Protest Decision

Matter of:	Bruce Air Filter Company, LLC
Case No.:	2022-107
Posting Date:	September 9, 2021
Contracting Entity:	University of South Carolina
Solicitation No.:	210076
Description:	HVAC Filters

DIGEST

Protest of non-responsiveness determination is denied. The protest letter of Bruce Air Filter Company (BAF) 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:	07/15/2021
Deadline for Receipt of Questions	07/27/2021
Amendment 1 Issued	08/11/2021
Bid Opening	08/17/2021
Intent to Award Posted	08/24/2021
BAF Intent to Protest Received	08/31/2021
BAF Protest Received	09/02/2021

The University of South Carolina (USC) issued this Invitation for Bids (IFB) on July 15, 2021, for 125 different sizes of HVAC filters. The IFB required bidders to provide a single discount that would be applied to list price for each filter size and to any other filter sizes that might be required during the contract. The deadline for receipt of questions regarding the solicitation was July 27, 2021. BAF submitted questions regarding this solicitation on July 19. 2021. (Attachment 2) USC acknowledges that it inadvertently failed to answer BAF's questions in Amendment 1 which was published on June 10, 2021. Bids were received from Freedom Air Filtration and Wholesale (FAF), BAF, and Carolina Filters (CF) on June 24, 2021. Instead of a single discount, BAF bid a unique discount for each filter and its bid was rejected as non-responsive. An Intent to Award was posted FAF and CF on August 24, 2021. BAF filed an intent to protest on August 31, 2021 followed by its protest on September 2, 2021.

ANALYSIS

BAF protests that the solicitation requested both pleated filters and panel filters making it impractical to bid a single discount:

> Since the product types were different (Pleated Filters & Panel Filters), this didn't allow us to provide a set discount percentage overall. We utilize multiple vendors for specific products, so offering a set discount for the entire scope would have been unattainable. As you can see from both the "Market Basket" listings, the discount would have had to be by filter type and not as a whole, which was listed in our bid. As you can see from the discount pages, we offered a substantially higher discount for the pleated filters and a second discount for the revised panel filters required.

BAF argues that its attempt to clarify this issue was not addressed:

> Bruce Air Filter Company submitted questions regarding this solicitation on 7 /19/21 (Exhibit A), but failed to receive direct answers, nor were our questions

> added to the Addendum sent 8/11/21. "Questions from Offerer's" (02-2A070-2) and responsibility of procurement were not met, per the "Duty to Inquire" statute which states: "All questions received have been reprinted below (Exhibit B). Answers provided in the addendum left ambiguity on the exact type and product being requested.

BAF realized that the bid structure was problematic and properly attempted to resolve the issue by seeking clarification by submitting its concerns to the procurement office within the prescribed time. Unfortunately, those concerns were not addressed in the amendment posted on August 11, 2021. BAF could have pressed its concerns by protesting Amendment 1 within fifteen days of the posting date or August 26, 2021 but is barred under Section 11-35-4210(1)(b) from raising this issue as a protest of the award. Instead, BAF chose to submit its bid by the August 17, 2021 submission deadline with multiple discounts while the other two bidders submitted bids with the required single discount.

An IFB contains the material requirements and contractual terms and conditions that establish a level playing field upon which bidders can offer competing prices. Section 11-35-1520(10) requires that award be made to:

> … the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids …

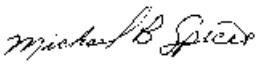
A responsive bidder is "a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals." Section 11-35-1410(9) By submitting its bid with multiple discounts, it did not meet the requirements set forth in the IFB and afforded BAF an unfair competitive advantage. BAF's bid was properly rejected as non-responsive. [2]

[2] Agencies are cautioned against posting an award or intent to award prior to the time allowed for protest of the solicitation or amendments has expired.

DECISION

For the reasons stated above, the protest of Bruce Ari Filter Company, LLC is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

GS-IFB-210076- Protest

8/31/2021

To: Chief Procurement Officer, Materials Management Office

From: Aaron Smith, Vice President Bruce Air Filter Company

RE: Protest IFB #GS-IFB-210076

To whom it may concern:

Bruce Air Filter Company is protesting the above IFB awarded to Carolina Air Filters for the 5-year contract to supply HVAC Air Filters to the University of South Carolina.

