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Protest Decision

Matter of: Consolidated Machine Corporation dba Consolidated Sterilizer Systems

Case No.: 2017-138

Posting Date: April 18, 2017

Contracting Entity: College of Charleston

Solicitation No.: 17.29.DB.B

Description: Biology Laboratory Equipment

DIGEST

Protest of award alleging that the awarded bid was non-responsive and procurement preferences were improperly applied is denied. Consolidated Sterilizer Systems' (Consolidated) letter of protest is included by reference. [Attachment 1]

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

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	02/03/2017
Amendment 1 Issued	02/16/2017
Amendment 2 Issued	02/22/2017
Intent to Award Issued	03/28/2017
Protest Received	04/07/2017

This Invitation for Bids was issued by the College of Charleston (CoC) on February 3, 2017, to acquire Biology Laboratory equipment. The bid consisted of five lots. An Intent to Award was posted to Sterilelink, Inc. (Sterilelink) on March 28, 2017, for Lot 3 which included 2 sterilizer-autoclaves with integrated electrical steam generator and integrated air compressor manufacturer, installation, maintenance, training, and freight. Consolidated timely protested the award to Sterilelink on April 7, 2017.

ANALYSIS

Consolidated protests that it did not receive the benefit of the Made in the US end product preference:

Consolidated Sterilizer Systems contests that the PREFERENCES – SC / US END-PRODUCT (C.11.12) in the Scope of Solicitation – IFB Single Transaction for Supplies, Equipment and Services – Rev. 10.19.16 was not considered in the award decision.

For Consolidated's bid offering on quotation 8984-1 the total unit price totaled \$96,128.20 (not including install services, preventative maintenance services and freight). There was a quantity of 2 units making the price per unit \$48,064.10. Consolidated Sterilizer's offering was under the \$50,000 per unit requirement and under the \$500,000 total potential value requirement for the U.S. preference consideration.

Furthermore Consolidated was under the \$50,000 of service work requirement with the installation and 2 year preventative maintenance line items considered. This work (service) total price qualifies Consolidated for the U.S. preference consideration.

The Consolidated Procurement Code authorizes a two percent preference for United States end products. Section 11-35-2410(B)(2) states:

When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by two percent the price of any offer for a United States end product. This preference does not apply to an item to which the South Carolina end product preference has been applied.

A United States end product is defined in Section 11-35-1524(A)(9) as:

“United States end product” means an end product made, manufactured, or grown in the United States of America.

Lot 3 consists of two line items, described on the bid schedule as “Laboratory Sterilizer-Autoclave with Integrated Electrical Steam Generator and Integrated Air Compressor” (Item 10), and “Installation and Training for LOT 3” (Item 11). The specifications are clear that the autoclave equipment includes delivery charges and two years of preventative maintenance. Consolidated offered a unit price of \$55,791.90 for Item 10 and \$7900 for Item 11. It also attached to its bid a quotation. The quote, which was not required by the solicitation, stated separately the price of the autoclave, maintenance agreement, and freight. The quote reflects Consolidated’s internal pricing for the equipment is less than \$50,000. Based on the quote, Consolidated argues the US end product preference should have been applied.

Section 11-35-1524(B)(3) provides in part, “whether an award is to be made by item or lot, the preferences must be applied to the price of each line item of end product....” Section 11-35-1524(E)(2) provides “The preferences provided in subsections (B) and (C)(1)(i) and (ii) do not apply to a single unit of an item with a price in excess of fifty thousand dollars....” Consolidated bid \$55,792 per unit for Item 10. Since the unit price exceeded \$50,000 the preference do not apply. This issue of protest is denied.²

² The CPO rejects Consolidated’s premise that it can “parse” a line item price by attaching its quote, thereby creating entitlement to a preference despite a unit price exceeding \$50,000. Even if this were the case, the protest would fail. While the equipment bid by Consolidated in response to line item 10 qualifies for the US end product preference, the freight, installation preventative maintenance line items are not made, manufactured or grown and consequently do not qualify as United States end products. The installation and training were included in line item 11 of the bid which also allowed the bidder to claim an applicable resident contractor preference. Consolidated did not apply for any of the resident contractor preferences. Section 11-35-1524(E)(4) states in part:

...For purposes of applying this section, a bidder is not qualified for a preference unless the bidder makes a request for the preference as required in the solicitation....

Consolidated next protests that the equipment bid by Sterilelink does not meet the physical dimensions required by the bid:

Consolidated disputes the awarded party meets specification for the chamber and overall size. On page 19 of 39 the specification states: *Chamber size: 26 IN wide x 26 IN high x 49 IN long*. Consolidated offered a chamber size of 26 IN wide x 26 IN high x 49 IN long with the model 26BV. The awarded party does not offer this size chamber in its offering (26.38" x 27.56" x 50.63"). Furthermore on page 25 of 39 of the bid the specified dimensions are as followed: 2. *Dimensions: a. Overall size: 46.5 IN wide x 78.5 IN high x 69.75 IN long*. The awarded party does not meet this either of these specified criteria.

