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Protest Decision

Matter of: LillyPad EV, LLC
Case No.: 2024-203
Posting Date: September 20, 2023
Contracting Entity: South Carolina Department of Education
Solicitation No.: 5400025315
Description: Charging Stations for EV Bus Sites

DIGEST

Protest dismissed as untimely. The protest by LillyPad EV, LLC (LPE) is attached and included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer (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.

BACKGROUND

| | |
|----------------------------|------------|
| Solicitation Issued | 05/24/2023 |
| Amendment 1 Issued | 06/22/2023 |
| Amendment 2 Issued | 06/27/2023 |
| Amendment 3 Issued | 07/10/2023 |
| Amendment 4 Issued | 07/25/2023 |
| Intent to Award Posted | 09/06/2023 |
| Intent to Protest Received | 09/11/2023 |
| Protest Received | 09/20/2023 |

The South Carolina Department of Education (DOE) issued this Best Value Bid on May 24, 2023, to acquire charging stations for electric vehicle (EV) bus sites. Potential Offerors were advised to submit any questions about the solicitation by June 2, 2023. Amendment 1 was issued on June 22, 2023. The Amendment reproduced the solicitation in full making material changes to the specifications, answered potential Offerors' questions, and changed the bid submission date. Amendment 2 was issued on June 27, 2023, making minor changes to the price proposal spreadsheet. Amendment 3 was issued on July 10, 2023, followed by Amendment 4 on July 25, 2023. An Intent to Award was posted to Incharge Energy, LLC (IE) on September 6, 2023. LP filed an Intent to Protest on September 11, 2023, followed by its formal protest on September 20, 2023.

DISCUSSION

LP protests the award to IE on the grounds that the specifications were unduly restrictive, and IE was the only vendor that could have won the award:

LilyPad EV is protesting the award of SN 5400025315 on grounds that the awarded bidder was the only bidder that could have won this award. We believe that the specifications of the bid were written to favor one charging manufacturer, this advantage translated directly into a cost advantage, and, because of that manufacturer was also the awarded bidder, there was always one bidder that had an unsurmountable advantage. LilyPad EV requested minor changes to the specifications that would have allowed us to submit a competitive bid using other approved charging equipment and were denied this request. We will use materials from this bid, the bus manufacturer that the charging equipment was intended for, and communication with South Carolina Department of Education (SC DOE) to prove that this bid was tailored to one bidder only.

LP is protesting the specifications published in the original solicitation. While LP could have protested the specifications when the solicitation was originally issued or within 15 days of the rejection of its requested changes, Section 11-35-4210(1)(b) prohibits a protest of a matter that could have been raised as a protest of the solicitation as a protest of the award:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual


bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added)

Consequently, the protest is untimely, and the CPO lacks jurisdiction to review the merits of this protest.

DECISION

For the reasons stated above, the protest of LillyPad EV, LLC is dismissed.



Michael B. Spicer
Chief Procurement Officer

Columbia, South Carolina

Attachment 1

Official Protest of Award for SN 5400025315

South Carolina Department of Education

9/18/2023

Elsie Montgomery
SC Department of Education
ATTN: Procurement Office
1429 Senate St. STE 200
Columbia SC, 29201

Dear Ms. Montgomery:

We would like to begin by thanking you for your professionalism and prompt response throughout the bid process and this protest process.

LilyPad EV is protesting the award of SN 5400025315 on grounds that the awarded bidder was the only bidder that could have won this award. We believe that the specifications of the bid were written to favor one charging manufacturer, this advantage translated directly into a cost advantage, and, because of that manufacturer was also the awarded bidder, there was always one bidder that had an unsurmountable advantage. LilyPad EV requested minor changes to the specifications that would have allowed us to submit a competitive bid using other approved charging equipment and were denied this request. We will use materials from this bid, the bus manufacturer that the charging equipment was intended for, and communication with South Carolina Department of Education (SC DOE) to prove that this bid was tailored to one bidder only.

We intend to prove that the specifications were unnecessarily rigid. LilyPad made attempts to have minor changes made to the specifications and were denied without reason. The specifications clearly state that the winning bidder must use equipment that has current, successful interoperability tests with the OEM of the SC DOE fleet of buses. That OEM is Thomas and the bus model is Jouley. When you juxtapose the specifications of the bid and the list of equipment that has current, successful interoperability tests with the OEM, there is only one qualified equipment manufacturer for this bid.

Despite attempts to get minor aspects of the bid specifications changed, SC DOE refused, tacitly supporting only one manufacturer for this bid. The reasons for rejection were never provided.

The ability for only one equipment manufacturer to successfully bid on this opportunity also meant that this manufacturer was able to control the winning price of the bid and, therefore, leave them as the only logical winner of the bid from the start.

We ask that SC DOE nullify the award to InCharge and rebid the opportunity with more equitable specifications and terms.

Frank Huerta
Director of Alternative Fuels
LilyPad EV
Frank.huerta@lilypadev.com
(619) 850-1128

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2023)

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 2023 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.