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Protest Decision

Matter of: CFS Brands DBA Dinex

Case No.: 2021-141

Posting Date: June 1, 2021

Contracting Entity: SC Department of Mental Health and SC Department of Disabilities and Special Needs

Solicitation No.: 5400020880

Description: Retherm equipment and supplies

DIGEST

Protest alleging that vendor was the low bidder is denied, where award was properly made to the lowest bidder in accordance with the solicitation. The protest letter of CFS Brands DBA Dinex is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer¹ (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.

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

Solicitation Issued:	02/18/2021
Amendment 1 Issued	03/18/2021
Amendment 2 Issued	04/02/2021
Amendment 3 Issued	04/12/2021
Amendment 4 Issued	04/16/2021
Amendment 5 Issued	04/19/2021
Intent to Award Posted	05/06/2021
Intent to Protest. Received	05/11/2021
Protest Received	05/19/2021

The State Fiscal Accountability Authority (SFAA) issued this issued this Invitation for Bids (IFB) on behalf of the South Carolina Departments of Mental Health (DMH) and Disabilities and Special Needs (DDSN) on February 18, 2021 for equipment and supplies necessary to operate a rethermalization (retherm) system in DMH's commercial kitchens and the locations supported by these kitchens. Five Amendments followed with bid opening on April 27, 2021. An Intent to Award was posted to Aladdin Temp-Rite, LLC (ATR) on May 6, 2021. Dinex filed an intent to protest on May 11, 2021, followed by its protest on May 19, 2021.

ANALYSIS

This solicitation invited bids for equipment and supplies from two prequalified manufacturers: Aladdin and Dinex.

Two manufacturers of retherm equipment have been pre-qualified to move forward in the bid process - Aladdin and Dinex. This pre-qualification was the result of on-site evaluations of equipment, and an advertisement of the State's intent to pre-qualify these manufacturers to which no alternate manufacturers responded.

[Solicitation, Page 3] (emphasis in original)

The solicitation included four lots:

- LOT 1 – Retherm equipment (Aladdin)**
- LOT 2 – Retherm equipment (Dinex)**
- LOT 3 – Retherm supplies (Aladdin)**
- LOT 4 – Retherm supplies (Dinex)**

In two places, the solicitation explained that award would be made to the lowest bid between lots 1 and 2 and, depending on which of these lots was awarded, award would be made to the lowest bid for lots 3 or 4:

Two contracts will be awarded under this solicitation – one for the retherm equipment, and one for the supplies to use that equipment. The required commodities are broken down into Lots. Lots 1 and 2 detail the required retherm equipment from Aladdin and Dinex respectively. Lot 3 lists the Aladdin supplies needed to utilize Aladdin’s equipment, while Lot 4 lists the supplies needed to operate using Dinex’s equipment. Further explanation of the calculations used in the award process can be found in Section VI of this solicitation.

[Solicitation, Page 3]

Award will be made by complete lots. Lots 1 and 2 are for the retherm equipment, while Lots 3 and 4 are for the supplies to be used on that equipment.

Two contracts will be awarded under this solicitation:

1. One contract will be awarded to the low bidder for the retherm equipment (Lots 1 and 2).
2. If the first contract is awarded to the low bidder from Lot 1 (Aladdin), the second contract will be awarded to the low bidder from Lot 3. If the first contract is awarded to the low bidder from Lot 2 (Dinex), the second contract will be awarded to the low bidder from Lot 4.

[Solicitation, Page 21]

Dinex protests:

We submit that Dinex is the lowest bidder overall as outlined below. Our overall bid is \$1,177,972.60 **lower** than Aladdin’s. The award criteria does **not** state the lowest equipment bid is the only determining factor in this award.

Aladdin equipment bid: \$2,090,017.00

Aladdin supplies bid: \$5,793,100.14

Aladdin total bid: \$7,883,117.14

Dinex equipment bid: \$2,221,522.98

Dinex/GFS supplies bid: \$4,483,621.56

Dinex total bid: \$6,705,144.54

(highlighting in original)

Protest Decision, page 4

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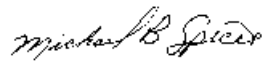
June 1, 2021

The solicitation clearly stated that award would be made to the lowest bidder between lot 1 and lot 2, not the combination of lots 1 and 3 versus lots 2 and 4. Aladdin's bid for lot 1 was lower than the Dinex bid for Lot 2. The award was properly made to Aladdin as the low bidder.

