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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: Benjamin Foods, LLC

Case No.: 2018-123

Posting Date: November 1, 2017

Contracting Entity: South Carolina Department of Corrections

Solicitation No.: 54000141145

Description: Cake Base Dry White

DIGEST

Protest alleging irregularities in a reverse auction is granted. Benjamin Foods' (BF) 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.

BACKGROUND

Event
Solicitation Issued

Date
09/07/2017

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

<i>Event</i>	<i>Date</i>
Intent to Award Issued	10/16/2017
Protest Received	10/25/2017

ANALYSIS

The South Carolina Department of Corrections (DOC) issued notification that it would conduct a Reverse Auction (RA) under Section 11-35-1529 for cake mix on September 7, 2017. The solicitation indicated that:

The specifications for each food item with approved brands is listed in the bidding schedule.

[Solicitation, Scope of Work]

The bidding schedule indicates that the approved brands were Continental Mills and Tova:

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	15504.000	Bag		
Product Catg.: 39346 - Desserts: Packaged Canned and Mixes				
Item Description: Mix, Cake Base				
<p>Tendering Text: Mix, Cake Base- Dry White Cake mix. Add egg and water only, kosher and yields approximately 10 sheet pans shipped in 50 pound bags only. Produced from enriched bleached flour (wheat flour, niacin, reduced iron, thiamin mononitrate, riboflavin, and folic acid), sugar, partially hydrogenated soybean and cottonseed oils, leavening (sodium bicarbonate, sodium aluminum phosphate, and monocalcium phosph hate), salt, dextrose, artificial flavor, corn syrup solids, sodium stearoyl lactylate, and guar gum. May contain wheat, eggs, milk, soy and tree nuts. Material Number: 105730</p> <p>Approved Brands: Continental Mills-744-2200, Tova</p> <p>Deliver: 816 Bags 10/17/2017 816 bags 11/7/2017 816 bags 11/28/2017 816 bags 12/19/2017 816 bags 1/9/2018 816 bags 1/30/2018 816 bags 2/20/2018 816 bags 3/6/2018 816 bags 3/27/2018 816 bags 4/17/2018 816 bags 5/8/2018 816 bags 5/22/2018 816 bags 6/12/2018 816 bags 7/3/2018 816 bags 7/24/2018 816 bags 8/14/2018 816 bags 9/4/2018 816 bags 9/25/2018 816 bags 10/16/2018</p>				
Internal Item Number: 1				

The RA was conducted on September 26, 2017, and an Intent to Award posted to Good Source Solutions, Inc. (GSS) on October 16, 2017. BF protested the award on October 25, 2017 alleging:

The basis of our protest is that the apparent low bid on E-Bridge for this solicitation/auction evident by the attached document shows an undisclosed bidder whose low bid of \$22.29/Each was ranked #1. E-Bridge does not allow you to enter a best and final offer if your bid does not overtake the #1 rank bid in this case \$22.29/Each. Benjamin Foods initial place bid was \$200 which we use quite frequently but due to the low bid of \$22.29/Each we were not able to enter our best and final price, which would have been in the mid to high \$20 range. The attached intent to award was posted on 10/16/17 but showed an awarded price of \$37.00/Each to Good Source Solutions. Upon receipt of this document, Benjamin Foods reached out to Laurie Branham seeking explanation as to why the low bid on the auction was not the price the Intent to Award listed. The explanation provided was that the company who bid \$22.29/Each on the auction was intending to provide a brand that was not pre-approved/approved, therefore they were disqualified at which point purchasing went down the list of bidders and ended up on Good Source Solutions with their bid of \$37.00/Each. This means that none of the bidders who were approved to participate in the auction could lower their initial bids to allow a competitive bid to take place. Our initial bids were frozen but as stated this was due to a vendor who was bidding a brand that was not approved and therefore this vendor should have never been allowed to participate in the first place.

During the auction, Dori Foods, Inc. submitted a low bid of \$22.29 per unit for cake mix.
(Attachment 2)

Section 11-35-1529(2) states in part:

Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time.

