

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

The Greenery, Inc.

University of South Carolina
IFB No. USC-IFB-2235-DG
Landscaping Services for USC Beaufort
Campuses & Athletic Fields

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-132

POSTING DATE: August 23, 2012

MAILING DATE: August 23, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from The Greenery, Inc. With this invitation for bids (IFB), the University of South Carolina (USC) attempts to procure landscaping services for the USC Beaufort campuses and athletic fields. In the letter, The Greenery protested USC's award to ValleyCrest Landscape Maintenance, Inc. (ValleyCrest) alleging ValleyCrest's bid was non-responsive on three separate grounds.¹

The issues to be decided in this case are clear. Therefore, this decision is prepared based on an administrative review of the procurement file and correspondence received since the protest.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

¹ The Greenery also alleged "The bid submitted by Ocean Woods Landscape [the second lowest bidder] also did not have the proper Material Data Safety Sheets documentation nor did their bid include the required MBE participation and should also be rejected as non-responsive." Since the CPO denies the protest he need not reach these allegations. However, USC provided copies of the Ocean Woods bid. Ocean Woods in fact included MSDS documentation and completed the MBE section of the solicitation.

1. On June 7, 2012, USC solicited bids for Landscaping Services for USC Beaufort Campuses & Athletic Fields. (Ex. 1)
2. On June 19, 2012, USC issued Addendum # 1. (Ex. 2)
3. On June 21, 2012, USC issued Addendum # 2. (Ex. 3)
4. On June 28, 2012, USC opened the bids.
5. On July 3, 2012, USC posted a revised intent to award to ValleyCrest Landscape Maintenance, Inc. for an estimated potential value of \$349,966. (Ex. 4)
6. On July 11, 2012, Janet Noonan of The Greenery filed its protest of the award.
7. On July 16, 2012, the CPO requested a formal response to the protest from USC, sending a copy of the request to The Greenery.
8. On July 20, 2012, USC responded to Ms. Noonan. (Ex. 5)
9. On July 23, 2012, the CPO corresponded with Ms. Noonan writing, "I ask that you review USC's response and let me know via email if you wish to continue your protest or not."
10. Ms. Noonan never responded.

DISCUSSION

USC solicited bids for landscaping services for USC Beaufort campuses and athletic fields. After evaluation of the bids, USC posted its award to ValleyCrest. The Greenery protested the award on the grounds that: (1) ValleyCrest did not submit its bid on the required bid form, (2) ValleyCrest did not include the Materials Data Sheets for the products it planned to use during the conduct of the work, and (3) ValleyCrest did not include any MBE participation nor did they provide any evidence that they attempted to meet this State of South Carolina requirement.

USC responded to The Greenery's allegations, as follows:

[Issue # 1]: The bid submitted by ValleyCrest was not submitted on the proper forms and not the form issued in addendum number two.

USC Response: ValleyCrest acknowledged and used Addendum 2 to submit their bid response. The word "Revision" was not noted on the form submitted by

ValleyCrest. All the other information was included on the bidding schedule provided by ValleyCrest.

[Issue # 2]: The specifications clearly stated that Material Data Sheets were a required submittal with the bid.

USC Response: ValleyCrest submitted Material Data Sheets (MSDS) as required in the solicitation. Since the MSDS information had been redacted by ValleyCrest, it was not included in the FOIA information provided to The Greenery. The University has requested and received approval to release the MSDS information. A copy of the ValleyCrest MSDS is enclosed for your review. (ValleyCrest's MSDS were shared with Janet Noonan of The Greenery on July 23, 2012.)

[Issue # 3]: ValleyCrest did not include any MBE participation.

USC Response: MBE participation is not a mandatory requirement, and therefore is not included in the evaluation of the bid response.

CONCLUSIONS OF LAW

The Greenery alleged that ValleyCrest's bid was deficient in that it did not comply with these three requirements of the IFB; that it was non-responsive. Regarding award of an IFB, the Consolidated Procurement Code (Code) requires, "notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids." (11-35-1520(10)) The Code defines a responsive bidder as, "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." (11-35-1410(7))

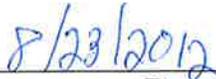
According to USC, ValleyCrest's bid was evaluated and determined responsive to the requirements of the IFB. In Addendum No. 2 USC made minor formatting changes and added an optional "Lot 3" to the Bidding Schedule. ValleyCrest acknowledged the addendum and submitted its bid on a form that is essentially identical to the revised bidding schedule. Valley Crest included MSDS sheets with its bid. Finally, according to USC, MBE participation is not a mandatory requirement. The CPO agrees. *Cf.* Code Section 11-35-1520(13)(f).

DETERMINATION

For the aforementioned reasons, the protest of The Greenery is denied.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2012)

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 83.1 of the 2012 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, an incorporated business must retain 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).

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, 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.



the greenery, inc.

Employee Owned

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Office 843-785-3848 Fax 843-686-9075

University of South Carolina
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Via email to: protest-mmo@mmo.state.sc.us, GallmanD@mailbox.sc.edu
and fax to: 803-737-0639

Re: Bid # USC-IFB-2235-DG
Landscaping Services for USC Beaufort Campuses & Athletic Fields

The Greenery Inc. hereby protests the Revised Intent to Award dated July 3rd (see attached) for Bid #USC-IFB-2235-DG as follows;

The bid submitted by ValleyCrest was not submitted on the proper forms, did not include the required documentation and did not have any MBE participation.

The specifications clearly stated that Material Data Sheets were a required submittal with the bid as follows;

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JAN 2006): Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations.

B. All bidders shall furnish a list of supplies and materials to be used in the performance of this contract. This listing shall be accompanied by OSHA form 20 (Material Safety Data Sheet) for each product. All supplies should be manufactured by a full line national company and be compatible with other materials used in the performance to the contract. All materials are subject to the approval of the USC Coordinator and the Health and Safety Committee of the University of South Carolina.

ValleyCrest submitted their pricing on an improper bid form and not the form issued in addendum number 2.

ValleyCrest did not include any MBE participation nor did they provide any evidence that they attempted to meet this State of South Carolina requirement.

ValleyCrest bid should be deemed non-responsive and rejected from consideration.

The Bid submitted by Ocean Woods Landscape also did not have the proper Material Data Safety Sheets documentation nor did their bid include the required MBE participation and should also be rejected as non-responsive.

The Greenery's bid was fully responsive, included all required documentation and has the State of South Carolina required MBE participation.

The Greenery requests that the bids submitted by ValleyCrest and Ocean Woods be rejected and that the bid be awarded to The Greenery Inc.

Respectfully Submitted,
The Greenery Inc.

Janet Noonan

Janet Noonan
Business Developer

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