THE DIVISION OF PROCUREMENT SERVICES
DELBERT H. SINGLETON, JR.
DIVSION DIRECTOR
(803) 734-8018
MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: Velocitel, Inc., dba FDH Velocitel

Case No.: 2017-146

Posting Date: May 18, 2017

Contracting Entity: University of South Carolina

Solicitation No.: 2000032118

Description: Scanning and Nondestructive Evaluation of Four (4) Bridge Decks

DIGEST

Protest of award alleging improper sole source is denied. Velocitel's (Velocitel) 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*
Sole Source Awarded	04/05/2017
Protest Received	05/04/2017

ANALYSIS

This Sole Source was awarded to Bridge Diagnostics, Inc. by the University of South Carolina to acquire scanning and nondestructive evaluation of four (4) bridge decks. Velocitel protests that this was an improper sole source. The award to Bridge Diagnostics was in the amount of $35,067.62. (Attachment 2) Section 11-34-4210(1)(d) limits the remedies available through the protest process to procurements with a total potential value greater than fifty thousand dollars:

> (d) The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

The Chief Procurement Officer lacks jurisdiction to consider the merits of this protest.[2]

DECISION

For the reasons stated above, the protest of Velocitel, Inc., dba FDH Velocitel is denied.

For the Materials Management Office

Michael B. Spicer
Chief Procurement Officer

[2] Nothing in this decision should be interpreted as the CPO's approval of the University's sole source determination.

Attachment 1

FDH VELOCITEL®

ENGINEERING INNOVATION

NORTH CAROLINA OFFICE (RALEIGH)
6521 Meridien Drive
Raleigh, NC 27616
O: (919) 755-1012, F: (919) 755-1031
corporateinfo@fdhvelocitel.com

WWW.FDHVELOCITEL.COM

May 4, 2017

Michael Spicer
Chief Procurement Officer
University of South Carolina
Materials Management Office
1201 Main Street, 6th Floor
Columbia, SC 29201

Dear Mr. Spicer,

On behalf of Velocitel, Inc., dba FDH Velocitel ("FDH Velocitel"), I am writing to lodge a formal protest of the award of a $35,067 sole source subcontract by the University of South Carolina ("USC") to Bridge Diagnostics, Inc. ("BDI")[1] and Dr. Shane Boone[2] for the SCDOT-funded project titled "Feasibility Study for Rapid Condition Assessment of Bridge Decks." As I explain below, the rationale for the sole source procurement of BDI and Dr. Boone fails to take into account FDH Velocitel's expertise and does not provide a justification for why FDH Velocitel was not included in the initial laboratory testing stage.

In the fall of 2014, as part of an internally-funded R&D project, FDH Engineering, Inc.,[3] at its own expense, performed rapid bridge deck scanning of multiple bridges in multiple states (including the I-77 bridges over the Catawba River) using step-frequency Ground Penetrating Radar ("GPR") coupled with infrared thermography. In reviewing the capabilities of FDH Velocitel's proposed system with SCDOT, Mr. Lee Floyd, SCDOT's Bridge Maintenance Engineer, expressed (i) interest in this technology, (ii) his intent to support competitive R&D funding to support a study addressing the feasibility of rapid bridge deck scanning systems, and (iii) his expressed interest for inclusion of FDH Velocitel's technology in the study.

In the spring of 2015, FDH was contacted by multiple university PIs, including Professor Paul Ziehl from USC, seeking a commitment of support in terms of a statement of capabilities and an approximate budget estimate for testing up to four (4) bridges using its proposed step-frequency GPR/infrared thermography system. FDH Velocitel provided both a budgetary commitment and statement of capabilities to the University of South Carolina in support of Professor Ziehl's proposal, as shown in the attached letter (Exhibit A).

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[1] To be clear, FDH Velocitel is only protesting the sub award to BDI and not to the other sub awardees who use different technology than FDHV.

[2] For the sake of transparency, please be advised that FDH Velocitel is currently engaged in a lawsuit with Dr. Boone – a former FDH Velocitel employee – and others regarding the suspected use of FDH Velocitel proprietary information and past interference with FDH Velocitel clients.

[3] In February 2015, Velocitel purchased certain assets from FDH Engineering including the relevant assets described herein.

Following the award of the SCDOT grant to Professor Ziehl's team in the late summer of 2015, I personally visited USC with FDH Engineering, Inc.'s founder – Dr. Darrin Holt – in November 2015 to meet with Professor Ziehl and his team to review the capabilities of FDH Velocitel, and discuss the path forward. At that time, Professor Ziehl informed us that his team was still getting organized on the selection and review process, and anticipated reaching back out to FDH Velocitel later in 2016 as the field evaluation phase of the project got underway.

Over the next year, I contacted Professor Ziehl several times to inquire on project status and when FDH Velocitel's participation would be needed, as shown in the attached email correspondence (Exhibit B). It was not until March 23, 2017, that Professor Ziehl informed me that "we are headed in a different direction at this time." In a phone conversation on April 12, 2017, Professor Ziehl described the three technologies/companies that had been selected for evaluation in the study: (1) a pole-mounted thermal imaging system by Thermastick; (2) an impact-echo system by a team from Washington State; and (3) a coupled GPR/Infrared system by BDI. Of these systems, only Thermastick and BDI were receiving funding from the SCDOT grant for their work. At this time, Professor Ziehl also informed me that BDI had not been a supporter of the USC's grant proposal to SCDOT.

