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GOVERNOR

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CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

Protest Decision

Matter of: B&C Associates, Inc.

Case No.: 2016-143

Posting Date: May 2, 2016

Contracting Entity: Materials Management Office

Solicitation No.: 5400010601

Description: SCDMV Janitorial Services

DIGEST

Protest challenging procurement officer's determination of non-responsibility is denied absent any indication determination was clearly erroneous, arbitrary, capricious, or contrary to law.

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

B&C Associates, Inc. (B&C) protests the Intent to Award a contract for janitorial services for 63 locations of the South Carolina Department of Motor Vehicles, alleging that B&C was improperly determined to be non-responsible. B&C's letter of protest is incorporated by reference. [Attachment 1]

The Invitation For Bids was issued to secure janitorial services from bonded contractors for 63 locations of the South Carolina Department of Motor Vehicles. The solicitation was comprised of 21 lots with award by lot. Responses were received from seventeen bidders.

Section 11-35-1520(10) requires that:

Unless there is a compelling reason to reject bids as prescribed by regulation of the board, 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 must be given by posting the notice at a location specified in the invitation for bids.

Section 11-35-1810(1) requires:

Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The board shall by regulation establish standards of responsibility that shall be enforced in all state contracts.

Section 11-35-1410(6) defines a responsible bidder as:

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

B&C protests a determination that it was not a responsible bidder. In a letter to B&C, the procurement officer gave the following reasons for her determination:

B&C submitted an offer for this solicitation as instructed and was the apparent low bidder for two lots. However, while checking responsibility of the Offeror, The SC Secretary of the State website showed B&C in a forfeiture status.

On April 12, 2016, the Materials Management Office tried to contact Mr. William Chapman. Mr. Chapman was out of the office and a message was left with the Office Manager regarding the issue and a request for a quick response. The Office Manager returned the call saying that the problem was that they owed back taxes to the State but hoped to have that paid off by the end of the year.

After having the discussion with B&C that confirmed the validity of failure to pay State taxes, a Dun & Bradstreet report was pulled and reviewed. The report showed eight (8) liens against B&C with three (3) being the State of South Carolina in an open status. This was confirmed by Andrea Cornelius with the SC Department of Revenue on 4/13/16 prior to this determination.

REGULATION 19-445.2125 – Responsibility of Bidders and Offerors.

A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the State; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

The Materials Management Office (MMO) also contacted Mrs. Cathy Lucas with South Carolina Department of Motor Vehicles on April 13, 2016 to discuss the status of this vendor and providing her with all of the details discovered in the D&B report. After review and careful consideration, SC DMV agreed that a non-responsible determination would be appropriate.

It is evident from the offer as submitted by B&C Associates, Inc., plus the Dun & Bradstreet report referenced above, that B&C Associates, Inc., does not meet the definition of “Responsible bidder or offeror” as defined in 11-35-1410 (6). Therefore, B&C Associates, Inc. is deemed Nonresponsible for this solicitation, and the offer as submitted cannot receive further consideration for award.

(Attachment 2) (emphasis in original).

In its letter of protest, B&C responds:

... You indicated that you spoke to the office manager, however, I should have had an opportunity to address your concerns and further explain the issues regarding the forfeiture of corporation status and the state taxes.

The regulation states satisfactory record of performance, which I would think would come from references provided, my years in business, and the fact that I

currently provide service to several State Agencies, not my tax situation. To further explain the tax, this is old tax from 2008, which was during the economic turmoil that many businesses experienced. As a responsible business owner, I did not fold, the tax situation was handled appropriately with the SC DOR, and a payment plan was established to pay the back taxes. The company has not missed one payment on the installment plan. For the past 8 years all current payroll taxes have been paid on time, as well as federal taxes.

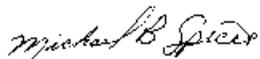
Based on regulation 19-445.2125, a prospective contractor may supply information concerning the responsibility of the contractor, I was not afforded the opportunity to provide further information. Also, no financial data was requested, i.e. profit & loss, 941 returns, etc. Which would have shown that B&C Associates is a responsible company and would be able to perform the services required.

