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Protest Decision

Matter of: B & R Painting Contractors, Inc.

Case No.: 2018-169

Posting Date: June 11, 2018

Contracting Entity: College of Charleston

Solicitation No.: 18.65.LS.B

Description: General Painting of Facilities as Needed

DIGEST

Protest alleging ambiguous specifications in the solicitation is denied as untimely. B & R Painting Contractors' (BRP) 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	04/20/2018
Amendment One Issued	04/27/2018
Intent to Award Issued	05/16/2018
Protest Received	05/16/2018

ANALYSIS

The College of Charleston issued this Invitation for Bids to acquire services for preparation, repair, painting, finishing work, clean up of various facilities at CoC. While not stated in so many words, the bid included the painting of windows, doors and trim. For example:

5. Seal and caulk all cracks around windows, doors, boards and joists using a high-grade acrylic caulk. All the caulking unable to perform for the length of the warranty period should be removed and replaced with caulking as specified. Allow caulking to cure for (8) eight hours in dry weather before paint is applied. NOTE: It is recommended applying primers first and then apply caulk before applying finish paint. Use Acrylic Siliconized Caulk or equivalent that is paintable.
12. Exterior doors shall have tops, bottoms, and side edges finished same as exterior faces of doors.

[Scope of Work]

Six bids were received on May 16, 2018. BRP was the low bidder at \$79,550.00. The CoC explains:

Because of the low bid value, Mr. Eddie Barker of B&R was contacted to confirm that his bid was inclusive of labor and paint and included all windows, doors and trim. He acknowledged that his price included labor and paint but did not include windows, doors and trim, just wall size.

The second low bidder BM Construction (**\$224,150.00**) was then contacted. Mr. Bert McQueen of BM Construction was asked to confirm if his price included labor, paint, supplies and painting of doors, windows and trim etc. He confirmed that it did cover all. He then sent an email to confirm the position.

A letter of intent to Award was then issued to BM Construction.

(Attachment 2)

BRP protests:

1. Accurate pricing cannot be obtained from the criteria given in the scope. Our interpretation was a square foot price to paint walls, which is normal in construction. We have no way of knowing if doors, frames, baseboards, crown moldings, floors, ceilings, etc. exist in the area nor a way to quantify. A SF price to encompass everything is not possible. A better way would have been to clarify a SF price for walls per coat, price for doors, lineal foot of trim, windows, door frames, exterior siding, etc. It is not fair to base the award on an arbitrary number that has various ways of interpretation. We interpreted the price per SF of walls to paint walls only.
2. Section K of the scope is a section for Pressure Washing and Surface Preparation- how can a price per SF on interior space be reflective of pressure washing and painting exterior. Again, should price per SF of interior walls or SF of ceilings or SF of heated space be used? There are various ways to interpret the information.
3. Even if the SF pricing was to be used it is not clarified if the bid should be per SF of wall space or per SF of ceiling space or SF of heated space or SF of exterior wall space.
4. I have priced similar bids for Charleston County (which we have the contract with), Coastal Carolina University, Horry Georgetown Technical College and many others but have never seen this method of an arbitrary price per SF. The other institutions provide adequate detail or have a jobsite visit for clarification.
5. I assume each building on campus is a little different so there is no way an arbitrary SF price will work. Are the administrative buildings the same as the dorms, same as classrooms, and same as sports facilities?
6. Under the scope of work, a unit price is requested for wall repairs. How about ceiling repairs? Also, the unit price for wall repairs seems to coincide with the SF price for painting to reference walls. Again, what is the measure of SF - walls, heated space or ceiling area? If it is to be walls then we are the low price.

Please let this letter serve as my request to have the "General Painting for Facilities as Needed" be rebid with clarified requirements. As it stands the bid is open to interpretation and arbitrary. Based on our interpretation we should be the low price.

The Code grants any actual bidder the right to protest the award of a contract in accordance with Section 11-35-4210(1)(b) as follows:

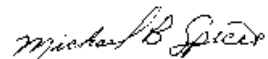
Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, 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 supplied.) BRP protests that the bid specifications were arbitrary and inadequate to allow for accurate pricing. These issues could have been raised as a protest of the solicitation or as questions to be addressed in the amendment. Consequently, they cannot be raised as a protest of the award.

DECISION

For the reasons stated above, the protest of B & R Painting Contractors, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

B & R Painting Contractors, Inc.

Commercial & Industrial Painting
1651 Stockholder Street
Myrtle Beach, SC 29577
843-448-9346 * Fax 843-839-9346

May 16, 2018

College Of Charleston

RE: General Painting of Facilities as Needed- 18.65.LS.B

Please let the letter serve as our protest to the above reference bid. Please note the grounds of our protest below.

