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MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: Eagle Fire, Inc.

Case No.: 2022-118

Posting Date: December 15, 2021

Contracting Entity: Medical University of South Carolina

Solicitation No.: 5400021963

Description: Fire Suppression Inspection, Maintenance & Repair

DIGEST

Protest alleging apparent successful bidder is nonresponsive is granted. The protest letter of Eagle Fire, Inc. (EF) is included by reference. (Attachments 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.

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

BACKGROUND

Solicitation Issued:	10/12/2021
Amendment 1 Issued	10/15/2021
Amendment 2 Issued	10/22/2021
Intent to Award Posted	11/12/2021
Protest Received	11/15/2021

The Medical University of South Carolina (MUSC) issued this Invitation for Bids (IFB) on October 12, 2021, to acquire fire suppression inspection, maintenance & repair services. Amendment 1 was issued on October 15, 2021. Amendment 2 was issued on October 22, 2021. A Statement of Award² was posted to International Fire Protection, Inc. (IFP) on November 12, 2021. EF filed a protest on November 15, 2021 alleging IFP failed to include 5 and 10 year inspections in its first year price.

ANALYSIS

EF protests:

Eagle Fire would like to protest our unsuccessful award of the Fire Suppression Inspection, Maintenance & Repair at the Medical University of South Carolina, Charleston, SC. It is our understanding that the winning contractor was required to perform 3- & 5-year inspections as part of year 1 of the contract. The awarded pricing does not reflect the additional work to be performed as stated in the following of the solicitation and formal questions.

1. Page 17 - #4 – Three (3) and Five (5) year tests and inspections will all be conducted in 2022 (Year 1 of contract)
2. Formal Questions – Q20 – Details of the 5-year internal inspection and what is expected. Every other system is due for inspection.

The solicitation requested pricing for testing and inspection, an hourly rate for repairs performed during regular hours, and an hourly rate for repairs performed during premium hours for each year of the five-year contract. The three- and five-year tests and inspections were required

² The Statement of Award was posted on November 12, 2021 in the amount of \$ 1,032,800.52. Section 11-35-1520(10) requires an Intent to Award to be posted for contracts with a total potential value greater than \$100,000.

during the first year of the contract. IFP bid the same price for inspection and testing for years one and three through five and a slightly lower price in year two.

In response to an inquiry by the CPO to verify that the required inspections were included in its bid price, IFP responded:

Our interpretation on the five-year internals would have been done with the service hours (example Ashly River Towers has 9 floors and 120 valves, there is no clarification of how many 5-year internals would need to be completed).

(Attachment 2)

In other words, IFP confirmed that the three-year and five-year tests were not included in its year one pricing but rather would be billed as part of hourly service pricing.

Section 11-35-1520(10) requires award be made to the lowest responsive and responsible bidder.

Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at a location specified in the invitation for bids.

Section 11-35-1410(8) defines a responsive bidder as:

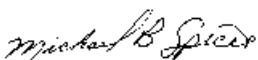
'Responsive bidder or offeror' means a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals.

IFP did not include all the material requirements in its bid price and its bid is not responsive.

DECISION

For the reasons stated above the protest of Eagle Fire, Inc. is granted. The intended award to International Fire Protection, Inc. is cancelled, and the procurement is remanded to the Medical University of South Carolina for processing in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



MEMO FOR RECORD

Date: 11/15/2021

TO: Andy Champion – Chief Procurement Officer and Materials Management Officer

FROM: Raymond Clarke – President

SUBJECT: Protest of Unsuccessful Award for Contract Sol# - 5400021963

Mr. Champion,

Eagle Fire would like to protest our unsuccessful award of the Fire Suppression Inspection, Maintenance & Repair at the Medical University of South Carolina, Charleston, SC. It is our understanding that the winning contractor was required to perform 3- & 5-year inspections as part of year 1 of the contract. The awarded pricing does not reflect the additional work to be performed as stated in the following of the solicitation and formal questions.

1. Page 17 - #4 – Three (3) and Five (5) year tests and inspections will all be conducted in 2022 (Year 1 of contract)
2. Formal Questions – Q20 – Details of the 5-year internal inspection and what is expected. Every other system is due for inspection.