S. C. Code Ann. Section 11-35-2410 provides that a determination of nonresponsibility under Section 11 35 1810(2) is final and conclusive unless “clearly erroneous, arbitrary, capricious, or contrary to law”. B&C has the burden to prove by a preponderance of the evidence that the procurement officer’s determination is clearly erroneous, arbitrary, capricious, or contrary to law. B&C argues that its past performance should take precedence but does not deny the findings by the procurement officer. B&C did not meet its burden to prove that the procurement officer’s determination was clearly erroneous, arbitrary, capricious, or contrary to law. *See, e.g., Appeal by Trinity 7 Security, LLC, Panel Case No. 2012-8; Appeal by Allied Waste Services, Panel Case No. 2013-12.*

DECISION

For the reasons stated above, the protest is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

"Your Properties Best Friend"



B & C ASSOCIATES

3201 Colonial Drive, Columbia, South Carolina 29203

Telephone: (803) 252-7582 1-800-634-2556 Fax: (803) 748-7112

April 14, 2016

Chief Procurement Officer
Material Management Office
Procurement Manager
1201 Main St. Suite 600
Columbia, SC 29201

SUBJECT: PROTEST OF AWARD: 5400010601 Non-Responsibility Determination SC
DMV Janitorial Service

Dear Sir:

I received your correspondence reference the above solicitation regarding the determination of B&C Associates as Non-Responsible. I am hereby protesting the reason given based on the sited regulation. You indicated that you spoke to the office manager, however, I should have had an opportunity to address your concerns and further explain the issues regarding the forfeiture of corporation status and the state taxes.

The regulation states satisfactory record of performance, which I would think would come from references provided, my years in business, and the fact that I currently provide service to several State Agencies, not my tax situation. To further explain the tax, this is old tax from 2008, which was during the economic turmoil that many businesses experienced. As a responsible business owner, I did not fold, the tax situation was handled appropriately with the SC DOR, and a payment plan was established to pay the back taxes. The company has not missed one payment on the installment plan. For the past 8 years all current payroll taxes have been paid on time, as well as federal taxes.

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William Chapman
President

Attachment 2

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HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

April 14, 2016

Mr. William Chapman
B&C Associates, Inc.
3201 Colonial Drive
Columbia, SC 29203

Re: Non-Responsibility Determination for Solicitation # 5400010601- SC DMV Janitorial Services

B&C Associates, Inc. (hereinafter referred to as "B&C") has been determined to be "Non-Responsible" and by state statute may not be awarded the referenced contract. This determination applies only to the solicitation referenced above.

SECTION 11-35-1410. Definitions of terms used in this article.

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

SECTION 11-35-1810. Responsibility of bidders and offerors.

(1) Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The board shall by regulation establish standards of responsibility that shall be enforced in all state contracts.

The Materials Management Office (MMO) issued an Invitation for Bid, No. 5400010601 for South Carolina Department of Motor Vehicles (DMV) Janitorial Services on February 26, 2016. The solicitation clearly stated the purpose and needs of SC DMV and the necessary requirements and work expected of the Offeror. The solicitation and procurement code require a financially sound Offeror who would be able to provide and pay for all materials, equipment, labor and services as well as perform all other acts and supply all things necessary, to fully and properly perform and complete the contracted work.

B&C submitted an offer for this solicitation as instructed and was the apparent low bidder for two lots. However, while checking responsibility of the Offeror, The SC Secretary of the State website showed B&C in a forfeiture status.

On April 12, 2016, the Materials Management Office tried to contact Mr. William Chapman. Mr. Chapman was out of the office and a message was left with the Office Manager regarding the issue and a request for a

quick response. The Office Manager returned the call saying that the problem was that they owed back taxes to the State but hoped to have that paid off by the end of the year.

After having the discussion with B&C that confirmed the validity of failure to pay State taxes, a Dun & Bradstreet report was pulled and reviewed. The report showed eight (8) liens against B&C with three (3) being the State of South Carolina in an open status. This was confirmed by Andrea Cornelius with the SC Department of Revenue on 4/13/16 prior to this determination.

REGULATION 19-445.2125 – Responsibility of Bidders and Offerors.

A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

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The Materials Management Office (MMO) also contacted Mrs. Cathy Lucas with South Carolina Department of Motor Vehicles on April 13, 2016 to discuss the status of this vendor and providing her with all of the details discovered in the D&B report. After review and careful consideration, SC DMV agreed that a non-responsible determination would be appropriate.

It is evident from the offer as submitted by B&C Associates, Inc., plus the Dun & Bradstreet report referenced above, that B&C Associates, Inc., does not meet the definition of "Responsible bidder or offeror" as defined in 11-35-1410 (6). Therefore, B&C Associates, Inc. is deemed Nonresponsible for this solicitation, and the offer as submitted cannot receive further consideration for award.



Jo Marie Brown, CPPO, CPPB
Procurement Manager

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.