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Protest Decision

Matter of: Sentry Security Fasteners, Inc.

Case No.: 2018-135

Posting Date: March 7, 2018

Contracting Entity: South Carolina Department of Corrections

Solicitation No.: 5400014600

Description: Locks and Accessories

DIGEST

Protest claiming products bid by awarded vendor are not responsive to the requirements of the solicitation is granted. Sentry Security Fasteners' (SSF) 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 materials in the procurement file 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	11/30/2017
Amendment 1 Issued	12/06/2017
Intent to Award Issued	01/29/2018
Protest Received	02/07/2018

ANALYSIS

The South Carolina Department of Corrections (DOC), pursuant to authority delegated by the Chief Procurement Officer, issued this solicitation for a Reverse Auction (RA) on November 11, 2017 to establish a term contract for various brands and types of correctional locks. The original solicitation listed Folger Adams locks and accessories and included the following statement on pages 13 and 24:

These are security locks and **No Substitutions will be permitted.**

(emphasis in original) Amendment 1 was issued on December 16, 2017 and modified these statements to read as follows:

SCDC will accept an equal but equals must be identical. Vendors must submit the most updated detailed literature justifying that the locks you are offering are an identical equal to the Folger Adams locks.

(emphasis added)

Neither the solicitation nor the amendment listed any other brand names or any salient features of the Fogler Adams products. The amendment changed the specifications from a brand name specification to a brand name or equal specification as defined in Regulation 19-445.2140(A)(2) as:

"Brand Name or Equal Specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.

Corrections Products Company, Ltd (CPC) bid its model 30D Deadlock and provided specifications for the lock. An Intent to Award was posted to CPC on January 29, 2018.

SSF protested on February 7, 2018 that the products offered by CPC are not Folger Adams products and are not inspected or tested by Southern Folger Detention Equipment Company, the owner / manufacturer of Folger Adam locks requested in this bid.

This solicitation did not set out “all known acceptable brand names.” It included no purchase description other than naming the Folger Adams model. It stated neither performance requirements nor salient features. By the terms of Amendment 1, DOC announced it would accept only locks that were identical to Folger Adams locks.²

The South Carolina Procurement Review Panel addressed brand name or equal specifications in the *Protest of General Sales Company, Inc.*, Case 1983-5:

“Brand-Name or Equal” Specifications should set out all known acceptable brand name products. The specification before the Panel did not list any other brand names. Where a purchase description is used, bidders must be given the opportunity to offer products other than those specifically referenced if those other products will meet the needs of the State in essentially the same manner as those referenced. It should always be clear that a “Brand-Name or Equal” description is intended to be descriptive not restrictive and is merely to indicate the quality and characteristics of the product that will be satisfactory and acceptable. Products offered as equal must, of course, meet fully the salient characteristics and product requirements listed in the Invitation for Bids.

The amendment stated that DOC would accept “an equal but equals must be identical.” Identical means the same, indistinguishable. A “Brand Name or Equal” specification is intended to be descriptive not restrictive and is merely to indicate the quality and characteristics of the product that will be satisfactory and acceptable. However, stating that the products must be identical to the Folger Adams locks without listing known acceptable alternatives, providing performance

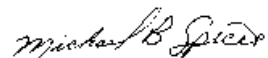
² A memorandum from Robert Wilson, the Lock Shop Supervisor, dated February 9, 2018, two days after the protest, indicates that the Department has been installing CPC locks for 13 years and considers them equal to the Folger Adams locks. [Attachment 2] Nothing in the solicitation documents, however, gave notice to prospective offerors that CPC locks were an acceptable product.

specifications, or listing salient features resulted in the amendment having no effect on the original solicitation requirement. Absent an appropriate amendment, the solicitation remained a “Brand Name Specification” that limited the solicitation to products with one brand name, making bids without Folger Adams products non-responsive. See Regulation 19-445.2140(A).³

DECISION

For the reasons stated above, the protest of Sentry Security Fasteners, Inc. is granted. The award to Corrections Products Company, Ltd is cancelled and the procurement is remanded to the South Carolina Department of Corrections for procurement in accordance with the South Carolina Consolidated Procurement Code. If the Department wishes to re-solicit these locks, it should broaden the solicitation by revising the specifications to include acceptable alternatives, performance specifications, and a listing of salient features that reflect the Department’s needs.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

³ In addition, conducting a reverse auction for brand name or equal products without listing known acceptable alternatives, providing performance specifications, or listing salient features is an invitation for bids of unacceptable products to invalidate the auction.

Attachment 1

From: steve@sentrysf.com
To: [Protest-MMO](#)
Subject: Solicitation 5400014600
Date: Wednesday, February 07, 2018 4:57:19 PM

Please understand that the products offered by Corrections Products Company, in this quote, are not from Southern Folger Detention Equipment Company, the owner / manufacturer of Folger Adam locks requested in this bid.

Our concerns;

The products offered are not Folger Adam products

Products are not inspected nor tested by Southern Folger Detention Equipment Company

Tolerances of the keys, tumblers, internal parts may be an issue when future maintenance / replacement items are required, when supplied by Southern Folger. Possibly causing improper fit / operation problems.

Tolerances of the keys, tumblers, internal parts may be an issue when future maintenance / replacement items are required, when supplied by Southern Folger. Possibly causing unreliable operation.

Key records would not be kept by Southern Folger for ready access when needed.

Above concerns may create a single source, CPC, for South Carolina DOC.

Thank you for your attention.

Steve

Stephen Cramer
Sentry Security Fasteners, Inc.
8208 N. University Street
Peoria, Illinois 61615
Phone: 888-693-2646 ext.111
Fax: 309-693-2872 or 800-693-2872
e-mail: steve@sentrysf.com

Attachment 2

To: Myrtle Dewerd
From: Robert Wilson
cc: Ruthie Bishop
Date: 2/9/2018
Re: Justification for CPC locks

South Carolina Department of Corrections has been installing and using CPC locks for the past 13 years with no issues. South Carolina Department of Corrections considers CPC locks to be equal to Folger Adams locks.

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.