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Protest Decision

Matter of: Trane US Inc.

Case No.: 2023-104

Posting Date: January 9, 2023

Contracting Entity: Medical University of South Carolina

Solicitation No.: 5400022717

Description: Chiller Maintenance for the Medical University of South Carolina

DIGEST

Protest of solicitation and amendment is denied as untimely. The protest letter of Trane US Inc. (Trane) is included by reference. (Attachment 1)

AUTHORITY

The Deputy 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 Deputy Chief Procurement Officer.

BACKGROUND

Solicitation Issued	05/09/2022
Amendment 1 Issued	06/01/2022
Opening Date	06/15/2022
Intent to Award Posted	08/09/2022
Intent to Protest Received	08/12/2022
Protest Received	08/24/2022

The Medical University of South Carolina (MUSC) issued this Invitation for Bids (IFB) on May 9, 2022, for a Chiller Maintenance for the Medical University of South Carolina. Bids were opened on June 15, 2022. An Intent to Award was posted to Carolina Chillers, Inc. on August 9, 2022. Trane filed an intent to protest on August 12, 2022, followed by the formal protest on August 24, 2022.

ANALYSIS

Trane protests that two provisions in the solicitation and subsequent amendment lacked clarity and caused confusion. First, the solicitation required the contractor to perform all minor and major repairs for each chiller listed in Attachment C to the solicitation. The solicitation contained the following language:

- iii. Repairs must include replacement as necessary of internal and external parts and components of a chiller that represent 5% or less of the replacement cost of that chiller, not including labor.
 1. The following items are excluded from the 5% provision above and are included as part of this agreement at no additional cost: chiller motor failures, chiller refrigeration leaks regardless of size or refrigeration type and any chiller VFD failures.

Repair items include, but are not limited to: filters, lubricants, refrigerant, sensors, relays, switches, controls, circuit boards, condenser fans/motors, gaskets, seals, bearings and various hardware. All minor repair must be included as part of the contract.
- iv. Major repairs are included as part of the contract unless failure of a component and the need for the major repair is a direct result of failure of the contractor to perform required routine maintenance or minor repair as described herein. Major repair must consist of major disassembly, replacement of major components, overhauling and re assembly. Major repairs would include motor work, motor starter repair or replacement, main shaft replacement, tube or barrel replacement and repair or replacement of other failed major components. The contractor may be requested to provide a quote to perform other major repairs.

In Amendment 1, there were two questions (#7 and #10) regarding these requirements:

7. Regarding the chiller motors (pg 15 6:1) implies the chiller motor failures are included above and beyond the 5% clause. However, on (pg 16, 6 b:i) states motors, shafts and rotors are excluded. Please clarify the 5% valuation process.

The following are included in the contract base price:

- Failure of a chiller motor, shaft, or rotor
- Refrigerant leaks
- Chiller VFD failure
- Annual preventative maintenance
- Any repair other repair where the material price is \leq 5% of the chillers value

10. Pg 16, 6:iv states that "Major repairs are included unless it is the direct result of contractor negligence". The wording seems like it should say EXCLUDED. Especially with the last sentence which mentions pricing such work as outside of the scope.

This is correct. Major repairs that fall outside the 5% clause are not covered by the contract, unless negligent contractor actions directly result in damages or failures. This is not limited to the chillers. If the negligent action damages any other properly, the contract shall be financially responsible

Trane protests that these questions could be interpreted as contradictory. Protests to a solicitation or an amendment at issue must be filed within 15 days of the date of issuance. S.C. Code Ann. § 11-35-4210. Here, the IFB was published on May 9; the amendment at issue was published on June 1; but Trane did not protest the solicitation and amendment until over two months later on August 12. This protest issue is denied as untimely.²

² Even if the protest were timely, the CPO finds that the questions are not contradictory. Question 7 addresses the minor repair section of the solicitation. The answer lists the specific repairs to be included in the base value of the contract. Question 10 addresses the major repair section of the solicitation. The answer confirms that these repairs are not included in the base value of the contract. The solicitation states that MUSC may requests quotes for these repairs from the contractor. While there was a contradiction in the original language of the solicitation, the CPO finds no contradiction in the answers to these questions. The questions corrected the original contradiction and clarified what repairs were covered as minor repairs and identified that major repairs outside of this definition were not part of the contract.

Trane also protests the second provision centered on preventative maintenance on all Chiller VFDs. The solicitation stated:

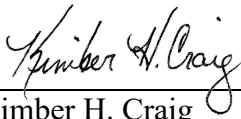
xii. Preventive Maintenance done on all chiller VFDs (Allen Bradley and Rockwell) per manufacturer's specification.

