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Protest Decision

Matter of: Customer Results, LLC

Case No.: 2018-215

Posting Date: May 25, 2018

Contracting Entity: South Carolina Department of Employment and Workforce

Solicitation No.: 5400014994

Description: Asset Management Solution

DIGEST

Protest claiming issues with electronic bidding is denied as either untimely or premature. Customer Results' (CR) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer (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.

BACKGROUND

Event	Date
Solicitation Issued	3/29/2018
Amendment I issued	4/06/2018
Amendment 2 Issued	4/16/2018
Protest Received	5/17/2018

ANALYSIS

The South Carolina Department of Employment and Workforce (DEW) issued this Request for Proposals to acquire an Asset Management System. CR filed a protest claiming it was unable to submit its proposal electronically. DEW submitted a motion to dismiss this protest as untimely. [Attachment 2]

The South Carolina Consolidated Procurement Code authorizes the CPO to conduct an administrative review of the protest of a solicitation or an amendment to a solicitation within 15 days of the posting of the document. Section 11-35-4210(1)(a):

A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue.

The CPO is also authorized to review the protest of any actual bidder, offeror, contractor, or subcontractor 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.

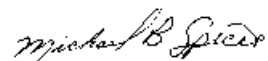
In this case, the solicitation was issued on March 29, 2018, amendment one was issued on April 6, 2018, and amendment two was issued on April 16, 2018. To the extent CR protests the

solicitation, its protest is untimely because it was filed more than fifteen days after the last amendment. If CR challenges the award, its protest is premature because no award statement has been posted. In either case, the protest is dismissed.¹

DECISION

For the reasons stated above, the protest of Customer Results, LLC is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

¹ If its protest had been timely, the CPO is unconvinced that CR has alleged any violation of the Code. The federal Government Accountability Office has held that the government’s loss of a bid because of a computer malfunction—even if through the negligence of the agency—does not entitle the bidder to relief. *American Material Handling, Inc.* B- 281556 (Comp. Gen.), 99-1 CPD ¶ 46 (1999). GAO recognizes a limited exception “where the record demonstrates that the loss was not an isolated incident, but rather, was part of a systemic failure....” *Id.* CR has alleged little more than its bid was not accepted. That the State received other proposals electronically indicates there was no “systemic failure.” Even accepting its allegations as true, CR’s protest letter fails to state a claim upon which the CPO may grant a protest.

Attachment 1

From: [graham.clark](#)
To: [itmo_protest](#)
Subject: Protest On Non Acceptance of Customer Results Response to RFP 5400014994
Date: Thursday, May 17, 2018 12:31:38 PM
Importance: High

Please accept this email as an official protest with respect to your non acceptance of our proposal submission for consideration with respect to RFP 5400014994.

With the proposal due 10am April 25th I personally uploaded our proposal on April 24th and had emailed Daniel at 6pm cst on 24th to note there was no 'Submit Button visible'. I therefore assumed that the upload was the submit process (although other similar systems always have a submit button so I was confused it was not visible)

He responded at 10.16am on the 25th (after the bid had closed) and I called the service desk at 10.58am as soon as I saw this email to be retold the bd had closed. Everyone agreed they could see we had uploaded our proposal the prior day just not 'submitted'

I believe we have a highly compelling offer, a revolutionary solution that provides tremendous cost and functionality benefits and that it is both inappropriate and unfair not to not consider our proposal and/or to award without considering it. We did everything we should have and got caught in a technical challenge.

I have emails and records of all these contacts. I am not asking for anything other than the opportunity to participate in your evaluation process.

Thank you and please let me know what other information I can provide

Graham V Clark
Digital & CX Transformation Lead @ Customer Results
www.customerresults.com
T 404.660.1609
O 646.452.4509
E graham@customerresults.com

Because Results MatterSM
Ease, Effectiveness & Emotional Empathy = Great Experiences + Analytics + Operating Efficiency =
Competitive Edge

From: Covey, Daniel <DCovey@dew.sc.gov>
Sent: Thursday, May 3, 2018 10:38 AM

To: graham clark <graham@customerresults.com>

Subject: RE: Asset Infinity - RFP 5400014994

Importance: High

Mr. Clark,

I understand your frustration in this matter. A problem with the SCEIS submission system would qualify as a mitigating circumstance and I have asked the IT office responsible for the system to recheck the system logs from the times that Customer Results, LLC., performed any actions in the system, send me a report, and an explanation, if possible, of why you were not able to submit a bid. In the absence of a malfunction in the SCEIS system, the SC Procurement Code and Regulations clearly state that I cannot accept offers after the submission time has expired and I do not have the authority to make exceptions to the Code and Regulations.

The value of any contract awarded as a result of the RFP will be in excess of \$50,000 so you have the right to protest the matter. Provided at the bottom of this email is a link to State Office of Procurement Services that provides instructions and information about the protest procedure. The next paragraph is a brief overview of the process.

Protests must be submitted in writing and received by the appropriate Chief Procurement Officer (CPO) within ten days of DEW posting an, "Intent to Award Notice". Protests can be submitted via mail or email to the address provided at the end of this email. Once the CPO receives a timely protest, an automatic stay will prevent DEW from proceeding further with the award or contract until the matter under protest is resolved. Although the Chief Procurement Officer can waive the stay, he is unlikely to do so for a procurement of this type and I would not file a motion requesting him to do so. Either party can also protest the CPO's decision to the Procurement Review Panel.

The anticipated award date for RFP 5400014994 is 5/23/2018; however, the Procurement Code permits the agency to extend this date if more time is required to complete the process. DEW will post any extensions to the award date, the Intent to Award, and any other notices at the following URL:

<http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400014994>

I will notify you at graham@customerresults.com if I post any notices. If you would like me to copy anyone else on these notifications, please provide me their email addresses and I will do so. It is important that you know the posting date of the Intent to Award because the ten-day window to protest starts the day after the posting date.

To submit a protest:

Protests must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing

(a) by email to protest-itmo@itmo.sc.gov.

(b) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201.

For Further Information about the Protest Process:

Go to <https://procurement.sc.gov/legal/general-info> and scroll down to "Protest Process Overview"

→ Click on "Introduction to Protests." The Introduction document provides the information you need to protest an award. If you have questions about protests, please feel free to contact me to discuss the process.

Regards,

Daniel W. Covey
Procurement | South Carolina Department of Employment & Workforce
1550 Gadsden Street | Columbia, SC 29201
Office: 803.737.2402 | TTY: 711

CONFIDENTIALITY: This email and any files transmitted with it contain information from the South Carolina Department of Employment and Workforce which may be confidential or privileged. The information is intended for business purposes only, and is to be used by the named recipients. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited. Please notify the sender immediately if you have received this email by mistake and delete this email from your system. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the the South Carolina Department of Employment and Workforce.

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.