(Emphasis added)

This means the once Dori submitted its low bid for unapproved product, the system would not allow other bidders to lower their bids unless the new bid was lower than Dori's. After the conclusion of the auction, DOC verified that Dori had bid product manufactured by National, which was not an approved brand and disqualified Dori's bid. (Attachment 3) DOC then awarded the contract to GSS as the lowest priced responsive bidder. However, it is possible that

competition for approved products had not run its course at the time Dori's non-responsive low bid was submitted. Consequently, the award to Good Source Solutions, Inc. was not arrived at in a fair and open competition.

Section 11-35-1529(2) provides in part:

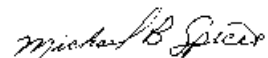
The State may require bidders to register before the Opening Date and Time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation.

In the future potential bidders should be required to identify which approved products they intended to bid as part of the registration process and only responsive bidders should be allowed to participate in the auction.

DECISION

The protest of Benjamin Foods, LLC is granted, because the award to Good Source Solutions, Inc. was not arrived at in a fair and open competition. It is unfortunate that bidders' prices and bidding strategy were exposed when the competition between responsive bidders was prematurely terminated. One of the policies of the Code as expressed in Section 11-35-15 is to foster effective broad-based competition for public procurement within the free enterprise system. In furtherance of this policy, this award is cancelled and the procurement remanded to the South Carolina Department of Corrections for processing in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



Mitch Cohen
Benjamin Foods LLC.
1001 S. York Road
Hatboro, PA 19040

Wednesday, 25th October 2017

To Whom It May Concern,

Please let this letter serve as official notice of Benjamin Foods LLC's will to protest the Intent to Award/Results of Solicitation# 5400014145, Cake Base Dry White Mix that was issued on 9/7/17 and opened on 9/18/17 which resulted in a reverse auction hosted and facilitated by EBridge on 9/26/17.

The basis of our protest is that the apparent low bid on E-Bridge for this solicitation/auction evident by the attached document shows an undisclosed bidder whose low bid of \$22.29/Each was ranked #1. E-Bridge does not allow you to enter a best and final offer if your bid does not overtake the #1 rank bid in this case \$22.29/Each. Benjamin Foods initial place bid was \$200 which we use quite frequently but due to the low bid of \$22.29/Each we were not able to enter our best and final price, which would have been in the mid to high \$20 range. The attached intent to award was posted on 10/16/17 but showed an awarded price of \$37.00/Each to Good Source Solutions. Upon receipt of this document, Benjamin Foods reached out to Laurie Branham seeking explanation as to why the low bid on the auction was not the price the Intent to Award listed. The explanation provided was that the company who bid \$22.29/Each on the auction was intending to provide a brand that was not pre-approved/approved, therefore they were disqualified at which point purchasing went down the list of bidders and ended up on Good Source Solutions with their bid of \$37.00/Each. This means that none of the bidders who were approved to participate in the auction could lower their initial bids to allow a competitive bid to take place. Our initial bids were frozen but as stated this was due to a vendor who was bidding a brand that was not approved and therefore this vendor should have never been allowed to participate in the first place.

The process for becoming approved as a vendor through E-Bridge to participate in the reverse auction requires the vendor to list/notify which brands they intend to offer/provide/bid before the solicitation is reviewed and approved. Once the solicitation is reviewed then EBridge notifies all applicable vendors of their approval to participate in the resulting reverse auction.

In conclusion due to this process and EBridge's system not allowing a vendor to enter their best and final price if it doesn't overtake the #1 ranked price, along with the information that the #1 ranked bidder was disqualified due to them not bidding on an item that was pre-approved, it is Benjamin Foods position that this auction was compromised and therefore the results should be voided.

If this auction is not voided and re-done The State of South Carolina stands to grossly overpay for a very large contract resulting in Hundreds of thousands of dollars in over expenditure due to this error.

