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Protest Decision

Matter of: The George Seelke Company

Case No.: 2020-117

Posting Date: December 18, 2019

Contracting Entity: South Carolina Department of Transportation

Solicitation No.: 5400018380

Description: 5500 Gal. Captor Containment Systems

DIGEST

Protest alleging apparent successful bid is not responsive is granted. The George Seelke Company 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	08/16/2019
Amendment 1 Issued	09/06/2019
Intent to Award Posted	11/01/2019
Intent to Protest Received	11/07/2019
Protest Received	11/15/2019

The South Carolina Department of Transportation (DOT) issued this Invitation for Bids August 16, 2019, to acquire 5500 Gal. Captor Containment Systems. On November 1, 2019, DOT posted an Intent to Award to Coastal Technical Sales, Inc. (CTS) GSC notified the CPO of its intent to protest on November 7, 2019 and filed its formal protest on November 15, 2019.

ANALYSIS

GSC protest that CTS's bid was not responsive to the material and essential requirement of the solicitation. The first instance is that the solicitation required the tanks be molded with high density linear polyethylene (HDLPE), and CTS proposed tanks molded with cross-link polyethylene (XLPE). The solicitation required:

- 3) Both the primary and secondary tanks shall be molded with HDLPE using a 1.5 sg design.

(emphasis added) [Solicitation, Page 13]

In a Quotation attached to its bid, (Attachment 2) CTS describes its product as follows:

1. 1.0: We consider the Poly Processing XLPE tank superior to a Snyder Industries Captor double wall tank.
 - a. XLPE has 20 times the environmental stress crack resistance of HDPE.
 - b. It has 10 times the molecular weight of HDPE.
 - c. It has 5 times the impact and tensile strength of HDPE.

(emphasis added)

Next GSC protests that the solicitation required an 18" mushroom tank vent and CTS bid an 8" mushroom tank vent. The solicitation required:

- 8) The CAPTOR shall include the following fittings:
 - a) (1) 18" threaded Manway with vented center cap
 - b) (1) 2" PVC bulkhead fitting in the top
 - c) (1) 3" PVC bulkhead fitting in the top

- d) (1) 18” Polyethylene Mushroom vent with 1/8” Bug Screen
- e) (1) 2” PVC double 150# flange fitting, with PE encapsulated head 316 stainless steel bolts, and UFO between the primary and secondary tanks.

(emphasis added) [Solicitation, Page 13]

In the Quotation attached to its bid, CTS describes its product as follows:

- 8. 2.0: The manway access includes a 24” bolted cover with an 8” Mushroom vents sized for 2650 ACFM volume flow rate to accommodate the pneumatic filling. The outlet is the Poly Processing bellows transition fitting which supports the secondary containment requirements.

(emphasis added)

Section 11-35-1520(10) provides:

Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at a location specified in the invitation for bids.

Regulation 19-445.2090(A) provides:

The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.

Section 11-35-1410(9) defines a responsive bidder as:

'Responsive bidder or offeror' means a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals.

Regulation 19-445-2070

Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

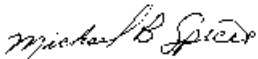
The solicitation required the tanks be molded with HDPLE, and the tanks bid by CTS contain XLPE resins. Although CTS claims that XPLE is “superior,” “[v]endors may not rewrite specifications to tell the State what it needs.” *Appeal by Applied Campus Technologies Division*, Case No. 1992-19. The CTS bid is not responsive to this requirement. *See Appeal by Centerline Industries, Inc.*, Case No. 2001-1 (finding despite testimony from a chemist that paint viscosity of 79 Krebs Units is scientifically the same as 80 Krebs Units, the specifications on their face

required a minimum viscosity of 80 Kreh Units, and therefore a bid that had a tested sample at 79 Kreh Units was nonresponsive.) The solicitation also required an 18” mushroom tank vent, the tank bid by CTS has an 8” mushroom tank vent. The CTS bid is also not responsive to this requirement.

DECISION

For the reasons stated above, the protest of The George Seelke Company is granted. The award to Coastal Technical Sales, Inc. is cancelled. The procurement is remanded to the South Carolina Department of Transportation for award in accordance with the Consolidated Procurement Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: Dick Youtz
To: [External] Formal Protest of Solicitation 5400018380 Award: 5500 GAL CAPTOR CONTAINMENT SYSTEMS
Subject: [External] Formal Protest of Solicitation 5400018380 Award: 5500 GAL CAPTOR CONTAINMENT SYSTEMS
Date: Friday, November 15, 2019 8:34:09 AM
Attachments: image001.png
image002.png
image003.png
ESCR - Performance testing for polyethylene tanks - Understanding ESCR.PDF
Video.mov

Attn: Chief Procurement Officer, Material Management Office

From: Dick Youtz, The George Seelke Company

We are requesting the subject award be withdrawn and the award issued to The George Seelke Company. The basis of this request is that the low bidder's offering does not meet the specifications in numerous areas and their submittal does not call out these exceptions. The George Seelke Company offering is in full compliance with the specification and was the next low bidder.

