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Protest Decision

Matter of: LASCO Corp

Case No.: 2017-131

Posting Date: January 10, 2017

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400012124

Description: Statewide Drug Testing & Background

DIGEST

Protest of the rejection of a late proposal submission is dismissed. LASCO Corp (LASCO's) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ 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

<i>Event</i>	<i>Date</i>
Solicitation Issued	11/09/2016
Amendment 1 Issued	11/21/2016
Amendment 2 Issued	11/28/2016
Protest Received	11/29/2016

ANALYSIS

The State Fiscal Accountability Authority (SFAA) issued this Request for Proposals on November 9, 2016 to establish a state term contract for drug and alcohol testing and background check services. Proposals were received at 11:00 AM on December 14, 2016. LASCO advises that the states' software service was not operating properly so they attempted to deliver its bid to the SFAA Procurement Services office after 11:00 AM but prior to 12:00 PM on December 14, 2016. SFAA Procurement Services staff refused to accept LASCO's bid indicating that the time for accepting bids had past at 11:00 AM. LASCO protests that the actual deadline for submission of bid was 12:00 PM not 11:00 AM as evidenced by the Notice of Time Extension Posting of Award Related Documents attached to its protest.

The South Carolina Consolidated Procurement Code (Code) authorizes the Chief Procurement Officer to resolve the protest of a solicitation, amendment to a solicitation or an award of a contract. S.C. Code Ann. §11-35-4210(1). In the present case LASCO is not protesting the solicitation, amendment or award since no award has been made. Consequently, the Chief Procurement Officer does not have jurisdiction over LASCO's issue as a protest.

However, the CPO did review the situation and found the following:

Amendment 2 established the deadline for submission as 11:00 AM on December 14, 2016.

Bids and proposals may be submitted electronically, through the South Carolina Enterprise Information System (SCEIS), or hand delivered to the designated location any time prior to the deadline. Regulation 19-445.2070(G) requires:

Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening.

Hand carried bids and proposals received prior to the deadline must be entered into SCEIS. This is called a surrogate bid since it was not entered into SCEIS by the originator. To enter the surrogate bid, the bid clerk must extend the opening date and/or time in SCEIS to allow the offer to be entered against the solicitation. In this case, the bid clerk conducted the bid opening at 11:00 a.m. on 12/14/2016. After the bid opening was completed, the bid clerk needed to enter hard copy/paper offers into SCEIS. The bid clerk changed the opening time to 12/14/16 at 12:00 noon and published the document in order to give her time to enter the surrogate bids. She also added the tendering text “OPEN FOR OFFICE USE ONLY. NO OTHER RESPONSES WILL BE ACCEPTED.” (see screenshot below)

The screenshot displays the 'Display RFX' interface in the SCEIS system. At the top, there are navigation buttons: Edit, Close, Copy, Check, Close Rfx, Responses and Awards, Create Follow-on RFX, Convert to Auction, Print Preview, Questions and Answers (0), and Related Links. Below these, the RFX details are shown: RFX Number 5400012124, Smart Number STATEWIDE DRUG TESTING & BACKGROUND SC, Type Request for Proposal, Status Published, Created On 09/12/2016 11:34:47, Created By JO MARE BROWN, and Time Zone EST. The 'Notes and Attachments' tab is selected. The 'Notes' section shows a document header with the text 'Tendering text' and a preview of the text 'OPEN FOR OFFICE USE ONLY. NO OTHER RESPONSES WILL BE ACC...'. The 'Attachments' section shows a table of attachments:

Assigned To	Category	Description	File
Document Header	Standard Attachment	Solicitation	SW
Document Header	Standard Attachment	SCBO Advertisement	SCB
Document Header	Standard Attachment	Amendment #1	SW
Document Header	Standard Attachment	Revised Bid Schedule	Rev
Document Header	Standard Attachment	Amendment #2	SW

A modal window titled 'Show Tendering text' is open, displaying the text 'OPEN FOR OFFICE USE ONLY. NO OTHER RESPONSES WILL BE ACCEPTED' in a text area. The window has a 'Cancel' button at the bottom right.

This was done at 11:06:07 on 12/14/2016 and created version 5 of the document (as shown in the screenshot below).

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Case No. 2017-126
January 10, 2017

Display RFX :

RFx Number: 5400012124 Smart Number: STATEWIDE DRUG TESTING & BACKGROUND SC Type: Request for Proposal Status: Published Created On: 09/12/2016 11:34:47 Created By: JO WARE BROWN Time Zone: EST Number of Suppliers: 15 Number of Items: 6 Version Number: 6

RFx Information Bidders Items Notes and Attachments Weights and Scores Approval Tracking

Document	Name	Document Number	Back-End Document Number	Status	Date
RFx	STATEWIDE DRUG TESTING & BACKGROUND SC	5400012124		Published	09/12/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040081		Submitted	12/09/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040088		Submitted	12/13/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040089		Submitted	12/13/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040090		Submitted	12/13/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040093		Submitted	12/13/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040097		Submitted	12/13/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040098		Submitted	12/14/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040466		Submitted	11/05/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040469		Submitted	12/01/2016
RFx Response	STATEWIDE DRUG TESTING & BACKGROUND SC	5500040647		Submitted	12/13/2016

