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GRANT GILLESPIE
EXECUTIVE DIRECTOR

Protest Decision

Matter of: Control Management, Inc.

File No.: 2021-003B

Posting Date: May 21, 2021

Contracting Entity: Department of Corrections

Project No.: N04-9731-FW-E

Description: Evans CI & Lieber CI Chilled Water Controls Revision and Commissioning

DIGEST

Statement of protest that is not submitted within 15 calendar days of posting and notice is untimely.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer for Construction (CPOC) conducted an administrative review of a protest filed by Control Management, Inc. (CMI). CMI's protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

CMI protests the Department of Corrections award of a contract to Johnson Controls, Inc. (JCI), to replace chilled water controls at Evans Correctional Institution and Lieber Correctional Institution. CMI's protest sets forth two grounds, neither of which states a claim for which relief may be granted.

CMI's first ground of protest is that the existing hardware and software is JCI hardware and software meaning that JCI would not have to do as much work as other bidders to carry out the requirements of the request for small construction quotes.¹ A competitive advantage by reason of incumbency alone,

¹ DOC requested quotes per S.C. Code Ann. §11-35-1550(2)(b) – Three Written Quotes. Under this provision, an agency may make a written request for written quotes to three or more contractors for construction exceeding \$10,000 but not more than \$100,000.

does not create a ground of protest. The State routinely solicits bids for equipment and services were the existing equipment and services are provided by an incumbent contractor. The Consolidated Procurement Code (Code) does not preclude such incumbent contractors from bidding to provide such equipment and services as they are provided pursuant to a prior contract. Nor does The Code preclude the State making an award to such contractors absent an organizational conflict of interest or unfair trade practice. CMI does not allege facts that by themselves constitute either an organizational conflict of interest or unfair trade practice.

CMI's second ground of protest is that the work the work of the request for quotes is work that JCI was paid to perform under an earlier contract with DOC. CMI essentially alleges that JCI breached its contractual obligations to DOC under a previous contract and should not be allowed to receive an award of a contract intended to correct JCI's defective performance under that previous contract.² Put another way, CMI is asserting a breach of contract claim, a claim that it does not have standing to assert on the State's behalf and a claim that does not give grounds for a protest of the award of the contract at issue here.

DECISION

Based on the foregoing, the CPOC denies CMI's protest.



John St. C. White, PE

Chief Procurement Officer for Construction

Columbia, South Carolina

² The CPOC lacks sufficient information to determine if DOC may have a breach of contract claim on a earlier contract that has given rise to this request for quotes. The CPOC, however, understands that whether such a claim may lie, it would not be a claim against JCI since DOC's contract for that earlier work was not with JCI. Under that earlier contract JCI was a subcontractor.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

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 2020 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.

Exhibit A



Control Management, Inc.

COLUMBIA- MAIN OFFICE

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CHARLESTON

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GREENVILLE

30-B Cessna Court
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Fax (864) 213-9005

MYRTLE BEACH

3803 Wesley Street
Myrtle Beach, SC 29579
Phone (843) 236-5999
Fax (843) 236-3263

Notice of Intent to Protest
State Project Number N04-9731-FW-E
04/13/2021

All,

I am officially notifying the Chief Procurement Officer (Aaron Turner) and the Office of State Engineer (Fred Walker) that Control Management, Inc is protesting the above state project award. The cause for protest is listed below.

1. The project scope was not equal for all bidders, the awarded bidder had a distinct advantage on the project. Three bidders had to produce new engineered control drawings, new control hardware and provide new programming. Johnson Controls the winning bidder only needed to modify existing control programs and control drawings.
2. The awarded bidder is getting paid to perform work that was previously paid for by SCDC under a previous contract and is shown as provided on the As-Built drawings for the previous contract. The other bidders have additional cost to perform the specified scope that was already paid to the winning bidder on another project.

Thanks

A handwritten signature in black ink, appearing to read "Eric Scales", is written over a horizontal line.

Eric Scales
Control Management, Inc.
Project Manager
803-351-0881