

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Berger Allied

SC Department of Health and
Environmental Control
IFB No. 5400005040
Moving Services to Columbia and
Surrounding Area

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-153

POSTING DATE: February 1, 2013

MAILING DATE: February 1, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest emailed December 24, 2012, from Berger Allied. With this invitation for bids (IFB) the South Carolina Department of Health and Environmental Control (DHEC) attempts to procure moving services to Columbia and the surrounding area. After evaluating the bids received and applying the preferences affording bidders resident to South Carolina, DHEC posted a notice of intent to award to Move Something, Inc. Berger Allied protested the award alleging that Move Something did not qualify for the resident bidder preference it requested that determined the award. Inasmuch as the facts surrounding the protest are not in dispute, the CPO decides the matter without 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 November 26, 2012, DHEC issued IFB No. 5400005040.
2. DHEC issued an undated amendment to the solicitation to answer questions raised by prospective bidders.
3. On December 21, 2012, DHEC posted its Intent to Award to Move Something, Inc.

4. On December 24, 2012, Berger Allied filed its protest by email to the email address mmo@mo.sc.gov (.). That email address was incorrect.¹ A few minutes later, concerned that the email address did not work, Michael Zlotnik forwarded the email to Laura Cravens, DHEC procurement officer.
5. On December 27, 2012, Ms. Cravens forwarded the protest to the correct email address of protest-mmo@mmo.sc.gov (.). The protest was timely filed.
6. Also undated, DHEC suspended the award.

DISCUSSION AND DETERMINATION

Berger Allied offered the lowest bid price for moving services. However, Move Something requested the South Carolina resident bidder preference. After application of the preference, DHEC determined Move Something, not Berger Allied, the low awarded bidder. Berger Allied protested the award to Move Something alleging Move Something was not qualified to receive the benefit of the South Carolina resident vendor preference. In an email to Tripp Clark, DHEC Procurement Director, dated January 10, 2013, Michael Hayes of Move Something admitted this allegation.

Since the facts surrounding the protest are not in dispute, the protest is granted. The intent to award to Move Something is cancelled. The procurement is remanded back to DHEC to proceed in accordance with the Consolidated Procurement Code.

¹ The source of the incorrect email address of mmo@mo.sc.gov used by Berger Allied is a mystery. However, the CPO notes that the protest email address of protest-mmo@mo.sc.gov provided bidders by DHEC on its intent to award was also incorrect. The correct protest email address is protest-mmo@mmo.sc.gov (.). The Code requires that every intent to award advise bidders of their protest privileges including how and where to submit a protest. DHEC's intent to award was defective, in that it included the wrong protest address. The CPO urges DHEC to utilize the standard clauses provided every agency by this office, which are incorporated into the South Carolina Enterprise Information System (SCEIS). Had DHEC used SCEIS for posting its award, there would have been no confusion about the correct address to file the protest.

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

February 1, 2013
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, business entities organized and registered as corporations, limited liability companies, and limited partnerships 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.

Skinner, Gail

From: Protest-MMO <Protest-MMO@mmo.sc.gov>
Sent: Thursday, December 27, 2012 9:17 AM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Award for 5400005040

From: Cravens, Laura[SMTP:CRAVENLM@DHEC.SC.GOV]
Sent: Thursday, December 27, 2012 9:16:39 AM
To: Protest-MMO
Subject: Fwd: FW: Award for 5400005040
Auto forwarded by a Rule

I am forwarding this protest since the vendor used an invalid email address. Thanks,

Laura M. Cravens
Procurement Officer
DHEC - Bureau of Business Mgmt.
2600 Bull Street
Columbia, SC 29201-1708
Phone: (803) 898-3484
Fax: (803) 898-3505

----- Forwarded message -----

From: Michael Zlotnik <MichaelZ@bergerallied.com>
Date: Mon, Dec 24, 2012 at 10:10 AM
Subject: FW: Award for 5400005040
To: "cravenlm@dhec.sc.gov" <cravenlm@dhec.sc.gov>

Ms. Craven,

The email below mmo@mo.sc.gov does not work.

See my protest below.

Michael Zlotnik

General Manager

10350 Nations Ford Road, Suite Y

Charlotte, NC 28273

704-916-6477 Direct Line

704-625-3204 Direct Fax

919-208-3272 Cell



Click this truck to take a ride,
the Berger Team is on your side!

From: Michael Zlotnik
Sent: Monday, December 24, 2012 10:07 AM
To: 'mmo@mo.sc.gov'
Subject: Award for 5400005040
Importance: High

Please advise the award given to Move Something, 220 Sweetwater Drive, Hopkins, SC. This is a home, not a business address.

Also, their hourly straight time rate was \$99.25....we provided a\$100.00/hr rate

Their OT rate was \$148.12....we provided \$140.00

Boxes without paper their rate was \$12.75....we provided \$7.20.

I see they claimed Items 1-4 and items 5-10.

So my question is are they even a legal moving company in the State of South Carolina?

Thank you,

Michael Zlotnik

General Manager

10350 Nations Ford Road, Suite Y

Charlotte, NC 28273

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Click this truck to take a ride,
the Berger Team is on your side!

This organization is committed to protecting network security.

This communication has been scanned for all viruses

by the MXLogic Email Defense System.