Since Snyder Industries, our tank manufacturer, has been involved with DOTs in numerous other States we asked for their review of the submittal provided by the low bidder, which is included below. Snyder has advised that after a similar experience with the same bidder in Illinois the award was withdrawn and Snyder tanks were purchased based on the items noted in their review below. Many States, including NJ, CT, MA, IL, OH, MD, NC, PA Turnpike, MO, MN and VA, have standardized on the CAPTOR as a superior solution for de-icing storage. Virginia had used the SAFE-Tank but changed to the CAPTOR. SC DOT has installed over 100 CAPTOR 5500 gallon tanks which have been serving your districts without issues or problems.

Snyder is not aware of a State DOT using Crosslinked (XLPE) tanks. Snyder routinely molds both Crosslinked (XLPE) and High Density Linear polyethylene (HDLPE). They select the polyethylene resin to provide the best solution for the customer, and some chemicals must be stored in XLPE, but that is not the case for brine and calcium chloride. While HDLPE is more difficult to mold it offers some advantages over XLPE. HDLPE is repairable by welding and XLPE is not. This allows a tank to remain serviceable if it is damaged by external forces such as being bumped by equipment or if a piping connection is physically loaded and the tank wall is cracked, instead of having to be replaced with the added cost of installation after being without the tank until a new one is delivered. XLPE is a more yellow color which makes it more difficult to see the liquid level through the tank sidewall.

Snyder designs and molds their tanks per the current ASTM 1998 standards. It is important to recognize that low density and medium density linear resins are not comparable to High Density polyethylene resin and Snyder provides a specification to their resin supplier which requires their HDLPE resin to be on the high end of the High Density range. Comparing XLPE and HDLPE is like comparing steel and aluminum. The same strength can be accomplished but the design thicknesses are different based on their properties. The manufacturer who does not mold both HDLPE and XLPE resins must promote their resin selection (XLPE) as being superior but that is not the case as explained by Snyder in the write-up below and the attachments.

The information below, provided by Snyder engineering and sales personnel, supports our position that the low bidder's offering does not meet the specification and has deficiencies which justify withdrawing the award. Also, item nine of the specification calls for the supplier's engineer to be available. The low bidder states they will have a "representative".

We would appreciate your review of this information and consideration of our request that the award be withdrawn and the award issued to The George Seelke Company.

Respectfully submitted,

Dick Youtz
SC PE, Ret.

Snyder Industries technical review of the CTS submittal

Regarding Coastal Technical Sales submittal letter:

Tank Description as per Page #13 of 31

1. 1.0: We consider the Poly Processing XLPE tank superior to a Snyder Industries Captor double wall tank.
 - a. XLPE has 20 times the environmental stress crack resistance of HDPE. ESCR tests are done with a chemical called Igepal® which is a surfactant. Surfactants are one of a small handful of chemicals that Snyder recommends XLPE tanks on. However these tanks are not storing surfactants, they are storing liquid calcium chloride, liquid magnesium, and or salt brine. So ESCR comparison of XLPE to HDLPE has no relevance to the chemicals being stored. See article attached named "ESCR = Performance testing for polyethylene tanks - Understanding ESCR".
 - b. It has 10 times the molecular weight of HDPE. The density of Paxon 7004 XLPE and Snyder's HDLPE resin is exactly the same.

	HDXLPE Paxon 7004	HDLPE Sii-PE945N
Density, ASTM D1505, g/cc	0.945	0.945

- c. It has 5 times the impact and tensile strength of HDPE. This is just flat out wrong. Whoever stated this is not comparing to HDLPE that Snyder uses. Probably because Polyprocessing seldom, if ever, molds tanks out of HDLPE. Below is a comparison of the XLPE resin that Polyprocessing molds tank with and the HDLPE resin that Snyder molds tanks with. The HDLPE we use has a higher tensile strength than XLPE.

