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Protest Decision

Matter of: Advanced Imaging Systems, Inc.

Case No.: 2017-216

Posting Date: June 14, 2017

Contracting Entity: Department of Motor Vehicles

Solicitation No.: 5400013390

Description: Kodak Alaris Scanners

DIGEST

Protest of the award alleging that the solicitation did not provide for consideration of the true and total cost is denied. Advanced Imaging Systems' (AIS) letter of protest is included by reference.

[Attachment 1]

AUTHORITY

The Chief Procurement Officer 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.

BACKGROUND

Event
Solicitation Issued

Date
05/02/2017

Intent to Award Issued
Protest Received

05/30/2017
06/08/2017

ANALYSIS

The South Carolina Department of Motor Vehicles (DMV) issued this Invitation for Bids on May 2, 2017, for four Kodak Alaris i5850 High Speed Scanners with three year extended warranties. DMV posted an Intent to Award to HMB, Inc. on May 30, 2017.

AIS protested on June 8, 2017, that:

AIS is protesting the Equipment Solicitation 5400013390 on the grounds that the State has not considered all aspects of the solicitation as it relates to the true and total costs to the DMV Office. The State did not specify in the Equipment Solicitation the offset for pricing as stated in the Maintenance Solicitation Award Documentation. As such, the State's Equipment Solicitation request for proposal is incomplete and does not solicit a complete pricing structure to the State.

AIS fully complied with the Equipment Solicitation and did not include unused maintenance prices because AIS was not allowed to deviate from the equipment purchase price solicitation. Doing so would have jeopardized AIS' Equipment Solicitation bid. Had the State included the unused maintenance pricing offset language in the Equipment Solicitation, AIS would have been able to:

- (1) provide equipment pricing (as requested in the Equipment Solicitation); and,
- (2) include a deduction for unused maintenance costs as set forth on page 25 of the Maintenance Solicitation.

AIS included the following as a footnote:

The amount of offset for unused maintenance costs will not be known until the date of equipment replacement is established. AIS would have included into Equipment Solicitation bid a deduction table based on projected replacement timeframes. The total offset is significant and estimated to be over \$20,000.

Section 11-35-4210(1)(b) provides any actual bidder, offeror, contractor, or subcontractor the right to protest the award of a contract as follows:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have

been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added)

The fact that the solicitation did not provide for offerors to include a maintenance offset as part of their bid was known at the time the solicitation was issued and AIS could have addressed the issue at that time. Under Section 11-35-4210(1)(b), AIS is prohibited from raising this issue as a protest of the award.

DECISION

For the reasons stated above, the protest of Advanced Imaging Systems, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



June 8, 2017

Michael B. Spicer
Chief Procurement Officer
Information Technology
Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

VIA US MAIL
VIA EMAIL:

Re: Solicitation No. 5400013390
Description: KODAK ALARIS SCANNERS
Agency: DMV Administration

PROTEST –OF INTENT TO AWARD (“Protest”)

Dear Mr. Spicer:

This protest is being made on behalf of Advanced Imaging Systems, Inc. (“AIS”) pursuant to S.C. Code Ann. §11-35-4210(1)(b) and §11-35-4210(2)(b) (collectively, “Statutes”). As set forth in the Statutes, this Protest will provide the background for Solicitation: 5400013390 (“Equipment Solicitation”), the grounds of the protest, and relief requested. We endeavor to honor the spirit and letter of the Statutes. As such, please do not hesitate to contact me directly should you have any questions or would like additional discussion.

Background

As you may know, AIS and The State of South Carolina DMV Office (“State”) have been conducting business since 1994. AIS is a local Certified HUB company providing document management hardware, software, and service to the DMV Office as well as over 16 other SC State agencies since its inception in 1972. AIS has provided the exact same Kodak Alaris hardware via Solicitation 5400013390 to the SC DMV within the last 12 months as part of a multi-year Scanner Upgrade project.

