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THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
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INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: Azalea Moving & Storage
Case No.: 2019-127
Posting Date: March 25, 2019
Contracting Entity: State Fiscal Accountability Authority
Solicitation No.: 5400016710
Description: Moving Services

DIGEST

Protest alleging awarded bidder is non-responsible and did not provide evidence of insurance is denied. Azalea Moving & Storage's letter of protest is included by reference. [Attachment 1].

AUTHORITY

The Procurement Director¹ 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

<i>Event</i>	<i>Date</i>
Solicitation Issued	December 10, 2018
Amendment 1 Issued	January 9, 2019
Intent to Award Posted	January 31, 2019

¹ The Materials Management Officer delegated the administrative review of this protest to the Procurement Director for the State Fiscal Accountability Authority.

Protest Received

February 6, 2019

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids on behalf of the College of Charleston in order to establish a contract with a moving service provider to relocate and assemble selected furniture in various residence halls and other academic/administrative buildings for the College's Division of Facilities Management. The solicitation required that "The Offeror shall have at least five (5) years' experience moving projects in the commercial office and industrial trade." The solicitation also required the contractor to obtain contractor's liability insurance and provide evidence of this insurance no later than three (3) business days after award and prior to the commencement of any work.

Azalea Moving & Storage (Azalea) protests the award to Carwin Logistics LLC (Carwin) which was posted on January 31, 2019.

ANALYSIS

Azalea's first issue of protest is that Carwin is not a responsible bidder. Azalea argues:

The solicitation clearly spells out on page 19 that all Offerors must have at least 5 years experience moving commercial offices and industrial trades. The intended awardee has not been in the relocation business for this amount of time, thus not qualified to submit an offer.

Section 11-35-1810(1) requires that the responsibility of bidders shall be determined as follows:

Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The board shall by regulation establish standards of responsibility that shall be enforced in all state contracts.

A "responsible bidder" is defined in Section 11-35-1410(6) as:

[A] person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

Carwin submitted a Qualifications Letter with their bid which states Carwin was established on August 9, 2013. The procurement file indicates that on January 30, 2019, the procurement officer conducted a search of the Secretary of State's website which

confirms that Carwin was incorporated on August 9, 2013 and is currently in good standing. The procurement officer also reviewed other materials in the procurement file, such as references, and determined that Carwin had met the requirement of having at least five years of moving experience in the commercial and industrial trade. This issue of protest is denied.

Azalea's second issue of protest relates to providing proof of insurance. Azalea argues:

Secondly, we feel the award shall be revoked base on the intended awardees non compliance with providing proof of insurance within 3 business days of award as is specifically spelled out in Section VII terms and conditions 2/3rds the way down page 26 of solicitation. Contractor shall provide as the contract shall be considered an "insured contract" and must include general liability with aggregate totals, workman's compensation, automobile liability covering owned an NON owned, or hired autos.

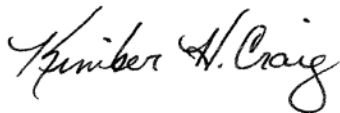
If this policy proof was not received by within the allotted time, the offeror is non compliant.

Carwin submitted a signed cover page with its bid. By signing the cover page, Carwin agreed to be bound by the terms of the Solicitation, including any requirements for insurance. The proof of insurance is not required until three business days after award and prior to the commencement of any work. Azalea's protest is based on speculation and conjecture that Carwin will submit the required proofs of insurance when it is due. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of Azalea Moving & Storage, Inc. is denied.

For the Materials Management Office



Kimber H. Craig
Procurement Director

Attachment 1



7131 Bryhawke Circle
Charleston, SC 29418

843.767.4888
843.767.9691 Fax



1-800-849-8376
AzaleaMoving.com

02/06/2019

Chief Procurement Officer
Material Management Office
121 Main St, Suite 600
Columbia, SC 29201

RE: Solicitation # 5400016710 Moving Services

Dear Chief,

Let this notice stand as an aggrieved protest of the intended reward solicitation 5400016710 for moving services.

The grounds for the below protests are twofold and relate to both qualification by experience and qualification by insurance terms and conditions.

Firstly, we feel the award was granted incorrectly based on Section V Qualifications regarding experience of a qualified offeror.

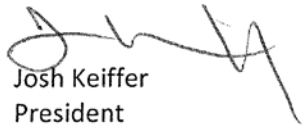
The solicitation clearly spells out on page 19 that all offerors must have at least 5 years experience moving commercial offices and industrial trades. The intended awardee has not been in the relocation business for this amount of time, thus not qualified to submit an offer.