This bid was administered by Tracy Fountain and award posted on 8/24/2021. Bruce Air Filter Company has met the requirement to be entitled to protest, per Section 11-35-4210 by submitting intent notification within seven (7) days after award and submitting the official protest documentation herein within fifteen (15) days post award.

Bruce Air Filter Company submitted a bid that was lower by more than half of the awarded vendor, only to be deemed "non-responsive" because a single discount was not offered for sizes not included in the "Market Basket."

Furthermore, Bruce Air Filter Company, found several inconsistencies in the original bid document which caused an inability to offer the same discount percentage by item, since different types of filters and vendors were required to meet the contract product changes.

Bruce Air Filter Company was awarded the most recent air filter bid (GS-RFQ-210044) and performed flawlessly for the University of South Carolina, in addition to offering the school system a substantially lower cost for the current solicitation. Bruce Air Filter Company's bid should be deemed responsive and given consideration for award.

BRUCEAIR

GS-IFB-210076- Protest

I. **General Bid Preparation & Design**:

Bruce Air Filter Company submitted questions regarding this solicitation on 7/19/21 (Exhibit A), but failed to receive direct answers, nor were our questions added to the Addendum sent 8/11/21. "Questions from Offeror's" (02-2A070-2) and responsibility of procurement were not met, per the "Duty to Inquire" statute which states: "All questions received have been reprinted below (Exhibit B). Answers provided in the addendum left ambiguity on the exact type and product being requested.

II. **Scope of Work/Specifications**:

The original IFB requested "MERV-8 rated filters" and "Filters not listed must be discounted a set percentage off catalogue, price sheet or price schedule as described." The original IFB and the amended "Market Basket" did not make a request to provide a full catalogue or pricing matrix to determine what the vendor states as the "List Price" would even be accurate when new sizes are added. Furthermore, the original "Market Basket" was in a completely different format than the amended basket; please see Exhibit C & D.

Since the product types were different (Pleated Filters & Panel Filters), this didn't allow us to provide a set discount percentage overall. We utilize multiple vendors for specific products, so offering a set discount for the entire scope would have been unattainable. As you can see from both the "Market Basket" listings, the discount would have had to be by filter type and not as a whole, which was listed in our bid. As you can see from the discount pages, we offered a substantially higher discount for the pleated filters and a second discount for the revised panel filters required.

Deeming Bruce Air Filter Company "non-responsive" for not offering a flat discount for items not listed on the bid makes this bid unfair, non-transparent, nor does it create equality.

BRUCEAIR

GS-IFB-210076- Protest

III. **Conclusion**:

Bruce Air Filter Company submitted a responsive bid for the items requested by the University of South Carolina. All line items were quoted and given a set discount, both by percentage and by individual price. Awarding Carolina Air Filter this contract, over double Bruce Air Filter's quote, due to a meaningless technicality, makes this bid unfair and will cost the university a considerable amount of unnecessary expense.

Bruce Air Filter Company should be deemed responsive and reviewed for possible bid award.

Sincerely,

Aaron Smith
Vice President
Bruce Air Filter Company

Attachment 2

Exhibit A

BRUCEAIR

GS-IFB-210076

7/19/2021

To: Ms. Fountain
From: Aaron Smith, BruceAir

Re: Bid Questions

Below are the questions we have regarding the upcoming air filter bid GS-IFB-210076. We look forward to participating and receiving feedback to finalize our offering.

1. Approximately how many delivery locations will the awarded vendor be required to delivery directly to?

2. Product Specifications lists "Pleated Filters, MERV-8," however a vast majority of the sizes listed in "Market Basket" are indicative of link panel filters. Are the following line items link panels: #35-#41, #85-#91, and #103-#125?

3. If the above sizes are in fact poly link panels, do you require a 2-ply or 3-ply type?

Sincerely,

Aaron Smith
Vice President
BruceAir

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.