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Protest Decision

Matter of: All Pro Solutions, Inc.

Case No.: 2021-205

Posting Date: October 8, 2020

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400019274

Description: STC Records Conversion - Paper

DIGEST

Protest of apparent successful bidder's ability to perform the contract is denied. The protest letter of All Pro Solutions (APS) is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer (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:	02/28/2020
Amendment 1 Issued	03/23/2020
Amendment 2 Issued	04/10/2020
Amendment 3 Issued	04/30/2020
Amendment 4 Issued	06/05/2020
Amendment 5 Issued	07/20/2020
Amendment 6 Issued	08/10/2020
Amendment 7 Issued	08/28/2020
Intent to Award Posted	09/24/2020
Protest Received	09/25/2020

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids to establish a state term contract for the conversion of paper records on February 28, 2020. An Intent to Award was posted to Palmetto Microfilm on September 24, 2020. APS filed a protest of the award on September 25, 2020.

ANALYSIS

APS protests:

We are shocked by Palmetto Microfilm winning this bid.

They used to be specialized in microfilm and we never had the chance to bid against them for any projects in the past 10 years. We bid against US Imaging, AIS and others, but not Palmetto Microfilm.

They used to scan paper records but their pricing was always higher than others.

We believe there's no way for them to be able to honor bid pricing. They just threw the price there and we think somebody guided them... because this price is very unusual for them – they were always more expensive than others.

They're specialized in microfilm digitization, not paper records, so they just threw the price in there to win the bid but we're sure they won't be able to honor it.

They're sneaky, they will tell everybody they have the SC state contract, nobody will question that and they will charge customers at a different pricing compared to the bidding one.

I hope you're a specialist in digitizing microfilm and paper records, otherwise it will be very easy to be misguided.

For example, just to show how bad the price is, if you scan and index 385 pages per hour, you make \$10. How much you have to pay your employees to cover your cost and also make a little profit? Even in socialism they calculated this price

better, but in this case, there's no way to scan and index 385 pages per hour knowing the paper documents are old and they have to be done manually. This example is for a range of 1 to 500,000 pages. For a range of 1.5 million to 3 million pages, according to their pricing, you have to scan and index 526 pages per hour to make \$10... Wow...

We are very unhappy and don't trust this bidding result at all.

Also the Invitation For Bid Amendment #7 mentions on page 32 "AWARD TO TWO OFFERORS"

This bidding took 7-8 months with all the preparations and changes, which tell us many things, and in the end we have a very unusual winner.

From now on, we will have a chance to check what price they charge the customers and if it is what we feel it will be, we will decide what to do next. The big picture is that we're very unhappy with SC bidding and decision makers.

The first issue raised questions Palmetto's ability to perform the contract at the price bid. Section 11-35-1810(1)¹ requires the procurement officer to assess a bidder's ability to perform, or its responsibility, as defined in Section 11-35-1410(8)², prior to making an award. The South Carolina Procurement Review Panel set the standard for review of a bidder's responsibility as follows:

Catamaran argues that ESI is not a responsible offeror because its "commercially unreasonable" price will prevent it from establishing a robust pharmacy network as required by the RFP. The Procurement Code requires that responsibility be determined prior to making an award. S.C. Code Ann. § 11-35-1810(1) (2011). An inquiry into responsibility considers an offeror's ability to perform the contract requirements and "may be substantiated by past performance." S.C. Code Ann. § 11-35-1410(6) (2011). As noted by the CPO in his written determination, PEBA's action in making the award to ESI indicates that PEBA found ESI to be a responsible offeror. Under the Procurement Code, a procurement officer's finding of responsibility is a matter of discretion that should not be overturned absent proof that it is "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A) (2011); *Protest of CollegeSource, Inc.*, Panel Case

¹ "Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The board shall by regulation establish standards of responsibility that shall be enforced in all state contracts."

² "Responsible bidder or offeror' means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance."

