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## Protest Decision

**Matter of:** Holtzclaw Lawn Service, LLC

**Case No.:** 2021-126

**Posting Date:** January 20, 2021

**Contracting Entity:** Piedmont Technical College

**Solicitation No.:** 5400020416

**Description:** Piedmont Technical College Grounds Maintenance

### DIGEST

Protest of bid irregularities is dismissed as untimely. The protest letter of Holtzclaw Lawn Service, LLC (HLS) is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file and applicable law and precedents.

### BACKGROUND

Solicitation Issued: 10/13/2020

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

Amendment 1 Issued  
Protest Received

11/03/2020  
01/19/2021

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids (IFB) on behalf of Piedmont Technical College on October 13, 2020, for Piedmont Technical College Grounds Maintenance. Amendment 1 was issued on November 3, 2020. HLS filed a protest on January 19, 2021.

## ANALYSIS

Section 11-35-4210(1)(b) sets forth the protest procedure as follows:

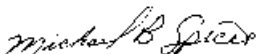
Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

No award has been posted or sent as of the date of this decision. The time for filing a protest of the award has not matured and the CPO lacks jurisdiction to review the merits of this protest.

## DECISION

For the reasons stated above, the protest by Holtzclaw Lawn Service, LLC is dismissed.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

Attachment 1

Tinsley & Tinsley, P. C.  
Attorneys at Law  
109 Oak Avenue  
Greenwood, South Carolina 29646  
(864) 223-0770  
FAX: (864) 377-8278  
email: tinsleyattorneys@gmail.com

January 19, 2021

**Via Certified Mail and e-mail**

Stephen Taylor  
Chief Procurement Officer, Materials Management Office  
1201 Main St.  
Columbia, SC 29201  
protest-mmo@mmo.state.sc.us  
staylor@mmo.sc.gov

Re: Solicitation No. 5400062416  
Piedmont Technical College Ground Maintenance Contract  
My Client: Carey Holtzclaw d/b/a Holtzclaw Lawn Service

Dear Mr. Taylor:

I am writing on behalf of my client Carey Holtzclaw to formally issue an intent to protest the notice of intent to award the Piedmont Technical College Grounds Maintenance contract that the state procurement office issued January 15, 2021.

Mr. Holtzclaw's protest is based upon the improper process and procedures used to determine the winner of the contract. Mr. Holtzclaw had the prior contract from 2016-2020 and fulfilled his contractual duties properly. Prior to the current bidding process opening, the state procurement office published incorrect amounts for Mr. Holtzclaw's bid from five years ago. Mr. Holtzclaw has been informed that the bidder who ultimately secured the contract slightly underbid these prior amounts without even stepping foot on the various campuses. After November 18, 2020, when the bidding closed, the successful bidder realized that his prices were unbalanced as he had amounts that were unreasonably high for certain campuses and unreasonably low for other campuses. Rather than rejecting the unbalanced offer, the state procurement office allowed this bidder to adjust his improper bid despite the bidding being closed. This unbalanced bid is prohibited by S.C. Regulation 19-445.2122.

This improper process gave the successful bidder an unfair competitive advantage in violation of the purposes and policies of the South Carolina Consolidated Procurement Code, which requires fair and equitable treatment of all persons who deal with the procurement system and ethical behavior of all involved. The Code also imposes an obligation of good faith that was

not complied with in allowing a bidder to correct an improper bid after everyone else had lost the opportunity to bid on the job.

Mr. Holtzclaw requests that the procurement office reject the improper bid that secured the procurement and award the job to him if he was the next bidder in line to receive the award. Alternatively, Mr. Holtzclaw would ask that the bidding be reopened so everyone can have an even playing field. The successful bidder should not be allowed to benefit from the unfair advantage of being allowed to correct an improper, unbalanced bid after the bidding had closed for everyone else.

Please contact me if you have any questions.

Yours truly,

A handwritten signature in black ink, appearing to read "R. J. Tinsley, Jr.", written in a cursive style.

R. Jamison Tinsley, Jr.

cc: Carey Holtzclaw

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2019)*

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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  
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

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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: \_\_\_\_\_

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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.**