DECISION

For the reasons stated above, the protest by CFS Brands dba Dinex is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Protest-MMO](#)
To: [MMO - Procurement](#); [Shealy, Voight](#); [Skinner, Gail](#)
Subject: FW: [External] Re: SC Award: RETHERM EQUIPMENT AND SUPPLIES
Date: Wednesday, May 19, 2021 4:17:41 PM
Attachments: [image002.png](#)
[image003.png](#)
[SC_Protest_on_contract_4400026180_for_solicitation_5400020880.pdf](#)

From: Melissa Pierce <MelissaPierce@CFSBrands.com>
Sent: Wednesday, May 19, 2021 4:17:13 PM (UTC-05:00) Eastern Time (US & Canada)
To: Protest-MMO <protest-mmo@mmo.state.sc.us>
Cc: Marcie Desmarais <MarcieDesmarais@CFSBrands.com>; Dawson, Nathan <ndawson@mmo.sc.gov>; Mari Herdine <MariHerdine@CFSBrands.com>
Subject: RE: [External] Re: SC Award: RETHERM EQUIPMENT AND SUPPLIES

May 19, 2021

Nathan Dawson

Procurement Manager

Division of Procurement Services

SC State Fiscal Accountability Authority

Solicitation #5400020880

RE: Bid Protest Aladdin Temp Rite
Contract #4400026180

I am presenting this letter on behalf of CFS Brands, DBA Carlisle Foodservice products, Dinex, et. al. The purpose of this letter is to formally protest the above referenced contract award and solicitation. As outlined in more detail below, the award criteria was to be made to the lowest responsible and responsive bidder; we complied with all of the requirements and were the lowest responsive bid. Additionally, the solicitation did not allow for a final facility site visit to determine the full scope of work prior to bid submittal.

Here the bidding documents, solicitation #5400020880 clearly states the Award Criteria: "Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]" As well as in response to Question #2 in amendment #3, "the only factor being evaluated in this solicitation is the price (see award criteria – bids on page 21 of the solicitation). See Attachment A.

We submit that Dinex is the lowest bidder overall as outlined below. Our overall bid is \$1,177,972.60 **lower** than Aladdin's. The award criteria does **not** state the lowest equipment bid is the only determining factor in this award.

Aladdin equipment bid: \$2,090,017.00
Aladdin supplies bid: \$5,793,100.14
Aladdin total bid: \$7,883,117.14

Dinex equipment bid: \$2,221,522.98
Dinex/GFS supplies bid: \$4,483,621.56
Dinex total bid: \$6,705,144.54

In addition, there is a quantity error between attachment 3 and attachment 4. Which was not corrected after we

notified the procurement manager in writing.

Quantity on 'server flat beige reusable' tray on #3 is noted as 400 with a 12 per case pack versus #4 at 800 with double the case pack of 24 per case. See attachment A.

Furthermore, a final walk-thru each facility with all vendors at the same time was not offered to determine the full scope of work and to ensure all vendors receive the same information. Excerpt from the referenced solicitation and amendment #3 noted in Attachment A below. The prequalification to bid was the only walk through allowed in response to this bid for the vendors which was completed separately which could allow for difference insights to be communicated unfairly to one vendor or another. Additionally, the lack of a final walk through directly affects the installation estimate which was added to the cost of the equipment.

Respectfully,

Melissa Pierce, MS, RD
Director of Healthcare

Attachment A

AWARD BY LOT (MODIFIED)

Award will be made by complete lots. Lots 1 and 2 are for the retherm equipment, while Lots 3 and 4 are for the supplies to be used on that equipment.

Two contracts will be awarded under this solicitation:

1. One contract will be awarded to the low bidder for the retherm equipment (Lots 1 and 2).
2. If the first contract is awarded to the low bidder from Lot 1 (Aladdin), the second contract will be awarded to the low bidder from Lot 3. If the first contract is awarded to the low bidder from Lot 2 (Dinex), the second contract will be awarded to the low bidder from Lot 4.

AWARD CRITERIA – BIDS (JAN 2006)

Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

CALCULATING THE LOW BID

In calculating the Low Bid for a Lot, all pricing will be taken from the Bidding Schedule as shown in Section VIII of this solicitation. The "Unit Price" for each Lot is the "Total Price" from the respective Attachment spreadsheet. For example, the Unit Price for Lot 1 is the Total Price from the Attachment 1 spreadsheet, the Unit Price for Lot 2 is the Total Price from the Attachment 2 spreadsheet, etc.

The Unit Price for each Lot will be compared to the Total Price from the accompanying Attachment spreadsheet. If the prices do not match, that offer will be rejected.

The "Extended Price" for a Lot is the Unit Price multiplied by the "Quantity" for each Lot. As the Quantity in each Lot is "1", the Unit Price and the Extended Price will be the same.

Failure to offer on all Items in a LOT will also result in rejection of the offer.

[06-6050-1]

COMPETITION FROM PUBLIC ENTITIES (JAN 2006)

If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

UNIT PRICE GOVERNS (JAN 2006)

In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]

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
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.