STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2015-106

POSTING DATE: September 11, 2014
MAILING DATE: September 11, 2014

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation is for Maintenance for Fire & Smoke Alarms for the South Carolina Department of Natural Resources (DNR). VSC Fire & Security, Inc. (VSC) protests the award of a contract to Coastal Burglar Alarm. [Attachment 1] The Chief Procurement Officer\(^1\) issues this ruling without a hearing.

Findings of Fact

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invitation For Bids Published</td>
<td>07/31/2014</td>
</tr>
<tr>
<td>Bid Opening</td>
<td>08/18/2014</td>
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<tr>
<td>Award Posting</td>
<td>09/02/2014</td>
</tr>
<tr>
<td>Protest Received</td>
<td>09/02/2014</td>
</tr>
</tbody>
</table>

Discussion

VSC protests that Coastal is not licensed Sprinkler and Suppression work in the State of South Carolina and requests Coastal provide its licenses. The Invitation for Bid included six line items:

1. Maintenance of Fire Alarm and Smoke Detector systems for Administration Building, MRRRI Building and Marshland House complying with all specifications listed in the solicitation and statement of work.

\(^1\) The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.
2. CO2 systems inspections for Marshlands House and CCEHBR Building complying with all specifications listed in the solicitation and statement of work.

3. Inspection of sprinkler system for Marshlands House and Physical Plant Building complying with all specifications listed in the solicitation and statement of work.

4. Hourly labor rate for technician.

5. Hourly labor rate for helper.

6. Parts discount for necessary repairs.

DNR responded to the protest with a copy of the bid submitted by Coastal indicating that it would perform item 1 and identifying Liberty Fire Protection, Inc. as a subcontractor that would perform item 2. [Attachment 2] DNR also provided a copy of the Licensee look-up results from the South Carolina Department of Labor, Licensing and Regulation for both companies. Coastal is licensed as a Fire Alarm Company and Liberty is licensed as a Fire Sprinkler Company. [Attachment 3]

Chapter 10 of Title 40 is the “Fire Protection Sprinkler Systems Act.” It requires licensure as a “fire sprinkler contractor” for certain types of work, including “the planning, sale, installation, repair, alteration, addition, maintenance, or inspection of fire protection sprinkler systems or water spray systems,” S.C. Code Ann. § 40-10-20(7) (2011). Section 40-10-45 provides:

It is unlawful for a person to engage in the planning, sale, installation, repair, alteration, addition, maintenance, testing, or inspection of a fire sprinkler system, water based or wet pipe systems, or water foam systems in this State except in conformity with the provisions of this chapter.

This chapter has no threshold for its application. That is, it applies even if the value of the fire sprinkler work is nominal.²

Section 40-10-43 describes situations where licensed fire sprinkler contractors may perform as subcontractors. Section 40-10-43(E) allows a licensed fire sprinkler contractor to bid as sole subcontractors.

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² This provision differs from the general contractor’s licensing statute in at least two ways. First, no license is required for work described in Chapter 11 if the value of the work is less than $5000, S.C. Code Ann. § 40-11-30 (2011). Second, any licensee can bid as sole prime contractor if at least forty percent of the work falls under its license classification, § 40-11-340. According to LLR’s licensee lookup, Coastal does not hold a general contractor’s license, so § 40-11-340 is inapplicable.
prime contractor on a job including alarm work, if at least half of the value of the work is fire protection sprinkler work:

A fire sprinkler contractor may submit a bid for a project which includes fire/burglar alarm work if fifty percent or more of the work to be performed is fire sprinkler work. The fire/burglar alarm work must be subcontracted to a licensed fire/burglar alarm contractor. The fire sprinkler contractor is responsible for the work performed by the fire/burglar alarm contractor. Both licensees may be held accountable by the board for improper work. The determination of the cost of the work involved on a project must be determined by the total cost of construction involved in the bid or contract or work to be performed.

Fire alarm system contractors are licensed under Chapter 79 of Title 40. There is no analog to either § 40-10-43(E) or § 40-11-340 in Chapter 79. That is, a fire alarm system contractor is not authorized to bid as the sole prime contractor for work that includes fire protection sprinkler systems.

The solicitation is titled “Maintenance for Fire & Smoke Alarms.” The Statement of Work similarly seeks “bids on maintenance and repair of smoke detectors and fire alarm systems…. ” While the SOW describes the Scope of Work generally as “maintenance and repairs, on a yearly basis, to fire alarm and smoke detector systems and accompanying circuitry,” it also includes “inspections of the sprinkler systems at the Marshland’s House and the Physical Plant building.” This is clearly within the definition of fire sprinkler system work for which Chapter 10 of Title 40 requires a license. Since Coastal Burglar alarm is not licensed as a fire sprinkler contractor, it cannot bid this work as a sole prime contractor.


