

AMENDED AGENDA
FLORENCE COUNTY COUNCIL WORKSESSION
CONFERENCE ROOM, ROOM 802
180 NORTH IRBY STREET
FLORENCE, SOUTH CAROLINA
THURSDAY, MAY 1, 2014
7:30 a.m.

*Chairman James T. Schofield (Council District 8),
Councilman Waymon Mumford, Vice-Chairman (Council District 7)
Councilman Mitchell Kirby, Secretary-Chaplain (Council District 4)
Councilman Russell W. Culberson (Council District 6)
Councilman Alphonso Bradley (Council District 3)
Councilman Roger M. Poston (Council District 2)
Councilman Kent C. Caudle (Council District 5)
Councilman Willard Dorriety, Jr. (Council District 9)
Councilman Jason M. Springs (Council District 1)*

I. CALL TO ORDER

II. DISCUSSION OF FIRE SERVICES AND PROPOSED ORDINANCES NO. 17-2013/14 AND NO. 18-2013/14

III. OTHER BUSINESS

Discussion Of Appeal of Denial of Protest by Infrastructure Consulting and Engineering, PLLC.

IV. EXECUTIVE SESSION

- Legal Advice

V. ADJOURN

FLORENCE COUNTY COUNCIL WORKSESSION

May 1, 2014

AGENDA ITEM: Other Business

DEPARTMENT: Administration

ISSUE UNDER CONSIDERATION:

Appeal of Denial of Protest by Infrastructure Consulting and Engineering, PLLC.

ATTACHMENTS:

- 1) Copy of Protest Letter from Lawrence C. Melton, Nexsen Pruet, Special Counsel to Infrastructure Consulting and Engineering, PLLC (“ICE”)
- 2) Copy of Letter from County Administrator K. G. Rusty Smith, Jr. Denying Protest
- 3) Copy of Letter of Response from Lawrence C. Melton, Nexsen Pruet
- 4) Copy of Letter of Appeal from Lawrence C. Melton, Nexsen Pruet to County Council and attachment

Lawrence C. Melton
Special Counsel

April 16, 2014

K. G. Smith, Jr., County Administrator
Florence County
180 North Irby Street
Florence, SC 29501
Fax: 843-665-3042

RE: Florence County Request for Proposals No. 18-13/14
Program Management Services – Capital Projects Sales Tax Program II

Dear Mr. Smith:

This firm is counsel to Infrastructure Consulting and Engineering, PLLC (“ICE”). ICE is a full service transportation consulting and engineering firm headquartered in Columbia, South Carolina. ICE’s expertise includes providing program and construction management services for capital projects.

As counsel to ICE, we hereby protest the above-referenced procurement pursuant to Section 11-33 and Section 11-101 of the Florence County Code of Ordinances, Chapter 11, Art. II (hereinafter the “Florence County Procurement Code”).

The background for this protest is as follows:

1. On or about August 29, 2013, Florence County (“County”) advertised for engineering services under RFQ No. 08-13/14. The RFQ called for qualified engineering firms to provide professional services on an “as needed” basis in connection with various future County engineering projects, excluding any buildings or water/sewer projects. Furthermore, the County’s original RFQ for “as needed” engineering services did not indicate that the awardees would be issued a “Private” RFQ to meet the County’s need for Program and Construction Management services under the County’s Capital Projects Sales Tax Program II.

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Suite 700 (29201)
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Columbia, SC 29202
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Nexsen Pruet, LLC
Attorneys and Counselors at Law

Management services under the County's Capital Projects Sales Tax Program II.

2. ICE did not submit a proposal in response to the County's RFQ No. 08-13/14 for "as needed" engineering services. ICE has significant talent, resources and experience and was very much interested in performing program and construction management services, but not in the "as-needed" type of engineer services identified in RFQ No. 08-13/14.
3. On or about October 22, 2013, the County announced that eleven firms had been selected for contract award under RFQ No. 08-13/14.
4. At some time unknown to ICE, the County sent a "Private" RFQ to the eleven awardees under RFQ No. 18-13/14 for proposals for program/construction management services on Capital Projects Sales Tax Program II projects. The County has never publically advertised for proposals for Program/Construction Management services for Capital Projects Sales Tax Program II projects.
5. Based on information and belief, the eleven awardees under RFQ No. 18-13/14 for "as needed" engineering services formed various combinations and the County only received two (2) proposals on or about February 17, 2014. ICE understands that the County is currently in negotiation with the team led by Davis & Floyd, Inc.
6. ICE is a prospective bidder for program and construction management services to Florence County and would have responded to any publically noticed request for proposals for such services.

The County's "private" solicitation for program/construction management services to the eleven awardees of the "as needed" engineering services contract violates the Florence County Procurement Code. Section 11-33 of the Procurement Code requires that procurement of capital project construction manager services "be done through the procurement office to assure maximum competition and best prices for the county."

The original RFQ for "as needed" engineering services did not identify that contract as a basis for eligibility to bid on program or construction management services. The result of these events is that companies such as ICE that would not be interested in "as needed" engineering services, were excluded from competing for the program/construction

K. G. Smith, Jr., County Administrator
April 16, 2014
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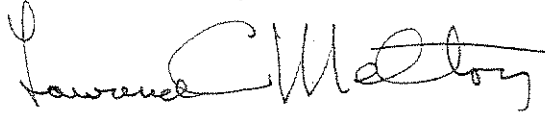
management contract. This guaranteed lack of competition from program and construction management firms highly specialized in the field violated both the letter and the spirit of Florence County's Procurement Code.

