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Protest Decision

Matter of: Rock Solid Technology, Inc.

Case No.: 2019-214

Posting Date: July 22, 2019

Contracting Entity: South Carolina Department on Aging

Solicitation No.: 5400017770 and 5400018007

Description: Ombudsman Software Management System

DIGEST

Protest of solicitation cancellation is granted but relief is denied due to unique circumstances. Rock Solid Technology's letter of protest is included by reference. (Attachment 1)

AUTHORITY

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

BACKGROUND

Solicitation 5400017770 Issued
Solicitation 5400018007 Issued

05/03/2019
05/24/2019

Published Opening Date for 5400017770	06/21/2019
Published Opening Date for 5400018007	06/13/2019
Protest of 5400017770 Received	06/26/2019

The State Fiscal Accountability Authority (SFAA) issued a Request for Proposals (5400017770) on behalf of the South Carolina Department on Aging to acquire an Ombudsman Software Management System on May 3, 2019 with a published opening date of June 21, 2019. This solicitation was first published in South Carolina Business Opportunities on May 6, 2019, and continued to appear every day through June 21, 2019. On May 24, 2019, SFAA issued solicitation 5400018007 on behalf of the South Carolina Department on Aging to acquire the same Ombudsman Software Management System with a published opening date of June 13, 2019. This solicitation was first published on May 24, 2019, and continued to appear in SCBO every day through June 13, 2019. The advertisement for the second solicitation included the following explanation:

DUE TO AN ADMINISTRATIVE ERROR (AN INCORRECT “SUBMIT BY DATE”) SOLICITATION 5400017770 HAS BEEN CANCELLED AND REPLACED WITH SOLICITATION 5400018007. THIS NEW SOLICITATION (5400018007) IS IDENTICAL TO THE ONE BEING REPLACED (5400017770) EXCEPT APPENDIX D WAS ADDED.

(emphasis in original)

Solicitation 5400017770 was set to prevent bidders from submitting responses through the South Carolina Enterprise Information System (SCEIS). However, an amendment cancelling the first solicitation was never posted to the public facing web site. Four proposals were received in response to the second solicitation (5400018007) on June 13, 2019. Rock Solid protested the RFP process regarding Solicitation 5400017770.

ANALYSIS

Rock Solid protested on June 26, 2019:

I write in order to protest of the RFP process regarding RFP 40001770 [sic]. This RFP was scheduled to close and receive proposals until June 21, 2019. Our company, Rock Solid technologies made a significant investment in the process of

replying to this RFP and we were ready to delivery it on time. When we asked Kathy Santandreu if there were any addendums regarding Q/A, since there were none posted, we received communication that the RFP 40001770 [sic] was replaced by RFP 5400018007 and that the due date had passed. The new RFP was basically the same except the date changed. There was no addendum or attachment for the original solicitation (40001770 [sic]) in the web site, indicating such change. The original solicitation was closed on the web site on June 20, 2019 right after we received notification from Kathy on the cancellation and replacement of the RFP. This after the replacement RFP process had ended therefore giving us no chance to respond.

Regulation 19-445.2065 states that “[e]very effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices.” The Panel has noted that this regulation places an affirmative duty on the State. *Appeal by Helena Chemical Co.*, Panel Case 2001-5. Here, when the State attempted to cancel Solicitation 5400017770, it failed to issue an amendment or to post a cancellation in SCEIS alerting prospective offerors that the solicitation, which appeared to be open, was in fact not open to receive proposals. While the State properly advertised and issued an amendment to Solicitation 5400018007 that cancelled Solicitation 5400017770, this notice was insufficient to satisfy the requirements of Regulation 19-445.2065. This issue of protest is granted.

Although the CPO grants the protest, he denies any relief. This is an unfortunate and unique situation, apparently caused by the procurement officer’s mistaken belief that her actions to close Solicitation 5400017770 had also removed the solicitation from public view.¹ But the CPO must strike a balance between the equitable treatment of vendors, on one hand, with the needs of the State on the other. While the CPO is sympathetic towards Rock Solid’s predicament, the State has already issued a new solicitation, received and evaluated proposals, and published an award that reveals how much the State is paying on the contract.

¹ The procurement officer closed the first solicitation because she made a typo in the date of award. Because SCEIS does not allow procurement officers to move a date backward, she tried to fix this error by closing the solicitation and opening a new one.

Finally, to the extent Rock Solid's protest of Solicitation 540001770 can also be interpreted as a protest to the award made in Solicitation 5400018007, Rock Solid lacks standing to protest that award. Under Section 11-35-4210, only an "actual bidder, offeror, contractor, or subcontractor" has standing to challenge an award. "[I]n order to protest an award or intended award, a party must bid on a contract and the State must announce its intent to award the contract to another bidder." *Appeal of South Carolina Association of the Deaf*, Panel Case No. 2008-5. Here, Solicitation 54000180078 was published in South Carolina Business Opportunities (SCBO), providing legally adequate notice as required by Sections 11-35-1520(3) and -1530(2). Additional notice was provided to all vendors registered in SCEIS with the appropriate commodity code. Four vendors submitted proposals in response to Solicitation 5400018007. Having received legally adequate notice and having failed to submit an offer, Rock Solid lacks standing to protest an award issued in that solicitation.

DECISION

For the reasons stated above, Rock Solid Technology, Inc.'s protest of Solicitation 5400017770 is granted. However, because the State closed Solicitation 5400017770 and proceeded with a separate solicitation and award that Rock Solid Technology lacks standing to challenge, the CPO denies any relief.

For the Information Technology Management

Office 

Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Omar Rosario](#)
To: [itmo, protest](#)
Subject: [External] Protest of RFP 40001770 that was later replaced by RFP 5400018007
Date: Wednesday, June 26, 2019 9:27:50 AM
Attachments: [image001.png](#)
[image006.png](#)

To whom it may concern,

I write in order to protest of the RFP process regarding RFP 40001770. This RFP was scheduled to close and receive proposals until June 21, 2019. Our company, Rock Solid technologies made a significant investment in the process of replying to this RFP and we were ready to delivery it on time. When we asked Kathy Santandreu if there were any addendums regarding Q/A, since there were none posted, we received communication that the RFP 40001770 was replaced by RFP 5400018007 and that the due date had passed. The new RFP was basically the same except the date changed.

There was no addendum or attachment for the original solicitation (40001770) in the web site, indicating such change. The original solicitation was closed on the web site on June 20, 2019 right after we received notification from Kathy on the cancellation and replacement of the RFP. This after the replacement RFP process had ended therefore giving us no chance to respond.

As a follow-up action, we still hand delivered our proposal on time with our employee. Kathy Santandreu, replied indicating that our proposal will not be accepted.

I respectfully solicit that a chance be given to us in order to submit our proposal, and if needed, to reopen the time to submit bids due to an irregular solicitation process.

Regards,

Omar Rosario



Omar Rosario, PMP/SPM/ Respond Business Product Director
orosario@rocksolid.com / 787.642.2874

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STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2019)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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
1205 Pendleton Street, Suite 367, 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.