	HDXLPE	HDLPE
	Paxon 7004	Si-PE945N
Tensile Strength at yield, ASTM D638, Type IV Specimen, 2 in (50 mm) per min, psi (Mpa)	3000	3500

2. 1.0: We are providing a 2" FNPT connection only, for level indicator. It is assumed the level indicator is being provided separately as needed.
3. 1.0: We have provided a price adder for the manufacturer's Float Type Level Indicator. Brochure is attached for your review.
4. 1.1: The **primary tank** is designed per ASTM D1998-15 standards
Both Snyder's Primary Tank and Containment Tank are designed to ASTM D1998-15 standards. If the Polyprocessing containment tank is not designed to ASTM D1998 standards then it does not meet specification and is a thinner wall tank that what the spec calls for.
5. 1.2: The primary and secondary tanks have a specific gravity greater than 1.50
6. 1.3: The Capacity of the Inner storage tank provided is 5,447 gallons. The outer containment vessel exceeds the 115% capacity requirement at 6,346 gallons
Snyder's 5500 gallon primary tank is designed to hold 5509 gallons and the containment provides 115% containment capacity which exceed containment regulations.
7. 1.4: Tank has (6) molded in top lifting lugs capable of supporting the entire weight of the completely assembled EMPTY unit
|8| Lifting lugs are standard on all Snyder Captor tanks that allow for lifting of the entire weight of the completely assembly EMPTY unit.
8. 2.0: The manway access includes a 24" bolted cover with an 8" Mushroom vents sized for 2650 ACFM volume flow rate to accommodate the pneumatic filling. The outlet is the Poly Processing bellows transition fitting which supports the secondary containment requirements.
The 8" mushroom vent does not meet specification. The specification calls for an 18" Mushroom Vent to ensure the vent can handle higher PSI used during pneumatic fill of the tank. The 18" Mushroom vent has more than double the venting capacity as a smaller 8" mushroom vent.
The Outlet on Polyprocessing's tank does not meet specification. The specification calls for the UFO (bellows) to be between the primary and containment tank walls. Snyder tanks are designed this way to take stress off the primary tank during loading and unloading. Polyprocessing but a bellows outside the containment tank making installation difficult and the chances of leaks are greater due to head pressure (see attached video). In addition, the bolted fitting used to secure the fitting is not a double 150# flange.
9. 2.2: Delivery will be no longer than (12) weeks from receipt of purchase order

Other Advantages of Snyder's HDLPE Double Wall tank vs. Polyprocessing's XLPE double wall tank

- HDLPE is recyclable and better for the environment.
- HDLPE can be welded making repairs an option in the event that something is done that damages the tank.
- Snyder double wall tanks have an octagonal shaped containment which creates a friction fit on 4 sides that allows the system to meet seismic and wind codes without additional blocking when used with Snyder restraint systems.
- In the event of an overflow, the overflow would collect in the raincap area that feeds back down into the primary tank saving chemical and clean up mess.
- Snyder's fittings use two 150# flanges and the correct size bolts as specified by the flange manufacturer for the size flange they are used on. Polyprocessing using smaller diameter bolts to cut corner and save money and their bolts do not meet flange manufacturer's specifications which call for 5/8" diameter bolts to be used on a 2" Flange. Polyprocessing's bolts are only 1/2" diameter. The encapsulated head of Polyprocessing's bolt is also round and Snyder's is a blockhead design allowing the bolt to be tightened without having to enter the tank to hold the bolt from spinning.

III. SCOPE OF WORK/SPECIFICATIONS

5500 GALLON CAPTON CONTAINMENT SYSTEM

PPC's tank is only 5400 gallons

- 1) The South Carolina Department of Transportation (SCDOT) is soliciting for a supplier for provision and delivery of 5500 gallon captor storage brine or calcium chloride containment systems to various locations within the State (see Attachment B) SCDOT will accept the tank's standard liquid level indicator configuration with its order(s). However, if there is an alternative level indication configuration available, SCDOT will get a quote from a vendor and issue a separate purchase order for the alternative configuration. SCDOT recognizes that a full truck load order is two (2) tanks. Therefore, in the event SCDOT places an order for less than the full truck load order quantity, SCDOT will absorb the additional freight cost on the purchase order for that individual purchase of less than a truck load. SCDOT will unload the transport vehicle upon the delivery of the tanks and will perform the installation.
- 2) The primary tank shall be designed per ASTM D 1998-06 with a hydrostatic design stress of 600 psi at 73 degrees. The tank shall be rotationally molded one-piece seamless construction. The tanks shall have stratiform walls. PPC's spec states their double wall tanks greater than 1000 are 110% capacity, however in their response they claim they exceed 115%.
- 3) Both the primary and secondary tanks shall be molded with HDLPE using a 1.5 sg design.
- 4) The secondary containment tank shall have a minimum capacity equal to 115% capacity of the primary tank in compliance with 40 CFR-264.193. PPC does not list what durometer their gaskets are in their specifications.
- 5) The tank shall have integrally molded lift lugs and tie-down lugs and shall be capable of being lifted into position as a unit.
- 6) The tank top shall be keyed to the containment tank to prevent rotation and shall prevent rain water from entering either tank.
- 7) All fitting gaskets shall be 3/4" EPDM with a durometer of 40-50.
- 8) The CAPTOR shall include the following fittings:
 - a) (1) 18" threaded Manway with vented center cap
 - b) (1) 2" PVC bulkhead fitting in the top
 - c) (1) 3" PVC bulkhead fitting in the top
 - d) (1) 18" Polyethylene Mushroom vent with 1/8" Bug Screen
Polyprocessing's does not offer an 18" Mushroom vent. They will offer a smaller size which does not meet spec.
 - e) (1) 2" PVC double 150# flange fitting, with PE encapsulated head 316 stainless steel bolts, and UFO between the primary and secondary tanks. Polyprocessing's bolted fittings are single flange or their BOSS fitting is not PE Encapsulated. PPC also does not have a UFO between the primary and containment tank.
- 9) Immediately after receipt of an order, the supplier shall have their engineer visit the site as required to assist the site in determining the proper fitting locations for each tank. The engineer shall visit the site after the installation is completed to confirm its compliance with the manufacturer's warranty requirements. The supplier's engineer must be able to be on site within 24 hours after receiving a call regarding any problem with the installed tanks. The costs of these field services shall be included in the base cost of the tank.
- 10) Shipment Time - Tanks shall be delivered approximately 12 weeks after contractor's receipt of the purchase order. The 12 week timeframe includes the tank moldings, fittings layout, initial and final drawings for tank production, and wide load permit for South Carolina delivery.

