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CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

Protest Decision

Matter of: Protest of The J.P. Holley Funeral Home

Case No.: 2016-119

Posting Date: November 18, 2015

Contracting Entity: South Carolina Department of Mental Health

Solicitation No.: 5400010369

Contract No.: 4400011736

Description: Mortuary and Funeral (Including Crematory Services) for SCDMH

DIGEST

Protest alleging agency failed to properly advertise the solicitation denied, where (1) advertisement was timely published in South Carolina Business Opportunities; and (2) protester was not an actual bidder and therefore lacked standing.

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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

DECISION

The protest by The J.P. Holley Funeral Home of the posting of a Notice of Intent to Award to J. K. Yarborough Mortuary LLC for Mortuary and Funeral (Including Crematory) Services is denied. Holley's letter of protest is incorporated by reference. [Attachment 1]

DISCUSSION

Holley protests that the solicitation was never properly published and thus has created an unfair advantage for those bidders who were aware of the bid location which was not in the "South Carolina Business Opportunities" publication:

The J.P. Holley Funeral Home has checked weekly starting in the last weeks of September 2015 yet never seeing any advertisement or publication informing, relating, or detailing an opportunity to submit a bid for the Mortuary and Funeral (Including Crematory) Services Contract. It is the position of the J.P. Holley Funeral Home that we never saw any publication in the weekly "South Carolina Business Opportunities". The J.P. Holley Funeral Home as an interested party was never able to view the electronic media of Mortuary and Funeral Services Bid because it was never posted. Per South Carolina Consolidated Procurement Code which states that "*...the publication will be available to all interested parties by subscription and distributed by mail or electronic media*"—S.C. Code Regs. 19-445.2040

Section 11-35-1520(3) requires that:

Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in 'South Carolina Business Opportunities' or a means of central electronic advertising as approved by the designated board office. ...

Regulation 19-445.2040(A) states:

A. Specifications of Publication.

The name of the official state government publication shall be known as the "South Carolina Business Opportunities." It shall be published by the Materials Management Office at least weekly. The purpose is to provide a listing of proposed procurements of construction, information technology, supplies, services and other procurement information of interest to the business community.

Except as otherwise provided by law, the publication will be available to all interested parties by subscription and distributed by mail or electronic media. Contents shall be limited to inclusion of proposed procurements required by regulations and such other business information as approved by the Materials Management Officer. Publication of proposed procurements of a classified nature or emergencies may be excluded from publication.

This Invitation for Bids was published to the South Carolina Enterprise Information System (SCEIS) by the South Carolina Department of Mental Health on October 13, 2015. [Attachment 2] When a solicitation related document is published to SCEIS it is automatically posted to the Internet and available, free of charge, to the public at large. In addition, SCEIS automatically notifies registered bidders by email of any solicitations issued under commodity codes that it identified at the time of registration or through a subsequent update. This solicitation was advertised in the South Carolina Business Opportunities (SCBO) publication on October 15, 2015. [Attachment 3] This publication is also available, free of charge, to the public through the Internet.

This solicitation was published in accordance with the South Carolina Consolidated Procurement Code and Regulations.

In addition, Section 11-35-4210(1)(b) limits the right to protest an award or intended award of a contractor to an actual bidder, offeror, contractor, or subcontractor as follows:

(b) 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.

The J. P. Holley Funeral Home was not an actual bidder and lacks standing to protest the award of this contract.

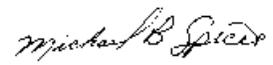
For the reasons stated above, the protest is denied.

Protest Decision, page 4

Case No. 2016-119

November 18, 2015

For the Materials Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer

Chief Procurement Officer

Attachment 1

Formal Protest

November 10, 2015

Protest of Mortuary and Funeral (Including Crematory) Services

Procedural Facts:

Solicitation: 5400010369

Description: Mortuary and Funeral (Including Crematory) Services

Agency: SCDMH

**To: Chief Procurement Officer
Protest-mmo@mmo.sc.gov
1201 Main Street
Suite 600
Columbia, SC 29201**

**Submitted By: The J.P. Holley Funeral Home
C/o Johnathan P. Holley
8132 Garners Ferry Road
Columbia, South Carolina 29209**

*****Delivered via Email*****

Statement of Protest

Whether the publication of the Mortuary and Funeral Services Bid was properly published on the South Carolina Public Procurement website in accordance with South Carolina Code of Regulation.

In accordance with the South Carolina Consolidated Procurement Code: *"The Official State Government Publication. A. Specifications of Publication. The name of the official state government publication shall be known as the "South Carolina Business Opportunities." It shall be published by the Materials Management Office at least weekly. The purpose is to provide a listing of proposed procurements of construction, information technology, supplies, services and other procurement information of interest to the business community. Except as otherwise provided by law, the publication will be available to all interested parties by subscription and distributed by mail or electronic media. Contents shall be limited to inclusion of proposed procurements required by regulations and such other business information as approved by the Materials Management Officer. Publication of proposed procurements of a classified nature or emergencies may be excluded from publication."* –S.C. Code Regs. 19-445.2040.

