Protest Decision

Matter of:	Eleven Four Hundred, Inc.
Case No.:	2021-144
Posting Date:	June 7, 2021
Contracting Entity:	Technical College of the Lowcountry
Solicitation No.:	5400020966
Description:	Culinary Kitchen Equipment for The Culinary Institute of the South at Technical College of the Lowcountry

DIGEST

Protest of nonresponsiveness denied. Protest that apparent successful bidder is nonresponsive is granted and award cancelled. The protest letter of Eleven Four Hundred, Inc. (EFH) is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer[1] (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:	03/02/2021
Amendment 1 Issued	03/17/2021
Amendment 2 Issued	03/24/2021
Amendment 3 Issued	04/07/2021
Intent to Award Posted	05/19/2021
Protest Received	05/20/2021

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids (IFB) on behalf of the Technical College of the Lowcountry (TCL) on March 2, 2021 to acquire culinary kitchen equipment for The Culinary Institute of the South. Amendment 1 was issued on March 17, 2021. Amendment 2 was issued on March 24, 2021. Amendment 3 was issued on April 7, 2021. An Intent to Award to Johnson Lancaster and Associates (JLA) was posted on May 19, 2021. EFH filed a protest on May 20, 2021, alleging an improper nonresponsiveness determination.

ANALYSIS

The procurement officer first determined EFH's bid was nonresponsive to line item 20 as follows:

> **Line Item 20**
> Item #22: Gas Range, Open Burners
> Spec: Montague Model V136-5
> Alternate: Vulcan Model V4B36S
> Key Difference(s): *Vulcan alternate does not meet spec requirements* Montague unit has convection oven base and (6) Open Burners. Outputs 220,000 BTUs
> Vulcan unit has standard oven base and (4) Open Burners. Outputs 190,000 BTUs

[Procurement Officer's Determination of Nonresponsibility]

EFH protests this determination as follows:

> 11400 Inc's bid for line item 20, equipment item 22 was rejected because the model number we listed was a (4) open burner top and standard oven base. The basis of design model is a (6) open burner top and a convection oven base. However the awarded contract issued to Johnson Lancaster also listed a (4) open burner top and standard oven base.
>
> See exhibit A page 3. Awarded contract info found here - > https://webprod.cio.sc.gov/SCContractWeb/contractDetail.do?solicitNumber=5400020966&contractNumber=4400026220

> Additionally Section 11-35-1520 Competitive Sealed Bidding paragraph (13) speaks about minor informalities and irregularities as highlighted on page 1 exhibit A. As noted in pages 3 and 6 of exhibit A this is a minor informality with a negligible effect on total bid price.

The bidding schedule was included as a spreadsheet with the solicitation. Line item 20 confirms the requirement for a convection oven and 6 open burners:

HEAVY DUTY 36" GAS RANGE, 6 OPEN BURNERS
Montague Company Model V136-5 Legend™ Heavy Duty Range or equivalent
Gas, 36", (6) 12" 30,000 BTU open burners, convection oven base, stainless steel front & 4" flue riser, black sides, 6" high adjustable stainless steel legs, 220,000 BTU, NSF, cETLus, CE
ALTERNATE MANUFACTURERS: Southbend, Vulcan
Vendor Offer w/ Manufacture / Model:

(emphasis added, highlighting in original)

By its own acknowledgement, EFH bid a 4 burner stove top with a standard oven. Section 11-35-1410(9) defines a responsive offeror as:

> 'Responsive bidder or offeror' means a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals.

The South Carolina Procurement Review Panel has ruled that a bids responsiveness is determined at the time of bid opening based on the bid as submitted:

> The Panel has consistently held that the responsiveness of a sealed bid must be determined at the time of bid opening solely from the four comers of the bid document. *Appeal by Greenville Office Supply*, Panel Case No. 2014-5 (September 10, 2014); *Appeal by Two State Construction, Co.*, Panel Case No. 1996-2 (April 1, 1996).

IN RE: *Appeal by Butler Chrysler Dodge Jeep, LLC*, Panel Case 2016-13

EFH offers to substitute a compliant item at the same price. Section 11-35-1520(6) requires bids be accepted unconditionally without alteration:

> Bid Acceptance and Bid Evaluation. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be

> evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.

