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Protest Decision

Matter of: Thyssenkrupp Elevator Corporation

Case No.: 2020-138

Posting Date: July 23, 2020

Contracting Entity: Coastal Carolina University

Solicitation No.: CCU-9300341

Description: Elevator Maintenance and Repair Services

DIGEST

Protest of lack of site visit is denied as untimely. The protest letter of Thyssenkrupp Elevator Corporation (TEC) 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	June 1, 2020
Amendment 1 Issued	June 23, 2020
Intent to Award Posted	July 15, 2020
Protest Received	July 16, 2020

Coastal Carolina University (CCU) issued this Invitation for Bids on June 1, 2020 to obtain a source for complete elevator maintenance and repair services for the University's thirty-nine (39) elevators for a potential five-year term beginning September 4, 2020 and ending September 3, 2025. Seven bids were received, and an Intent to Award was posted to Charter Elevator Carolinas on July 15, 2020. TEC protested on July 16, 2020:

We would like to submit our contest or protest the CCU-9300341, we understand due to the COV-19 of social distancing but none of the elevator vendors were allowed to survey the equipment to verify current testing, condition of elevators for part warranty, which other than bid spec would determine the Maintenance involved other than the monthly bid spec for time needed on each visit based on current condition and what parts need to be replaced immediately which is highly vital to the bid price. The non-survey provided a blind bid which does not reflect an accurate bid for the elevator maintenance. I believe that each elevator bidding vendor which would consist of only 1 or 2 persons from each company could have surveyed on separate time intervals with one CCU Maintenance staff member to allow machine room access and elevator vendor could access hoistway without a CCU Maintenance Staff member, we wear masks as company policy since March 2020.

ANALYSIS

The original solicitation included the following statement:

1. Elevators – Post Award Inspection.

Due to the University's operations during the current pandemic, a pre-bid site visit will not be scheduled or provided to any potential offeror.

Following the potential award of a contract and prior to the contract start date, the successful Contractor shall be provided an opportunity to schedule a date and time to inspect each elevator on the University's campus. Should the successful Contractor not find the elevators in suitable condition, a written report on each elevator not meeting this requirement, along with the cost for the necessary repairs, must be submitted to the University's Contract Representative.

Contractor may be required to perform all or part of the repairs noted in report, if in the opinion of the University such repairs are necessary. However, the University reserves the right to have identified repairs performed by another party prior to turning the elevators over the contractor for maintenance.

[Solicitation, Page 14]

Section 11-35-4210(1)(b) of the Code grants any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract the right to protest as follows:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

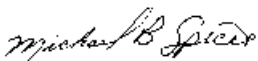
(emphasis added)

The agency's intention not to allow site visits was known to TEC and could have been challenged as a protest of the solicitation but cannot be challenged as a protest of the award.

DECISION

For the reasons stated above, the protest of Thyssenkrupp Elevator Corporation is dismissed as untimely.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Pfaff, Eugene](#)
To: [Protest-MMO](#)
Cc: [Boemer, Michael](#); [Costenoble, Charlotte](#)
Subject: [External] Contest- CCU-9300341
Date: Thursday, July 16, 2020 9:52:27 AM

Good Morning,

We would like to submit our contest or protest the CCU-9300341, we understand due to the COV-19 of social distancing but none of the elevator vendors were allowed to survey the equipment to verify current testing, condition of elevators for part warranty, which other than bid spec would determine the Maintenance involved other than the monthly bid spec for time needed on each visit based on current condition and what parts need to be replaced immediately which is highly vital to the bid price. The non-survey provided a blind bid which does not reflect an accurate bid for the elevator maintenance. I believe that each elevator bidding vendor which would consist of only 1 or 2 persons from each company could have surveyed on separate time intervals with one CCU Maintenance staff member to allow machine room access and elevator vendor could access hoistway without a CCU Maintenance Staff member, we wear masks as company policy since March 2020.

Please feel free to contact me with any questions

Thanks,

Regards,
Tripp Pfaff
Myrtle Beach Branch Manager
ET-AMS/FLD

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[MAX - Predictive maintenance from thyssenkrupp Elevator - YouTube](#)

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.