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CHAIRMAN, HOUSE WAYS AND MEANS

Protest Decision

Matter of: Spartan Fire & Emergency Apparatus, Inc.

Case No.: 2017-107

Posting Date: August 1, 2016

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400011049

Description: Fire Apparatus for the South Carolinas Fire Academy

DIGEST

Protest of a determination to cancel the solicitation is denied. Spartan Fire & Emergency Apparatus' (Spartan) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer[1] conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence 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

Event	***Date***
Solicitation Issued	05/06/2016
Amendment One Issued	05/20/2016
Amendment Two Issued	05/23/2016
Statement of No Award Issued	07/22/2016
Protest Received	07/22/2016

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids on May 18, 2016, on behalf of the South Carolina Department of Labor, Licensing, & Regulation (SCDLLR) to solicit bids from qualified vendors for the purchase of three (3) different apparatus.

- Aerial Apparatus, Diesel Engine
- Pumper Apparatus, Diesel Engine
- Water Tender, Diesel Engine

The solicitation included a requirement that all items were to be delivered within 60 days after award. [Solicitation, Page 18] Two vendors submitted responses: Rosenbauer South Dakota, LLC; (Rosenbauer) and Spartan. Rosenbauer offered to deliver the Aerial Apparatus within 365 days after award and both the Pumper Apparatus and the Water Tender within 300 days after award. Spartan offered to deliver the Water Tender in November 2016, between 116 and 180 days after award. Both bidders were determined to be non-responsive to a material requirement of the solicitation and the solicitation was cancelled.

ANALYSIS

Spartan protests that the solicitation required award be made to the lowest responsive and responsible bidder and did not put bidders on notice that the State would not accept an exception to the delivery requirement:

> The specifications provided for this Solicitation did not restrict any vendor the opportunity to participate by indicating “No Exception” for Delivery or any other portion of the specifications. Each vendor had the same opportunity to provide their lowest responsible and responsive bid. Our grounds for protest is that the Award Criteria is not being followed as set for within the specifications and the specifications did not indicate “No Exception” for the requested Delivery times

> therefore not justifying a reason to issue a Statement of No Award for this Solicitation.

However the solicitation also put bidders on notice that any offeror that failed to conform to the material requirements of the solicitation may be rejected:

> (c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

[Solicitation, Page 9]

Section 11-35-1410(7) defines a responsible bidder as:

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

Regulation 19-445.2070(A) requires that:

> Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

Section 11-35-1520(13) does authorize the waiver of minor informalities in a bid as follows:

> Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders.

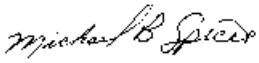
The South Carolina Procurement Review Panel has noted that a requirement is not material or essential "if variation from it has no, or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being performed." *In re: Protest of National Computer Systems, Inc.*, Panel Case No. 1989-13. The delivery time

required by this bid was 60 days after award and the two bidders offered delivery between 116 and 365 days after award. This is more than a minor variation from the exact requirements of the solicitation. The exceptions by their terms affected "delivery of the supplies being furnished" and thus cannot be waived as a minor informality or irregularity. Accordingly, both bids must be rejected. Since no responsive bids were received, the procurement officer correctly cancelled the solicitation in accordance with the Code.

DECISION

For the reasons stated above, the protest of Spartan Fire & Emergency Apparatus, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: Robby Fore
To: Protest-MMO
Subject: RE: SC Award: FIRE APPARATUS FOR SC FIRE ACADEMY Solicitation 5400011049
Date: Friday, July 22, 2016 5:18:26 PM

Chief Procurement Officer, I greatly appreciate the opportunity to participate as a bidder to the Solicitation for SC Fire Academy. We have been a South Carolina based company for over 40 years representing Pierce Manufacturing. As the President of Spartan Fire and Emergency Apparatus I have no desire to sacrifice future opportunities with the State of South Carolina however I am challenged with the decision to issue a Statement of No Award based on the email below.

As stated on page 21, Section VI. Award Criteria, Award Criteria-Bids, "Award will be made to the lowest responsible and responsive bidder(s)". Who is the lowest responsible and responsive bidder? How can an award not be issued with this statement of Award Criteria within the Solicitation? Out of all bidders of this project there has to be one vendor that is the lowest responsible and responsive bidder who mostly meets the requirements set forth within the specifications. Correct?

Secondly, as stated in Section III. Scope of Work/Specifications, Delivery Date – Days ARO (Modified), "Company awarded bid will be able to deliver all items within 60 days from award of bid notifications". The specifications for this Solicitation allowed all participants to provide products that most closely match the specification requirements. There is not one portion of the specifications that indicate "No Exception" including Section III. Delivery Date – Days ARO (Modified). How can this merit a Statement of No Award?

As a participant in this Solicitation, like all other participants, we made every effort to be the lowest responsible and responsive bidder as stated in Section VI. Award Criteria. The specifications provided for this Solicitation did not restrict any vendor the opportunity to participate by indicating "No Exception" for Delivery or any other portion of the specifications. Each vendor had the same opportunity to provide their lowest responsible and responsive bid. Our grounds for protest is that the Award Criteria is not being followed as set for within the specifications and the specifications did not indicate "No Exception" for the requested Delivery times therefore not justifying a reason to issue a Statement of No Award for this Solicitation.

Again, we greatly appreciate the opportunity to participate and look forward to your response.

Sincerely,
Robby Fore, President
Spartan Fire & Emergency Apparatus, Inc.
319 Southport Road
Roebuck, SC 29376
Toll Free 866-582-2376
Mobile 864-316-2251
rfore@spartanfire.com
www.spartanfire.com

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised September 2015)

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

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 111.1 of the 2015 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.