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Protest Decision

Matter of: PMI Corporation

Case No.: 2019-146

Posting Date: July 12, 2019

Contracting Entity: Clemson University

Solicitation No.: 116512134

Description: Cooper Library Journal Move

DIGEST

Protest that evaluation not in the best interest of the agency is denied. PMI Corporation's (PMI) 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

| | |
|----------------------------|----------------|
| Solicitation Issued | April 8, 2019 |
| Amendment 1 Issued | April 12, 2019 |
| Intent to Award Issued | May 20, 2019 |
| Intent to Protest Received | May 27, 2019 |
| Protest Received | June 4, 2019 |

Clemson University issued this Request for Proposals on April 8, 2019, to obtain the services of a contractor for a large-scale collection relocation project in the summer of 2019.

Approximately 17,000 linear feet of select bound library materials will be removed from the main branch, Cooper Library, delivered safely and accessioned into the Libraries' offsite high bay, high-density storage facility, the Library Depot. Five proposals were received and evaluated by a four-member panel. An Intent to Award was posted to Iron Mountain on May 20, 2019. PMI indicated its intent to protest of May 27, 2019 and supplemented its protest of June 4, 2019.

ANALYSIS

PMI protests that Clemson's evaluation put a large emphasis on experience using their software when it should have focused on the resources proposed and the timeline for completing the project. The evaluation criteria were published in the original solicitation:

AWARD CRITERIA:

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive Offertory will be ranked from most advantageous to least advantageous.

- A. Offeror Qualifications
- B. Cost
- C. Capability

[Scope of Work, Page 4]

The issues raised by PMI were not identified as unique criteria for evaluation, consequently the extent of consideration of these issues was left to the discretion of the members of the evaluation

committee. The Procurement Review Panel established the standard for review of an evaluation in the appeal of Santee Wateree Regional Transportation Authority, Case 2000-5:

In the Coastal Rapid Public Transit Authority case, the Panel established the basic framework for review of challenges to evaluators' conduct:

The determination by the State who is the most advantageous offeror is final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law The burden of proof is on [the protestant] to demonstrate by a preponderance of the evidence that the determination in this case has such flaws The Panel will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

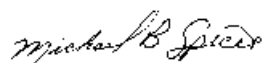
The Panel has held that the evaluation process does not need to be perfect so long as it is fair. NBS Imaging Systems, Inc., cited above. Further, because the Panel will not re-evaluate proposals or substitute its judgment for that of the evaluators, the Panel has held that a claim of superiority by a vendor in certain areas of evaluation, however valid, does not compel the finding that the vendor is the most advantageous to the State. See, Protest of First Sun EAP Alliance, Inc., and Protest of Coastal Rapid Public Transit Authority, cited above.

The degree to which the sub categories that fall within a published evaluation criterion were considered, was left to the discretion of the evaluators. PMI alleges that the relative importance assigned by the evaluators was inappropriate, but PMI does not allege that these considerations were clearly erroneous, arbitrary, capricious, or contrary to law. The CPO will not reevaluate the proposals or substitute his judgement for the judgement of the evaluators. PMI's protest is denied.

DECISION

For the reasons stated above, the protest of PMI Corporation is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

PMI Corporation

Clemson University RFP #116512134

We are protesting the intent to award this project to Iron Mountain because we feel as though the grading system used to rank the companies bidding was not in the best interest of Clemson University.

Clemson put a large emphasis on experience using their software. Universities across America use different ingest software, but the fields used to capture the pertinent information requested are virtually the same in all software. The company that has the personnel which can adapt to any software quickly should be most desirable.

The most important criteria should be how many staff members will be used, what will each member perform on a daily basis, how many days will it take to complete this project, and give references of similar projects. The company that brings its own employees with over 200 years experience moving libraries and ingesting books, also uses its own hardware,

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PMI Corporation

own lifts, and completes the project in the least amount of time and disruption to the university for the least amount of money should be most desirable. 9 days instead of 60 days should prove to Clemson which company really is the expert in moving and ingesting book collections.

We have attached a couple of letters that we think you will find interesting.

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.