On May 1, 2017, I received from Ms. Venis Mango, the Director of Purchasing at USC, documentation regarding the BDI sole source request. See Exhibit C.

With this background, FDH Velocitel is protesting the sole source selection of BDI and Dr. Boone for this project, based on the following:

1) At Professor Ziehl's request, in May 2015, FDH Velocitel provided a letter of commitment to perform step-frequency GPR/Infrared rapid deck scanning for $25,000 ($10,000 less than BDI's awarded price) in support of USC's proposal to SCDOT, along with a description of our system and a statement of its capabilities and our expertise. FDH Velocitel was therefore a named partner in this research grant.

2) After award of the SCDOT grant to USC, FDH Velocitel visited with Professor Ziehl to discuss its capabilities and ability to partner on this – and other – bridge NDT research. Thereafter, FDH Velocitel made repeated attempts to follow up with Professor Ziehl and was consistently informed that its participation would be needed at a later date in this grant.

3) Despite FDH Velocitel's repeated attempts to contact Professor Ziehl on this project, FDH Velocitel was not informed of any selection process, competition, or RFI/RFP. As a named supporter of USC's proposal, FDH Velocitel should have been duly informed of any selection process, the requirements, and criteria for selection so that it could fairly compete for the sub award. FDH Velocitel received no such notification, despite reaching out several times to Professor Ziehl over the course of the project.

4) FDH Velocitel - a 500-person engineering company licensed to operate in 50 states - has extensive experience in nondestructive testing of bridges over the past 23 years. These include nearly 3,000 bridges tested for the Louisiana DOTD, 400 bridges for NCDOT, and over 300 bridges for SCDOT, with our most recent bridge testing being in support of SCDOT during the flooding of October 2015, when FDH Velocitel crews deployed under emergency conditions to perform testing on critical I-95 bridges that were in danger of failure.

5) FDH Velocitel's experience in bridge NDT includes a patent in location, sizing, and assessment of rebar using GPR, and other seismic and non-seismic technologies. During my discussion with Professor Ziehl on April 13, 2017, he appeared unaware of FDH Velocitel's capabilities and experience in bridge NDT, including GPR, despite the support letter, statement of qualifications, and visit in the fall of 2015.

6) In the materials provided by Ms. Mango, two reasons are given for the sole source request: the importance of comparing laboratory results to actual results and the need for a qualified vendor. Such reasons do not justify why FDH Velocitel was originally excluded from the laboratory testing phase (and thereby subsequently precluded from the actual testing phase). Furthermore, they ignore FDH Velocitel's expertise in this area as described above.

Based on these points, FDH Velocitel is requesting that the selection results of the subject award be invalidated. If Professor Ziehl and his team are unable to honor the original support letter and terms of FDH Velocitel, FDH Velocitel requests that a fully-transparent, qualifications- and price-based selection be made, following standard procurement practices. Furthermore, FDH Velocitel hereby requests that you provide us with all relevant documents that pertain to the selection of BDI and all interactions/ communications between USC and BDI and Dr. Shane Boone.

In closing, I would like to point out that FDH Velocitel was founded based on collaborative university-industry research, and we value partnerships with universities and university faculty very highly. It is in this spirit that we undertook support of Professor Ziehl's grant proposal, showed good faith in meeting with Professor Ziehl and his team, and repeatedly communicated our interest and engagement in supporting this important research project. FDH Velocitel remains committed to pursuing this research with USC and Professor Ziehl in an open and collaborative manner, and we hope that this issue can be resolved quickly.

I look forward to your response.

Sincerely,

Robert Lindyberg, PhD, PE
Senior Vice President, Engineering and Technology

cc: Shai Halivni, General Counsel, FDH Velocitel
M. Robin Davis, Jackson-Lewis
Professor Paul Ziehl, University of South Carolina
Venis Manigo, Director of Procurement, University of South Carolina
Lee Floyd, SCDOT Bridge Maintenance

Attachment 2

UNIVERSITY OF SOUTH CAROLINA

Purchase Order

University of South Carolina
Purchasing Department
1600 Hampton Street
Columbia SC 29208
United States

Pending Approval/Approved		Email Dispatch
Purchase Order No. 2000032118	**PO Date** 03-23-2017	**Revision No. / Date**
Buyer Michelle Robinson	**Phone** 803/777-4115	**Currency** USD
Payment Terms Net 30 Day	**Freight Terms** DESTFP	**Ship Via** COMMON

SUPPLIER
BRIDGE DIAGNOSTICS INC
1995 57th Court North Ste 100
Boulder CO 80301-2960
United States
Supplier ID: 0000023926

SHIP TO
See Detail Below

ATTENTION
See Detail Below

BILL TO
Controller's Office
1600 Hampton Street 6th Floor
Columbia SC 29208
United States

Line	Item / Description	Qty	Unit	Unit Price	Extended Amt	Due Date
1	Bridge deck scanning subcontract	1.00	EA	35,067.62	35,067.62	03/23/2017

Ship Item To:
300 MAIN STREET
Room C206
COLUMBIA SC 29208
United States

Attention: Molly Sagona

Item 1 Total 35,067.62

Total PO Amount **35,067.62**

Unauthorized

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised November 2016)

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 2016 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 473, 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.