If you have any additional questions, comments, or concerns please free to reach out to me.

Best Regards,
Mitch C.

A handwritten signature in black ink, appearing to read "Mitch C.", is written over a white background.



1001 S. York Rd., Hatboro, PA 19040
Phone: 215.437.5000 | Fax: 215.437.5010
benjaminfoods.com



Competitive Bid Information

Rank	Bidder	Amount
1	Not Disclosed	\$22.29

Close



Upcoming Events

| Past Events

| Archived Bids

| Help

| Logout

SC Department of Corrections - White Cake Base Mix 5400014145 - Logged in as Mitch Cohen



Bid Ended

Tuesday, September 26, 2017 11:15:00 AM

Eastern Daylight Time

Time Remaining

00:00:00:00

Ended

Lots and Elements

White Cake Base Mix

Description	Rank	Current Bid	Total	New Bid	Bid Info	History
White Cake Base Mix, 15,504 Bags per Specifications, Delivered - Price per 50 LB Bag Min Dec: \$0.06 Floor: \$0.01 Type: Required Number Entry	4	\$200.00	\$200.00	\$ <input type="text" value="200.00"/>		

SHOW / HIDE

Google Analytics

Toll Free: 1-877-245-8880



South Carolina Department of Corrections
4420 Broad River Rd
Columbia, SC 29210

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this award. THIS IS A STATEMENT OF INTENT TO AWARD A CONTRACT AND BECOMES THE OFFICIAL STATEMENT OF AWARD EFFECTIVE 4:00 PM, LOCAL TIME OCTOBER 26, 2017.

PROTEST TO BE FILED WITH:

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Facsimile: 803-737-0639
E-mail: protest-mm@mmo.state.sc.us

Intent to Award
Posting Date: October 16, 2017

Contract Dates: 10/27/2017 – 10/26/2018
Potential Contract Dates: 10/27/2017 – 10/26/2022

Solicitation : 5400014145
Issue Date : 09/7/2017
Opening Date : 09/18/2017 @ 10 AM
Description : Cake Base Dry White Mix

Awarded To: Good Source Solutions
3115 Melrose Drive
Suite 160
Carlsbad, CA 92010
800-914-9319
lgable@goodsource.com
Vendor 7000007045

Evaluated Amount: \$ 573,648.00
Awarded Amount: \$ 573,648.00
Potential Contract Amount: \$2,868,240.00

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	15,504.000	each	\$37.00	\$573,648.00
Product Catg.: 39346 - Desserts: Packaged Canned and Mixes				
Item Description: Mix, Cake Base				
Tendering Text: Mix, Cake Base- Dry White Cake mix. Add egg and water only, kosher and yields approximately 10 sheet pans shipped in 50 pound bags only. Produced from enriched bleached flour (wheat flour, niacin, reduced iron, thiamin mononitrate, riboflavin, and folic acid), sugar, partially hydrogenated soybean and cottonseed oils, leavening (sodium bicarbonate, sodium aluminum phosphate, and monocalcium phosphate), salt, dextrose, artificial flavor, corn syrup solids, sodium stearoyl lactylate, and guar gum. May contain wheat, eggs, milk, soy and tree nuts. Material Number: 105730				

Attachment 2



Final Bid Submission Report

White Cake Base Mix 5400014145

Started: 9/26/2017 11:00 AM
Ended: 9/26/2017 11:15 AM

White Cake Base Mix

White Cake Base Mix, 15,504 Bags per Specifications, Delivered - Price per 50 LB Bag

Rank	Company	Value	Date/Time
1	Dori Foods, Inc.	\$22.29	9/20/2017 9:26:35 AM
2	Chicago Meat Group Inc.	\$31.00	9/21/2017 11:53:35 AM
3	Good Source Solutions Inc.	\$37.00	9/22/2017 8:22:35 PM
4	Benjamin Foods	\$200.00	9/22/2017 8:12:56 AM

Attachment 3

Brittany Driggers (C053362)

From: Sarah Cooper <scooper@dorifoods.com>
Sent: Wednesday, September 27, 2017 3:57 PM
To: Brittany Driggers (C053362)
Subject: RE: Cake Mix Solicitation 5400014145

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Hi Brittany
We quoted on National brand.



