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CHAIRMAN, HOUSE WAYS AND MEANS

Protest Decision

Matter of: Wholesale Industrial Electronics, Inc.

Case No.: 2016-136

Posting Date: March 31, 2016

Contracting Entity: South Carolina Department of Corrections

Solicitation No.: 5400010569

Description: Vicon Cameras

DIGEST

Protest of award alleging the ambiguity in solicitation documents regarding shipping charges is denied, where awarded vendor included shipping as a separate line item.

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

¹ The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

DISCUSSION

Wholesale Industrial Electronics, Inc. (Wholesale), protests the inclusion of shipping as a separate line item in the award to A3 Communications, Inc. (A3) for Vicon Cameras. Wholesale's letters of protest are incorporated by reference. [Attachments 1 and 2 respectively]

BACKGROUND

Solicitation Issued	December 17, 2015
Amendment 1 Issued	January 12, 2016
Intent to Award Issued	March 3, 2016
Protest Received	March 11, 2016
Award Suspended	March 15, 2016
Protest Amended	March 17, 2016

The South Carolina Department of Corrections (DOC) issued this Invitation For Bids under a delegation by the Chief Procurement Officer to establish a source or sources of supply for the purchase of new Vicon Camera Equipment at Lee Correctional Institution and McCormick Correctional Institution. The solicitation included two lots. Lot 1 was comprised of line items 1 – 46 to be delivered to Lee Correctional Institution. Lot 2 was comprised of line items 47 – 87 to be delivered to McCormick Correctional Institution. Award was to be made to one bidder for the two lots combined.

DISCUSSION

Wholesale protests that:

After reviewing Solicitation 5400010569, we find no reference to freight terms whatsoever. We also find no provision on the Bid form for the inclusion of freight charges. Furthermore there is no provision on the bid form for any additional lines. It is clear that there is ambiguity in regard to the Bid Policy for the inclusion of freight charges. When a separate freight charge line is provided in the Bid, item pricing methodology is different. It is our contention that in fairness to ALL bidding parties that this should have been addressed in the original solicitation, or an AMENDMENT to the solicitation should have been issued making it clear that freight could be added to the bid and by what means that could be done.

The solicitation clearly states that the bidder is responsible for the shipping charges:

DELIVERY / SHIPPING

All deliveries shall be shipped F.O.B. Destination-Freight Prepaid, the seller pays and bears all freight charges; collect shipments will not be accepted. It is agreed by the parties hereto that delivery by the contractor to the common carrier does not constitute delivery to the State of South Carolina. Any claim for loss or damage shall be between the contractor and the carrier.

(Solicitation, Page 14) (emphasis added)

The solicitation did provide for additional charges for shipping if the agency requested a quicker delivery than specified in the bid:

DELIVERY DATE -- 30 DAYS ARO (JAN 2006)

Unless otherwise specified herein, all items shall be delivered no later than thirty days after contractor's receipt of the purchase order. If the using governmental unit requests delivery sooner than the time specified, contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order. [03-3025-1]

(Solicitation, Page 13) (emphasis added)

The solicitation did not specify whether shipping was to be included as part of each line item price, added to a single line item, or listed as a separate item. Any ambiguity about the inclusion of freight charges as part of each line item or as a separate line item, was evident to the bidders at the time the solicitation was published or the time Amendment 1 was published. Section 11-35-4210(1)(b) of the Code provides that:

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (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)

Any protest of an ambiguity in the solicitation or amendment is untimely and the CPO lacks authority to hear that issue and the issue is dismissed.

Wholesale protests that A3 was allowed to add a line item to its bid for shipping in spite of clear language on the on-line solicitation cover page [Attachment 3] prohibiting bidders from adding line items to their bids. The solicitation cover page states:

Bidder can add items? No

A3 completed all the line items for Lots 1 and 2 and added a statement below the bid schedule that shipping would be \$4,000. According to the DOC Procurement Director, DOC added an additional line item to A3's bid to capture the shipping charge in the bid tabulation. (Attachment 4)

Section 11-35-1520(13) provides that a minor informality or irregularity can be cured or waived when it is in the best interest of the state and not prejudicial to other bidders.