EFH also suggests that this is a minor informality or irregularity under Section 11-35-1520(13). A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids. The difference between standard and convection ovens is not immaterial. The difference between 6 burners and 4 burners is not immaterial. This issue of protest is denied.

EFH also raises the issue that the apparent successful bidder, JLA, was nonresponsive to this same item. JLA submitted an item from the desired manufacturer and an alternate from an approved manufacturer, neither of which meets the requirements of a 6-burner stove top and a convection oven published in the solicitation:

Johnson-Lancaster and Associates, Inc. *04/07/2021*

Item	Qty	Description	Sell	Sell Total
		Montague Company Model No. 136-5A Legend™ Heavy Duty Range, gas, 36", (4) 18" 30,000 BTU open burners, standard oven base, stainless steel front & 4" flue riser, black sides, 6" high adjustable stainless steel legs, 160,000 BTU, NSF, cETLus, CE		
	3 ea	Standard warranty: one year parts and labor warranty		
	3 ea	Lifetime door warranty, standard		
	3 ea	Gas type to be specified		
	3 ea	1" Left rear manifold with pressure regulator (up to 500,000 BTU/hr)	$328.32	$984.96
	3 ea	Cap & stainless steel manifold cover, left		
	3 ea	Cap & stainless steel manifold cover, right		
		ITEM TOTAL:		**$20,951.13**
22ALT	3 ea	**HD RANGE, 36", 4 OPEN BURNERS**	$5,074.00	<Alternate>
		Southbend Model No. P36D-XX Platinum Heavy Duty Range, gas, 36", (4) 45,000 BTU open burners, manual controls, (1) standard oven, includes (2) racks, stainless steel front, sides, rear, exterior bottom & 6" adjustable legs, 225,000 BTU, CSA, NSF (Note: Qualifies for Southbend's Service First™ Program, see Service First document for details)		
	3 ea	Domestic Shipping, inside of North America		<Alternate>
	3 ea	Standard (1) year limited parts and labor warranty (reference warranty document for details)		<Alternate>
	3 ea	NOTE: 5" flue riser, standard		<Alternate>
	3 ea	Gas type to be specified (gas pressure regulator required for individual unit)		<Alternate>
		ITEM TOTAL: <Alternate>		**$15,222.00**

[JLA Proposal, Page 10]

JLA's bid should also have been rejected as nonresponsive.

The second issue for which EFH's bid was determined nonresponsive states:

> **Line Item 21**
> Item #23: Fryer, 2 Bank
> Spec: Pitco Model SG14RS-2FD
> Alternate: Frymaster Model MJ240
> Key Difference(s): *Frymaster alternate does not meet spec requirements*
> Pitco Unit has built-in filtration, (2) 50lb capacity tanks, outputs 244,000 BTUs
> Frymaster unit does NOT have built-in filtration, (2) 40lb capacity tanks, outputs 220,000 BTUs

[Procurement Officer's Determination of Nonresponsibility]

EFH protests:

> 11400 Inc's bid for line item 21, equipment item 23 fryer battery was also stated to be rejected because the model MJ240 does not have built-in filtration. Submitted response by 11400 Inc was for model FMJ240, which has a built-in filtration system standard.

A quick check of the WebstaurantStore web site revealed the following statement about the Frymaster model FMJ240:

> This model boasts a renowned Millivolt temperature control and has a fast filtration system. The filtration process is easy and allows for one fryer to be filtered while the other fryers remain in use. This encourages frequent filtering that maximizes oil life.

https://www.webstaurantstore.com/frymaster-fmj240-40-lb-natural-gas-two-unit-floor-fryer-with-filtration-system-and-millivolt-temperature-control-220-000-btu/369FMJ240MN.html (last viewed 6/2/2021)

The final issue for which EFH's bid was determined nonresponsive states:

> **Line Item 36**
> Item #44: Gas Range, Open Burners
> Spec: Montague Model 124-5
> Alternate: Vulcan Model 24S-4B
> Key Difference(s): Montague unit is "Legend Series" heavy duty and outputs 140,000 BTUs
> Vulcan unit is "Endurance Series" Restaurant Range and has less build quality. Outputs 143,000 BTUs

EFH protests:

> 11400 Inc's bid for line item 36, equipment item 44 range was rejected based on bid quality. Section III Scope of Work listed on page 14 of the solicitation explicitly states **"The Bid Manufacturer and Model Number is as specified or with suggested alternates. The Brands listed are approved by the General Contractor and meet the specifications needed."** Vulcan is listed as an approved manufacturer and stated to meet the specifications needed. Reference exhibit A, pages 8 through 11 which highlight that the Vulcan unit meets the specification in footprint, capacity, utility. Moreover, the Vulcan unit has stainless steel sides as a standard feature where the primary Montague unit has black painted sides.

