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Protest Decision

Matter of: Carey Holtzclaw, d/b/a Holtzclaw Lawn Service

Case No.: 2021-128

Posting Date: February 18, 2021

Contracting Entity: Piedmont Technical College

Solicitation No.: 5400020416

Description: Piedmont Technical College Grounds Maintenance

DIGEST

Protest of unbalanced bid and process irregularities is granted. The protest letter of Carey Holtzclaw, d/b/a Holtzclaw Lawn Service (HLS) is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer¹ (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.

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

BACKGROUND

Solicitation Issued:	10/13/2020
Amendment 1 Issued	11/03/2020
Negotiations Completed	01/12/2021
Bid Opening	01/19/2021
Protest Received	01/19/2021
Intent to Award Posted	01/21/2020
Protest Received	01/22/2020

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids (IFB) on October 13, 2020, to establish a 5-year contract for grounds maintenance at Piedmont Technical College campuses. Amendment 1 was issued on November 3, 2020. HLS originally filed a protest on January 19, 2021, prior to the posting of the Intent to Award, alleging that Landscape Upstate, LLC's (LU) original bid was unbalanced and improperly modified after opening. Since an Intent to Award had not been posted, this protest was dismissed as untimely. An Intent to Award was posted to LU on January 21, 2020. HLS resubmitted its protest on January 22, 2021.

ANALYSIS

HLS protests:

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.

The bid schedule requested pricing for Schedule 1, 2, and 3 cuttings and parking lot sweeping at one PTC campus and Schedule 1 and 3 cuttings and parking lot sweeping at the other seven PTC campuses. The quantities for the Schedule 1, 2, and 3 cuttings and parking lot sweeping was the

same for all eight campuses. The bid schedule also requested hourly rates for four (4) job classifications for a total of 29 line items. (Solicitation, Page 34) Award was to be made to the lowest responsible and responsive bidder. (Solicitation, Page 22) The bid total was to be calculated as follows:

CALCULATING THE LOW BID

The low bid will be calculated by multiplying the unit price times the quantity for the extended price. The low bid will then be calculated by totaling the extended price of each line item together.

[Solicitation, Page 22]

Landscape Upstate, LLC (LU) submitted the lowest overall bid of \$591,050. While the solicitation stated that the low bid would be calculated by totaling the extended price for each line item, the last four line items, the hourly rates, were not included in that calculation.² LU's unit prices were distributed as follows:

	Quantity	Six Campuses	Campus Seven	Campus Eight
Schedule 1	225	\$61,875	\$67,500	\$67,500
Schedule 2	110			\$33,000
Schedule 3	15	\$1,800	\$1,800	\$1,800
Parking Lot Sweeping	20	\$5,000	\$2,400	\$5,000

Occupational Specialty	
Maintenance Supervisor Rate	\$120/HR
Maintenance Laborer Rate	\$120/HR
Tractor Operator Rate	\$120/HR
Dump Truck Operator Rate	\$120/HR

A Record of Negotiations dated January 12, 2021, modified LU's unit prices states:

Piedmont Technical College and Landscape Upstate LLC have agreed to terms on the following price model for services under solicitation 5400020416 for Grounds Maintenance at the following campuses at Piedmont Technical College:

LU's prices were modified as follows:

² The Bid Schedule indicated a quantity of 1 for each of the four occupational specialties. The absence of a good faith estimate of the anticipated usage and failure to include that total in the total bid price calculation creates an opportunity for unbalanced bidding that could be avoided.

	Quantity	Original Bid	Modified Bid	Original Unit Price	Mod Unit Price
<u>Greenwood</u>					
Section 1	225	\$ 61,875.00	\$334,000.00	\$275.00	\$1,484.44
Section 3	15	\$ 1,800.00	\$2,000.00	\$120.00	\$133.33
Parking lot	20	\$ 5,000.00	\$7,000.00	\$250.00	\$350.00
	Quantity	Original Bid	Modified Bid	Original Unit Price	Mod Unit Price
<u>Abbeville</u>					
Section 1	225	\$ 61,875.00	\$21,000.00	\$275.00	\$93.33
Section 3	15	\$ 1,800.00	\$6,500.00	\$120.00	\$433.33
Parking lot	20	\$ 5,000.00	\$1,525.00	\$250.00	\$76.25
<u>Edgefield</u>					
Section 1	225	\$ 61,875.00	\$17,000.00	\$275.00	\$75.56
Section 3	15	\$ 1,800.00	\$4,000.00	\$120.00	\$266.67
Parking lot	20	\$ 5,000.00	\$2,025.00	\$250.00	\$101.25
<u>Laurens</u>					
Section 1	225	\$ 61,875.00	\$69,000.00	\$275.00	\$306.67
Section 3	15	\$ 1,800.00	\$4,500.00	\$120.00	\$300.00
Parking lot	20	\$ 5,000.00	\$2,500.00	\$250.00	\$125.00
<u>Advanced mfg</u>					
Section 1	225	\$ 61,875.00	\$21,000.00	\$275.00	\$93.33
Section 3	15	\$ 1,800.00	\$4,500.00	\$120.00	\$300.00
Parking lot	20	\$ 5,000.00	\$1,500.00	\$250.00	\$75.00
<u>McCormick</u>					
Section 1	225	\$ 61,875.00	\$26,000.00	\$275.00	\$115.56
Section 3	15	\$ 1,800.00	\$1,000.00	\$120.00	\$66.67
Parking lot	20	\$ 5,000.00	\$2,000.00	\$250.00	\$100.00
<u>Newberry</u>					
Section 1	225	\$ 67,500.00	\$21,000.00	\$300.00	\$93.33
Section 3	15	\$ 1,800.00	\$1,000.00	\$120.00	\$66.67
Parking lot	20	\$ 2,400.00	\$3,000.00	\$120.00	\$150.00