Trane argues that very little detail is provided in the scope which could lead to different interpretation and pricing. However, no questions were submitted on this requirement. As with the first protest issue, this issue could have been raised in the pre-bid conference or as a protest of the solicitation but cannot now be raised as a protest of the award. This protest issue is dismissed as untimely.

DECISION

For the reasons stated above, Trane's protest is denied.

For the Information Technology Management Office



Kimber H. Craig
Deputy Chief Procurement Officer

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.



University Procurement
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Building 1 Room JB402
Charleston, S.C. 29407
Attn: Andy Champion

Bryan Heffner
Trane U.S. Inc
4951 Rivers Avenue
North Charleston, SC 29406
(843) 743-7440

To: Andy Champion
Chief Procurement Officer

Cc: MMO Protests

We are writing you today to inform you of our protest to Solicitation 5400022717: CHILLER MAINTENANCE for Medical University of South Carolina. Trane's protest arises from two provisions within the Invitation to Bid and subsequent Amendment 1 which caused confusion or lack of clarity which could affect interpretation and pricing discrepancies between bidders. Trane's responses and supporting documentation was provided with the intent of transparency to help MUSC evaluate the scope of services. Based on "Protest Grounds", Trane asks that due diligence and scope of services discussion occur in order to determine if a bidding contractor is deemed "Responsible".

Protest Grounds #1

Confusion and contradiction between Q/A #7, Q/A#10 "Major Repairs" in Amendment 1.

7. Q: Regarding the chiller motors (pg 15 6:1) implies the chiller motor failures are included above and beyond the 5% clause. However, on (pg 16, 6 b:i) states motors, shafts and rotors are excluded. Please clarify the 5% valuation process.

A: The following are included in the contract base price:

- Failure of a chiller motor, shaft, or rotor*
- Refrigerant leaks*
- Chiller VFD failure*
- Annual preventative maintenance*
- Any repair other repair where the material price is <= 5% of the chillers value*

10. Q: Pg 16, 6:iv states that "Major repairs are included unless it is the direct result of contractor negligence". The wording seems like it should say EXCLUDED. Especially with the last sentence which mentions pricing such work as outside of the scope.

A: This is correct. Major repairs that fall outside the 5% clause are not covered by the contract, unless negligent contractor actions directly result in damages or failures. This is not limited to the chillers. If the negligent action damages any other properly, the contract shall be financially responsible.

Trane Explanation for Protest Grounds #1

Amendment #1 questions 7 and 10 focused on “Major Repairs” coverage under the Select Service Contract, which constitute a large portion of the estimated costs for unplanned repairs that were covered in Trane’s Bidding Schedule. The answers to these questions were unclear as they could be interpreted as contradictory. Trane elected to be transparent with what we were including to help MUSC Procurement and MUSC Facilities better compare costs in Bidding Schedule. Our concern is that bidding contractors can look at these provisions as an opportunity to charge or bill MUSC for the repairs that are interpreted as not being included in the scope of coverage.

Protest Grounds #2

Very little detail is provided for the scope of services that include the Preventative Maintenance on all Chiller VFDs, which could lead to different interpretation and pricing. The lack of detail could also present the risk of non-responsible bidders thinking that they can maintain the equipment covered under this contract.

1. Section 5.xii:

xii. Preventive Maintenance done on all chiller VFDs (Allen Bradley and Rockwell) per manufacturer’s specification.

Trane Explanation for Protest Grounds #2

Section 5.xii called out the need for preventative maintenance on all Chiller VFDs per manufacturer’s specification. With Trane being the OEM for the majority of the equipment, we elected to be transparent and provide detail on what the “Manufacturer’s Specification” was for the unique and complicated drives (Rockwell Drives in CEP), which accounted for over 10% of our Bidding Schedule costs. The intent of providing this information was to better arm MUSC with the ability to compare “apples-to-apples” scope for the bidding contractors. Trane feels as the lack of detail in Section 5.xii describing the necessary scope of services present the risk of contractors not covering (or having the training and skillset to fulfill) the intended coverages.

Conclusion

Trane submitted our bid with supporting information with the understanding that this is a very complicated scope to evaluate and ultimately fulfill. Having this support documentation enables MUSC to compare scope coverage between the bidding contractors and determine if there are any bidding contractors that are not “responsible” per the award criteria. We feel as though the Protest Grounds present risks for MUSC as they can be interpreted differently from contractors. We thank you for your review of this protest and consideration of a future scope review to determine if the bidding contractors are in fact the lowest responsible and responsive bidder.