Pursuant to Section 11-105 of the Procurement Code, this will request that the County's "Private" RFQ No. 08-13/14 to the awardees of the "as needed" engineering services contract be rescinded and any contract awards made pursuant thereto be cancelled and re-bid on an open and fair basis to comply with the law.

We look forward to your response.

Very truly yours,

NEXSEN PRUET, LLC

A handwritten signature in black ink, appearing to read "Lawrence C. Melton". The signature is written in a cursive style with a long horizontal stroke at the end.

Lawrence C. Melton

LCM:kmt



FLORENCE COUNTY
County Administrator

April 23, 2014

Mr. Lawrence C. Melton
Nexsen Pruet, LLC
1230 Main Street, Ste. 700 (29201)
P.O. Box 2426
Columbia, SC 29202

RE: Florence County Request for Proposals No. 18-13/14
Program Management Services- Capital Project Sales Tax Program II

Dear Mr. Melton:

This letter is in response to yours of April 16, 2014, in which your client, Infrastructure Consulting and Engineering, PLLC ("ICE"), protests the selection of a program manager for the Capital Projects Sales Tax Program II for Florence County. The date of the award for the program manager was March 20, 2014. Pursuant to Florence County Ordinance No. 11-101.1 (1) a protest must be submitted within seven (7) days of a procurement award. The protest by your client is thus not timely and is therefore denied.

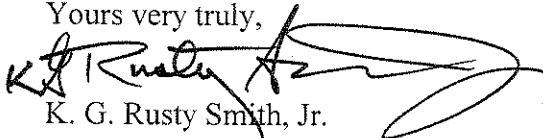
To respond further to your letter, Florence County Code Section 11-33 establishes services that are exempt from the Florence County Procurement Code. One of those exempt services is found at 11-33 (28), which provides an exemption for a Capital Project Construction Manager.

In your letter, you suggest that the second sentence in the preamble to Section 11-33 of the County Code requires that such a construction manager be selected utilizing procedures provided for in the Florence County Procurement Ordinance. This is clearly not the case, as Section 11-33 provides an unequivocal exemption to competitive procurement with respect to a Capital Project Construction Manager, and merely requires that a contract for Capital Project Construction Manager and all other exempt contracts be entered into through the County's central procurement department. The purpose of this provision is to ensure effective administration and consistency with regard to County contracts, and it in no way obviates the specific exemptions to competitive procurement contained in Section 11-33.

Should you have any questions, please do not hesitate to contact me.

With kind regards, I am,

Yours very truly,



K. G. Rusty Smith, Jr.
Florence County Administrator

Lawrence C. Melton
Special Counsel

April 25, 2014

Mr. K. G. Smith, Jr.
180 North Irby Street MSC-G
Florence, South Carolina 29501

RE: Florence County Request for Proposals No. 18-13/14
Program Management Services – Capital Project Sales Tax Program II

Dear Mr. Smith:

This will respond to your letter of April 23, 2014 as follows:

1. The date of the award may have been March 20, 2014, but as the procurement was “private” no notice thereof was provided to the public or our client. Dismissal of the protest on the basis of a “private” award date is, therefore, inappropriate.
2. Your letter essentially reads the preamble to Section 11-33 out of the Florence County Procurement Code. The preamble to the exemptions qualifies all exemptions, including capital project construction manager services, with this language: “these purchases are to be done through the procurement office *to assure maximum competition* and best prices for the county.” The protested procurement did not assure maximum competition but was, rather, intended to—and did -- limit competition.
3. The services procured also fall under Section 11-84, architect-engineering and land surveying services and are not exempt from the Florence County Procurement Code Section 11-84, requires that the County conduct discussions with no less than three (3) firms. The County received only two proposals and, apparently, only conducted discussions with one firm. The reason that only two proposals were submitted is directly related to the County’s “private” restriction to

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Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

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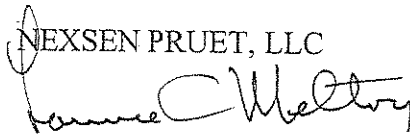
Attorneys and Counselors at Law

Mr. K. G. Smith, Jr.
April 25, 2014
Page 2

awardees of an unrelated contract for non-specific engineering services.

Pursuant to Section 11-101(3)(b) ICE hereby appeals your decision of April 23, 2014, to the Florence County Council.

Very truly yours,

NEXSEN PRUET, LLC


Lawrence C. Melton

LCM/kmt

cc: Florence County Council

Lawrence C. Melton
Special Counsel

April 25, 2014

Mr. James Schofield, Chairman
Florence County Council
P. O. Box 13559
Florence, SC 29504

Re: Florence County Request for Proposals No. 18-13/14
Program Management Services – Capital Project Sales Tax Program II

Dear Mr. Schofield:

This firm is counsel to Infrastructure Consulting and Engineering, PLLC (“ICE”). Pursuant to Section 11-101(3)(b) of the Florence County Procurement Code, ICE hereby appeals the April 23, 2014, decision of the Florence County Administrator denying the protest filed by ICE on April 16, 2014, (copies attached). The grounds for the appeal are as set out in our letter of April 25, 2014, (copy attached). ICE has also filed a request under the S. C. Freedom of Information Act for documents relating to this procurement. We hereby request that the County Council review this matter and grant the relief requested in the April 16th protest.

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

Very truly yours,

NEXSEN PRUET, LLC


Lawrence C. Melton

LCM:kt

cc: K. G. Smith, Jr. ✓
All members of the Florence County Council

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180 North Irby Street MSC-G
Florence, South Carolina 29501

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Very truly yours,

NEXSEN PRUET, LLC


Lawrence C. Melton

LCM/kmt
cc: Florence County Council