Secondly, we feel the award shall be revoked base on the intended awardees non compliance with proving proof of insurance within 3 business days of award as is specifically spelled out in Section VII terms and conditions 2/3rds the way down page 26 of solicitation. Contractor shall provide as the contract shall be considered an "insured contract" and must include general liability with aggregate totals, workman's compensation, automobile liability covering owned an NON owned, or hired autos.

If this policy proof was not received by within the allotted time, the offeror is non compliant.

Upon review of the bid tabulation attached as provided through the solicitation and public records, we are seeking the following relief. The intent of award for solicitation shall be revoked for non qualification grounds as well and non compliant grounds. Relief should then be granted by intent to award to the next lowest responsible and responsive bidder Azalea Moving & Storage, Inc.

Respectfully,



Josh Keiffer
President

Azalea Moving & Storage, Inc.

V. QUALIFICATIONS

QUALIFICATIONS OF OFFEROR (MAR 2015)

(1) To be eligible for award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. (3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability;** however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide. Instructions and forms to help assure acceptability are posted on procurement.sc.gov, link to "Standard Clauses & Provisions."



The Offeror shall have at least five (5) years' experience moving projects in the commercial office and industrial trade.

QUALIFICATIONS -- REQUIRED INFORMATION (MODIFIED)

Submit the following information or documentation for you and for any subcontractor (at any tier level) that you identify pursuant to the clause titled Subcontractor - Identification. Err on the side of inclusion. You represent that the information provided is complete.

- (a) The general history and experience of the business in providing work of similar size and scope.
- (b) List of failed projects, suspensions, debarments, and significant litigation.

SUBCONTRACTOR -- IDENTIFICATION (FEB 2015)

If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your cost, (2) involves access to any "government information," as defined in the clause entitled "Information Security - Definitions," if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may contact and evaluate your proposed subcontractors. [05-5030-2]

VII. TERMS AND CONDITIONS -- B. SPECIAL

CHANGES (JAN 2006)

(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.
[07-7B025-1]

COMPLIANCE WITH LAWS (JAN 2006)

During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]

CONTRACT LIMITATIONS (JAN 2006)

No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment. [07-7B045-1]

CONTRACTOR'S LIABILITY INSURANCE - GENERAL (MODIFIED)

(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

(b) Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required

occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

- * (2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- * (3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
 - (c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
 - (d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.
 - (e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.
 - (f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.
 - (g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.
 - (h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
 - (i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other special circumstances.

The Contractor shall provide evidence of complete insurance for their personnel and equipment, including but not limited to Worker's Compensation, general liability, truck liability, property damage, personal injury and any other insurance normally required. Evidence of such insurance, or an original, signed letter from your insurance carrier indicating an insurance certificate will be furnished no later than three (3) business days after award and prior to the commencement of any work.

CONTRACTOR PERSONNEL (JAN 2006)

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]

CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006)

The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

Josh Keiffer

From: Moss, Kristen [kmooss@mmo.sc.gov]
Sent: Friday, February 01, 2019 1:27 PM
To: Josh Keiffer
Subject: RE: SC Solicitation: MOVING SERVICES
Attachments: 5400016710 Bid Tab.pdf

Good afternoon,

This e-mail is in regards to your request for information regarding Solicitation 5400016710 Moving Services.

The release of public records is governed by the South Carolina Freedom of Information Act, S.C. Code Ann. §30-4-10 et seq., and by the Consolidated Procurement Code, S.C. Code Ann. §11-35-410.

Attached is the information you requested.

Section 32-2-50 of the Code of Laws of the State of South Carolina provides that no person or private entity shall knowingly obtain or use any personal information obtained from a public body for any commercial solicitation directed to a person in the State. The SC State Fiscal Accountability Authority, as a public entity, gives notice to you, as a requestor of records from this agency, that obtaining or using these public records for commercial solicitation is prohibited. Any person who knowingly uses public records for commercial solicitation is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed \$500.00 or imprisoned for a term not to exceed one year, or both.

Please see S.C. Code of Laws, Section 30-2-10, et seq, for full text of Family Privacy Protection Act.

Thank you,
Kristen Moss

Kristen Moss, CPPB | Procurement Manager II, State Procurement Office Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-2772 | kmooss@mmo.sc.gov

-----Original Message-----

From: Josh Keiffer <josh@azaleamoving.com>
Sent: Friday, February 01, 2019 1:09 PM
To: Moss, Kristen <kmooss@mmo.sc.gov>
Subject: RE: SC Solicitation: MOVING SERVICES

May I please see the bid tabulation please?

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.