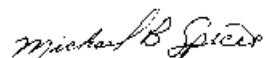
A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State.

A3 included the shipping charge in its bid, just not in the form specified in the bid document and is an immaterial variation from the exact requirements of the bid and is waived. A3's shipping charges were properly included in the bid tabulation. Regardless whether the shipping charges were included as part of each line item or added to a single line item or added as a separate item, A3 was the lowest bidder for both lots combined.

DECISION

For the reasons stated above, the protest is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Walt Klimek](#)
To: [Protest-MMO](#)
Cc: [Blair Harner](#); [Gerald Sonenshine](#)
Subject: Solicitation 5400010569 - PROTEST OF INTENT TO AWARD
Date: Friday, March 11, 2016 2:15:42 PM
Attachments: [Bid Invitation# 5400010569 Front Page.pdf](#)
Importance: High

TO: Chief Procurement Officer MMO – 03/11/2016

Wholesale Industrial Electronics protests the award of Solicitation Number 5400010569 posted on March 3, 2016 to A3 Communications, Inc. for the following reason. The bid in question was specific for 87 line items. HOWEVER, A3 Communications added a line 88 to the bid. It is clearly specified under the Bid Invitation Rules (see attached): Bidder can add items? NO !!! Had we known we could add a line item as A3 had done (line 88) we would have bid differently. We strongly feel adding this line item gave A3 Communications a clear and unfair advantage.

Thus, since A3 Communications did not follow the SPECIFIC GUIDELINES of the bid, we respectfully ask you to declare this bid NULL and VOID and reissue it! This would give all bidding parties an equal opportunity. Thank you for your consideration in this disputed award.

Respectfully submitted,

Walter A Klimek
Wholesale Industrial Electronics
1900 Richland St.
Columbia, SC 29201
803-451-6118

Attachment 2



1900 Richland Street • Columbia, South Carolina 29201
PHONE (803) 256-0746 • TOLL FREE (800) 868-2213 • FAX (803) 256-0815

TO: Chief Procurement Office MMO – 3/17/2016

RE: Solicitation 5400010569 PROTEST OF INTENT TO AWARD

Wholesale Industrial Electronics previously submitted a protest of this award based on the addition of a Line Item 88 to the Award that was not listed in the Bid. This was added on the Award to accommodate bidder A3 Communications for freight costs. Ms. Bishop explained via phone only that A3 Communications did not add a line; that it was added by a procurement officer to the award after the closing date to accommodate A3 Communications inclusion of a freight charge that they apparently documented either somewhere on their bid submittal or as an attachment. The Bid stated that Vendors must bid as specified. After reviewing Solicitation 5400010569, we find no reference to freight terms whatsoever. We also find no provision on the Bid form for the inclusion of freight charges. Furthermore there is no provision on the bid form for any additional lines. It is clear that there is ambiguity in regard to the Bid Policy for the inclusion of freight charges. When a separate freight charge line is provided in the Bid, item pricing methodology is different. It is our contention that in fairness to ALL bidding parties that this should have been addressed in the original solicitation, or an AMENDMENT to the solicitation should have been issued making it clear that freight could be added to the bid and by what means that could be done.

We respectfully submit that this ambiguity affects item pricing, and request that the intent to award be rescinded. We further request that this solicitation be reissued with corrective measure taken to remedy the freight policy incertitude. Be advised that we are prepared to involve our Legal Counsel in this matter if this Award is not rescinded and reissued with freight terms specified for legitimate bidding.

