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Protest Decision

Matter of: Jet-Vac Equipment Company, LLC

Case No.: 2021-101

Posting Date: August 5, 2020

Contracting Entity: SC Department of Transportation

Solicitation No.: 5400018766

Description: Truck Mounted Pipe Cleaner

DIGEST

Protest that apparent successful bidder is not responsive and that there were irregularities in the solicitation is denied. The protest letter of Jet-Vac Equipment Company, LLC (Jet-Vac) 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:	01/06/2020
Amendment 1 Issued	01/24/2020
Amendment 2 Issued	01/28/2020
Amendment 3 Issued	01/29/2020
Intent to Award Posted	07/17/2020
Intent to Protest Received	07/21/2020
Protest Received	07/23/2020

The South Carolina Department of Transportation (DOT) issued this Invitation for Bids on January 6, 2020 to acquire truck mounted pipe cleaners. Bids were received on February 14, 2020. An Intent to Award was posted to Carolina Industrial Equipment, Inc (CIE) on July 21, 2020. Jet-Vac filed its protest on July 23, 2020 alleging the bid submitted by CIE is not responsive and that there were irregularities in the bidding schedule.

ANALYSIS

Jet-Vac first alleges:

1. The intent to award has been awarded to a company whose product cannot and does not meet the equipment specifications as detailed in:
Scope of Work/Specifications
Cleaner, Pipe and Vacuum, Truck-Mounted
SCOOT Spec No. 0122.37 - 06/06/2019

Jet-Vac does not specify how the equipment bid by CIE fails to meet the specifications. Section 11-35-4210(2) requires:

A protest pursuant to subsection (1) must be in writing, filed with the appropriate chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(emphasis added) This issue of protest is dismissed for lack of particularity.

Jet-Vac next alleges:

2. On the bid tabulation sheet, it appears that each bidder interpreted the line item pricing differently. Each bidder entered different information into different line items, making it difficult to quantify a true winner.

Jet-Vac argues:

We would also like clarification of what equipment should be included on each line item. The bid tabs show inconsistent pricing for each line item.

For example:

1. Some bidders price the sewer module and the chassis in Line 1, where some bidders price the sewer module only. It is clearly stated "truck mounted" for Line 1 price.
2. For line item 3, some bidders price the optional fan or pd blower only, while others price the sewer module and the optional fan or pd blower.
3. We have included warranty prices in line item 7, and that is why our line item 7 is higher than other bidders. See chart on page 1.

The bidding schedule asked for prices for seven items. The solicitation provided that the low bid would be determined by summing the extended prices of all seven lines.

CALCULATING THE LOW BID

The low bid will be calculated by summing the Extended Prices. The Extended Price is the Unit Price multiplied by the Quantity.

[Solicitation, Page 27]

Section 11-35-4210(1)(b) provides:

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) Protests about the construct of the solicitation must be addressed within 15 days of the issuance of the solicitation or amendment at issue, and cannot be raised as a protest of the award. To the extent that Jet-Vac's request for clarification is intended to be an issue of protest, it is dismissed as untimely. Jet-Vac provides no evidence that bidders failed to provide all the required pricing, or that there was an error in calculating

the low bid. The Procurement Review Panel has held that the burden of proof lies with the protestant, which must sustain its allegations by the weight or preponderance of the evidence. See *In Re: Protest of Johnson Controls, Inc.*, Panel Case 1989-9. Jet-Vac has failed to meet its burden of proof that any alleged confusion with the bidding schedule resulted in a flawed evaluation or award. This issue of protest is denied.

Jet-Vac next alleges:


3. It appears that Jet-Vac is the only bidder to include the required 72 months of warranty as requested in the published bid specification. All of the chassis prices are close to the price of a chassis without an extended warranty. It appears from comparison that ours is the only one to include this and that is why our chassis price is so much higher. Extra warranties add money.

Jet-Vac offers no evidence, other than a lower price for the equipment, that CIE did not include the 72-month warranty. Jet-Vac has failed to meet its burden of proof and this issue of protest is denied.

DECISION

For the reasons stated above, the protest of Jet- Vac Equipment Company, LLC is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



Solicitation: 5400018766
Description: Truck-Mounted Pipe Cleaner
Agency: SC Department of Transportation

07/23/2020

Materials Management Office
Chief Procurement Officer – John White
protest-mmo@mmo.state.sc.us

Dear Mr. White –

Please accept this letter as Jet-Vac Equipment Company, LLC’s notice of intent to protest and formal protest with the grounds of protest listed below:

1. The intent to award has been awarded to a company whose product cannot and does not meet the equipment specifications as detailed in:
Scope of Work/Specifications
Cleaner, Pipe and Vacuum, Truck-Mounted
SCDOT Spec No. 0122.37 – 06/06/2019
2. On the bid tabulation sheet, it appears that each bidder interpreted the line item pricing differently. Each bidder entered different information into different line items, making it difficult to quantify a true winner.
3. It appears that Jet-Vac is the only bidder to include the required 72 months of warranty as requested in the published bid specification. All of the chassis prices are close to the price of a chassis without an extended warranty. It appears from comparison that ours is the only one to include this and that is why our chassis price is so much higher. Extra warranties add money.

Here is a breakdown of our **TOTAL** bid of \$378,783.87:

Sewer Module	\$249,533.87
Chassis	\$110,345.00
7 Year Engine Warranty	\$ 17,655.00
3 Year Transmission Warranty	\$ 1,250.00
Total WITH Warranties	\$378,783.87

5746 Broad Street, Sumter, SC 29154
800.527.4469 or 803.494.4430
803.494.4440 fax



The relief requested is requiring that ALL bids meet ALL specs and include the 72-month warranty. If we were allowed to bid without meeting all of the requested specs, or without the 72-month warranty, our bid would be much lower.

We would also like clarification of what equipment should be included on each line item. The bid tabs show inconsistent pricing for each line item.

For example:

1. Some bidders price the sewer module and the chassis in Line 1, where some bidders price the sewer module only. It is clearly stated "truck mounted" for Line 1 price.
2. For line item 3, some bidders price the optional fan or pd blower only, while others price the sewer module and the optional fan or pd blower.
3. We have included warranty prices in line item 7, and that is why our line item 7 is higher than other bidders. See chart on page 1.

We look forward to your response.

Best regards –

A handwritten signature in blue ink, appearing to read "Justin Kohl", is written over a light blue horizontal line.

Justin Kohl
President

5746 Broad Street, Sumter, SC 29154
800.527.4469 or 803.494.4430
803.494.4440 fax

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.