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Protest Decision

Matter of: Herald Office Solutions

Case No.: 2022-130

Posting Date: May 12, 2022

Contracting Entity: Technical College of the Low Country

Solicitation No.: JanitorialScrubbers2022

Description: Provide (3) Janitorial Scrubbers

DIGEST

Protest dismissed for lack of jurisdiction. The protest letter of Herald Office Solutions (HOS) is included by reference. (Attachments 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:	03/17/2022
Bids Received	04/04/2022
Intent to Award Posted	02/22/2022
Protest Received	04/26/2022

The Technical College of the Lowcountry (TCL) issued this Invitation for Bids (IFB) on March 17, 2022, for three (3) Tennant T290 Walk Behind Scrubbers Model# 9022004 - Self Propel - 150AH Wet Batteries or equivalent. Bids were opened on April 4, 2022. An Intent to Award was posted to Aviate Enterprises, Inc. on April 5, 2022. HOS filed a protest of the award on April 26, 2022.

ANALYSIS

This protest fails for two reasons: First, the protest was not filed within the statutory time limit established by the Code and second, the total potential value of this procurement is below the statutory authorization for review by the CPO.

Section 11-35-4210(1) of the Consolidated Procurement Code grants any actual bidder, offeror, contractor, or subcontractor the right to protest the award of a contract 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.

(emphasis added)

The Intent to Award was posted on April 5, 2022. HOS' protest was not received until April 26, 2022. This is 13 business days after the posting of the Intent to Award and well beyond the seven-business day window established by the Code for filing a protest of an award.

In addition, S.C. Code §11-35-4210(1)(d) sets the threshold for such a protest to procurements with a potential value greater than \$50,000:

The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

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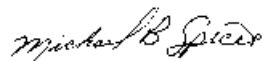
The total potential value of this procurement is \$13,972.53, well below the \$50,000 threshold established by the Code.

Consequently, the CPO lacks jurisdiction to review the merits of this protest.

DECISION

For the reasons stated above the protest of Herald Office Solutions is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Alana Bramble](#)
To: [Protest+MMO](#)
Cc: [Matt Reynolds](#); [Chase Cook](#); [richnson@td.edu](#)
Subject: [External] Solicitation JanitorialScrubbers2022 ***BID PROTEST***
Date: Tuesday, April 26, 2022 11:39:29 AM
Attachments: [image001.png](#)
[HCS_JanitorialScrubbers2022-Solicitation_30Mar22.pdf](#)
[Intent-to-Award-Janitorial-Scrubbers-2022.pdf](#)

Good Morning,

We have reviewed the posted "Intent to Award" for this solicitation and we would like to protest the award and/or receive additional clarification as to the justification for the award.

The "Intent to Award" was for \$13,972.53 and our submittal was for \$7,714.11 for a comparable substitution which was allowed per the bid document.

We would like to respectfully request clarification as to why an award was made for twice our cost to an out of state non-preferred vendor.

Best Regards,
Alana Bramble

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

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 2020 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.