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THE DIVISION OF PROCUREMENT SERVICES

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DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Protest Decision

Matter of: Infoseal, LLC, and Northstar Computer Forms

Case No.: 2020-133, and 2020-137

Posting Date: July 28, 2020

Contracting Entity: SC Department of Health and Environmental Control

Solicitation No.: 5400019436

Description: Vital Records Security Paper

DIGEST

Protests that award was not made to the lowest responsive and responsible bidder are denied. The protest letters of Infoseal, LLC (Infoseal) and Northstar Computer Forms (Northstar) are 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:	04/21/2020
Amendment 1 Issued	05/15/2020
Intent to Award Posted	06/17/2020
Infoseal Protest Received	06/17/2020
Northstar Protest Received	06/24/2020

The South Carolina Department of Health and Environmental Control (DHEC) issued this Invitation for Bids on May 15, 2020 to acquire 3,500,000 sheets of vital records security paper. Bids were received from Infoseal, Northstar, and R.R. Donnelley & Sons Company (Donnelley). The Infostar and Northstar bids were determined to be non-responsive. An Intent to Award was posted to Donnelley on June 17, 2020.² Infoseal and Northstar protest that their bids were lower priced than Donnelley and should have received the award.

ANALYSIS

The original solicitation set the annual quantity needed at 700,000 sheets per year:

- 3.11.1. The anticipated annual quantity is 700,000 certification sheets.
 - 3.11.1.1. The quantity indicated is a good faith estimate based on anticipated usage. The quantity may increase or decrease by up to 25% to reflect changes in the workflow, program support, or funding limitations without a unit price increase.

[Solicitation, Page 21]

If the maximum variance of 25% is realized, the total potential quantity purchased during the potential five-year term of this contract would be 4,375,000 sheets. Amendment 1 increased the annual quantity to 800,000:

- 3.11.1. The anticipated annual quantity is 800,000 certification sheets.
 - 3.11.1.1. The quantity indicated is a good faith estimate based on anticipated usage. The quantity may increase or to 25% to reflect changes in the workflow, program support, or funding limitations without a unit price increase.

² The Intent to Award shows a unit price of \$.13 and a Total Potential Value of \$700,000. The solicitation indicates a total potential purchase of 5,000,000. At \$.13 the total potential value of the contract should not exceed \$650,000.00. Award notices should reflect the total potential value of the contract.

[Amendment 1, Page 7]

If the maximum variance of 25% is realized, the total potential quantity purchased during the five-year term of this contract would be 5,000,000 sheets.³

The original bid schedule included the following statement:

Tendering Text: Quantity of 3,500,000 is based on an estimated annual amount of 700,000. Bid price to include all delivery/shipping related charges. Unit price must be provided with up to 2 decimal places only.

(emphasis added)

The solicitation required unit prices, with the “unit of measure” stated as “each,” and provided that in “determining award, unit prices will govern over extended prices unless otherwise stated.” [Solicitation, pages 17, 27, and 45] Donnelley and Infoseal attached hard copies of their completed bid schedule along with other requested information to their bids. The hard copy of the bid schedule Donnelley submitted shows a unit price of \$.1292 per sheet for a grand total of \$452,200. In compliance with the instructions to submit the unit price to 2 decimal places, Donnelley rounded its unit price up to \$.13 and bid a grand total of \$455,000.

The hard copy of Infoseal’s completed bid schedule reflected a unit price of \$.12485 per sheet for a grand total of \$436,975.⁴ Infoseal did not round its price to 2 decimal places and was declared non-responsive as follows:

The bid failed to meet an essential requirement that the unit price must be provided with up to 2 decimal places only. Instructions regarding this essential

³ The original bidding schedule asked for a price per sheet for 3,500,000 sheets of paper based on the original annual requirement of 700,000 sheets. The bidding schedule did not reflect the total potential quantity that could be purchased, and the bidding schedule was not changed to reflect the modification in Amendment 1. If the maximum variance of 25% is realized, the total potential quantity purchased under this contract will be 5,000,000. That is an increase of approximately 43% in quantity from the 3,500,000 quantity in the bidding schedule that was not accounted for in determining the award. To the maximum extent possible, a bidding schedule should establish the parameters necessary to receive bids reflecting, and the award should be based on, the total potential value of the contract. There is at least one theory of public contracting that suggests that if a product or service is not considered during the evaluation process, then it is not included in the resulting contract.