The focus of Reg. 71-8303 is on who performs fixed fire extinguishing systems. That is, there is no express prohibition in the regulation against bidding by a company who does not hold a Fire Equipment Dealer license, so long as the person actually performing the work is licensed. However, Reg. 71-8303.13(B) provides:
A person who does not hold a license or permit as required by this Chapter, may not bring any action either at law or in equity to enforce the provisions of any contract for providing services as a Fire Equipment Dealer.

This provision would bar Coastal from enforcing any contract with the State that included the work described in Item 2 of the Bidding Schedule. If Coastal is disqualified from enforcing the contract, it cannot be qualified legally to contract for these services.

Section 11-35-1520(10) requires that award be made to the lowest responsive and responsible bidder. Section 11-35-1410(6) defines a responsible bidder as a person who has the capability in all respects to perform fully the contract requirements ....” Budget and Control Board Regulation 19-445-2125(A)(4) requires that a responsible bidder be “… qualified legally to contract with the State.” Coastal Burglar Alarm Co., Inc. is not licensed as a fire sprinkler contractor and is not qualified legally to contract to provide the solicited services.

**Determination**

For the reasons stated above, the protest of VSC Fire & Security, Inc. is granted, and the award to Coastal Burglar Alarm Co., Inc. is cancelled.

For the Materials Management Office

Michael B. Spicer
Chief Procurement Officer
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 108.1 of the 2014 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 offer 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 be represented by 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.
From: Prezimirski Steven A.
Sent: Tuesday, August 26, 2014 1:48:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: Protest-MMO
Subject: Maintenance for Fire and Smoke Alarms

Chief Procurement Officer,
Materials Management Office

VSC is protesting the Statement of Award to Coastal Burglar Alarm. We believe that they do not have a license in South Carolina for Sprinkler and Suppression work. We would like for them to provide their license’s. Thank you.

STEVE PREZIMIRSKI
VSC Fire & Security, Inc.
453 Jessen Lane
Charleston, SC 29492
843-416-1329 - phone
843-991-6502 - cell
843-416-1301 - fax
sprezimirsk@vscfs.com
www.vscfs.com
In the Matter of Protest of VSC Fire & Security, Inc., Case No. 2015-106

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**State of South Carolina**

Invitation For Bid

**DESCRIPTION:** Maintenance for Fire & Smoke Alarms

**USING GOVERNMENTAL UNIT:** SC Department of Natural Resources

The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior, See "Submitting Your Offer" provision.

**SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:**

**MAILING ADDRESS:**
SC Department of Natural Resources
Attn: Procurement Services
PO Box 167
Columbia SC 29202

**PHYSICAL ADDRESS:**
SC Department of Natural Resources
Attn: Procurement Services
1000 Assembly Street, Room 142
Columbia SC 29201

SUBMIT OFFER BY (Opening Date/Time): 08/06/2014 11:00:00

(See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: 08/05/2014 16:00:00

(See "Questions From Offerers" provision)

**NUMBER OF COPIES TO BE SUBMITTED:** 1

**CONFERENCE TYPE:** Site Visit
**DATE & TIME:** 07/31/2014, 10:00 am
(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)

**LOCATION:** SCDNR/MRD
Physical Plant Building #3
217 Ft. Johnson Road
Charleston, SC 29412

**AWARD & AMENDMENTS**
Award will be posted on 08/11/2014. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov

Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, you agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date.

(See "Signing Your Offer" and "Electronic Signature" provisions.)

**NAME OF OFFEROR**
(Coastal Burelar Alarm Co Inc
2001 Henn Ave, N Charleston)

(Enter full legal name of business submitting the offer)

**AUTHORISED SIGNATURE**
(Person must be authorized to submit binding offer or contract on behalf of Offeror)

SC 29405

Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

**TAXPAYER IDENTIFICATION NO.**
57-0601166
(See "Taxpayer Identification Number" provision)

**STATE VENDOR NO.**
FAC 3041
(Enter vendor number from the State Vendor Registry at www.procurement.sc.gov)

**PRINTED NAME**
Mike Eyster

(Enter printed name of person signing above)

**DATE SIGNED**
8/15/14

(Enter date of signature)

**STATE OF INCORPORATION**
South Carolina
(If you are a corporation, identify the state of incorporation)

**OFFEROR'S TYPE OF ENTITY:**

- [ ] Sole Proprietorship
- [X] Corporation (not tax-exempt)
- [ ] Corporation (tax-exempt)
- [ ] Partnership
- [ ] Other