On October 19, 2016, the (“State”) published Solicitation 5400012293 (“Maintenance Solicitation” attached as **Attachment A**) for the State’s procurement of Kodak Scanner Maintenance. AIS responded to, and was ultimately awarded the contract for the Maintenance Solicitation. Of particular importance to this protest is language found on page 25 of the Maintenance Solicitation Response, which stated: *“Pricing provided allows SCDMV to credit any*

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unused maintenance under this agreement to be used towards the purchase of new Kodak Alaris equipment” (See page 25 of Attachment A). This form of a credit offer is a common practice for AIS and was discussed in several meetings with the State DMV Office as a way offer implementation flexibility while saving money during the multi-year Scanner Upgrade project.

The State included the AIS offset language in the Kodak Scanner “Maintenance Solicitation Invitation For Bid Confirmation” under the Bidder’s Remarks (Attachment B) when the State was ready to upgrade the equipment, thereby saving the State money in non-used maintenance costs. As a value to added service, AIS offered the State the offset (and it was included in the Maintenance Solicitation Response Attachment B Page 1) an opportunity to credit a portion of the maintenance agreement purchased from AIS in November of 2016 to be applied towards the purchase of new Kodak Alaris hardware purchased by AIS. This promotional offer is provided exclusively by AIS to the State and put in place to promote upgrading the older 4 Kodak i1860 scanners (sold by AIS to the State in 2007).

On May 2, 2017 the State published the Solicitation (“Equipment Solicitation” attached as **Attachment C**) for the State’s procurement of: *Kodak Alaris i5850 High Speed Scanners with 3 year extended warranty*. The scope of the Solicitation is set forth on page 3 (**Attachment C, page 3**). The scope is materially limited to establishing “a source or sources of supply for the purchase of new supplies and/or equipment as listed.” The Equipment Solicitation did not identify, invite, or request proposal for any offset charges to the procurement request, such as unused maintenance under the Maintenance Solicitation. The Equipment Solicitation did not reference the Maintenance Solicitation or the availability of unused maintenance costs to offset the purchase price of the Kodak Alaris equipment the State sought to purchase with the Equipment Solicitation. The Equipment Solicitation is for equipment that would replace and/or nullify the need for maintenance services purchased through the Maintenance Solicitation.

Grounds for Protest

AIS is protesting the Equipment Solicitation 5400013390 on the grounds that the State has not considered all aspects of the solicitation as it relates to the true and total costs to the DMV Office. The State did not specify in the Equipment Solicitation the offset for pricing as stated in the Maintenance Solicitation Award Documentation. As such, the State’s Equipment Solicitation request for proposal is incomplete and does not solicit a complete pricing structure to the State.

AIS fully complied with the Equipment Solicitation and did not include unused maintenance prices because AIS was not allowed to deviate from the equipment purchase price solicitation. Doing so would have jeopardized AIS’ Equipment Solicitation bid. Had the State included the unused maintenance pricing offset language in the Equipment Solicitation, AIS would have been able to:

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(1) provide equipment pricing (as requested in the Equipment Solicitation); and, (2) include a deduction¹ for unused maintenance costs as set forth on page 25 of the Maintenance Solicitation.

Relief Requested

AIS respectfully request that the State issue a new Equipment Solicitation that allows all bidders to include maintenance cost offsets and/or any other deductions that that State deems reasonable or required based on past solicitations, including without limitation the Maintenance Solicitation. AIS understands that all bidders should be provided an opportunity to re-bid the Equipment Solicitation and welcomes the opportunity to submit a new (or revised) bid that includes maintenance cost refunds.

Thank you for your consideration,

Matt Solomon

A handwritten signature in blue ink that reads "Matt Solomon".

CEO Advanced Imaging Systems
704-998-6555
matts@aisimc.com

¹ The amount of offset for unused maintenance costs will not be known until the date of equipment replacement is established. AIS would have included into Equipment Solicitation bid a deduction table based on projected replacement timeframes. The total offset is significant and estimated to be over \$20,000.

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.