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Protest Decision

Matter of: Sea To Summit Pressure Washing, LLC

Case No.: 2017-143

Posting Date: May 18, 2017

Contracting Entity: Clemson University

Solicitation No.: 85531862-1

Description: Soft Wash & Pressure Washing

DIGEST

Protest of award alleging awarded vendors did not comply with oral modifications to specifications is denied. Sea To Summit Pressure Washing's 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 | 04/10/2017 |
| Amendment 1 Issued | 04/21/2017 |
| Bid Opening | 04/24/2017 |
| Intent to Award Issued | 04/27/2017 |
| Protest Received | 05/01/2017 |

ANALYSIS

Sea To Summit states that during the pre-bid walk-thru, two facilities people pointed out additional places that they wanted cleaned and stated that the use of any bleach would not be allowed. Sea To Summit acknowledges that there was no mention in the posted scope of work of the additional areas to be cleaned or that bleach would be prohibited on this project. These additional requirements were not addressed in the subsequent amendment to the solicitation issued by Clemson. Sea To Summit protests that while its bid was adjusted to reflect these additional requirements, the two contractors that were awarded the contract were not at the pre-bid walk-thru so they could not have known that there was extra places to be cleaned and that bleach would not be allowed. Sea To Summit states that the prohibition of bleach would have a significant impact on a bid since a 55 gallon drum of a substitute cleaning solution can cost \$135 to \$1,200.00.

The contract resulting from an Invitation For Bids (IFB) awarded under the South Carolina Consolidated Procurement Code is comprised of the solicitation, any amendments to the solicitation, the vendor's bid, and the award statement. Any requirement that is not written in those documents is not part of the contract. Clemson published one amendment to the solicitation that clearly stated that any information not addressed in the amendment remained as stated in the original solicitation:

Any changes to the original scope reflected in these answers will take precedence over any information in the original Bid solicitation. Any information not addressed specifically in this amendment will remain as stated in the original Bid solicitation.

(emphasis added) [Amendment 1, Page 1]

While Clemson may need to counsel personnel conducting pre-bid meetings and site visits about making comments beyond the published scope of work, the amendment clearly stated that any information not specifically addressed in the amendment would remain as stated in the original solicitation. This insures that all vendors are bidding on the same requirements. Section 11-35-1520(10) requires that:

Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location specified in the invitation for bids.

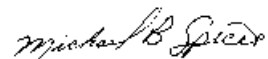
(emphasis added)

Sea To Summit must assume responsibility for accommodating unpublished requirements in its bid when advised in writing that only changes published in an amendment would modify the solicitation.

DECISION

For the reasons stated above, the protest of Sea To Summit Pressure Washing, LLC is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Len Sutton](#)
To: [Protest-MMO](#)
Cc: kboerny@clermson.edu
Subject: protest pressure washing/soft washing contract # 85531862
Date: Monday, May 01, 2017 2:00:04 PM

I was one of the bidders for the contract for pressure washing/soft washing # 85531862. I have a grievance with the award going to Jet Set II LLC 810 Thomasville Rd. Tallahassee FL 32303 and to Power Wash Systems LLC 140A Amicks Ferry Rd., Chapin SC 29036 and I protest this award.

On March 28th 2017 at 2:00 PM Clemson held a contractor's pre-bid meeting on site to do a walk-thru to go over what was expected to be cleaned and the procedures and processes that had to be followed. Clemson had posted on line the Scope of Work Specifications. With these specifications as written, I had already measured the buildings and courtyard areas prior to the meeting with the facilities people at the pre-bid meeting.

During the walk-thru, the two facilities people pointed out additional places that they wanted cleaned. I knew these areas were not listed in the scope of work specification and even asked how other contractors would know about this extra work and put it in their bids.

Two of these areas was the concrete that was directly in front and around the right side of Tillman Hall. From the posted scope of work, I would have never considered it to be part of Military Plaza.

Another area was the concrete/ brick pavers in front of Brackett Hall. Since there was no bid scenario for concrete cleaning at Brackett Hall, so we were told to add the additional area to be cleaned into the soft washing price of the building.

The two contractors that were awarded the contract were not at this meeting so they could not have known that were unaware that there was extra places to be cleaned. If they had known, they most likely would have adjusted their bid price as I did.

I think this is highly unfair and that the contract should be bid over where everyone bidding will be bidding on the exact amount of work. I feel strongly that there be a mandatory meeting for the contractors wanting to bid this contract especially if additional areas to be cleaned will be pointed out during the pre-bid meeting.

There was one more issue that was pointed out during the pre-bid meeting. Facilities said the use of any bleach would not be allowed. Bleach is not the great Satin that some people think it is and is one most used components in the cleaning solutions used by virtually all pressure washing companies throughout the entire pressure washing industry.

I would point out that there was no mention in the posted scope of work that bleach would be prohibited on this project. The only time that was mentioned was at the pre-bid meeting. There are other cleaners that will substitute, but they come at a significantly higher cost. A 55 gallon drum of sodium hypochlorite will typically cost around \$135.00. A 55 gallon drum of a substitute cleaning solution can cost over \$1,200.00 and that is without shipping.

Since I was at the pre-bid meeting where I got the information that bleach would not be allowed on this project and the two contractors that were not at the meeting would have no way of knowing that bleach would not be allowed. They could have easily bid this contract at a much lower price than I did based on cleaning solution cost alone.

Again, it is clear that this contract was not bid apples to apples.

I do not know how low the lowest bidder was or if it would have made a difference, but everyone needs to have all the same information before submitting their bids.

There was one contractor that pulled out of the bidding due to this work added on that was not in the posted scope of work specifications. Pat Clark with Precision Pro Wash from Greenville, SC said that was an unfair practice and that he felt he would not have a chance if everyone didn't know to put the cost of this extra cost into their bids.

I appreciate you looking into this and hope you will consider cancelling the awards given to these two contractors and putting this contract out for rebid when everyone can have all the same information.

Sincerely,

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.