The J.P. Holley Funeral Home has checked weekly starting in the last weeks of September 2015 yet never seeing any advertisement or publication informing, relating, or detailing an opportunity to submit a bid for the Mortuary and Funeral (Including Crematory) Services Contract. It is the position of the J.P. Holley Funeral Home that we never saw any publication in the weekly "South Carolina Business Opportunities". The J.P. Holley Funeral Home as an interested party was never able to view the electronic media of Mortuary and Funeral Services Bid because it was never posted. Per South Carolina Consolidated Procurement

Code which states that "...the publication will be available to all interested parties by subscription and distributed by mail or electronic media"—S.C. Code Regs. 19-445.2040

The J.P. Holley Funeral Home has a reasonable request; that request being to submit a bid for the above listed solicitation as a matter of law. The solicitation was never properly published and thus has created an unfair advantage for those bidders who were aware of the bid location which was not in the "South Carolina Business Opportunities" publication.

Respectfully Submitted,

Johnathon Holley, President

The J.P. Holley Funeral Home

Attachment 2

11/18/2015

Solicitation Attachments



PROCUREMENT SERVICES

NOTICE OF TIME EXTENSION POSTINGS OF AWARD RELATED DOCUMENTS

For solicitations issued by the Information Technology Management Office, the Statement of Award or Intent to Award will be posted at this location on the date published on the solicitation. If the appropriate award document has not been posted at this location by the close of business on the date published on the solicitation, contact the procurement officer whose name and contact information appears on the cover page of the solicitation, or if applicable, the last amendment to the solicitation.

For additional information, please reference Regulation 19-445.2090(B).

[Refresh](#)

Solicitation Number	Solicitation Description	Purchasing Agency	Delivery Point	Submission Ending Date/Time
5400010369	MORTUARY AND FUNERAL SERVICES FOR SCDMH	Mental Health	Columbia, SC	10/29/2015 04:15:00 PM

Solicitation Attachments

Pre-Award Notices

1 solicitation attachments found, displaying all solicitation attachments.

Attachment Name	Date/Time Posted
1 Funeral Services SCDMH.doc	10/13/2015 03:08:46 PM

Contract Awards

Post-Award Notices

One contract found.

<u>Contract Number</u>	<u>Term From</u>	<u>Term Thru</u>	<u>Vendor Name</u>	<u>Vendor Number</u>
4400011736	11/10/2015	11/09/2020	JK YARBOROUGH MORTUARY LLC	7000230379
1 Suspension Notice.doc				11/10/2015 02:46:23 PM
2 Intent to Award.doc				10/30/2015 12:50:27 PM

[BACK](#)

Today in SCBO

<table style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;"><i>Architect/Engineering</i></td><td style="text-align: right; padding: 2px;">1</td></tr> <tr><td style="padding: 2px;"><i>Construction</i></td><td style="text-align: right; padding: 2px;">2</td></tr> <tr><td style="padding: 2px;"><i>Consultants/Prof. Services</i></td><td style="text-align: right; padding: 2px;">3</td></tr> <tr><td style="padding: 2px;"><i>Equipment</i></td><td style="text-align: right; padding: 2px;">4</td></tr> <tr><td style="padding: 2px;"><i>IT</i></td><td style="text-align: right; padding: 2px;">5</td></tr> <tr><td style="padding: 2px;"><i>Maintenance and Repair</i></td><td style="text-align: right; padding: 2px;">6</td></tr> </table>	<i>Architect/Engineering</i>	1	<i>Construction</i>	2	<i>Consultants/Prof. Services</i>	3	<i>Equipment</i>	4	<i>IT</i>	5	<i>Maintenance and Repair</i>	6	<table style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;"><i>Services</i></td><td style="text-align: right; padding: 2px;">7</td></tr> <tr><td style="padding: 2px;"><i>Supplies</i></td><td style="text-align: right; padding: 2px;">8</td></tr> <tr><td style="padding: 2px;"><i>For Sale/Lease</i></td><td style="text-align: right; padding: 2px;">8</td></tr> <tr><td style="padding: 2px;"><i>Disaster Recovery Information</i></td><td style="text-align: right; padding: 2px;">10</td></tr> <tr><td style="padding: 2px;"><i>Intent to Sole Source</i></td><td style="text-align: right; padding: 2px;">10</td></tr> <tr><td style="padding: 2px;"><i>SCBO Notices</i></td><td style="text-align: right; padding: 2px;">11</td></tr> </table>	<i>Services</i>	7	<i>Supplies</i>	8	<i>For Sale/Lease</i>	8	<i>Disaster Recovery Information</i>	10	<i>Intent to Sole Source</i>	10	<i>SCBO Notices</i>	11
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Architect and Engineering Services

Invitations for Architectural / Engineering, Land Surveying & Construction Management Services

[Click Here](#) to access the SCBO Notes referred to in State Agency advertisements appearing in the Architect / Engineering Section of SCBO Please verify requirements for non-State agency advertisements by contacting the agency / owner.