This was a brand name or equal specification. The solicitation listed a Model 66D Sterilizer by Tuttnauer as the base acceptable model and, among other features, listed the chamber size of 26 IN wide x 26 IN high x 49 IN long [Specifications, Page 19] and overall size of 46.5 IN wide x 78.5 IN high x 69.75 IN long [Specifications, Page 25] of the Model 66D. The model bid by Sterilelink has a chamber size matching the requirements of the solicitation and an overall size of 35 IN wide x 78.5 IN high x 61 IN long. The solicitation did not identify any of the dimensions of the Model 66D as salient features. The solicitation clearly put bidders on notice that equipment from other manufacturers of the same or better quality would be acceptable:

ACCEPTABLE MANUFACTURERS

A. Laboratory Sterilizers:

1. Base:

a. Tuttnauer USA Co. LTD.

2. Optional:

a. Environmental Tectonics Corporation.

b. GetingeUSA, Inc.

c. Primus Sterilizer Company, LLC.

d. Steris Corporation.

3. Only listed manufacturers will be permitted. Must be the same quality or better than base model. Provide documentary evidence to substantiate quality equivalent of base model.

[Specifications, Page 19]

Reducing Consolidated's total bid price of \$111,583.80 by two percent of the cost of the equipment (\$119,483.20 – (\$96,128.20 x .02) = \$117,560.64) is still higher than Sterilelink's bid of \$117,030.00.

This was expanded to include other manufacturers in Amendment 1:

CofC Response 4: Alternative manufacturers that are not listed in the specification may be submitted. Offerors must attach detailed specifications for each piece of equipment to the bid. The College of Charleston reserves the right to determine whether the proposed substitution meets the College's requirements.

[Amendment 1, Question 4]

The agency determined that the overall size of the Sterilelink bid device was acceptable. This issue of protest is denied.

Consolidated protests the qualifications of Sterilelink as follows:

Consolidated disputes the awarded party meets the installer qualifications on page 17 of 39. The awarded party has just recently offered the specified sterilization products for sale and delivery in the United States (less than of period 5 years). As a result the following specification requiring a minimum of five years' experience is disputed since the local installation team has not had access to the products specified and subsequently offered for a period of greater than 5 years: *Firm specializing in installation of products specified, with minimum five years' experience, and authorized by manufacturer to install product.*

Sterilelink's bid indicates that it has been in business for 11 years and provided 5 professional references. [Sterilelink Bid, Page 2] CoC asserts that Sterilelink has been installing autoclaves for 11 years and has installed 23 of these Steelco units in North Carolina and South Carolina. Consolidated has failed to prove that Sterilelink lacks the required qualification and this issue of protest is denied.

Consolidated protests that the equipment bid fails to meet every construction and safety standard listed in the solicitation:

Consolidated disputes that the awarded party meets all the stated specifications and standards stated in the scope of work. The awarded party does not publicly list in any literature or specification sheets that it complies with the scope of work standards. Consolidated requests that College of Charleston confirm and supply documentation from the awarded party's compliance as detailed below:

1. ASTM 240: Standard Specification for Stainless and Heat-Resisting Chromium- Nickel, Stainless Steel Plate, Sheet, and Strip for Pressure Vessels; current edition.
2. ASTM E84: Standard Test Method for Surface Burning Characteristics of Building Materials; current edition.
3. Underwriters Laboratory (UL) Standard 508.
4. Underwriters Laboratory (UL) Standard 61010-1.
5. Canadian Standards Association (CSA) Standard C22.2, No. 125.
6. National Electrical Code (NEC), NFPA 70, current edition, for clearances at electrical equipment,
7. ASME Code, Section VIII, Division 1, for unfired pressure vessels, current edition.
8. LEED-NC Water Efficiency Prerequisite « Indoor Water Use reduction » for process water requirements as applicable.
9. ASME Code, Section I, Part PMB, for power boilers, current edition

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INTEGRAL ELECTRIC STEAM GENERATOR

- G. Standards: Units shall conform to the applicable requirements of the following:
1. ASME Code, Section I, Code M.
 2. Underwriters Laboratory Listed.
 3. CSA Certified.

Sterilelink certified in its bid documentation that it complies with each of the listed standards. Consolidated has the burden of proof that the equipment bid by Sterilelink fails to meet the required standards. Consolidated failed to meet the burden of proof. This issue of protest is denied.

