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Protest Decision

Matter of: Environmental Solutions & Innovations, Inc.
Case No.: 2019-105
Posting Date: August 28, 2018
Contracting Entity: Adjutant Generals Office
Solicitation No.: 5400015915
Description: McCrady Bat Species Survey

DIGEST

Untimely protest of successful bidder's responsibility is denied. Environmental Solutions & Innovations' protest is included herein.

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.

BACKGROUND

Event	Date
Solicitation Issued	07/06/2018

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

Amendment 1 Issued	07/27/2018
Award Issued	08/17/2018
Protest Received	08/24/2018

ANALYSIS

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids on behalf of South Carolina Adjutant Generals Office to acquire a contractor to establish a baseline list of bat species present at the South Carolina Army National Guard's McCrady Training Center. A Statement of Award was posted to Nutter and Associates, Inc. on August 17, 2018 in the amount of \$36,043.00. Environmental Solutions & Innovations protested on August 24, 2018 as follows:

Chief Procurement Officer, Materials Management Office:

Environmental Solutions & Innovations, Inc. (ESI) protests award of contract 4400019420 in response to solicitation number 5400015915, McCrady Bat Species Survey. Award Criteria – Bids (Jan 2006) states “award will be made to the lowest responsible and responsive bidder(s)”. ESI's bid (\$25,000) was lower than the awarded bid (\$36,043) by nearly 45%. Our bid, though, was allegedly deemed non-responsive due to the inclusion of assumptions used in arriving at our cost. These assumptions were apparently taken by the selection committee as imposing conditions that modified material requirements of the solicitation. We disagree that any of assumptions did so. Moreover, we could not be told which of the assumptions modified the requirements of the solicitation when requested. From our experience, it is general practice to include assumptions used in arriving at cost when responding to an RFP/RFQ. We also believe doing so prevents misunderstandings later. Apparently the opposite happened in this case. We would like to point out that Responsiveness/Improper Offers (Jun 2015) reads “offers which impose conditions that modify material requirements of the solicitation may be rejected”, not that they will be. A quick call for clarification could have saved the State of South Carolina \$11,043; and we believe provided it a better end product. We are not seeking any relief other than acknowledgement of our grievance. We understand this contract is for a time sensitive project for the South Carolina Army National Guard and do not wish to impede its progress.

Section 11-35-4210 of the South Carolina Consolidated Procurement Code establishes the conditions under which the Chief Procurement Officer may consider the protest of a solicitation or award. Section 11-35-4210(1)(d) states:

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The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

The total potential value of this contract is \$36,043.00 and consequently the protest process is not available for this procurement.

DECISION

The protest of Environmental Solutions & Innovations, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2018)

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 2018 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.