

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

CET Fire Pumps, MFG

Forestry Commission
IFB No. 5400005651

Furnish and Deliver Firefighting Slip On
Units

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2013-112

POSTING DATE: July 8, 2013

MAILING DATE: July 8, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from CET Fire Pumps, MFG. (CET). With this invitation for bids (IFB), the South Carolina Forestry Commission (Forestry) attempted to procure five different types of Firefighting Slip-On Units. These units are designed for loading onto pick-up trucks for use in fighting forest fires. Following evaluation of the bids, Forestry rejected CET's bid as non-responsive, on the basis of a CAD drawing CET included with its bid for Item #3. It posted a Notice of Intent to Award to R.A.J. Fire Trucks (RAJ). CET protested Forestry's Intent to Award.

In order to resolve the matter, the CPO conducted a hearing June 26, 2013. Appearing before the CPO were the Ralph A. Johnson Company, represented by Dean Thompson and Sam Turner, and Forestry, represented by Michael Montgomery, Esq. The CPO sent notice of the hearing to CET by electronic mail and post, but no one from CET appeared at the hearing.¹

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

¹ A party challenging the procurement officer's determination of non-responsiveness bears the burden of proving, by a preponderance of the evidence that the determination was in error. In a similar matter the Procurement Review Panel dismissed an appeal for the party's failure to appear and present its case. Appeal by Brantley Construction Co. and D&S Construction Co., Inc., Panel Case No. 1993-8. Since responsiveness must be determined from the face of the bid documents, and the procurement file has been made part of the record, the CPO will treat the merits of CET's claim.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On February 27, 2013, Forestry released the IFB. [Ex. 1]
2. On March 1, 2013, Forestry issued Amendment #1. [Ex. 2] Amendment #1 was not relevant to the grounds of protest.
3. On March 7, 2013, Forestry conducted a pre-bid meeting.
4. On March 8, 2013, Forestry issued Amendment #2.[Ex. 3] Amendment #2 was not relevant to the grounds of protest.
5. On April 1, 2013, Forestry posted its Intent to Award to R.A.J. Fire Trucks. [Ex. 9]
6. On April 12, 2013, CET filed its protest with the CPO. Forestry suspended its Intent to Award due to the protest.

DISCUSSION

Forestry's IFB included five line items, each line item representing a slip-on unit designed to fit a different model pick-up truck. Forestry announced to all bidders that the bidder offering the lowest total price for all five line items would win the award. CET included CAD drawings of all five line items. When bids were tabulated, CET's total was the lowest response. [Ex. 7]

Line item three was a 200 gallon slip-on firefighting unit for a Ford F-350 extended cab long bed pick-up. The specifications required that the hose reel be located at the back of the unit at the truck's tail gate. CET included in its bid a drawing of the unit it proposed to furnish that clearly shows the hose reel sitting atop the water tank. Based on that CAD drawing for line item five, Forestry rejected CET's bid as nonresponsive. It annotated the bid tabulation to reflect that CET's proposal for item three "does not meet specs," and included copies of the pertinent specification and CET's drawing in the file with notes explaining why the drawing did not comply with Forestry's requirements. [Ex. 8]

CONCLUSIONS OF LAW

CET protested Forestry's rejection of its bid and the intent to award to the Ralph A Johnson Company alleging:

1. Our bid was rejected based on a referenced drawing sent with our bid, which we took no exception, in writing. The drawing, representing one of five units in the contract, displayed the wrong location of a specific part. The specification called for a certain location and reference drawing showed the location in a different space. Our bid reflected no exception. The drawing was offered, as a courtesy, for reference. Our drawing became the defining document for award of the contract, to another bidder. Had we not submitted drawings, we would have received the contract. No drawings were requested and yet we were rejected for them.
2. We also noted, the intent to award is for a company that is not a registered organization in the state of SC. On the official bid tabulation and the official intent to award letter the company name is R.A.J. Fire Trucks and the intent to award would go to a company with a similar name Ralph A Johnson Company. This a bit confusing to us, since they were given a significant, in state advantage and were still not low bid.

Regarding Protest Ground #1, according to Forestry officials, Forestry rejected CET's bid on the basis of a CAD drawing that CET submitted with its bid for Item #3 clearly reflected the hose reel sitting atop the water tank. The specifications, however, required an "Electric Rewind Hose Reel with a single hose roller mounted on the end of the skid platform beside the pump/motor." [Ex. 1] (Emphasis added) The specifications for the pump/motor required that the "Pump/motor is to be placed on the end of the skid platform at the tailgate. No placement of pump/motor on top of the tank. [Ex. 1] (Emphasis added)

CET acknowledged its drawing shows a unit that fails to meet Forestry's specifications. It contends that the drawing was offered "as a courtesy, for reference." Since CET took no exception to the specification, it argues Forestry should have ignored the drawing.

