

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	
)	
)	ORDER
IN RE: Appeal by National ATM Systems,)	
Inc.; Protest by CalTel, Inc.)	Case No. 2015-1
)	
)	
Solicitation No. 5400009215)	
ATM Installations for 25 SCDMV Field)	
Offices)	

This matter is before the South Carolina Procurement Review Panel (the Panel) for further administrative review pursuant to sections 11-35-4210(6) and 11-35-4410(1)(a) of the South Carolina Consolidated Procurement Code (the Code). National ATM Systems, Inc. (National) has appealed the March 30, 2015 decision of the Chief Procurement Officer (the CPO) granting the protest of CalTel, Inc. The Panel convened a hearing on May 21, 2015 to consider NATMS's appeal. The parties and their counsel conferred prior to the beginning of the Panel's hearing, and advised the Panel that they had reached an agreement resolving the dispute before the Panel. The parties also asked for the Panel's approval of their agreement. At the Panel's hearing, John E. Duncan, Esquire, represented National. Henry P. Wall, Esquire, represented CalTel; and William Dixon Robertson, III, Esquire represented the CPO. Cathy Lucas, Chief of Procurement and Contracts, attended the hearing on behalf of the South Carolina Department of Motor Vehicles (the Department).

The CPO's Motion

After the Panel convened, the CPO made the following motion:

The CPO moves the Panel affirm his decision granting the protest of CalTel, Inc., and modify the remedy to provide:

The award to National is canceled, and the procurement is remanded to the South Carolina Department of Motor Vehicles for further proceedings in accordance

with the South Carolina Procurement Code. The Department's procurement staff may consult with industry representatives, including representatives of CalTel and National, to help determine desirable amendments or changes to the solicitation.

Through their respective counsel, National and CalTel confirmed their consent to the CPO's motion, as did Ms. Lucas for the Department. The Panel unanimously granted the CPO's motion.

Discussion and Order

In light of the parties' mutual agreement, the Panel hereby adopts the findings of fact and discussion by the CPO in his March 30th written determination. This determination is attached hereto as Panel Exhibit A and incorporated by reference. Furthermore, the Panel affirms the CPO's decision granting the protest of CalTel and cancelling the award to National. However, as desired by the parties, the Panel modifies the remedy ordered by the CPO and hereby remands the procurement to the Department for further proceedings in accordance with the Code. Department staff may consult industry representatives, including National and CalTel, to help determine desirable amendments or changes to the solicitation.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: 
C. BRIAN MCLANE, SR., CHAIRMAN

This 1st day of June, 2015.

Columbia, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In Re: Protest of CalTel, Inc.

Protest of the to Award to National ATM Systems, Inc. for ATM Installations for 25 SCDMV Field Offices, Solicitation No. 5400009215

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2015-216

POSTING DATE: March 30, 2015

MAILING DATE: March 30, 2015

The South Carolina Consolidated Procurement Code (the Code) grants any actual bidder the right to protest the award or intended award of a contract, except that a matter that could have been raised as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation was issued by the South Carolina Department of Motor Vehicles (SCDMV) for ATM Installation at 25 SCDMV Field Offices with an option to add additional field offices. CalTel Inc. (CalTel) protests the intended award of a contract to National ATM Systems, Inc. (National) (Attachment 1) The Chief Procurement Officer issues this ruling without a hearing.

Findings of Fact

Invitation for Bids:	02/10/2015
Bid Opening	02/27/2015
Statement of Award Posted:	03/03/2015
Protest Letter Dated	03/09/2015

Discussion

This Invitation for Bids was for ATM installations at 25 DMV field offices statewide (with the option to include additional offices). This project was to be at no cost to SCDMV. Award was to be made to the lowest responsive and responsible bidder. The solicitation asked for a price per transaction and required the following:

- Offeror shall pay SCDMV 45% of the transaction fee profit generated from this contract on a quarterly basis. Offeror shall demonstrate/prove how profit shares will be calculated.

["ATM Specifications," Solicitation Attachment]

CalTel offered two bids. The first was for \$2.75 per transaction with 45% returned to DMV to be paid quarterly. The second was for \$3.00 per transaction with 45% returned to DMV paid quarterly.

National's bid was \$3.00 per transaction with 56% of the fee returned to DMV paid monthly. Award was made to National.

CalTel protests that the winning bidder failed to conform to the specified requirements of the Bid:

The SCDMV bid solicitation specifically stated an exact amount of the transaction fee profit percentage to be paid by the offeror to SCDMV from transactions generated from this contract. It did not state a minimum of 45%. CalTel, Inc. responded in compliance with the stated percentage 45% of the transaction fee profit generated from this contract. SCDMV awarded the contract to bidder (National ATM Systems) whereby the bidder's submission failed to comply with the requirements of the solicitation thus the bid should therefore be rejected [R. 19- 445.2070).

DMV has acknowledged that it inadvertently awarded the contract based on the percentage of the transaction fee to be returned to DMV instead of the transaction fee itself as required by the solicitation and requested cancellation of the award. [Attachment 2]

Section 11-35-1520(6) of the Code requires that:

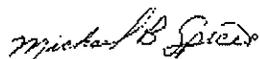
The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.

The solicitation specified the percentage of the transaction fee to be returned to DMV and bidders were to bid a per-transaction fee. Because the award was based on the percentage of the transaction fee rather than the transaction fee itself, the award does not conform to requirements of Section 11-35-1520(6) of the Code.

Determination

For the reasons stated above, the protest is granted. The award to National is cancelled, and the procurement is remanded to the South Carolina Department of Motor Vehicles for award in compliance with the South Carolina Consolidated Procurement Code.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer