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Protest Decision

Matter of: Safety Kleen

Case No.: 2021-145

Posting Date: June 2, 2021

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400021004

Description: STC Used Oil Filter Collection & Recycling

DIGEST

Protest that technical difficulties prevented bid submission is dismissed as not ripe. The protest letter of Safety Kleen (SK) 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.

BACKGROUND

Solicitation Issued:	04/05/2021
Amendment 1 Issued	05/04/2021

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

Bid Opening	05/19/2021
Protest Received	05/27/2021

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids (IFB) on April 5, 2021, for the recycling and disposal of used oil, used oil filters, antifreeze and other vehicle waste products. Amendment 1 was issued on May 4, 2021. Bids were opened on May 19, 2021. SK filed a protest on May 27, 2021 alleging that technical issues prevented it from submitting a bid.

ANALYSIS

Section 11-35-4210(1)(a) grants the CPO the authority to resolve a protest by prospective bidders protesting a solicitation or amendment to the solicitation within 15 days of the posting of the relevant document:

A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation shall protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date of issuance of the Invitation For Bids Request for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

Section 11-35-4210(1)(b) grants the CPO the authority to resolve a protest by actual bidders protesting the award of a contract within seven days of the posting of an award or intent to award:

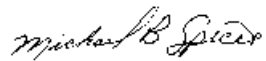
Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

Amendment 1 was posted on May 4, 2021. The last day to file a protest was May 19, 2021. SK's protest was not received until May 27, 2021. An award has not been posted as of this date, so the window for filing a protest of the award has not opened.² SK is not protesting the solicitation or amendment and the time for protesting the award has not come.

DECISION

For the reasons stated above, the protest by Safety Kleen is dismissed as not ripe.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

² Even if SK's protest were ripe, its protest would still most likely fail. Under federal law, which is persuasive when no South Carolina authority is on point, bid transmission errors generally do not give rise to a valid protest ground. "[E]ven with appropriate procedures in place, an agency may lose or misplace a bid or quotation, and the occasional loss of a bid or quotation—even if through the negligence of the agency—generally does not entitle the bidder or vendor to relief." *American Material Handling, Inc.*, B-281556 (Comp. Gen. 1999) (holding government's computer malfunction in accepting bid does not sustain a protest where the loss was isolated and not part of deliberate effort to exclude vendor or the result of agency's failure to have adequate procedures in place).

Attachment 1

From: [Fawcett, Kevin A](#)
To: [Protest-MMO](#)
Subject: [External] Protest of IFB 5400021004
Date: Thursday, May 27, 2021 10:12:46 AM
Attachments: [image001.png](#)
[image002.png](#)
[Incident 1216804 SCEIS.MM.Vendor.Bid Response.mso](#)

To whom it may concern. I am writing to give notice of our intent to protest IFB 5400021004. I am told that we are considered Non-Responsive, because we didn't get our bid in on time.

This is true, but the reasons for it are not our fault. Please let me make our case below.

In preparation of submitting our bid, I had gone on to the procurement services website, made sure I had our vendor number, as well as a working username and password. I believe I checked that on Tuesday, May 18th. I had read up on how to submit our bid, and I was on Internet Explorer. I had seen in the instructions to be on IE.

When I received our signed proposal, I knew it would only take a few minutes to enter our bid and upload our documents. I had about 25 minutes. When I tried to log on, it gave me an error.

I can't remember its exact wording, but it said there was an error and wouldn't accept our login.

I immediately called the number listed on the site for assistance, 803.737.0600. I had to wait a minute or so to get answered, but the lady who answered asked me my issue, which I explained, but then she announced that that number was not the help desk. That there was another number for the actual helpdesk. I immediately called that number. Once again, I had to wait a minute or two for my call to be answered. The gentleman asked me what my issue was. I explained it to him. He listened, then announced that he was in the department that assisted state agencies. That I needed to speak to the department that assisted vendors, which he transferred me to.

When that person answered, I believe his name was Adam, he was very helpful. He understood right away what needed to happen. There was still enough time at that point. Here is the point. A password reset had been tried. Adam tried to help me do it again. Again it was unsuccessful. He tried clearing my cache, and trying again. Again unsuccessful. The only way that he was able to reset my password and get me logged in, was when he bypassed the procurement external website system, and created a new password within his system. Resetting my password was not something I could have done, in the system available to me, at that time. Also, my username and password were valid. They had just been verified the day before. Why both the current password, and the password reset system, were not working at that time, I don't know. Adam did not know.

Adam told me that he would send me an email, outlining our call and the issues. That he would make it clear, that not for the technical issues, there was enough time for bid submission and that the technical issues were beyond my control. I will quote him below. His email is attached.

"Vendor contacted the help desk for login and bid submission assistance: Kevin contacted the SCEIS help desk for assistance in creating a response to solicitation #5400021004. During the response creation, technical errors occurred that consumed time needed to submit the response. Consequently, the bid submission end time passed. If not for the technical issues, Kevin would have been able to submit the response on time (with assistance). The password was reset successfully."

So the relief that we are asking for is just that our bid be allowed to be submitted. I have all documents


signed and ready to go. I have not emailed them in, until I am instructed on what to do.
I don't want to do anything improper.

Thank you for considering our appeal.

Thank you.

Kevin Fawcett Government Business Developer | Safety-Kleen | A Clean Harbors Company | Fort
Wayne, IN | kevin.fawcett@safety-kleen.com | 260-740-2232 (c) | safety-kleen.com

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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.