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Protest Decision

Matter of: Pack Men Construction, LLC

Case No.: 2017-109

Posting Date: September 20, 2016

Contracting Entity: Department of Health and Human Services

Solicitation No.: 5400011883

Description: J-4 Renovation Project

DIGEST

Protest of an award based on the resident vendor preference is dismissed where contract award was less than \$50,000. Pack Men Construction's (Pack Men) letter of protest is included by reference. [Attachment 1]

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

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	08/01/2016
Quotes Received	08/16/2016
Award Issued	08/17/2016
Protest Received	08/25/2016

ANALYSIS

The South Carolina Consolidated Procurement Code (Code) grants any actual bidder, offeror, contractor, or subcontractor the right to protest the award or intended award of a contract. S.C. Code Ann. §11-35-4210(1)(b). Pack Men alleges that the award of this contract was based on application of the Resident Vendor Preference that was only made available to bidders submitting paper bids while denying online bidders the opportunity to claim the preference.

The South Carolina Department of Health and Human Services (HHS) issued this Request for Quotation on August 1, 2016, demolition and minor construction services on the fourth (4th) floor of the Jefferson Square Building located at 1801 Main Street, Columbia, SC 29201. The solicitation was distributed through the South Carolina Enterprise Information System (SCEIS) and requested bidders submit a hard-copy response.

Your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:	
MAILING ADDRESS: SCDHHS Procurement and Contracts 1801 Main St. 6 th Floor Columbia, SC 29201	PHYSICAL ADDRESS: SCDHHS Procurement and Contracts 1801 Main St. 6 th Floor Columbia, SC 29201

[Solicitation Cover Page]

The RFQ included a South Carolina Resident Vendor Preference claim form that was to be completed and returned with the vendor's hard-copy bid. Usually, bidders are encouraged to submit their solicitation responses online through SCEIS and, if applicable, are afforded the opportunity to request the resident vendor preference online with their bids. While HHS had

requested hardcopy quotations, bidders were not blocked from submitting online responses through SCEIS. However, the online bid schedule did not afford bidders the opportunity to request the resident vendor preference. There were no instructions in the solicitation for online bidders to complete the hardcopy form and attach a copy to the online response. Three of the five respondents to the RFQ requested the resident vendor preference in writing and the preference was applied in determining the award.

The Resident Vendor form, as published in the solicitation, included a note that the preference would not apply if the price of a single unit were more than \$30,000.

NOTE: Preferences do not apply to a vendor of goods whether in quantity or not when the price of a single unit is more than thirty thousand dollars.

[Solicitation, Page 4]

According to this statement in the solicitation the preference should not have applied since the lowest price bid was \$43,000. However, Section 11-35-1524(E)(2) actually limits application of the preference when the price of a single unit is more than fifty thousand dollars:

The preferences provided in subsections (B) and (C)(1)(i) and (ii) do not apply to a single unit of an item with a price in excess of fifty thousand dollars or a single award with a total potential value in excess of five hundred thousand dollars.

Two of the five bidders did not apply for the preference. Pack Men submitted the low bid of \$43,000.00. However, after application of the resident vendor preference, J. D. Powers, LLC was awarded the contract at \$44,500.00. The extent to which this misinformation discouraged those two bidders from applying for the preference is not known. Regardless, Section 11-35-1524(E)(5) specifically excludes a procurement for construction services from application of the preferences as follows:

This section does not apply to an acquisition of motor vehicles as defined in Section 56-15-10 or an acquisition of supplies or services relating to construction. This section does not apply to a procurement conducted pursuant to Section 11-35-1550(2)(a) or (b), Section 11-35-1530, or Article 9, Chapter 35.

(emphasis added)

Regrettably, the CPO has no discretion to remedy the mistakes in this matter. Section 11-35-4210(1)(d) limits the CPO's jurisdiction to procurements with a total or potential value greater than \$50,000:

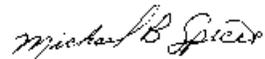
The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

Since the total potential value of this contract is \$44,500, the Chief Procurement Officer lacks jurisdiction to address the issues raised by Pack Men.

DECISION

For the reasons stated above, the protest of Pack Men Construction, LLC is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

DISPUTE ON AWARD DECISION

Solicitation Number: 540011883
Date issued: 8/01/2016
Opening Date/Time: 08/16/2016 at 12:00 pm
Procurement Officer: Brigitte Poore
Phone: 803-898-1012

SC HEALTH AND HUMAN SERVICES
J-4 Renovation Project

PROTESTED BY:
PACK MEN CONTRACTING LLC

REASONS FOR PROTEST

Both disputes are concerning the SC Resident Vendor preference.

We Pack Men Contracting submitted an online bid which we often have done to submit bids for SC State projects. On this occasion there was no vendor preference at all or any other questions to be acknowledged. From my experience and further investigation, if an agency is going to acknowledge a preference it would be in the questions section to check yes or no if the bidder wants to be granted any. We were the apparent low bidder in this case before any preference was given, however, we were told that once that preference was given the award would not be ours. Our argument is that although we did not walk a paper bid in, we should have been given the same opportunity to check yes or no under the questions for SC PREFERENCE. There was no questions and nothing else was asked for online other than a quote.

Second part to this is on that same SC vendor preference. During further research after we were informed we were found non responsive, we discovered that the residents preference form they put out under notes said, **“preference do not apply to a vendor of goods whether in quantity or not when the price of a single unit is more than thirty thousand dollars.”** So not only do they not have it online for bidders to acknowledge, we would not have turned it in anyhow because the bid was more than that amount.

We really think this award should be granted to us. Please contact us for any questions.

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.