

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In Re: Protest of CalTel, Inc.

CASE NO. 2015-216

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

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:

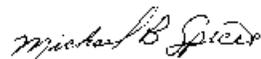
The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.

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

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised October 2014)

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 108.1 of the 2014 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
1105 Pendleton Street, Suite 209, 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 for 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.



MAR 10 15 TU 1:26PM
REC'D BID CONTROL

Post Office Box 827
Conway, SC 29528
(843) 397-4284

March 9, 2015

Chief Procurement Officer
1201 Main Street, Suite 600
Columbia, SC 29201

Re: South Carolina Department of Motor Vehicles - Solicitation 5400009215
INTENT TO AWARD TO NATIONAL ATM SYSTEMS

Please accept this letter as notice of our formal protest to South Carolina Department of Motor Vehicles (SCDMV) Intent to Award of the above referenced bid. We are filing this protest under the provisions of SC Code § 11-35-4210.

Our grounds for protest are:

1. Winning Bidder Failed to Conform to the Specified Requirements of the Bid

In its solicitation requirements SCDMV specified 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."**

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].

2. Award Criteria – Winning Bidder was Not Lowest Responsible and Responsive Bid

In its solicitation SCDMV stated that the award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

As the solicitation stated a fixed percentage (45 percent) of the profit generated from this contract it seemed to suggest that this SCDMV requirement in the solicitation was made with the intention of the SCDMV to select the winning bidder on non-price criteria (e.g. experience, South Carolina based, etc.) CalTel, Inc. submitted its bid based upon this belief. In the event that SCDMV was seeking to maximize its compensation under the revenue share concept of this solicitation then SCDMV in its solicitation should have correctly stated that the award would be made to the highest (not lowest) responsible and responsive bidder. As written in the solicitation (lowest responsible and responsive bidder) CalTel, Inc. obviously is lower bid than the percentage offered by the National ATM Systems, that was awarded the bid and perhaps CalTel, Inc. did in fact submit the lowest bid of all respondents.

3. SCDMV Pursuant to South Carolina law and regulations was not required to solicit competitive quotations.

Small Purchase Procedures: Procurements not exceeding \$2,500 may be made without soliciting competitive quotations, but the prices must be considered reasonable. For procurements not exceeding \$10,000, written quotes must be solicited from at least three sources. For procurements not exceeding \$50,000, written quotes must be solicited with a written solicitation, which must be advertised. [11-35-1550]

CalTel, Inc. was the originator of the idea for SCDMV to place ATM machines in its field offices to begin with. CalTel, Inc. first contacted SCDMV on May 14, 2014 and recommended that SCDMV place ATM machines in their field locations (see attached correspondence between CalTel, Inc. and SCDMV between the dates of May 14, 2014 and March 6, 2015). As a result of CalTel, Inc.'s investigations in the development of its protest response to the outcome of this solicitation, CalTel, Inc. has now discovered that perhaps it was not required by laws and regulations of the state of South Carolina for SCDMV to have even been required to solicit public bids. As a result of this ATM machine initiative requiring zero expenditures on the part of SCDMV for the aforementioned ATM machine initiative, CalTel, Inc. believes it was not necessary for SCDMV to go out for public bid on this initiative.

Even if one was to argue that while there is no cost for the services there is still a "value" of the contract in terms of potential revenue to the SCDMV as its share of the profits, the potential value is an unknown. CalTel, Inc. has found no histrionics for the number of monthly transactions or revenue per ATM for ATM machines placed in field offices of any other department of motor vehicles of any other jurisdiction in the United States or abroad. In one of its initial communications to SCDMV, CalTel, Inc. suggested to SCDMV that a short term test be made in a small number of SCDMV locations to determine what the expected value would be. Had this been done then the histrionics from such a test could have been published in the SCDMV's solicitation to provide potential bidders and the SDCMV a better understanding of the potential revenue of such an initiative. This knowledge base would have likely provided a better basis for bidders to make their quotations which could have increased the number of respondents and thus maximized quantity and quality of quotations.

Thank you for your careful consideration of this protest. I look forward to your response.

Respectfully,

Larry Edward Scott, Jr.
President & CEO
CalTel, Inc.
(843) 397-4284

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

March 11, 2015

Information Technology Office
Mr. Mike Spicer, Chief Procurement Officer
1201 Main St. – Suite 600
Columbia, SC 29201

Re: Solicitation 5400009215 (ATM Installations)

Mr. Spicer:

Per our conversation today, I request your approval to cancel the award for solicitation 5400009215 due to an administrative error (19-445-2085 – C (7, 8)). An award was inadvertently made to the incorrect vendor using the percentage price offered instead of the transaction fee price.

We will take extra measures in the future on bid reviews to ensure proper award is made.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Lucas".

Cathy Lucas
Procurement Director

cc: Procurement Bid File

Post Office Box 1498, Blythewood, South Carolina 29016