⁴ Infoseal also submitted a total price of \$499,400 for 4,000,000 sheets to reflect the change made in Amendment 1.

requirement was specified in Section VIII. Bidding Schedule/Price-Business Proposal.

[Attachment 2, DHEC Determination and Findings]

Northstar did not attach a copy of the bid schedule to its bid but submitted a price of \$108.20 per thousand sheets for a grand total of \$378,700.00. This would be the equivalent of \$.1082 per sheet ($\$108.20/1000 = \$.1082$). Northstar also failed to include samples with its bid for testing. Northstar's bid was also determined to be non-responsive as follows:

The bid failed to meet an essential requirement that the unit price must be provided with up to 2 decimal places only. Furthermore, the bid failed to meet an essential requirement to submit samples with their bid for evaluation purposes. Instructions regarding these essential requirements were specified in Section VIII. Bidding Schedule/Price-Business Proposal and Section IV. Information for Offerors To Submit.

[Attachment 3, DHEC Determination and Findings]

DHEC explains the 2 decimal place responsiveness determinations as follows:

Section VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL of the solicitation stated that the "Unit price must be provided with up to 2 decimal places only." This requirement was clearly communicated and was not arbitrary. Rather, it was required because of the limits of the State's purchasing software system, SCEIS, which cannot accommodate pricing at more than 2 decimal places. InfoSeal's bid was offered with 5 decimal places. Furthermore, InfoSeal was not the only vendor to be declared non-responsive. The actual lowest offer bid was also provided with 4 decimal places and found to be non-responsive.⁵

⁵ While it is true that SCEIS will only accommodate 2 decimal places, agencies have employed a number of techniques to accommodate industry pricing models that are based on more than 2 decimal places in order to receive the most advantageous pricing for the State. Agencies have adjusted the quantity, so the unit price is reduced to 2 decimal places. In fact, this solicitation set the groundwork for just such an adjustment. Amendment 1 to this solicitation provides:

3.11.3. An initial shipment of 100,000 sheets will be ordered upon award of the contract.

3.11.4. Additional shipments will be installments of 100,000 per each shipment.

[Amendment 1, Page 7]

The quantity in this bid schedule could had been set to a cost per 100,000 which would have been consistent with the solicitation and addressed the 2 decimal point problem.

There are other ways to address the 2 decimal place issue with SCEIS. DHEC itself recently published a solicitation where it required pricing to 3 decimal places and avoided the 2 decimal place issue by attaching a spreadsheet to

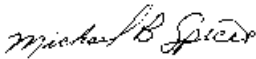
Because Infoseal failed to submit a price with only 2 decimal places, its bid is nonresponsive.⁶

In its Determination and Findings DHEC found that Northstar's bid failed to meet an essential requirement that the unit price must be provided with up to 2 decimal places only. While Northstar's bid of \$108.20 per thousand sheets is to 2 decimal places only, the solicitation required bids of unit prices with a "unit" measured as "each." It would be unfair to allow Northstar to change the unit of measure from each to 1,000 in order to avoid bidding a single unit at two decimal places. Had Infoseal been allowed to modify the unit of measure in such a fashion, it would have been the lowest bidder. Allowing a bidder to manipulate the unit of measure created an uneven playing field that would punish those bidders who followed the instructions. Northstar was properly deemed non-responsive.

DECISION

For the reasons stated above, the protests of Infoseal, LLC, and Northstar Computer Forms are denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

capture the 3 decimal place pricing and calculate the total potential value of the contract which was then entered into SCEIS. (Solicitation number 5400018781 - WIC Infant Formula Rebate) In this case, DHEC's failure to structure this bid in a way to take advantage of industry pricing models could potentially cost the agency \$86,000 if the total quantity of 5,000,000 sheets is purchased.

⁶ The limit to 2 decimal places could have been challenged as a protest of the solicitation but cannot be raised as a protest of the award. (Section 11-35-4210(1)(b))

Attachment 1

From: [Kate Torpey](#)
To: [Protest-MMO](#)
Subject: [External] Protest of Intent to Award Solicitation 5400019436
Date: Wednesday, June 17, 2020 1:58:52 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Hi

We would like to protest the intent to award issued today for the above referenced bid. Bid is being awarded to RRDonnelley at a price of .13per piece. InfoSeal bid .12485per piece – thus being a lower bidder.