Regarding award of an IFB, the Consolidated Procurement Code reads, "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.” [11-35-1520(10)] The Code 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.” [11-35-1410(7)]

CET submitted its drawings of the items voluntarily and at its own risk. CET’s drawing for Item #3 reflected the hose reel atop the water tank, not on the end of the skid platform at the tailgate in violation of the specifications. Therefore, CET was nonresponsive to the requirements for Item #3. Forestry rejected CET’s bid appropriately. Protest Ground #1 is denied. *Cf. Appeal by Blue Bird Corp.*, Panel Case No. 1994-15 (“The Panel would caution vendors that optional information [contained in a drawing] could cause confusion and be a grounds for rejection of a bid as nonresponsive....”)

Regarding Protest Ground #2, CET alleged “the intent to award is for a company that is not a registered organization in the state of SC. On the official bid tabulation and the official intent to award letter the company name is R.A.J. Fire Trucks and the intent to award would go to a company with a similar name Ralph A Johnson Company.” The cover page of the awardee’s bid read that it was submitted by “R.A.J. Fire Trucks (Ralph A. Johnson Company, Inc.)” [Ex. 6] The actual front page of the bid read, “Name of Offeror: Ralph A. Johnson Co., Inc.” The bidder provided its Home Office Address, Notice Address, Payment Address, and Order Address as, “Ralph A. Johnson Co., Inc., P.O. Box 248, Roebuck, SC 29376.” [Ex. 6, p. 2] In its request for preferences, the bidder identified its physical location as, “Ralph A. Johnson Co., Inc., 5821 Highway 221, Roebuck, SC 29376.” [Ex. 6, p. 2] The bidder also provided its Taxpayer Identification No. and State Vendor No.

CET’s reference to the bid tabulation is meaningless because the bid tabulation is merely a worksheet, not the official award. Forestry posted its Intent to Award to R.A.J. Fire Trucks.

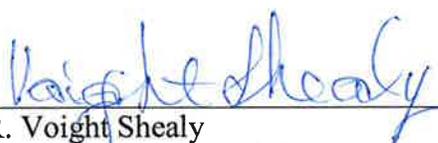
Forestry responded to the protest in a letter to the CPO dated April 16, 2013, writing, “The company goes by both names and is registered with the State of South Carolina’s Secretary of State’s office as Ralph A. Johnson Company.” [Ex. 11]

In a written statement provided the bidder at the hearing, the Ralph A. Johnson Company, Inc. wrote, “Each form supplied by and required by the State was filled out with the proper information and signed by an officer of the Ralph A. Johnson Company. We are incorapted [sic] in SC and have a business located in Spartanburg, SC. NO where on the official bid form summitted [sic] was the name R.A.J. Fire Trucks.” [Ex. 12]

The CPO finds the bid was properly submitted by the Ralph A. Johnson Company. Forestry should amend its Intent to Award to correct its ministerial error. However, there is no doubt who submitted the winning bid, a bidder registered with the State of South Carolina Secretary of State and as a bidder to the State of South Carolina. Therefore, Protest Ground #2 is denied.

DETERMINATION

For the foregoing reasons the protest is denied.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2013)

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 108.1 of the 2013 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
1105 Pendleton Street, Suite 202, 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.



ACCEPT ONLY THE BEST™

April 12, 2013

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Reference: Contract number 5400005651, Firefighting slip-on Units

Gentlemen:

The above reference contract was awarded to another bidder, at a significantly higher cost, than the bid submitted by CET Fire Pumps Manufacturing.

1. Our bid was rejected based on a referenced drawing sent with our bid, which we took no exception, in writing. The drawing, representing one of five units in the contract, displayed the wrong location for a specific part. The specification called for a certain location and reference drawing showed the location in a different space. Our bid reflected no exception. The drawing was offered, as a courtesy, for reference. Our drawing became the defining document for award of the contract, to another bidder. Had we not submitted drawings, we would have received the contract. No drawings were requested and yet we were rejected for them.
2. We also noted, the intent to award is for a company that is not a registered organization in the state of SC. On the official bid tabulation and the official intent of award letter the company name is R.A.J. Fire Trucks and the intent to award would go to a company with a similar name Ralph A Johnson Company. This a bit confusing to us, since they were given a significant, in state price advantage and were still not low bid.

We respect the decision(s) of the state of South Carolina, but feel these above referenced questions need to be addressed for future bids, we would be involved in.

Thank you, in advance, for your attention to this matter.

