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EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Protest Decision

Matter of: Florence Concrete Products, Inc.

Case No.: 2017-150

Posting Date: June 12, 2017

Contracting Entity: South Carolina Department of Transportation

Solicitation No.: 5400012765

Description: Bridge For S-30-480 Cleve Knight Rd. in Laurens County

DIGEST

Protest of inappropriate application of preferences is dismissed as moot. Florence Concrete Products' (FCP) 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 a review of procurement documents 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 | 04/07/2017 |
| Intent to Award emailed to bidders | 05/15/2017 |
| Intent to Award Posted | 05/23/2017 |
| Protest Received | 05/26/2017 |

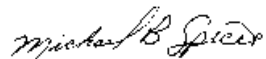
ANALYSIS

This Invitation for Bids was issued by the South Carolina Department of Transportation (DOT) for a 60 Foot Pre-stressed Concrete Bridge, 20 Foot Pre-stressed Concrete Bridge, Barrier Rails, and, Crane Rental with an Operator for Road S-30-480 – Cleve Knight Road , at Br. of Saluda River, Laurens County. An Intent to Award to Tekna Corporation was prepared and emailed to all bidders on May 15, 2017. On June 8, 2017, DOT requested cancellation of the award to Tekna Corporation indicating that the solicitation included the wrong drawings for the barrier rail drawings for the construction of the 80 foot bridge section. The award to Tekna Corporation is cancelled, the solicitation will be resolicited in accordance with the Code and FCP's protest of the award to Tekna is moot.

DECISION

For the reasons stated above, the protest of Florence Concrete Products, Inc. is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

Protest

Date: June 1, 2017

To: Chief Procurement Officer, Materials Management Office

From: Sherry Jones, Florence Concrete Products, LLC

Subject: Protesting Intent to Award on Solicitation #5400012765 -
Issue Date 04/07/2017
Bridge for S-30-480 Cleve Knight Road in Laurens County

Buyer: Richard Edmondson

The Intent to Award is being based on "Optional Preferences". Florence Concrete has been bidding on bridges for SCDOT for a long time and until recently we have never seen or heard of "Optional Preferences" on a solicitation. On page 32 of the solicitation, item #2, it states preferences are Optional.

Optional means it is an option, you can choose it or you do not have to choose it. If preferences are Optional, how can bids be considered apples to apples when making an award.

On page 1 of the above referenced solicitation, it states the Award will be posted on 05/12/2017. The Intent to Award shows the Posting Date as May 15, 2017. The Intent to Award was posted in SCEIS on May 23, 2017 at 04:04:12 PM. Since this award is in excess of \$100,000.00 and there is more than one vendor, the protest period is 10 days according to Section 11-35-4210 of the S.C. Consolidated Procurement Code.

On the Intent of Award, the final Statement of Award is effective May 26, 2017. If the Intent to Award was posted on May 23, 2017, the contract cannot be effective on May 26, 2017, due to the 10 day protest period.

Tekna Corporation bid - \$132,090.00

They chose the "Optional Preferences" for item #2.

The Intent to Award shows they chose Resident Vendor Preference & South Carolina/United States Made, Manufactured or Grown Preference.

Florence Concrete Products bid - \$130,990.00

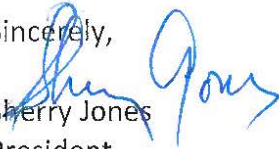
We did not chose preferences because it stated that the preferences were Optional not Mandatory for item #2.

Again, because of "Optional Preferences" on item #2, the Intent to Award is not based on apples to apples.

It should be noted that Florence Concrete Products has recently started submitting bids online in SCEIS as requested by SCDOT. We were bidding online and sending a paper copy. We stopped sending a paper copy because we felt comfortable in bidding online up until now.

Please advise us of your findings.

Sincerely,


Sherry Jones
President

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.