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Protest Decision

Matter of: A-OK Commercial Maintenance

Case No.: 2016-137

Posting Date: March 31, 2016

Contracting Entity: SC Department of Labor, Licensing & Regulation

Solicitation No.: 5400011043

Description: Janitorial Services for Fire Academy

DIGEST

Protest of award alleging unfair bidding practices is denied, where procurement officer published pricing from previous contract in amendment to current solicitation.

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

¹ The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

DISCUSSION

A-OK Commercial Maintenance (A-OK), protests the award to Olde Maid Janitorial Services for janitorial services at the South Carolina Fire Academy alleging that the procurement officer unfairly included A-OK's successful pricing from a previous contract in an amendment to the current solicitation allowing Olde Maid to under bid A-OK by one dollar. A-OK's letter of protest is included by reference. [Attachment 1]

BACKGROUND

Solicitation Issued	February 22, 2016
Amendment 1 Issued	March 4, 2016
Award Issued	March 17, 2016
Protest Received	March 17, 2016
Award Suspended	March 18, 2016

The South Carolina Department of Labor, Licensing & Regulation (LLR) issued this Invitation For Bids under a delegation by the Chief Procurement Officer to acquire janitorial services at the South Carolina Fire Academy. Olde Maid Janitorial Services was determined to be the lowest responsive and responsible bidder. A statement of Award was issued to Olde Maid on March 17, 2016.

DISCUSSION

In response to questions submitted by potential bidders, the procurement officer published the name of the incumbent and the price LLR was paying the current contractor. A-OK was the incumbent contractor and protests that publishing the current pricing unfairly allowed Olde Maid to bid one dollar less than A-OK's bid. The names of contractors the state does business with along with the price and value of those contracts is public information. The information published by the procurement officer was posted in 2013 on the South Carolina Enterprise Information System (SCEIS) web site, when the previous contract was awarded to A-OK. It may still be viewed at:

<http://webprod.cio.sc.gov/SCContractWeb/contractDetail.do?contractNumber=5000013410&hideReturnButton=true>

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While the incumbent may feel disadvantaged, there is no violation of the South Carolina Consolidated Procurement Code or Regulations.

DECISION

For the reasons stated above, the protest is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

March 17, 2016

Chief Procurement Officer,
Materials Management Office

RE: Protest of Award of Solicitation # 5400011043

Dear Sir:

I have become aware that the above caption solicitation has been awarded to another party who was considered the lowest bidder.

Because of the amount that was bid by the other vendor which was only \$1.00 less than my bid, I feel the need to protest this award. By being able view the previous bid tabulation, the opportunity is given to anyone to deliberately under bid the previous contractor which is what I think has happened here. I am also protesting the fact that my personal information was made available for anyone to see. I was not aware that this was part of the bidding process.

Any consideration you can give in this matter will be greatly appreciated.

Thank you,

Linda Green
A-OK Commercial Maintenance

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised September 2015)

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 111.1 of the 2015 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 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.