Sincerely,


Stephan Thibault
President
CET Fire Pumps, MFG.

sales@fire-pump.com • www.fire-pump.com | Toll Free U.S.A.: 1 800 567-2719 • Fax: 1 800 434-2613
Toll Free Canada: 1 888 844-2285 | International: Phone: 1 450 568-2719 • Fax: 1 450 568-2613

A CENTURY OF ENGINEERING FOR THE BRAVEST

200 Gallon Slip-On Firefighting Unit (Long Bed)

- 200 Gallon Polypropylene Tank
- 5 Gallon Integrated Foam Cell
- Foam Fill Tower and Water Fill Tower on top of tank
- Unit must be built to fit a 2011 Ford F-350 Ext. Cab Long Bed pickup (98in Long X 50" Between Wheel Wells)
- Unit must allow 10" of space on either side of tank to accommodate the placement of tool boxes on the bed rails (to be installed later by SCFC)
- Pump/motor is to be placed on the end of the skid platform at the tailgate. No placement of pump/motor on top of the tank.
- Pump must be at least 120 GPM and 300psi.
- At least 18 hp Gasoline motor with electric start. Power to be supplied by connection to vehicle.
- Minimum 4 gallon aluminum gas tank
- Electric Primer
- Foam proportioning system
- One (1) – Male 1 ½" NH Overboard Discharge w/ cap off back of skid unit w/ Quarter Turn Ball Valve
- One (1)- Male 2" NPSH Overboard Suction w/ cap on back of skid unit w/ Quarter Turn Ball Valve
- 1" Tank Fill with 1" Quarter Turn Valve
- Unit must be capable of drafting
- Electric Rewind Hose Reel with single hose roller mounted on the end of the skid platform beside the pump/motor. Manual rewind capability for power outage situations.
- 1" Quarter Turn Reel Shut-Off Valve
- 200' X ¾" 300psi hose w/ Forester Nozzle
- Suction and Discharge labeled
- Operator panel w/ pressure gauge, Foam proportion selector, starter, choke, throttle, primer control, hour meter, and work light. Installed at rear of skid unit facing the tailgate.
- Stainless Steel Plumbing
- Capable of being purged by compressed air for winterization
- Unit must be built on a single platform for easy installation and removal with openings in platform for lifting by forklift.

S.C. Forestry Commission

BID NO 5400005651 OPENING DATE 03/18/2013 11:00 AM DESCRIPTION SLIP ON UNITS

Vendor	RVP	USEPP	SCEPP	RSCP	RCF	Unit Price	Extended Price
<i>Overhead</i>		✓				14440.83	14449.83
		✓				14718.84	14718.84
		✓				14718.84	14718.84
		✓				14449.83	28899.66
		✓				23744.29	471528.58
R.D. Fire Trucks	✓	✓	✓			13985.24	13985.24
	✓	✓	✓			14340.00	14340.00
	✓	✓	✓			14340.00	14340.00
	✓	✓	✓			18985.24	27970.58
	✓	✓	✓			19340.00	387120.00

Handwritten signature

1091355-78
 Frederick E
 02/12/20

13031315

S.C. Forestry Commission

BID NO 540005651 OPENING DATE 03/18/2013 11:00 AM DESCRIPTION SLIP ON UNITS

Vendor	RVP	USEPP	SCEPP	RSCP	RCP	Unit Price	Extended Price
W.S. Darley						14288	14288
						14288	14288
						14288	14288
						14288	35576
						14288	32176
CET Fire Rump						11735.50	11735.50
						11765.50	11765.50
					#	1765.50	1765.50
						11735.50	23471.00
						17965.50	35131.00

* Items not meet specs

[Handwritten signature]

cc give hold

05 29 11 50

**STATE OF SOUTH CAROLINA
SOUTH CAROLINA FORESTRY COMMISSION
5500 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29212**

Intent to Award
Posting Date: April 1, 2013

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina consolidated Procurement Code applies to this award. Protest to be filed with:

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Facsimile: 803 737-0639
Email: protest-mmo@mmo.state.sc.us

This is a statement of intent to award a contract and becomes the official statement of award effective **8:00 AM, April 14, 2013**, unless otherwise suspended or canceled. Vendors are cautioned not to begin work on the contract or incur any costs associated with the contract prior to the effective date of the contract. The State assumes no liability for the expenses incurred by vendors prior to the effective date of the contract.

Solicitation : 5400005651
Issue Date : 02/27/2013
Opening Date : 03/18/2013 11:00 am local time
Description : Furnish and Deliver Firefighting Slip on Units

Awarded To : R.A.J. Fire Trucks
P O Box 248
Roebuck SC 29376

Evaluated Amount : \$109,355.78
Total Potential Value : \$109,355.78
Contract Number : 5400005651

<u>Item</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
000001	150 Gallon Slip On	13,985.26	13,985.26

<u>Item</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
000002	200 Gallon Slip On	14,340.00	14,340.00

<u>Item</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
000003	200 Gallon Slip On	14,340.00	14,340.00

<u>Item</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
000004	150 Gallon Slip On	13,985.26	27,970.52

<u>Item</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
000005	700 Gallon Slip On	19,360.00	38,720.00

Melissa Fleming, Procurement Manager
South Carolina Forestry Commission