No. 2008-4 (January 8, 2009). As the party challenging the responsibility determination, Catamaran must demonstrate that the responsibility determination lacks a reasonable or rational basis. *Protest of Value Options*, Panel Case No. 2001-7 (August 3, 2001) (citing *Robert E. Derektor of Rhode Island v. Goldschmidt*, 516 F.Supp. 1085 (D.R.I. 1981).

Catamaran's claim regarding ESI's responsibility is based upon speculation and conjecture that ESI will not be able to fully perform the contract because of its pricing proposal. The Panel finds such a claim is a matter of contract administration and does not state a proper challenge to responsibility. *See, e.g., ASC Medicare Service, Inc.*, B-213724 (Comp.Gen.), 84-1 CPD P 45, 1983 WL 27814 (1983); *Kitco, Inc.*, B-221386 (Comp. Gen.), 86-1 CPD P 321, 1986 WL 63328 (1986). Moreover, Catamaran does not allege any facts tending to show that PEBA's responsibility determination lacked a reasonable or rational basis. Therefore, the Panel finds has failed to state a claim upon which relief can be granted and hereby dismisses the portion of Catamaran's protest alleging that ESI is not a responsible offeror.

See In Re: *Appeal by Catamaran, LLC*, Panel Case 2015-2

APS's protest is based on speculation and conjecture that Palmetto will not be able to fully perform the contract because of its low price and offers no proof that the procurement officer's determination that Palmetto is a responsible bidder was clearly erroneous, arbitrary, capricious, or contrary to law.³

³ The Panel also offered a cautionary footnote to its decision that is worthy of reproduction in this case:

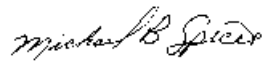
Nonetheless, the Panel takes this opportunity to encourage procurement officers to take extra care in making a responsibility determination where an offeror's price is significantly lower than the next offeror's price. While in this case Catamaran acknowledged that ESI could likely absorb any potential loss, the Panel is concerned that some bidders or offerors may bid an extremely low price in order to win a contract, but not have the financial reserves to enable them to sustain the bid price over the term of the contract. *See, e.g., Appeal by Trinity 7 Security, LLC*, Panel Case No. 2012-8 (March 11, 2013) (wherein the Panel upheld a finding of non-responsibility based in part on a balance sheet indicating liabilities exceeding the vendor's assets).

APS also points out that the solicitation provided for possible award to up to two bidders. However, APS's comment does not raise a question or allege a violation of the Code to be addressed by the CPO.

DECISION

For the reasons stated above, the protest of All Pro Solutions, Inc. is denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Butler, William](#)
To: [itmo_protest](#)
Subject: FW: [External] FW: Solicitation # 5400019274
Date: Friday, October 2, 2020 3:52:52 PM

FYI



Will Butler, CPPB | Procurement Manager | State Term Contracting Team
Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Phone: (803) 737-9854 | wbutler@mmo.sc.gov

From: Sandra <sandra@allprosolutions.com>
Sent: Friday, October 2, 2020 3:36 PM
To: Butler, William <wbutler@mmo.sc.gov>
Subject: [External] FW: Solicitation # 5400019274

Are we going to get an answer regarding our protest below?

From: Sandra [<mailto:sandra@allprosolutions.com>]
Sent: Friday, September 25, 2020 12:07 PM
To: 'protest-itmo@itmo.sc.gov'
Cc: Butler, William (wbutler@mmo.sc.gov)
Subject: Solicitation # 5400019274

We are shocked by Palmetto Microfilm winning this bid. They used to be specialized in microfilm and we never had the chance to bid against them for any projects in the past 10 years. We bid against US Imaging, AIS and others, but not Palmetto Microfilm. They used to scan paper records but their pricing was always higher than others.

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From now on, we will have a chance to check what price they charge the customers and if it is what we feel it will be, we will decide what to do next. The big picture is that we're very unhappy with SC bidding and decision makers.

Sincerely,

Sandra Czentye

All Pro Solutions, Inc.

803-980-4141 ext. 303

sandra@allprosolutions.com

www.allprosolutions.com

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2019)

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 2019 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.