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EXECUTIVE DIRECTOR

Written Determination

Matter of: The MuShield Company
File No.: 2021-143
Date: June 2, 2021
Contracting Entity: Coastal Carolina University
Solicitation No.: CCU-9300393
Description: Provide and deliver MuMETAL® magnetic shielding

DIGEST

Request to cancel award of a contract prior to performance granted where bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited.

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review per S.C. Code Ann. § 11-35-1520(7) and Regulation 19-445.2085. This determination is based on the evidence and applicable law and precedents.

DETERMINATION

On May 19, 2021, Coastal Carolina University (CCU) requested that the Chief Procurement Officer (CPO) cancel award a contract to The MuShield Company (TMC) prior to performance. [Exhibit A] The grounds for the request are that the bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited.

CCU issued this Request for Quotations (RFQ) on April 27, 2021, seeking quotes for magnetic shielding manufactured by the Magnetic Shield Corporation (MSC) and marketed under the registered trademark MuMETAL®. This source selection method requires award be made to the

lowest responsive and responsible bidder. A Statement of Award was posted to TMC as the low bidder on May 12, 2021. That same day the MSC advised CCU that it had no relationship with TMC. On May 13, 2021, TMC verified that it had bid a product meeting the same salient characteristics from a manufacturer other than the one required by the RFQ. CCU requested the award to TMC be cancelled because the bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited and it wishes to issue a new solicitation with revised specifications.

After award of a contract but prior to performance, the CPO may cancel an award or contract pursuant to S.C. Code Ann. § 11-35-1520(7). The statute requires that such a decision “must be supported by a written determination of appropriateness.” According to S.C. Reg. Ann. 19-445.2085(C), the CPO may only cancel an award for any of eight enumerated reasons, including when the “[s]pecifications have been revised,” and when the “[b]ids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited.” Under such circumstances, cancellation of award per S.C. Reg. Ann. 19-445.2085(C) is warranted.

For the foregoing reasons, the CPO hereby cancels the Award of a contract to The MuShield Company.

Michael B. Spicer
Chief Procurement Officer

Columbia, South Carolina

Exhibit A



Office of Procurement

MEMORANDUM

May 19, 2021

To: John St. C. White
Chief Procurement Officer
SFAA – Division of Procurement Services

From: Steven Glenn
Procurement Services
Coastal Carolina University

RE: Request for cancellation of award prior to performance
Coastal Carolina University solicitation/contract# CCU-9300393

Background:

On April 27, 2021, Coastal Carolina University Procurement Services (PS) issued Request for Quote, number CCU-9300393 (the RFQ), as a COTS purchase for a source to provide and deliver MuMETAL® magnetic shielding. Pertinent dates with respect to this RFQ were as follows:

April 27, 2021: solicitation issued.
May 3, 2021: questions due by date.
May 5, 2021: offers due by date.
May 12, 2021: award statement posted.

The RFQ requested the following:

Qty. 18 MuMETAL® magnetic shielding sheets with the following salient characteristics:

- 30" x 60" size sheets (total of 225 sq-ft)
- 0.040" thick
- ASTM A753 Alloy Type 4
- Heat treated

On May 12, 2021, I received an email from Magnetic Shield Corporation stating that they noticed the award had been made to the MuShield Company. They went on to state that MuMETAL® is a registered trademark of Magnetic Shield Corporation and that they have no sales history of The MuShield Company requesting or purchasing our .040" Thick MuMETAL material. Additionally, they stated "If you want to use the registered trademark "MuMETAL" on this project, the MuShield Company will need to purchase the material from us."

On May 13, 2021, I reached out to the sales rep who submitted the bid for The MuShield Company requesting confirmation and documentation that their bid was submitted based on the trademarked material. They replied and said that theirs was compatible and explained that the only difference was the trademark symbol.

Upon receiving this information I reached back out the end using department's subject matter expert and was advised that the material that was provided in the quote by The MuShield Company was acceptable for their project and that they were not specifically seeking the trademarked item.

It is noted here that as of the date of this memorandum, a University purchase order has not been issued to The MuShield Company.

Determination and request:

Based on the above, the University determines that product description could have been written differently to not include the trademark symbol, which would allow more competitors to participate in this bidding opportunity.

Per Section 19-445.2085.C. 5 of the South Carolina Code of Regulations, the University determines that the following conditions exist:

"(2) Specifications have been revised;" and

"(5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;"

The University therefore desires to cancel the award to The MuShield Company and issue a new solicitation, and hereby requests that the Chief Procurement Officer concur and so determine.

²Section 19-445.2085.C. provides "Cancellation Of Award Prior To Performance. After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled or either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that: ... (2) Specifications have been revised: ... (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited; ... "

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determinations Appeal Notice (Revised May 2020)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
(b) requests for review of other *written determinations*, decisions, *policies*, and *procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) See generally *Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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.