(Check one)

(Check "Signing Your Offer" provision)

COVER PAGE (Nov. 2003)
In the Matter of Protest of VSC Fire & Security, Inc., Case No. 2015-106

PAGE TWO
(Return Page Two with Your Offer)

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<td>(See &quot;Payment&quot; clause)</td>
<td>(See &quot;Purchase Orders and &quot;Contract Documents&quot; clauses)</td>
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- ✓ Payment Address same as Home Office Address
- ✓ Order Address same as Home Office Address

ACKNOWLEDGMENT OF AMENDMENTS
Officers acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

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<th>Amendment No.</th>
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- ✓ Payment Address same as Home Office Address
- ✓ Order Address same as Notice Address

DISCOUNT FOR PROMPT PAYMENT
(See "Discount for Prompt Payment" clause)

- 10 Calendar Days (%): 0
- 20 Calendar Days (%): 0
- 30 Calendar Days (%): 0
- _____ Calendar Days (%): ___

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)]**

PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE: Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)).

- ✓ In-State Office Address same as Home Office Address
- ✓ In-State Office Address same as Notice Address

PAGE TWO (SEP 2009)
### VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

**BIDDING SCHEDULE (NOV 2007)**

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**Item Description:** Maintenance for Fire Alarm and Smoke

**Tendering Text:** Detector Systems for Administration Building, MRRI Building and Marshland House complying with all specifications listed in the solicitation and statement of work.

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<th>Question</th>
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<td>Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIIB &amp; VIIIIB of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a></td>
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Page 28
### Item Description:
CO2 systems inspections for Marshlands

### Tendering Text:
House and CCEHBR Building complying with all specifications listed in the solicitation and statement of work.

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Subcontractor Identification:

Item 2 will be done by Liberty Fire Protection Inc.

7214 Peppermill Parkway
North Charleston, SC 29418
843-552-1301
Fed ID- 58-2478224
Adam Webb PES

Page 29
<table>
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<th>Item</th>
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**Item Description:** Inspection of sprinkler system for

**Tendering Text:** Marshlands House and Physical Plant Building complying with all specifications listed in the solicitation and statement of work.

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**Subcontractor Identification**

Item 3 will be done by:

Liberty Fire Protection, Inc
7214 Peppermill Parkway
North Charleston, SC 29418

843-552-1301
Fed ID - 58-2478224
Adam Webb, P.A.C.
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Item Description: Hourly Labor Rate for Technician

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Item Description: Hourly Labor Rate for Helper

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<td>Percentage</td>
<td>2.0 %</td>
<td>20 %</td>
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Item Description: Parts discount for necessary repairs

Subcontractor Information
Items 4-5-6 AS needed will be performed by Liberty Fire Protection, Inc.
7214 Peppermill Parkway
North Charleston, SC 29418
843-552-1301
Fed ID 58-2478224
Adam Webb, P.O.C.
IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JAN 2006)

Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]

MINORITY PARTICIPATION (JAN 2006)

Is the bidder a South Carolina Certified Minority Business? [ ] Yes [ ] No

Is the bidder a Minority Business certified by another governmental entity? [ ] Yes [ ] No

If so, please list the certifying governmental entity: ________________________________

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? [ ] Yes [ ] No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? ________

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? [ ] Yes [ ] No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? ________

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

[ ] Traditional minority
[ ] Traditional minority, but female
[ ] Women (Caucasian females)
[ ] Hispanic minorities
[ ] DOT referral (Traditional minority)
[ ] DOT referral (Caucasian female)
[ ] Temporary certification
[ ] SBA 8 (a) certification referral
[ ] Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL: http://www.govoepp.state.sc.us/osmba/

[04-4015-1]
LIBERTY FIRE PROTECTION INC
7214 PEPPERMILL PARKWAY
N. CHARLESTON, SC 29418

License Number: 1501
License Type: FIRE SPRINKLER COMPANY
Issued: 07/19/2001
Status: Active
Expiration: 07/31/2018

Board Public Action History:
View Orders | View Other License for this Person
No Orders Found

Supervised by:
GLEN LATTIMORE

File a Complaint against this Licensor

BOG: Burglar/Fire Alarm And Fire Sprinklers

COASTAL BURGLAR ALARM CO INC
2001 HELM AVE
N CHARLESTON, SC 29405

License Number: 3041
License Type: FIRE ALARM COMPANY
Issued: 08/31/2001
Status: Active
Expiration: 07/31/2016

Board Public Action History:
View Orders View Other License for this Person
No Orders Found

Supervised by:
ERICHSEN HENRY
KINARD JOHN

File a Complaint against this Licensee