

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

In Re: Protest of Ard's Container Service,  
Inc.

CASE NO.: 2015-156

Protest of Solicitation No. 5400009438  
for Trash Pick-up/ Dumpster Rental for  
Pee-Dee Center

POSTING DATE: June 19, 2015

MAILING DATE: June 19, 2015

The South Carolina Consolidated Procurement Code (the Code) grants any actual bidder the right to protest the award or intended award of a contract, except that a matter that could have been raised as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation was issued by the South Carolina Department of Disabilities and Special Needs (DDSN) for Trash Pick-up/ Dumpster Rental for Pee-Dee Center. Ard's Container Service, Inc. (Ard) timely protests the cancellation of the solicitation after opening but prior to award. [Attachment 1] The Chief Procurement Officer<sup>1</sup> issues this decision without a hearing.

**Findings of Fact**

Request for Proposals Published:	04/06/2015
Amendment 1 Issued	04/09/2015
Amendment 2 Issued	05/06/2015
Solicitation Cancelled	05/20/2015
Protest Received	05/25/2015

**Background**

DDSN issued this Invitation for Bids with two line items: the rental of nine (9) eight-yard dumpsters and twice weekly trash pick-up. The solicitation specified that award would be made by item.

**AWARD BY ITEM (JAN 2006)**

Award will be made by individual item.

[Solicitation, Page 14]

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<sup>1</sup> The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

DDSN opened two bids on May 13, 2015. After reviewing the bids DDSN determined on May 20, 2015, to cancel the solicitation after opening but prior to award citing inadequate specifications, some apparent ambiguity in the bidding schedule, and the fact that the needs of the state can be satisfied with less expensive article differing from that on which bids were invited. [Attachment 2] Ard protested that DDSN lacked sufficient justification to cancel the solicitation.

## **Discussion**

Section 11-35-1710 of the South Carolina Consolidated Procurement Code and Budget and Control Board Regulation 19-445.2065 govern the cancellation of a solicitation after opening and prior to award.

Section 11-35-1710. Cancellation of Invitation For Bids or Request For Proposals  
Any solicitation under this code may be cancelled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the State. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.

Budget and Control Board Regulation 19-445.2065(B)(1) provides in part that:

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with subsection A above and the procurement officer determines in writing that:

- (a) inadequate or ambiguous specifications were cited in the invitation;
- (e) bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (f) all otherwise acceptable bids received are at unreasonable prices;
- (h) for other reasons, cancellation is clearly in the best interest of the State.

Section 11-35-2410 states that the determinations required by the Code and Regulations to cancel solicitations are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

The ambiguity cited by DDSN was related to the term of the contract and the manner in which the bidders completed the bidding schedule. The solicitation clearly stated:

Any contract formed as a result of this solicitation will be for a period of one year with four one-year options to renew.

[Solicitation, Page 3], and

Start Date: July 1, 2015  
Initial Contract Period: July 1, 2015- June 30, 2016  
Maximum Contract Period: July 1, 2015- June 30, 2020

[Solicitation, Page 12]

The bidding schedule required the bidder enter a price per month for each item and multiply that by 60, the total potential number of months. One bidder correctly completed the bidding schedule. Ard entered the monthly amount and apparently multiplied it by 12 months, the initial term of the contract. This error is correctable under Regulation 19-445.2085(B) which provides:

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

(emphasis added) Cancellation based on this ambiguity is not justified.

The solicitation requested bids on two items:

**Dumpster Rental**

Provide the rental of (9) containers 8 yards, with doors that open on sides, with pick-up services two (2) times weekly Monday and Wednesdays for all containers. Contractor will furnish new or newly conditioned containers at the beginning of the contract period and make container exchanges and provide special cleaning services as requested. Monthly cost must include pick-up and all landfill and disposal fees as applicable

[Solicitation, Page 23], and

**Garbage/Trash Removal, Disposal**

Provide the Trash pick-up for (9) 8 yard dumpsters, (2) times weekly, Monday and Wednesday's. Monthly cost must include pick-up and all landfill and disposal fees as applicable

[Solicitation, Page 23]

Another justification to cancel the solicitation was a belief by DDSN that it had specified the wrong size dumpster. DDSN has withdrawn that as justification for cancellation. [Attachment 3]

Apparently there was some confusion with the bid schedule. Line item 1 was titled "**Dumpster Rental**" but included dumpster rental and pick-up services. Line item 2 was titled "**Garbage/Trash Removal, Disposal**" and only included the pick-up services. Based on the prices on the tab sheet for line item 2, pick-up services only, it appears that Ard failed to include the cost of the pick-up services in its bid for line item number 1.

After reviewing the bids DDSN determined that the lowest bid for the pick-up service exceeded the price the agency was currently paying and DDSN determined to cancel the solicitation because the bids

received indicated that the needs of the State could be satisfied by a less expensive article differing from that on which the bids were invited.

### **Determination**

The protest of Ard's Container Service, Inc. is denied and this solicitation is remanded to the South Carolina Department of Disabilities and Special Needs for processing in accordance with the Code.

For the Information Technology Management Office



Michael B. Spicer  
Chief Procurement Officer

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised October 2014)*

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.

