided in another location” and “1200 PSI pressure washer, not adequate”.

The BVB required of bidders: “[T]he Contractor will supply, maintain and distribute the following consumable items: Hand soap.” (Ex. 1, p. 19) In response to questions received from prospective bidders, MMO and PTC provided the following answers specific to hand soap: “There are three types of soap and four types of soap dispensers.” (Ex. 5, Question 52. See also Question 80) Also, in response to questions raised by prospective bidders, MMO and PTC provided the following answer specific to the brand/type of hand soap: “Automatic Foam, liquid, GoJo but not limited to.” (Ex. 6, Question 9)

The solicitation required of bidders, “Contractor will provide the make and model of the vehicle assigned to the contract for daily use by the contractor. This vehicle will be used for daily travel needs including but not limited to the County Centers inspection and/or activities. (Ex. 1, p. 15, Scope of Work/Specifications, Item 1)

The solicitation required of bidders, “The contractor will provide and maintain, at no cost to the college, all necessary equipment to perform the proposed janitorial services.” (Ex. 1, p. 19, Equipment)

CCS contradicted the comments and scores of evaluators Foster and Wheeler arguing that that it had offered staffing under the heading Staffing and Management Plan (Ex. 11, pp. 28-29), “antibacterial foam soap” under the heading Supplies and Equipment List (Ex. 11, p. 30), a “2010 Savanna Van” and a “2011 golf cart” under the heading Staffing and Management Plan (Ex. 11, p. 29), and one “1200psi pressure washer” under the heading Supplies and Equipment List (Ex. 11, p. 31)

Evaluators Foster and Holland attended the hearing. CCS called evaluator Foster to testify, but did not call evaluator Holland.

Regarding her scores, evaluator Foster testified that she scored the offers independently after reading them “on several occasions.” At the hearing, she defended and affirmed her scores, stating her opinion was not changed. She stated she was not biased, scored the offers fairly, and independently.

Regarding CCS’s specific argument that the two evaluators’ scores and comments regarding hand soap were clearly erroneous and CCS’s contention that it offered “antibacterial foam soap” under the heading Supplies and Equipment List (Ex. 11, p. 30), the CPO finds that CCS’s offer was ambiguous regarding hand soap. While CCS did offer antibacterial hand foam soap on page 30, CCS also rejected the solicitation’s requirement that bidders offer hand soap writing “Piedmont Technical College shall furnish all utility supplies such as toilet tissue, paper towels, hand soap” on page 24 of its offer. That statement, which was nonresponsive to the solicitation’s requirement that “the Contractor will supply, maintain and distribute the following consumable items: Hand soap” (Ex. 1, p. 19), caused confusion on the part of the evaluators.

CCS argued if the evaluators had questions, they should have contacted CCS for clarification, as allowed by S.C. Code Section 11-35-3220. This section of law, however, is devoted to procurements of architect-engineer, construction management, and land surveying services, not janitorial services. The Code does allow the state to seek clarification of best value bids reading, “Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders whose bids, in the procuring agency's sole judgment, need clarification shall be accorded such an opportunity.” (11-35-1528(6) Discussion with Responsive Bidders.) (Emphasis added) The state sought no clarification from the bidders -

the state is not compelled to seek clarification from any bidder. Bidders are responsible for the clarity of their offers, not the state.

Conclusion – The Evaluation

Regarding the determination of award in a best value bid procurement, the Code provides, “Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the State, taking into consideration all evaluation factors set forth in the best value bid.” (11-35-1528(8) Award). The solicitation reiterated the basis for award. (See Award Criteria, Ex. 1, p. 26) The Code reads further, “The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law . . . Section 11-35-1528(8)” (Competitive Best Value Bidding: Award). (11-35-2410)

On numerous occasions, the Panel has held that it will not re-evaluate proposals and will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as they follow the requirements of the Code and the RFP, fairly consider all proposals and are not actually biased. *See, e.g., Protest of Santee Wateree Regional Transportation Authority*, Panel Case No. 2000-5 (reaffirming that the evaluation process need not be perfect as long as it’s fair and the Panel will not re-evaluate proposals); *Protest of Transportation Management Services, Inc.*, Panel Case No. 2000-3 (finding that the evaluation process is not required to be perfect and that the Panel will not re-evaluate proposals); *Protest of First Sun EAP Alliance*, Panel Case No. 1994-11 (noting that the Panel will not disturb the evaluators’ findings so long as they following the Code and the RFP’s requirements, fairly consider all proposals and are not actually biased); *Protest of Volume Services*, Panel Case No. 1994-8 (holding that the Panel will not substitute its judgment for that of the evaluators). In the

Santee Wateree case, *ante*, the Panel also explained that subjectivity is the hallmark of the RFP process and does not equate with arbitrariness. Moreover, the Panel has found that “the variation of evaluators’ scores alone is only proof of the subjective nature of the evaluation aspect of the RFP process.” *Protest of Travelsigns*, Panel Case No. 1995-8. Regardless, the protestant bears the burden of proof to demonstrate by a preponderance of the evidence that the evaluators’ determinations were flawed. *Id.*

CCS has failed to meet that burden of proving that the evaluators’ actions were arbitrary, capricious, clearly erroneous, or contrary to law. Therefore, its protest of the evaluation is denied.

(2) Price

CCS’s protest letter also alleged “our pricing was lower.” CCS’s price was considerably lower than the Budd Group’s. CCS price offer was \$376,299.78 and The Budd Group’s price offer was \$422,287.47. Price offers were scored mathematically by the procurement officer, Theresa Watts. As the lowest price bidder, CCS received the highest possible score for price – 60 points from each evaluator, while The Budd Group received a score of 51 from each evaluator for its price bid. CCS can receive no further benefit in the evaluation for its lower price. However, price was only one of five evaluation factors. The other evaluation factors were scored subjectively by the evaluators. According to the Code, award of a best value bid “must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the State, taking into consideration all evaluation factors set forth in the best value bid.” (11-35-1528(8) Award). CCS has failed to meet its burden of proof that such did not occur here. Therefore, CCS’s allegation regarding its lower price is denied.

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 January 2013)

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); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

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.