NOTICE TO ALL CONSULTING ENGINEERING FIRMS

SCDOT – SOLICITATION NUMBER S-16S-16

District 4 Bridge Replacement Package E Construction Engineering & Inspection Services

The SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (SCDOT) requests a letter of interest and a current resume of qualifications from all interested consulting firms experienced in performing Construction Engineering and Inspection (CE&I) Services. The services are requested for the Federal Aid Bridge Replacement Project Package E in Cherokee, Chester, Fairfield, Lancaster, and York Counties (District 4). These services may include but not be limited to the services to perform construction management, construction engineering, construction survey verification, assurance and acceptance inspection and testing in the areas of concrete, foundation, earthwork, drainage and base, erosion control, traffic control, and asphalt roadway to determine compliance with the contract requirements. The CE&I contract for this project has an established Disadvantage Business Enterprises (DBE) goal of five percent (5%) of the Contract price.

The SCDOT will select one Project Team to provide these services. Consultants will be evaluated and ranked based on their score during the selection process.

RFP information associated with this solicitation is located at the following link:
http://info.scdot.org/SCDOTProfessionalServ/SitePages/constructionLetting_Services.aspx#tabs-5.

For questions, please contact the SCDOT Contracting Officers (CO), Wendy Hollingsworth, at 803-737-0746 or via email at Hollingswg@scdot.org or Roberta Mack, at 803-737-1256 or via email at MackRB@scdot.org. Electronic Submissions are due no later than 2:00pm on 11/5/2015.

LAURENS COUNTY WATER AND SEWER COMMISSION – ENGINEERING SERVICES

Laurens County Water and Sewer Commission (LCWSC) located in Laurens, South Carolina is requesting proposals from qualified engineering firms to provide professional design and limited inspection services for the City of Clinton Lyda Mill Sewer Upgrade Project (CDBG No. 4-CI-15-008). This project is funded in part with Com-

Services

Description: MORTUARY AND FUNERAL SERVICES FOR SCDMH

Solicitation Number: 5400010369

Submit Offer By: 10/28/2015 3:15pm

Purchasing Agency: SC Dept. of Mental Health 2414 Bull Street, Room 201 Columbia, SC 29201

Buyer: ANDREW JACKSON

Email: AJJ69@scdmh.org

Download Solicitation From:

<http://webprod.cio.sc.gov/SCSolicitationWeb/solicitationAttachment.do?solicitationnumber=5400010369>

Description: WINDOW WASHING SERVICES

Solicitation Number: C16002-10/28/2015

Delivery Point: 500 Wildlife Parkway, Columbia, SC 29210-8014

Site Visit: Non-mandatory. Please contact Kevin Eubanks, 803-602-0857, for appointments.

Submit Offer By: 10/28/2015 2:00pm

Purchasing Agency: Riverbanks Zoo and Garden

Buyer: Jessica Monts, jmonts@riverbanks.org

Download Solicitation From: www.riverbanks.org/procurements

PROJECT 2015-009 RFQ – PLANT ENTRANCE WARNING SIGN

Seneca Light & Water Department, Seneca SC is requesting quotes from pre-qualified bidders (SCDOT On-Call Traffic Signal Contracts) for the new installation of:

- Two (2) "PLANT ENTRANCE" Warning Signs complimented with Solar Powered "FLASHERS" dual beacons. See SCDOT Traffic Engineering Standard Warning Sign Detail_W11-16-36
 - Flat Sheet, Type III
 - Fixed Size & Message Sign (Shoulder Mounted)
- Sign #1 should be located approximately 175-Feet from a newly constructed entrance.
- Sign #2 should be installed approximately 450 – 500 Feet from the newly constructed entrance
 - This sign will also serve warning for the existing entrance.
- Project is located on State Road S-37-488, near the Borg Warner Plant

The submitted Quotes should include ALL related cost for complete installation of signs and assembly per design standards of the South Carolina Department of Highways & Public Transportation.

DUE DATE FOR SUBMITTALS: 2:00pm on 10/29/2015

Reply to:

Mike Greenman
Seneca Light & Water Engineering
221 E. North First Street
PO Box 4773
Seneca, South Carolina 29679

Contact Information – Mike Greenman
Phone: 864-882-8457
Fax: 864-885-0357
Email: mgreenman@seneca.sc.us
Visit Website: City of Seneca / Business / Current Bid Proposals

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised September 2015)

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 111.1 of the 2015 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**

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.