

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

National Hospital Specialties

SC Department of Health and
Environmental Control
IFB No. 5400004837
Anti-hemophilia Factor Blood Products

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-145

POSTING DATE: January 16, 2013

MAILING DATE: January 16, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest dated October 22, 2012, from National Hospital Specialties (NHS). With this invitation for bids (IFB) the South Carolina Department of Health and Environmental Control (DHEC) attempts to procure anti-hemophilia factor blood products. After evaluating the bids received, DHEC posted a notice of intent to award to multiple vendors several different items pursuant to the bid schedule in the IFB. BDI Pharma, Inc., received several awards including the low price awarded from Profilnine SD. NHS protested the award, alleging that the price NHS quoted for Profilnine SD was from a superseded price list. Inasmuch as the facts surrounding the protest are not in dispute, the CPO decides the matter without a hearing.

NATURE OF PROTEST

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

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On September 4, 2012, DHEC issued IFB No. 5400004837.
2. On October 16, 2012, DHEC posted its Intent to Award, including the award to BDI for Profilnine SD.

3. On October 22, 2012, NHS filed its protest by email to the Protest-MMO address. The protest was timely filed.
4. On October 23, 2012, DHEC suspended the entire award.
5. On October 30, 2012, DHEC issued a “Reinstatement of Award” and a “Corrected Intent to Award,” both of which documents reinstated all awards except the award of Profilnine SD to BDI. No one protested either of the award statements DHEC issued on October 30.
6. Also on October 30, 2012, BDI wrote to DHEC stating that its price for Profilnine SD “was inaccurately submitted at an expired price point that was below a recent manufacturer price increase....”

DISCUSSION AND DETERMINATION

In its email, NHS protested the award to BDI because BDI’s bid “reflected an incorrect price....” BDI admitted this allegation in its letter to DHEC. Since the facts surrounding the protest are not in dispute, the protest is granted.



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 January 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 83.1 of the 2012 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, an incorporated business must retain 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.

Skinner, Gail

From: Protest-MMO <Protest-MMO@mmo.sc.gov>
Sent: Monday, October 22, 2012 10:31 AM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Protest-Profilnine Price- SC bid

From: Jerry Kaplan[SMTP:GKAPLAN@NHSUSA.COM]
Sent: Monday, October 22, 2012 10:30:24 AM
To: Protest-MMO
Cc: Jerry Grossman; Jim Komar; Elana Ducran
Subject: Protest-Profilnine Price- SC bid
Auto forwarded by a Rule

Solicitation: 5400004837
Description: Anti-hemophilia Factor Blood Products
Posting Date: October 16, 2012

Dear Chief Procurement Officer, Materials Management Office

Due to the nature of biological products, manufacturers increase biological product prices at various times during the year. A product, Profilnine SD, was awarded to BDI Pharma, Inc at a price that reflected an incorrect price. Grifols increased prices of Profilnine to all distributors prior to the bid submission. All other Profilnine bid submission prices reflect this increase except BDI Pharma's bid. The price they offered appears to be based on the old price. We respectfully request that Profilnine be awarded to the provider with the lowest accurate price.

Best regards,
Jerry Kaplan

Thank you,
Jerry Kaplan
Vice President, National Sales Manager
National Hospital Specialties
201-488-1174