Please advise as to why this was not awarded to InfoSeal.

Thank you and please let me know if you need any additional information.

Thanks
Kate

Kate Torpey
Director of Sales & Business Development
ktorpey@infoseal.com
917.940.6779



From: [Ken Riles](#)
To: [Protest-MMO](#)
Subject: [External] Protest: Solicitation 5400019436
Date: Wednesday, June 24, 2020 12:07:33 PM
Attachments: [jm aae004.png](#)

To whom it may concern,

I would like to file an official protest in the awarding of Solicitation 5400019436 to RR Donnelly. This protest is based solely on price.

Here are the details of our two bids:

Winning Bid
RR Donnelly – \$130.00 per/1000

Our Bid
Northstar - \$108.20 per/1000

Thank you,

Ken Riles

Sales Manager
Northstar - Brooklyn Park
(800) 765.6787
(763) 531.7374 Direct
(763) 535.5671 Fax
ken.riles@northstar-mn.net
www.northstar-mn.net




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**BUREAU OF
BUSINESS MANAGEMENT**
DIVISION OF PROCUREMENT SERVICES
301 Gervais Street
Columbia, SC 29201-3073
Telephone (803) 898-3501 Fax (803) 898-3505

Date: 6/9/20

DETERMINATION OF NON-RESPONSIVE and/or NON-RESPONSIBLE BIDDER

PROCUREMENT OFFICER: Lisa Roland 

SOLICITATION NO.: 5400019436

OPENING DATE: 6/2/20

COMMODITY: Custom Printing of Vital Records Certification Sheets

BIDDER: Infoseal, LLC
1825 Blue Hills Cir. NE
Roanoke, VA 24012

In accordance with the S. C. Consolidated Procurement Code Regulation §19-445.2070, the referenced bid/bidder is rejected. S. C. Consolidated Procurement Code Regulation §19-445.2070(A) states that "any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected."

S.C. Code Ann. §11-35-1410(7) defines a "Responsive" bidder as "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." S.C. Code Ann. §11-35-1410(6) defines a "Responsible" bidder 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."

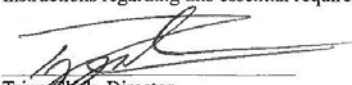
REASON FOR REJECTION:

Under S.C. Code Ann. §11-35-1410(7), a "Responsive" bidder or offeror means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

In order to be awarded a contract, a bidder must be responsive. S.C. Code Ann. §11-35-1520(10) defines a responsive bidder as one "who has submitted a bid which conforms in all material aspects to the invitation for bids [Section 11-35-1410(7)]. A bid does not need to conform to all of the IFB's requirements in order to be responsive; rather it must conform to the essential requirements.

The bid failed to conform to the essential requirement of the bid in accordance with the South Carolina Procurement Regulations §19-445.2070 "A. General Application – Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected."

The bid failed to meet an essential requirement that the unit price must be provided with up to 2 decimal places only. Instructions regarding this essential requirement was specified in Section VIII. Bidding Schedule/Price-Business Proposal.


Tripp Clark, Director
Division of Procurement Services

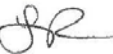

Larry Maddox, Director
Bureau of Business Management



**BUREAU OF
BUSINESS MANAGEMENT**
DIVISION OF PROCUREMENT SERVICES
301 Gervais Street
Columbia, SC 29201-3073
Telephone (803) 898-3501 Fax (803) 898-3505

Date: 6/9/20

DETERMINATION OF NON-RESPONSIVE and/or NON-RESPONSIBLE BIDDER

PROCUREMENT OFFICER: Lisa Roland 

SOLICITATION NO.: 5400019436

OPENING DATE: 6/2/20

COMMODITY: Custom Printing of Vital Records Certification Sheets

BIDDER: Northstar Computer Forms
7130 Northland Circle N.
Brooklyn Park, MN 55428

In accordance with the S. C. Consolidated Procurement Code Regulation §19-445.2070, the referenced bid/bidder is rejected. S. C. Consolidated Procurement Code Regulation §19-445.2070(A) states that "any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected."

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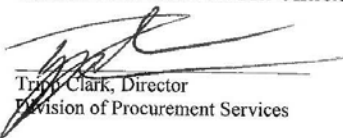
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Terry Clark, Director
Division of Procurement Services


Larry Maddox, Director
Bureau of Business Management

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.