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Protest Decision

Matter of: Jasper Engines and Transmissions, Inc.

Case No.: 2018-144

Posting Date: February 28, 2018

Contracting Entity: South Carolina Department of Education

Solicitation No.: 5400014739

Description: Remanufactured Engines

DIGEST

Protest that award was not made to the lowest responsive and responsible bidder is denied. Jasper Engines and Transmissions' (JET) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the procurement file, 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	01/03/2018
Amendment One	01/12/2018
Amendment Two Issued	01/24/2018
Intent to Award Issued	02/17/2018
Protest Received	02/19/2018

ANALYSIS

The South Carolina State Fiscal Accountability Authority (SFAA) issued this Invitation For Bids (IFB) on January 3, 2018 on behalf of the South Carolina Department of Education, to establish a term contract for remanufactured engines. Bids were received on February 9, 2018, and Intents to Award were posted to Dahmer Powertrain, Inc., Worldwide Equipment of South Carolina, Inc., and Interstate Transportation Equipment, Inc. on February 17, 2018.

On February 19, 2018, JET protested:

JASPER was the lowest bidder for Line Item 1 - Cat 3116 with a bid price of \$10,499 versus the awarded vendor, Worldwide Equipment of SC, with a bid price of \$13,497....

JASPER was the second lowest bidder for Line Item 5 - 7.3L International with a bid price of \$5,268 versus the awarded vendor, Worldwide Equipment of SC, with a bid price of \$6,050.

The solicitation stipulated that the State would not pay core charges except in cases where acceptable cores are not made available for pickup within 30 days from date of delivery:

CORES

The supplier shall be responsible for picking up cores at the point of delivery. The SCDE will not pay core charges except in cases where acceptable cores are not made available for pickup within thirty (30) days from date of delivery. In which case appropriate core charges (see bid schedule) will be invoiced separately.

Acceptable cores shall be defined as having no externally visible cracks or holes and/or no missing parts. Acceptability of cores will be determined ~~at time of pick-up~~ in 10-15 days. However the part/core needs to have a positive identification affixed and noted as to ensure it is the actual part in question upon core inspection. If an unacceptable core is made available for pick up within the stated thirty (30) day period, the standard core charge shall apply.

If no core is made available for pick up within the stated thirty (30) day period, the SCDE will pay a charge for a “non-returned core.”

Amendment Two, Page 15 (highlighting and overstrike in original).

Jet included its core policy as part of its bid which included the following:

ALL JASPER REMANUFACTURED UNITS have a core and skid charge billed at the time of sale. When the core is returned, a JASPER Associate will determine the amount to be credited back to the customer’s account. The core returned must be a like-for-like Make, Model and Type, but not a junkyard core. Cores must be returned drained of all fluids and oil, assembled and attached to the same undamaged skid or container your new unit was shipped in. Core must be returned within 30 days of the delivery date to receive credit. Full credit will be given unless certain damages and exceptions (listed below) are found.

In addition, JET included the following statement with each line item bid:

Bidder’s Remarks	Core Value \$2,500 Max Chargeback \$1,200 Hassle-Free Core Policy is as simple as inspecting the like-for-like cores for any holes or cracks, If there are any visible holes or cracks, charges will apply to the customer, up to and including the maximum charge-back amount for that unity type. Charges will also apply for missing trim parts
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The procurement office determined that JET had taken a material and essential exception to the requirements of the solicitation that could not be considered a minor informality or irregularity.

The procurement officer disqualified JET citing Regulation 19-445.2070 as follows:

A. General Application.

Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

B. Nonresponsive Bids.

Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.

Her written determination of non-responsiveness is included as Attachment 3.

Protest Decision, page 4

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February 28, 2018

The CPO concurs with decision of the procurement officer.

DECISION

For the reasons stated above, the protest of Jasper Engines and Transmissions, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



815 Wernsing Road • Post Office Box 650 • Jasper, Indiana 47547-0650
Phone (812) 482-1041 • (800) 827-7455
Fax (812) 634-1820 • www.jasperengines.com • e-mail: sales@jasperengines.com

February 19, 2018

State of South Carolina
Attn: Division of Procurement Services
PO Box 101103
Columbia SC 29211

RE: BID PROTEST – SCDE Remanufactured Engines
PROJECT: Solicitation Number 5400014739 – Remanufactured Engines

Pertaining to the above mentioned bid, Solicitation Number 5400014739, Remanufactured Engines, JASPER ENGINES is protesting the Intent to Award, which was posted on February 17, 2018.