Saluda

Section 1	225	\$ 67,500.00	\$23,000.00	\$300.00	\$102.22
Section 2	110	\$ 3,000.00	\$13,000.00	\$300.00	\$118.18
Section 3	15	\$ 1,800.00	\$1,000.00	\$120.00	\$66.67
Parking Lot	20	\$ 5,000.00	\$2,000.00	\$250.00	\$100.00
SUM		\$591,050.00	\$591,050.00		

Occupational Specialty	Original Rate	<i>Negotiated Rate</i>
Maintenance Supervisor Rate	\$120/HR	<i>\$45/HR</i>
Maintenance Laborer Rate	\$120/HR	<i>\$25/HR</i>
Tractor Operator Rate	\$120/HR	<i>\$65/HR</i>
Dump Truck Operator Rate	\$120/HR	<i>\$105/HR</i>

Section 11-35-1520(6) requires that competitive sealed bids be accepted unconditionally and without alteration:

Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.

Section 11-35-1540 sets forth the conditions under which negotiations are authorized when conducting a competitive sealed bid:

When bids received pursuant to an invitation for bids under Section 11-35-1520 are considered unreasonable by the procurement officer, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the chief procurement officer, the head of a purchasing agency, or the designee of either officer above the level of procurement officer, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

- (1) each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
- (2) the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;

- (3) the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.”

This negotiation does not meet the criteria set forth in Section 11-35-1540 and was not otherwise authorized by the Code. LU’s bid must be evaluated based on its original unit bid prices.³

The attempt to correct the Landscape Upstate’s bid through negotiation is not authorized under the Code.

DECISION

For the reasons stated above, the protest by Carey Holtzclaw, d/b/a Holtzclaw Lawn Service is granted. The award to Landscape Upstate LLC is cancelled. This procurement is remanded to State Fiscal Accountability Authority for proceedings in accordance with the Code. The procurement officer should analyze Landscape Upstate LLC’s pursuant to Regulation 19-445.2122. If the procurement officer concludes that unbalanced pricing increases performance

³ HLS also protests that LU’s bid was unbalanced. Since this bid required pricing for separate line items, Regulation 19-445.2122(C) requires that bids be analyzed to determine if the prices are unbalanced:

Unbalanced pricing. All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. If the responsible procurement officer determines that unbalanced pricing may increase performance risk (e.g., it is so unbalanced as to be tantamount to allowing an advance payment) or could result in payment of unreasonably high prices, she may conclude that the offer is unreasonable as to price.

LU bid a unit price of \$275 for each Schedule 1 cutting at six of the campuses and \$300 for the other two campuses regardless of the size of the campus or the required level of effort. This means that for some campuses the price per cutting was significantly understated and for others it was significantly overstated. The unauthorized negotiation appears to reallocate of the overall bid price to factor in the size of the campus and the anticipated level of effort for each service, at each campus, to more accurately reflect a realistic price for that service at that campus. This is significant because the solicitation anticipates that the list of duties for each month may increase or decrease as needs arise in the course of the contract:

SERVICES REQUIRED AND FREQUENCY INTERVALS

Please see Grounds and Landscaping Annual Schedule (**Attachment A**) for the list of duties designated for each month. This schedule may be negotiated (increase/decrease) as needs arise in the course of this contract. This listing does not replace or change the details of contract as defined. The attachment may not be all-inclusive.

[Solicitation, Page 15]

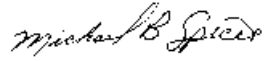
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risk or results in unreasonably high prices, the bid should be rejected; otherwise, award should be made to the low bidder.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

Tinsley & Tinsley, P. C.
Attorneys at Law
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Greenwood, South Carolina 29646
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email: tinsleyattorneys@gmail.com

January 22, 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. 5400020416
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,



R. Jamison Tinsley, Jr.

RJTJr/cct

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.

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**

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.