(emphasis in original)

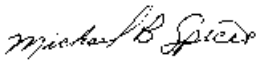
A quick review of the Vulcan Equipment web site shows that its heavy-duty line of ranges is the V series while the Endurance Series are restaurant-grade ranges. EFH did not bid the heavy-duty Vulcan range. This issue of protest is denied.

https://www.vulcanequipment.com/ranges (last viewed 6/2/2021)

DECISION

For the reasons stated above, the protest by Eleven Four Hundred, Inc. of an improper nonresponsiveness determination is denied. The protest that Johnson Lancaster and Associates' bid is nonresponsive is granted and the award to Johnson Lancaster and Associates is cancelled. This procurement is remanded to the procurement officer for processing in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

11400 ELEVEN FOUR HUNDRED INC.
FOOD SERVICE EQUIPMENT
www.11400INC.com

6801-E Northpark Blvd
Charlotte, NC 28216

Thompson, CT

Ph. 717.392.7429

2551 Horseshoe Road
Lancaster PA 17601

RE: Formal Protest of Solicitation 5400020966
To: SFAA Division of Procurement Services
Date: 5/20/21

We protest the subject solicitation, awarded to Johnson Lancaster & Associates for $558,257.97.

The protest is based on the following specific points of contention:

11400 Inc's bid for line item 20, equipment item 22 was rejected because the model number we listed was a (4) open burner top and standard oven base. The basis of design model is a (6) open burner top and a convection oven base. However the awarded contract issued to Johnson Lancaster also listed a (4) open burner top and standard oven base. See exhibit A page 3. Awarded contract info found here - > https://webprod.cio.sc.gov/SCContractWeb/contractDetail.do?solicitNumber=5400020966&contractNumber=4400026220

> Additionally Section 11-35-1520 Competitive Sealed Bidding paragraph (13) speaks about minor informalities and irregularities as highlighted on page 1 exhibit A. As noted in pages 3 and 6 of exhibit A this is a minor informality with a negligible effect on total bid price.

11400 Inc's bid for line item 21, equipment item 23 fryer battery was rejected because the model we submitted is rated at 220,000 BTU rating total. The basis of design fryer listed is model SG14 which is also a 220,000 BTU total (see exhibit bottom of page 4). However the rejection response by the food service consultant listed model SG14RS. The 'RS' suffix was not listed and is a higher capacity BTU of 244,000.

> Furthermore, reference exhibit B, contract drawing sheet K-1.6 which lists 220,000 BTUs as the rating for equipment item #23.

11400 Inc's bid for line item 21, equipment item 23 fryer battery was also stated to be rejected because the model MJ240 does not have built-in filtration. Submitted response by 11400 Inc was for model FMJ240, which has a built-in filtration system standard.

11400 Inc's bid for line item 36, equipment item 44 range was rejected based on bid quality. Section III Scope of Work listed on page 14 of the solicitation explicitly states **"The Bid Manufacturer and Model Number is as specified or with suggested alternates. The Brands listed are approved by the General Contractor and meet the specifications needed."** Vulcan is listed as an approved manufacturer and stated to meet the specifications needed. Reference exhibit A, pages 8 through 11 which highlight that the Vulcan unit meets the specification in footprint, capacity, utility. Moreover, the Vulcan unit has stainless steel sides as a standard feature where the primary Montague unit has black painted sides.

We feel that based on the above points of contention our bid totaling $543,205 was improperly rejected. Our submitted bid response 'met the specifications needed' per the solicitation and at the same time would have saved the state $15,052.97 dollars.

I can be reached by phone at extension 353 or at tadams@11400inc.com should you require additional information. Thank you in advance for your time.

Taylor Adams, VP Project Development

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.