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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 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 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 209, Columbia, SC 29201**

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\_\_\_\_\_  
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 for 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.**

## Ard's Container Service

PO Box 1601  
Columbia, SC 29202

Phone (843) 393-0002  
Fax (803) 233-1742

208 Prosperity Drive  
Florence, SC 29501

May 25, 2015

Chief Procurement Officer  
Attn: John White  
1201 Main St. Suite 600  
Columbia, SC 29201

Re: Solicitation #5400009438  
Description: Trash Pick-up/Dumpster Rental for Pee-Dee Center – Protest of no award

Dear Mr. John White:

Thank you for the opportunity to submit our protest in reference to SCDDSN for waste removal services at the Pee-Dee Center in Florence, SC.

On May 20, 2015 it was posted that no award was made on item Trash Pickup/Dumpster Rental for Pee-Dee Center and it will be Re-solicited with Revised Specifications by SCDDSN. Please see attached No award letter. We feel that this is not just since this was a public opening which we were the lowest bidder and now our pricing is known.

I did call Ms. Williams the procurement officer once the notice of no award was posted. She passed me on to her supervisor Mr. Mance. Mr. Mance told me first that they may only need the rental of the cans. There was a breakdown in the bid for rental and service/disposal which we were still the lowest bid for rental of the containers. He then said that he thinks that the city may supply service. I then informed him the City of Florence may supply service, but the containers will still have to be rented since the city does not supply them. Mr. Mance then went on to say that they may need different size cans since he thinks there are different sizes on site. I told him that he could do a per yard price on the pricing given to get the price of a different size can. It also says in the bid package under "III Scope of Work/Specifications – Requirements" the following on page 12....

### **I. Adjustment of Services**

The state reserves the right to adjust the size, number of containers, frequency of pick-ups or number of locations as may be deemed necessary during the contract period. The unit cost per container shall be utilized to obtain the change in contract price resulting in adjustments in service.

I feel that we should be awarded this solicitation since we were the lowest bidder and that if adjustments need to be made to the service required that it can be done with the pricing my company gave at the bid opening. Please see attached Bid Tally sheet provided at the bid opening by Ms. Serena Williams.

I want to thank you again for your time and consideration of our protest. If you have any questions or need further information please do not hesitate to let me know. We look forward to hearing from you soon.

Respectfully yours,

A handwritten signature in cursive script that reads "Stephen Ard".

Stephen Ard  
Owner  
803-933-9336  
Ard's Container Service  
[www.ardscontainer.com](http://www.ardscontainer.com)

**SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS  
Bid Tally Sheet**

BID NO: 5400009438      BID NAME: Trash Pick-Up/Dumpster Rental      REGION: Pee Dee      DATE: 5/13/2015

VENDOR	In-State Preference	In-State Mfg.	US Made	Adjusted Cost	Item 1	Item 2				
Republic Services	✓				89,400 1490.00	89,400 1490.00				
Ard's Container Services	70%				3240.00 370.00	17,820 1485.00				
Waste mgmt of Carolina	✓				NO BID	NO BID	NO	BID		

TABULATION CERTIFIED BY BOTH PERSON OPENING AND WITNESS

AWARD POSTING DATE: \_\_\_\_\_

Opened By: [Signature]  
Witnessed By: [Signature]

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Department of Disabilities and Special Needs  
3440 Harden Street Ext Suite 220  
COLUMBIA SC 29240  
Posting Date: 05/20/2015

**Solicitation:** S400009438  
**Description:** Trash Pick-up/Dumpster Rental for Pee-Dee Center  
**Agency:** SCDDSN

NO AWARD IS MADE ON ITEM(S): **No Award made on all items.**  
WILL BE RE-SOLICITED WITH REVISED SPECIFICATIONS.

Procurement Officer

Serena Saunders

## Attachment 2

### Justification:

Cancellation of Bid Prior to Award

Invitation For Bid # 5400009438

IFB 5400009438 Trash Pick-up / Dumpster Rental for Pee Dee Center was issued May 6, 2015.

It was opened on May 13, 2015. The results were sent to our PD center in Florence to evaluate.

After discussing with end user I issued a No award after opening based on these issues.

1. Inadequate specs cited in invitation. End user (Facility Director) did not know the size and quantity was changed.
2. The quantity listed read 60 vs 12, indicating a 5 year solicitation was done. One vendor responded with a 60 month quote and the other responded with a 12 month quote.
3. After opening a copy of bid tally sheet was given to vendor attending opening in error. Thus revealing all bids prior to an award to one vendor.
4. Bids received indicated that the needs of the state can be satisfied with less expensive article differing from that on which bids were invited.

### Attachment 3

Mike, sorry for the late response to your request.

The IFB asked for Dumpster rental and Trash pickup. However the end user did not want the trash pickup service. They only wanted Dumpster rental. As a result of advertising for both dumpster rental and trash pickup the low bid exceeded the current contract price. End user requested no award be made and keep current contract arrangement because of price increase.

I am dropping the use of "inadequate specs" for the NO Award because that was what the end user wanted.

We have learned a valuable lesson and updated procedures from this procurement. Whatever Your decision is, it will be accepted by DDSN. Thank you for your time, advice and instructions on this procurement.

*Allen Mance, Jr.* CPPB

Director Procurement Services

SC Department of Disabilities & Special Needs