Protest Decision, page 7

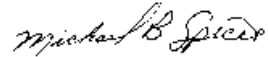
Case No. 2017-138

April 18, 2017

DECISION

Based on the above, the protest of Consolidated Machine Corporation dba Consolidated Sterilizer Systems is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



Simple. Reliable. Sterile.

April 6, 2017

College of Charleston
Materials Management Office
1201 Main Street
Suite 600
Columbia, SC 29201

RE: Solicitation 17.29.DB.B

Chief Procurement Officer,

I am writing to formally and respectfully protest the intent to award Solicitation 17.29.DB.B posted on March 28th, 2017 for the following reasons:

1: Consolidated Sterilizer Systems contests that the PREFERENCES – SC / US END-PRODUCT (C.11.12) in the Scope of Solicitation – IFB Single Transaction for Supplies, Equipment and Services – Rev. 10.19.16 was not considered in the award decision. The solicitation states; "Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively."

The awarded party product offering is not manufactured in the United States. Consolidated Sterilizer Systems has proudly manufactured all of its products in Boston, Massachusetts for over 70 years.

According to the **PREFERENCES – A NOTICE TO VENDORS (C.06.13)** in the Scope of Solicitation:

D. Preferences do not apply to a single unit of an item with a price in excess of \$50,000.00, or a single award with a total potential value in excess of \$500,000.00.

E. Preferences do not apply to a bid for an item of work (service) by the Offeror if the annual price of the Offeror's work exceeds \$50,000.00 or the total potential value of the Offeror's work (service) exceeds \$500,000.00.

For Consolidated's bid offering on quotation 8984-1 the total unit price totaled \$96,128.20 (not including install services, preventative maintenance services and freight). There was a quantity of 2 units making the price per unit \$48,064.10. Consolidated Sterilizer's offering was under the \$50,000 per unit requirement and under the \$500,000 total potential value requirement for the U.S. preference consideration.

Furthermore Consolidated was under the \$50,000 of service work requirement with the installation and 2 year preventative maintenance line items considered. This work (service) total price qualifies Consolidated for the U.S. preference consideration.

2: Consolidated disputes the awarded party meets specification for the chamber and overall size. On page 19 of 39 the specification states: *Chamber size: 26 IN wide x 26 IN high x 49 IN long*. Consolidated offered a chamber size of 26 IN wide x 26 IN high x 49 IN long with the model 26BV. The awarded party does not offer this size chamber in its offering (26.38" x 27.56" x 50.63"). Furthermore on page 25 of 39 of the bid the specified dimensions are as followed: *2. Dimensions: a. Overall size: 46.5 IN wide x 78.5 IN high x 69.75 IN long*. The awarded party does not meet this either of these specified criteria.

3: Consolidated disputes the awarded party meets the installer qualifications on page 17 of 39. The awarded party has just recently offered the specified sterilization products for sale and delivery in the United States (less

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than of period 5 years). As a result the following specification requiring a minimum of five years' experience is disputed since the local installation team has not had access to the products specified and subsequently offered for a period of greater than 5 years: *Firm specializing in installation of products specified, with minimum five years' experience, and authorized by manufacturer to install product.*

4: Consolidated disputes that the awarded party meets all the stated specifications and standards stated in the scope of work. The awarded party does not publicly list in any literature or specification sheets that it complies with the scope of work standards. Consolidated requests that College of Charleston confirm and supply documentation from the awarded party's compliance as detailed below:

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1. ASTM 240: Standard Specification for Stainless and Heat-Resisting Chromium- Nickel, Stainless Steel Plate, Sheet, and Strip for Pressure Vessels; current edition.
2. ASTM E84: Standard Test Method for Surface Burning Characteristics of Building Materials; current edition.
3. Underwriters Laboratory (UL) Standard 508.
4. Underwriters Laboratory (UL) Standard 61010-1.
5. Canadian Standards Association (CSA) Standard C22.2, No. 125.
6. National Electrical Code (NEC), NFPA 70, current edition, for clearances at electrical equipment,
7. ASME Code, Section VIII, Division 1, for unfired pressure vessels, current edition.
8. LEED-NC Water Efficiency Prerequisite « Indoor Water Use reduction » for process water requirements as applicable.
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INTEGRAL ELECTRIC STEAM GENERATOR

- G. Standards: Units shall conform to the applicable requirements of the following:
1. ASME Code, Section I, Code M.
 2. Underwriters Laboratory Listed.
 3. CSA Certified.

Thank you in advance for your reply and consideration and please contact me at your earliest convenience with any comments, questions, or if additional information is required.

Sincerely,

Jason Thompson
Director of Sales
Consolidated Sterilizer Systems
jason@consteril.com
617-800-3263

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised November 2016)

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 2016 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
1205 Pendleton Street, Suite 473, 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.