Attachment 2



Coastal Technical Sales, Inc.

QUOTATION

September 26, 2019

Quote #Q-00813010

Mr. Jeffery Schwalk
SCDOT Procurement Office
P.O. Box 191
Columbia, SC 29202-0191

Reference: ITB: No. 5400018380
SCDOT Statewide 5500 Gal Captor Containment Tank

Mr. Schwalk,

Thank you for the opportunity to quote. We are pleased to offer the following tanks as manufactured by Poly Processing. The tanks are rotationally molded, high density cross-linked polyethylene, double wall, Safe-tank®, flat bottom tanks. The assembly consists of one cylindrical, closed top inner primary tank and one cylindrical, open top containment outer tank. Each tank is a rotationally molded one-piece seamless constructed tank. The SAFE-Tank® tanks are designed for above-ground, vertical installation and are designed to store approved chemicals at atmospheric pressures. The assembly is designed to prevent rainwater and debris from entering the containment tank. The assembly is manufactured in accordance with ASTM D1998-15 standards.

ITB Tank Description as per Page #13 of 31

1. 1.0: We consider the Poly Processing XLPE tank superior to a Snyder Industries Captor double wall tank.
 - a. XLPE has 20 times the environmental stress crack resistance of HDPE.
 - b. It has 10 times the molecular weight of HDPE.
 - c. It has 5 times the impact and tensile strength of HDPE.
2. 1.0: We are providing a 2" FNPT connection only, for level indicator. It is assumed the level indicator is being provided separately as needed.
3. 1.0: We have provided a price adder for the manufacturer's Float Type Level Indicator. Brochure is attached for your review.
4. 1.1: The primary tank is designed per ASTM D1998-15 standards
5. 1.2: The primary and secondary tanks have a specific gravity greater than 1.50
6. 1.3: The Capacity of the inner storage tank provided is 5,447 gallons. The outer containment vessel exceeds the 115% capacity requirement at 6,346 gallons
7. 1.4: Tank has (6) molded in top lifting lugs capable of supporting the entire weight of the completely assembled EMPTY unit
8. 2.0: The manway access includes a 24" bolted cover with an 8" Mushroom vents sized for 2650 ACFM volume flow rate to accommodate the pneumatic filling. The outlet is the

116 Keystone Drive, Montgomeryville, PA 18936
800-345-4501 • PH: 215-628-1965 • FAX: 215-628-1649
www.coastaltechnical.com



Coastal Technical Sales, Inc.

Poly Processing bellows transition fitting which supports the secondary containment requirements.

9. 2.2: Delivery will be no longer than (12) weeks from receipt of purchase order

General Quotation Notes:

1. The tanks are chemically resistant to safely store liquid magnesium, calcium chloride or liquid salt brine
2. Tanks are constructed of high-density crosslinked polyethylene resins and are designed to contain liquids in accordance with the most recent version of ASTM D-1998. Quality test reports showing test results per ASTM D1998 will be provided with the tanks
3. Tank comes with an externally mounted gallonage marker tape indicating 500 gallon increments

INSTALLATION: We will provide a representative to assist in determining the proper fitting locations for each tank, along with a visit after installation to confirm compliance with manufacturer's warranty requirements.

We are providing:

(14) 5400ga Double Wall Storage Tanks with accessories and installation noted above for a delivered Total Bid Price of \$177,420.60.

This price is valid for all (4) years of the contract.

Price adder for manufacturer's Float Type Liquid Level Gauge: \$498.00/each tank

If you have any questions, or need any further information, please feel free to call.

Thank you

Ellie Langley
Customer Service

116 Keystone Drive, Montgomeryville, PA 18936
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STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2019)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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.