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Protest Decision

Matter of: Veritiv Operating Company

Case No.: 2018-150

Posting Date: March 22, 2018

Contracting Entity: South Carolina Department of Mental Health

Solicitation No.: 5400014669

Description: SCDMH Bags, Cutlery, and Cups

DIGEST

Protest of award, alleging vague solicitation requirement, is denied as untimely. Veritiv Operating Company's (VOC) 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 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

Event	Date
Solicitation Issued	12/28/2017
Amendment One Issued	01/05/2018
Amendment Two Issued	01/22/2018
Amendment Three Issued	01/23/2018
Amendment Four Issued	02/15/2018
Intent to Award Issued	02/22/2018
Protest Received	03/05/2018

ANALYSIS

The South Carolina Department of Mental Health (DMH) issued this Invitation For Reverse Auction (RA) on December 28, 2017 for Bags, Cutlery, and Cups. An Intent to Award was posted to Dade Paper and Bag Company on February 22, 2018. VOC protested the award on March 5, 2018 alleging:

During the Reverse Auction training with Tara O'Bannon from eBridge, the questions was asked as to the Unit of Measure to clarify on Lot #1 Line #8 if this was supposed to be priced as per Each or per Pack, since the original spreadsheet sent out by eBridge contained the Unit of measure "EACK". This is both one letter off from Each and Pack. Tara stated that the Unit of Measure that should be quoted was per "Each" bag, not per Pack. After this, the spreadsheet was correct to then read "EACH", confirming the answer Veritiv received.

In the eBridge Solicitation Terms and Conditions acknowledgement that was required, under the Section titled 2. Responsibilities of the Parties, it lists eBridge's responsibility as "clarifying buyer needs and specifications to the supplier". Therefore, once the Reverse Auction training and process started, the burden was on eBridge to ensure that all information was clearly and accurately communicated, which unfortunately was not done correctly.

The solicitation itself was unclear since on Lot #1 Line #8, the referenced Unit of Measure was listed as price per each. There was a note listed underneath it to price per Pack of 100. However, this should have been corrected on the original Unit of Measure to avoid confusion. On Lot #1 Line #9, the requested Unit of Measure had been changed to the requested Unit of Measure of a Pack.

Although Veritiv Operating Company may not have been the low bidder once the new pricing was calculated, this was a Reverse Auction, and Veritiv may not have been at its lowest possible pricing offered. In respect of the intent of the

specification, Veritiv Operating Company requests that the State of South Carolina revisit this solicitation, and offer an additional opportunity to participate in the Reverse Auction portion for Lot #1 or reissue the solicitation.

VOC argues that the requirement listed in the solicitation was unclear noting that the unit of measure was each while the tendering text indicated that the item should be priced by a pack of 100 as follows:

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0008	12,000	each	Reverse Auction	Reverse Auction
Product Catg.: 64060 - Plastic & Styrofoam Products: Cups Forks etc.				
Item Description: BAG,PLASTIC,ZIP LOCK,9" X 12"				
Tendering Text: Approved Product: Elkay Plastics # F20912W 2 Mil Line Single Track Seal Top Back with Write on Block. Clear, 9x12. Priced by Pack of 100.				
Internal Item Number: 8				

[Solicitation, Page 25]

While VOC argues that the initial spreadsheet provided by eBridge, the State's reverse auction administrator, listed the unit of measure as "EACK," this was corrected to match the requirement listed in the solicitation prior to the reverse auction.

Section 11-35-4210(1)(b) grants any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the award or intent to award of a contract, the right to protest that award, except that a matter that could have been raised as a protest of the solicitation or an amendment to the solicitation cannot be raised as a protest of the award:

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.

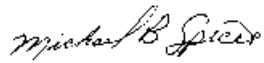
VOC alleges that "The solicitation itself was unclear...." By plain terms of its letter, the basis of VOC's protest is found in the original solicitation. While any confusion about the wording in the

original solicitation could have been addressed as a protest of the solicitation, it cannot be raised as a protest of the award.

DECISION

For the reasons stated above, the protest of Veritiv Operating Company is denied.

For the Materials Management Office

A handwritten signature in cursive script, reading "Michael B. Spicer".

Michael B. Spicer
Chief Procurement Officer

Attachment 1



State of South Carolina Dept of Mental Health
ATTN: Procurement Officer, Stephen Pullie, CPPB
SCDMH Procurement Office
P.O. Box 485
Columbia SC 29202
RE: Solicitation 5400014669

To whom it may concern:

Veritiv Operating Company would like to protest the Decision to Award Solicitation 5400014669 due to incorrect information received from eBridge during the Reverse Auction of the bid process and the inconsistent Unit of Measure referenced during the original solicitation document.

During the Reverse Auction training with Tara O'Bannon from eBridge, the questions was asked as to the Unit of Measure to clarify on Lot #1 Line #8 if this was supposed to be priced as per Each or per Pack, since the original spreadsheet sent out by eBridge contained the Unit of measure "EACK". This is both one letter off from Each and Pack. Tara stated that the Unit of Measure that should be quoted was per "Each" bag, not per Pack. After this, the spreadsheet was correct to then read "EACH", confirming the answer Veritiv received.

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Although Veritiv Operating Company may not have been the low bidder once the new pricing was calculated, this was a Reverse Auction, and Veritiv may not have been at its lowest possible pricing offered. In respect of the intent of the specification, Veritiv Operating Company requests that the State of South Carolina revisit this solicitation, and offer an additional opportunity to participate in the Reverse Auction portion for Lot #1 or reissue the solicitation.

If there is any additional information needed, please contact Laurie Braun at 717-610-9162 or Laurie.Braun@veritivcorp.com

Thank you!

A handwritten signature in black ink, appearing to be 'Kevin Carrier'.

Kevin Carrier, CSC MGR III
Veritiv Operating Company
7016 A.C. Skinner Pkwy
Jacksonville FL 32256

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.