1. Accurate pricing cannot be obtained from the criteria given in the scope. Our interpretation was a square foot price to paint walls, which is normal in construction. We have no way of knowing if doors, frames, baseboards, crown moldings, floors, ceilings, etc. exist in the area nor a way to quantify. A SF price to encompass everything is not possible. A better way would have been to clarify a SF price for walls per coat, price for doors, lineal foot of trim, windows, door frames, exterior siding, etc. It is not fair to base the award on an arbitrary number that has various ways of interpretation. We interpreted the price per SF of walls to paint walls only.
2. Section K of the scope is a section for Pressure Washing and Surface Preparation- how can a price per SF on interior space be reflective of pressure washing and painting exterior. Again, should price per SF of interior walls or SF of ceilings or SF of heated space be used? There are various ways to interpret the information.
3. Even if the SF pricing was to be used it is not clarified if the bid should be- per SF of wall space or per SF of ceiling space or SF of heated space or SF of exterior wall space.
4. I have priced similar bids for Charleston County (which we have the contract with), Coastal Carolina University, Horry Georgetown Technical College and many others but have never seen this method of an arbitrary price per SF. The other institutions provide adequate detail or have a jobsite visit for clarification.
5. I assume each building on campus is a little different so there is no way an arbitrary SF price will work. Are the administrative buildings the same as the dorms, same as classrooms, and same as sports facilities?
6. Under the scope of work, a unit price is requested for wall repairs. How about ceiling repairs? Also, the unit price for wall repairs seems to coincide with the SF price for painting to reference walls. Again, what is the measure of SF - walls, heated space or ceiling area? If it is to be walls then we are the low price.

Please let this letter serve as my request to have the "General Painting for Facilities as Needed" be rebid with clarified requirements. As it stands the bid is open to interpretation and arbitrary. Based on our interpretation we should be the low price.

Sincerely,

B & R Painting Contractors, Inc.
Eddie Barker

Attachment 2

Bid 18.65.LS.B
General Painting of Facilities as Needed

Solicitation issued on	4/20/18
Questions were due on	4/26/18
Bid closed on	5/14/18.

The bid was advertised in SCBO and the College's web site.

It was sent to 59 vendors.
26 vendors reviewed the bid.
There were 6 vendor responses.

On 5/16/18 after reviewing all bids, the apparent low bidder was B&R Painting with a bid of **\$79,550.00**. Because of the low bid value, Mr. Eddie Barker of B&R was contacted to confirm that his bid was inclusive of labor and paint and included all windows, doors and trim. He acknowledged that his price included labor and paint but did not include windows, doors and trim, just wall size.

The second low bidder BM Construction (**\$224,150.00**) was then contacted. Mr. Bert McQueen of BM Construction was asked to confirm if his price included labor, paint, supplies and painting of doors, windows and trim etc. He confirmed that it did cover all. He then sent an email to confirm the position.

A letter of intent to Award was then issued to BM Construction.

Mr. Barker, B&R Painting, phoned after receiving the Intent to Award and questioned why he was not awarded the contract. It was conveyed to him, as he had confirmed that his bid did not include painting of the doors, windows, trim etc, that the contract was awarded to a bidder whose offer did include those elements.

Mr. Barker stated that no bidder could enter a bid to include anything other than bare wall space as the College pricing was for a price per square foot as he was unable to price out door, windows, trim or any other variables that could come up. Mr. Barker then stated that he would be filing a protest.

It is noted that Mr Baker had ample time to protest the specification but had failed to do so. It is also be noted that the protestor did not raise questions about the scope of the solicitation other than to establish its term. No other bidder raised questions about the inclusion of the doors, windows or trim. It seems others comprehended the scope correctly and quoted accordingly.

The Scope of Work, attached, clearly states that the work is not limited to a restricted set of procedures or surfaces¹. It explicitly states that paint will be applied to " .. any other exposed substrate ... presently coated with field applied paint"². That is, if any surface is already painted, it should be repainted, this to include trim, doors etc.

¹ A. Scope of Work, first para.

² A. Scope of Work, (4)

Further, the specification states that caulking should be applied to windows 8 hours before painting³. It is clear that window painting is included but to be undertaken not less than 8 hours later.

It should also be clear to qualified painters that glossy wood surfaces include doors, windows, trims etc without the need to define what constitutes wood, glossy or to definitively list any and every object that is to be included⁴.

The specification has particular reference to painting of exterior doors requiring edges, sides etc to match the faces⁵. It should be clear to a painter, by clarifying the specific requirements of the exterior doors, that different approaches would exist for interior doors and, it follows, that interior doors were also expected.

It is suggested that reading the detail of the specification by vendors would show that doors windows, etc are included in the job requirements and that the basis of the protestor's complaint is without foundation

³ Surface Preparation (5)

⁴ Surface Preparation. Wood. (10)

⁵ Application. (12)

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.