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Written Determination

Matter of: Integrity Contracting Solutions, LLC
File No.: 2022-137
Date: June 16, 2022
Contracting Entity: Trident Technical College
Solicitation No.: 040122-953-00409-04/29/22
Description: Janitorial Services for TTC Berkeley Campus

DIGEST

Request to cancel award of a contract prior to performance granted where the award was based on administrative error. Trident Technical College's request for cancellation of the award prior to performance is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review per S.C. Code Ann. § 11-35-1520(7) and Regulation 19-445.2085. This determination is based on the evidence and applicable law and precedents.

DETERMINATION

On March 29, 2022, Trident Technical College (TTC) issued solicitation #: 040122-953-00409-04/29/22 with a bid submittal deadline of April 29, 2022, for janitorial services at its Berkeley Campus. Integrity Contracting Solutions, LLC (ICS) submitted a bid on April

24, 2022, with a total bid price of \$78,300.00. Amendment #1 was posted on April 27, 2022, answering vendor questions, increasing the scope of work, and extending the bid submittal deadline until May 13, 2022.

ICS attempted to submit a revised bid on May 2, 2022, through TTC's online system with a revised total price of \$82,392. ICS experienced some difficulties in submitting its revised bid online and on May 4, 2022, ICS sent a copy of the revised bid to the procurement officer and asked for verification that the online version had been received. The procurement officer looked on the online system, where he could see who had submitted offers but not the sealed offers themselves, and responded with the date and time that an offer was submitted.

Bids were opened on May 13, 2022. The procurement officer, failing to notice that ICS had neither included the signed amendment, nor acknowledged the amendment on page 2 of the cover page, determined the ICS was the lowest priced responsible offeror based on its original bid submission. An Intent to Award was posted to ICS on May 27, 2022, with an effective date of June 9, 2022.

In preparation for contract implementation, TTC determined that the awarded ICS bid did not include the additional work added through Amendment 1. ICS declined the opportunity to include the missing work at the original bid price. When the original ICS bid was replaced with the revised ICS bid, ICS was no longer the lowest priced responsible bidder.

TTC has requested the CPO cancel the award to ICS prior to performance under Section 11-35-1520 and Regulation 19-445.2070. Section 11-35-1520(7) provides:

Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with regulations promulgated by the board. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this

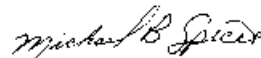
code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

Regulation 19-445.2085(C) provides:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (7) Administrative error of the purchasing agency discovered prior to performance, or

For the foregoing reasons, the CPO hereby cancels the award of a contract to ICS and the matter is remanded to DPS with instructions to proceed in accordance with the Consolidated Procurement Code.



Michael B. Spicer
Chief Procurement Officer

Columbia, South Carolina

Attachment 1

DocuSign Envelope ID: 1D321D05-FD0F-4ABA-9805-92FD2588FC4C

Request to Cancel an Award Prior to Performance

Solicitation #: 040122-953-00409-04/29/22

Solicitation Title: Janitorial Services for TTC Berkeley Campus

Award Posting Date: May 27, 2022

Trident Technical College is requesting permission to cancel an awarded contract prior to performance in accordance with SC Procurement Regulation 19-445.2085 (7) due to an administrative error on the part of the college discovered prior to performance.

On 03/29/2022 Trident Technical College (TTC) issued solicitation #: 040122-953-00409-04/29/22 for janitorial services at our Berkeley Campus. The solicitation was advertised in SCBO, notice was posted on the TTC website, and the solicitation was loaded into our electronic bidding system, Bonfire.

Amendment #1 answering vendor questions and making changes to initial specification and extending the bid closing date was issued on 04/27/2022. The amendment was uploaded into Bonfire and a notice sent through Bonfire to all potential offerors who had downloaded the initial solicitation. Notice of the amendment and the revised bid closing date was also posted on the TTC website.

Prior to the bid opening, Vendor Integrity, LLC (Integrity) notified the TTC buyer, Carlos Sanchez, that she had trouble uploading the amendment in Bonfire and asked if he had received it. She attached a copy of her signed amendment #1 with her revised pricing schedule to the email. Mr. Sanchez looked in Bonfire, where he could see who had submitted offers but not the sealed offers themselves and responded with the date and time that an offer was submitted.

Public opening was held through Webex on 05/13/2022 and all offers were unsealed by the Bonfire system at the appointed closing time and were opened and read.

Mr. Sanchez reviewed all offers, confirmed that bid totals were correct and completed a responsibility check for the lowest responsive offeror, Integrity, LLC. However, he did not notice that Integrity had neither included the signed amendment, nor acknowledged the amendment on page 2 of the cover page.

Mr. Sanchez notified the Procurement Director that the electronic solicitation package was ready for review before posting the intent to award. Carol Belcher, the Procurement Director reviewed the file without noting that while all other bidders had acknowledged Amendment #1 on page 2 of the cover page, Integrity had not.

Mr. Sanchez posted an intent to award notice on 05/27/2022 to Integrity which would be final at 12:01 a.m. June 9, 2022, and set up a contract start up meeting for the morning of June 9.

While reviewing documents in preparation for the contract start up meeting on the morning of June 9, Ms. Belcher noticed that amendment had not been acknowledged in Integrity's offer. When the Integrity representative, Ms. Shensky, arrived for the meeting, she asked if the price on the offer reflected the additions to the specifications included on Amendment #1. Ms. Shensky said, no, that the amendment that she has attempted to upload to Bonfire and had sent to Mr. Sanchez included a revised bidding schedule at a higher price.

At that point, Ms. Belcher explained to Ms. Shensky that she would have to cancel the contract start up meeting and review the revised bidding schedule.

Per the revised bidding schedule, the awarded offeror, Integrity, LLC is no longer the low bidder.

Therefore, it is necessary to cancel the contract award prior to performance and re-award the contract to the actual lowest responsive, responsible offeror, The Budd Group.

Submitted by:
Trident Technical College

6/10/2022 | 8:27 AM EDT

DocuSigned by:
Carol Belcher
182582061D214B7
Carol A. Belcher, C.P.M
Director, Procurement & Risk Management

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determinations Appeal Notice (Revised May 2020)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
(b) requests for review of other *written determinations*, decisions, *policies*, and *procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) See generally *Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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
1105 Pendleton Street, Suite 209, 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.