Walter Klimek
CCTV Specialist - Wholesale Industrial Electronics
Gerald B. Sonenshine
President – Wholesale Industrial Electronics

Attachment 3



Invitation For Bid

Version: 13

Bid Status: 5500043316 Bid Held
Created: 02/11/2016 08:30:52 EST
ROLAND ADDY
Last upd: 02/12/2016 08:19:46 EST
ROLAND ADDY

Bid invitation number: 5400010569
Description: LEE IP CAMERAS
Buyer name: ANDREA BOWMAN
Buyer email: bowman.andy@doc.state.sc.us
Buyer phone: 803-896-1934
Estimated award date: 02/16/2016
SCBO catg: Information Technology

Bidder: WHOLESALE INDUSTRIAL ELECTRONICS
1900 RICHLAND STREET
COLUMBIA SC 29201

Bid invitation rules

Bidding procedure: Public bid invitation
Requested price information: Normal price
Timezone: EST
End date/time: 02/12/2016 10:00:00 EST
Opening date/time: 02/12/2016 10:00:00 EST

Bids required for all items? No

Bid may be changed? Yes

Bidder can add items? No

Bid Basic Data

Target Value Bid: 1,334,437.15 (United States Dollar)
Terms of Payment: net 30 days
Currency: USD United States Dollar

Information from purchaser - header attachment(s)

Description
Solicitation
Amendment 1

Bid details

Line Number: 0001

Vicon, V923D-N39MIR-IP, 3 megapixel

Item Category: Material
Product Category: 84084 - Video & Audio Systems Acc. & Parts (CCTV)
Internal Item Number: 1
Target Quantity of Bid Invitation: 150.00 each
Price: 690.00 (United States Dollar) Per 1 each
Target Value Bid: 103,500.00 (United States Dollar)

Information from purchaser - item tendering text

vandal dome, IR, motorized lens. Vendor must be a certified ViconIntegrator.

Attachment 4

From: [Ruthie Bishop \(C045688\)](#)
To: [Spicer, Michael](#)
Cc: [Melissa Mims \(MmsMel\)](#)
Subject: RE: Protest of Wholesale Industrial Electronics, Case 2016-136
Date: Thursday, March 17, 2016 4:23:06 PM
Attachments: 5400010569 Full Bid.doc
5400010569 Intent to Award.doc
5400010569 TAB SHEET LOT 1&2.xls
A3 Communications Sol # 5400010569 SC Dept of Corrections ELECTRONIC COPY.pdf
Amendment 1.doc
Importance: High

Mike,

Please find attached all documents that pertain to Solicitation 5400010569 Vicon Camera's. SCDC was delegated authority to process this bid with the understanding that Kathy Santandreu from State Procurement would approve all documents before they were released. SCDC complied with this request.

I have spoken with Walt at Wholesale Industrial and explained that A3 Communications was not allowed to add a line item to the bid. A3 Communications stated in their bid that shipping charges was \$4,000.00 and when the clerical staff in my office typed the Intent to Award they added line 88 in order to show the shipping charges. SCDC verified with MMO that SCDC could accept A3 Communications bid since they had added shipping charges and SCDC was informed that the shipping charges could be accepted. Therefore, A3 Communication was still lower than all other vendors.

If you need anything else please let me know.

I will be out of the Office on Friday if you need anything please contact Melissa Mims at (803)896-1935 or by email: mims.melissa@doc.sc.gov

Thanks,
Ruthie

From: Spicer, Michael [mailto:mspicer@mmo.sc.gov]
Sent: Thursday, March 17, 2016 10:46 AM
To: Andy Bowman (C057464) <Bowman.Andy@doc.sc.gov>
Cc: Ruthie Bishop (C045688) <Bishop.Ruthie@doc.sc.gov>
Subject: Protest of Wholesale Industrial Electronics, Case 2016-136

Andy,
Can you send me a copy of the winning bid for solicitation 54100010569?

Thanks!



Michael B. Spicer | Information Technology Management Officer
Division of Procurement Services | SC State Fiscal Accountability Authority

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised September 2015)

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 111.1 of the 2015 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 209, 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.