Per **Section I – SCOPE OF SOLICITATION**, the bid was to be awarded on a **'per line item basis, to the lowest responsive and responsible bidder.'**

JASPER was the lowest bidder for Line Item 1 – Cat 3116 with a bid price of \$10,499 versus the awarded vendor, Worldwide Equipment of SC, with a bid price of \$13,497.

JASPER was the second lowest bidder for Line Item 5 – 7.3L International with a bid price of \$5,268 versus the awarded vendor, Worldwide Equipment of SC, with a bid price of \$6,050.

Please respond to our formal protest. Butch Stewart, Sales Manager, will be your point of contact to discuss the matter. He can be reached at 1-800-827-7455, ext. 11312 or butch.stewart@jasperengines.com.

Sincerely,

JASPER ENGINES AND TRANSMISSIONS

A handwritten signature in black ink that reads "Ashley Brush". The signature is written in a cursive style.

Ashley Brush
Procurement



Attachment 2

Assigned To	Category	Text Preview
Document Header	Bidder's Remarks	JASPER is No Bidding Line Item 3 - Mercedes MBE926, 250H...
Item01"Cat 3116, 250 HP, Turbocharged"	Internal Note	Reman Engine Specs up for bidContact : Bill Tindal 4-8...
Item01"Cat 3116, 250 HP, Turbocharged"	Bidder's Remarks	Core Value \$2,500Max Chargeback \$1,200Hassle-Free Core...
Item02"Cat 3126, 250 HP, Turbocharged"	Internal Note	Reman Engine Specs up for bidContact : Bill Tindal 4-8...
Item02"Cat 3126, 250 HP, Turbocharged"	Bidder's Remarks	
Item03"Mercedes MBE 906/926, 210 HP, Turbo"	Internal Note	

Attachments			Checked Out	Type		
JD Attachment	Edit Description	Versioning	Delete	Create Qualification Profile		
Assigned To	Category	Description				
Document Header	Standard Attachment	RFP Pages 1-2			<input type="checkbox"/>	pdf
Document Header	Standard Attachment	Pricing Sheet			<input type="checkbox"/>	pdf
Document Header	Standard Attachment	Minority Participation			<input type="checkbox"/>	pdf
Document Header	Standard Attachment	REFERENCES			<input type="checkbox"/>	pdf
Document Header	Standard Attachment	CORE POLICY			<input type="checkbox"/>	pdf

Change Bidder's Remarks

Bidder's Remarks: Core Value \$2,500
 Max Chargeback \$1,200
 Hassle-Free Core Policy is as simple as inspecting the like-for-like cores for any holes or cracks. If there are any visible holes or cracks, charges will apply to the customer, up to and including the maximum charge-back amount for that unit type. Charges will also apply for missing trim parts.

[Cancel](#)

Memorandum for Record

Determination of a Non-Responsive Bid

IFB NO. 5400014739 – Remanufactured Engines

Bid Submitted by: Jasper Engine Exchange, Inc.

The following are excerpts from the original State solicitation, SC Consolidated Procurement Code, and SC Procurement Regulations relevant to the Determination of Non-Responsiveness:

Solicitation dated 1/03/2018:

RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

§ 11-35-1520: COMPETITIVE SEALED BIDDING:

(13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:

(i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon, provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price or,

(ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;

R 19-445.2070: REJECTION OF INDIVIDUAL BIDS

A. General Application.

Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

B. Nonresponsive Bids.

Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.

Jasper Engine Exchange, Inc included a company core charge page with their bid along with bidder remarks on each line item about core charges. This was discussed at length during the pre-bid meeting to not add conditions to the bid.

The exceptions cannot be classified as a “minor informality or irregularity” as their offer does not conform to the solicitation.

Based on all of the above, Jasper Engine Exchange, Inc.’s entire offer is deemed “Non-Responsive” and cannot receive further consideration.



Jo Marie Brown, CPPO, CPPB
Procurement Manager

2/15/2018

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.