Sarah Cooper
(P) 804.355.1600 (F) 804.355.1631
www.dorifoods.com

From: Brittany Driggers (C053362) [mailto:Driggers.Brittany@doc.sc.gov]
Sent: Wednesday, September 27, 2017 12:00 PM
To: Sarah Cooper <scooper@dorifoods.com>
Subject: RE: Cake Mix Solicitation 5400014145
Importance: High

The following communication is from the Purchasing Division of the SC Department of Corrections in Columbia, SC. My name is Brittany Driggers and I am the Purchasing Officer for Solicitation #5400014145. In accordance with The SC Consolidated Procurement Code I need to clarify information concerning a solicitation for which you have made an offer.

CLARIFICATION (NOV 2007) Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

Approved brands for line 1 of Solicitation 5400014145 are Continental Mills and Tova. Please respond with which approved brand you are bidding on.

Thanks,

Brittany Driggers
Procurement Specialist
SC Dept. of Corrections
Procurement Branch
803-896-1383

803-896-1223 Fax
Driggers.Brittany@doc.sc.gov

----- Original message -----

From: "Brittany Driggers (C053362)" <Driggers.Brittany@doc.sc.gov>

Date: 9/27/17 11:41 AM (GMT-05:00)

To: Sarah Cooper <scooper@dorifoods.com>

Subject: Cake Mix Solicitation 5400014145

The following communication is from the Purchasing Division of the SC Department of Corrections in Columbia, SC. My name is Brittany Driggers and I am the Purchasing Officer for Solicitation #5400014145. In accordance with The SC Consolidated Procurement Code I need to clarify information concerning a solicitation for which you have made an offer.

CLARIFICATION (NOV 2007)*Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]*

Please verify which brand you bid on for line 1 cake mix. Please respond to this email by September 27, 2017 @ 4:00 pm.

Thanks,

Brittany Driggers
Procurement Specialist
SC Dept. of Corrections
Procurement Branch
803-896-1383
803-896-1223 Fax
Driggers.Brittany@doc.sc.gov

Brittany Driggers (C053362)

From: Jill Guzman <jill@chicagomeatgroup.com>
Sent: Thursday, September 28, 2017 12:19 PM
To: Brittany Driggers (C053362)
Subject: Re: Cake Mix Solicitation 5400014145
Attachments: White Cake Mix 80701 Egg and Water (3).pdf

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Hi Brittany,
We bid National Foods brand. I have attached the spec. We did sent in a 50 lb sample before bid opening as per Jessica Kelly. She did confirm that sample was received. Were we low bidder?

Jill Guzman
Chicago Meat Group, Inc.
4300 Lincoln Ave.
Rolling Meadows, IL 60008
847-776-5300
847-776-6409 fax
Direct 847-701-8321

From: Brittany Driggers (C053362) <Driggers.Brittany@doc.sc.gov>
To: "jill@chicagomeatgroup.com" <jill@chicagomeatgroup.com>
Sent: Thursday, September 28, 2017 9:58 AM
Subject: Cake Mix Solicitation 5400014145

The following communication is from the Purchasing Division of the SC Department of Corrections in Columbia, SC. My name is Brittany Driggers and I am the Purchasing Officer for Solicitation #5400014145. In accordance with The SC Consolidated Procurement Code I need to clarify information concerning a solicitation for which you have made an offer.

CLARIFICATION (NOV 2007) Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

Approved brands for line 1 of Solicitation 5400014145 are Continental Mills and Tova. Please respond with which approved brand you are bidding on. Please respond to this email by 09/28/2017 at 2:00 pm.

Thanks,

Brittany Driggers
Procurement Specialist
SC Dept. of Corrections

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 367, 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.