We would appreciate you looking into this matter and look forward to hearing back from you.

Sincerely,

Raymond Clarke

Raymond Clarke, PE
President
Eagle Fire Inc.

EAGLE FIRE INC.
7459 White Pine Road, Richmond, VA 23237
PHONE 804-743-2500 • FAX 804-743-2504 • www.eaglefire.com
Lic. NC 27146FS-IC • SC BFS.6229FSQ

Attachment 2

From: [Paul O'Dell](#)
To: [Spicer, Michael](#)
Cc: [Grier, Manton](#); [White, John](#); [Craig, Kimber](#); [Brian Pedrick](#); [Holloway, Belinda F.](#); [Edmondson, Richard](#); [Witt, Margaret](#); [Harrison, Jonathan](#); [Champion, Andy](#)
Subject: RE: [External] Eagle Fire - Protest Letter for Solicitation 5400021963
Date: Friday, December 3, 2021 4:56:12 PM
Attachments: [image003.png](#)

Good afternoon Michael,

Our interpretation on the five-year internals would have been done with the service hours (example Ashly River Towers has 9 floors and 120 valves, there is no clarification of how many 5-year internals would need to be completed).

We received a message from Andy Champion and responded and wanted to clarify our pricing, yet we reached out via by email on 11/17/2021 and 11/24/2021 and by phone on 11/17/2021 to discuss but have not heard back.

We are looking forward to hearing from you and working with MUSC.

Thank you,
Paul

From: Kimberlee Blevins <Kimberlee.Blevins@ifpinc.us>
Sent: Thursday, December 2, 2021 1:42 PM
To: Brian Pedrick <brian.pedrick@ifpinc.us>
Cc: Spicer, Michael <mspicer@mmo.sc.gov>; Grier, Manton <mgrier@ogc.sc.gov>; White, John <jswhite@mmo.sc.gov>; Craig, Kimber <kcraig@mmo.sc.gov>; Holloway, Belinda F. <brownbr@musc.edu>; Edmondson, Richard <edmondsr@musc.edu>; Witt, Margaret <wittma@musc.edu>; Harrison, Jonathan <harrijon@musc.edu>; Champion, Andy <champiow@musc.edu>; ray.clarke@eaglefire.com
Subject: Re: [External] Eagle Fire - Protest Letter for Solicitation 5400021963

Brian, see the below email and attached.

Thank you,
Kimberlee



Administrator

243 Royal Drive Madison, AL 35758 | D: 256.562.1311 | M:
256.656.1120

Visit us online at: www.candoifp.com

From: Spicer, Michael <mspicer@mmo.sc.gov>

Sent: Wednesday, December 1, 2021 8:07 AM

To: Kimberlee Blevins <Kimberlee.Blevins@ifpinc.us>

Cc: Grier, Manton <mgrier@ogc.sc.gov>; White, John <jswhite@mmo.sc.gov>; Craig, Kimber <kcraig@mmo.sc.gov>; Holloway, Belinda F. <brownbr@musc.edu>; Edmondson, Richard <edmondsr@musc.edu>; Witt, Margaret <wittma@musc.edu>; Harrison, Jonathan <harrjion@musc.edu>; Champion, Andy <champiow@musc.edu>; ray.clarke@eaglefire.com <ray.clarke@eaglefire.com>

Subject: RE: [External] Eagle Fire - Protest Letter for Solicitation 5400021963

You don't often get email from mspicer@mmo.sc.gov. [Learn why this is important](#)

Ms. Blevins,

I am the Chief Procurement Officer assigned to review the protest by Eagle Fire Inc. of an intent to award a contract to International Fire Protection for fire suppression inspection, maintenance & repair for the Medical University of South Carolina resulting from solicitation 5400021963. The Eagle Fire letter of protest and International's bid are attached. The protest questions whether International included three and five year tests and inspections during the first year of the contract. Can you verify whether these tests and inspections are included in International's pricing for year 1 of the contract?

Thank you.



Michael B. Spicer | Information Technology Management Officer
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896-5225 | mspicer@mmo.sc.gov

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.