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EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

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JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: Pace® Analytical Services

Case No.: 2022-133

Posting Date: June 7, 2022

Contracting Entity: Department of Health and Environmental Control

Solicitation No.: 5400023251

Description: Per- and Polyfluoroalkyl Substances (PFAS) Drinking Water Sampling

DIGEST

Protest alleging improper award is granted. The protest letter of Pace® Analytical Services (PAS) 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:	04/12/2022
Amendment 1 Issued	04/29/2022
Bids Received	05/17/2022
Intent to Award Posted	05/20/2022
Intent to Protest Received	05/23/2022
Amended Protest Received	05/29/2022

The Department of Health and Environmental Control issued this Invitation for Bids on April 12, 2022, for Per- and Polyfluoroalkyl Substances (PFAS) Drinking Water Sampling. Amendment 1 was issued on April 29, 2022. An Intent to Award to Gel Laboratories, LLC on May 20, 2022. PAS filed an intent to protest on May 23, 2022, followed by its formal protest on May 29, 2022.

ANALYSIS

PAS protests:

Pace's basis for this protest is found in the IFB sections listed below. These sections state that bidders shall provide pricing for both normal and expedited analysis for Method 537.1 [section III. 3.14.2], and the award will be based on lowest responsible and responsive bidder[s] [section VI.]. Further clarification in these sections of the IFB states that expedited analyses will not be part of the award criteria, and the award will be made to one Offerer. Based on line item 1 on the bid tabulation [provided on 20-May-2022], Pace® submitted the lowest unit price for Method 537.1. However, it appears that the expedited analysis was incorrectly factored into the overall award criteria by the State. As stated in the IFB, the award will be made to the lowest responsible and responsive bidder[s]. Pace® argues that we submitted the lowest unit price, we satisfied the lowest responsible and responsive bidder criteria, and therefore, we should be awarded the contract. Referencing Amendment 1 [Issued on 29-Apr-2022], Pace® does not see where any questions were asked by vendors or answers provided by the State of South Carolina regarding any changes to the award criteria. Please see sections below to support Pace's arguments....

III. SCOPE OF WORK/SPECIFICATIONS

3.14 PRICING:

3.14.2. Provide an individual price for analysis of Method 537.1.

The costs must be all-inclusive, including collection supplies, freight, and shipping charges.

Bidders shall provide pricing for both normal and expedited analysis [the pricing for expedited analyses will not be part of the award criteria). Based on this section, Pace® interpreted the requirements outlined in the referenced IFB that the unit pricing we provided for Method 537.1 would be the basis of the award,

and the pricing we provided for expedited analyses would not be factored into the decision for an award.

DHEC responds:

In response to Pace Analytical, LLC's protest of the award in solicitation # 5400023251, we reviewed the solicitation and have determined Pace Analytical is correct. Item 3.14.2 of the solicitation indicates expedited pricing will not be considered for award, but we mistakenly did include this information in our calculations. With the realization of this mistake, we concur with Pace Analytical, LLC's protest and agree that the award to GEL Laboratories, LLC was in error and that award to Pace Analytical, LLC would have been correct.

DECISION

For the reasons stated above, the award to Gel Laboratories, LLC is cancelled. The procurement is remanded to the Department of Health and Environmental Control for award in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



May 29, 2022

State of South Carolina
Materials Management Office
1201 Main Street, Suite 600,
Columbia, SC 29201

Subject: Protest of Award for SCDHEC IFB# 5400023251 Per- and Polyfluoroalkyl Substances (PFAS) Drinking Water Sampling

Dear Chief Procurement Officer,

This letter serves as Pace[®] Analytical Services' protest of contract award for the above reference IFB that was posted on 20-May-2022. It follows up on our intent to protest email dated 23-May-22 @ 10:11am EDT. Pace[®] respectfully requests the State accept our letter to officially protest an award for the above reference IFB that was posted on 20-May-2022. Pace's basis for this protest is found in the IFB sections listed below. These sections state that bidders shall provide pricing for both normal and expedited analysis for Method 537.1 (section III. 3.14.2), and the award will be based on lowest responsible and responsive bidder(s) (section VI.). Further clarification in these sections of the IFB states that expedited analyses will not be part of the award criteria, and the award will be made to one Offerer. Based on line item 1 on the bid tabulation (provided on 20-May-2022), Pace[®] submitted the lowest unit price for Method 537.1. However, it appears that the expedited analysis was incorrectly factored into the overall award criteria by the State. As stated in the IFB, the award will be made to the lowest responsible and responsive bidder(s). Pace[®] argues that we submitted the lowest unit price, we satisfied the lowest responsible and responsive bidder criteria, and therefore, we should be awarded the contract. Referencing Amendment 1 (issued on 29-Apr-2022), Pace[®] does not see where any questions were asked by vendors or answers provided by the State of South Carolina regarding any changes to the award criteria. Please see sections below to support Pace's arguments.

Statements of our protest includes the following sections:

From page 19 of IFB Per- and Polyfluoroalkyl Substances (PFAS) Drinking Water Sampling #5400023251:

III. SCOPE OF WORK/SPECIFICATIONS

3.14 PRICING:

3.14.2. Provide an individual price for analysis of Method 537.1.

- The costs must be all-inclusive, including collection supplies, freight, and shipping charges.



- Bidders shall provide pricing for both normal and expedited analysis (the pricing for expedited analyses will not be part of the award criteria).

Based on this section, Pace® interpreted the requirements outlined in the referenced IFB that the unit pricing we provided for Method 537.1 would be the basis of the award, and the pricing we provided for expedited analyses would not be factored into the decision for an award.

From page 22 of IFB Per- and Polyfluoroalkyl Substances (PFAS) Drinking Water Sampling #5400023251:

VI. AWARD CRITERIA

AWARD CRITERIA -- BIDS (JAN 2006)

Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

AWARD TO ONE OFFEROR (JAN 2006)

Award will be made to one Offeror. [06-6040-1]

In this section, it is important to note that Pace® believes we are the lowest responsible and responsive bidder for IFB Per- and Polyfluoroalkyl Substances (PFAS) Drinking Water Sampling #5400023251.

Pace® Analytical Services respectfully requests that the State of South Carolina considers our protest to award, and we look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin W. Custer". The signature is written in a cursive, flowing style.

Kevin W. Custer, Ph.D
Program Manager – Environmental Compliance and Emerging Contaminants

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.