System Status
Created > Complete > RFx Ready > Published

Version Overview

Version	Document/Version Type	Created On	Changed On	Document Name	External Version Number
5	Active Document	09/12/2016 11:34:47	12/14/2016 11:36:57	STATEWIDE DRUG TESTING & BACKGROUND SC	5
4	Historical Document	11/09/2016 15:57:59	11/09/2016 15:57:59	STATEWIDE DRUG TESTING & BACKGROUND SC	4
3	Historical Document	11/01/2016 15:30:26	11/01/2016 15:30:26	STATEWIDE DRUG TESTING & BACKGROUND SC	3
2	Historical Document	11/09/2016 11:54:35	11/09/2016 11:54:35	STATEWIDE DRUG TESTING & BACKGROUND SC	2
1	Historical Document	11/09/2016 11:23:35	11/09/2016 11:23:35	Drug, Alcohol Testing & Background	1

What LASCO attached to its protest was a screen shot of the SCEIS web site after the bid clerk entered the surrogate bids. The deadline for submitting bids was 11:00 AM as published in Amendment 2 and the bid clerk correctly rejected LASCO's late submission.

DECISION

The Chief Procurement Officer lacks jurisdiction to rule because LASCO's protest is not of a solicitation, amendment to a solicitation, or award of a contract. The protest of LASCO Corp is dismissed.

For the Materials Management Office

Michael B. Spicer

Michael B. Spicer
Chief Procurement Officer

Attachment 1



December 16, 2016

South Carolina Procurement Services
Material Management Division
South Trust Tower
1201 Main Street #600
Columbia, SC 29201

RE: Protest
Solicitation Number 5400012124
Statewide Drug Testing & Background SC.

Pursuant to Section II B, Protest (Jun 2006) of Solicitation Number 5400012124 Statewide Drug Testing & Background SC. LASCO Corp hereby submits its protest. LASCO Corp request that Procurement Services allows submission of our bid for consideration of award based on the Notice of Extension Postings of Award Related Documents date and time for submission.

While attempting to submit our bid online, the states' software service was not operating properly. While trying to upload the documents for bidding we experienced delays and also were not allowed to upload PDF documents. In order to get our bid submitted, we took our bid in its entirety to the procurement office located at 1201 Main Street in Columbia on December 14, 2016. It was past 11:00 AM but before 12:00 PM when we arrived. The receptionist did not clock or accept our bid stating that it was past the cut off time of 11:00 AM. We requested to speak with the procurement officer, but she was unavailable. The receptionist stated that Mrs. Honeycutt would be coming back to her office, so we waited. Upon speaking with Mrs. Honeycutt, she also stated she could not take the bid because it was past the 11:00 AM deadline. She, in fact, was the person that had cut off the submission online at 11:00 AM. She could see where we had logged onto the website and stated the bid had not gone through for submission. She further relayed to our representative that other bidders had not been able to submit bids through the online process.

Per the enclosed NOTICE OF TIME EXTENSION POSTING OF AWARD RELATED DOCUMENTS on the Procurement Services website, the submission date and time was 12/14/2016 12:00:00 PM not 11:00 AM for Solicitation Number 5400012124. Due to discrepant times for this submission, we demand our bid be accepted.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry A Sypolt".

Larry A Sypolt CEO
LASCO Corp
3030 Devine Street
Columbia, SC 29205

enclosure: Notice of Time Extension Postings Of Award Related Documents

3030 Devine Street
Columbia, SC 29205
803.569.1829

REC'D BID CONTROL

DEC 21 '16 WE 10:33AM



PROCUREMENT SERVICES

NOTICE OF TIME EXTENSION POSTINGS OF AWARD RELATED DOCUMENTS

For solicitations issued by the Information Technology Management Office, the Statement of Award or Intent to Award will be posted at this location on the date published on the solicitation. If the appropriate award document has not been posted at this location by the close of business on the date published on the solicitation, contact the procurement officer whose name and contact information appears on the cover page of the solicitation, or if applicable, the last amendment to the solicitation.

For additional information, please reference Regulation 19-445.2090(B).

[Refresh](#)

Solicitation Number	Solicitation Description	Purchasing Agency	Delivery Point	Submission Ending Date/Time
5400012124	STATEWIDE DRUG TESTING & BACKGROUND SC.	Materials Mgmt Ofc	South Carolina	12/14/2016 12:00:00 PM

Solicitation Attachments

Pre-Award Notices

5 solicitation attachments found, displaying all solicitation attachments.

	Attachment Name	Date/Time Posted
1	Mandatory Excel Bidders Schedule.xlsx	11/09/2016 11:45:25 AM
2	Solicitation.docx	11/09/2016 11:45:25 AM
3	Amendment #1.docx	11/21/2016 03:38:46 PM
4	Revised Bid Schedule.xlsx	11/21/2016 03:39:04 PM
5	Amendment #2.docx	11/28/2016 03:59:02 PM

Contract Awards

Post-Award Notices

No contracts found!

[BACK](#)

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.