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Protest Decision

Matter of: Cherry Bekaert, LLP

Case No.: 2017-147

Posting Date: May 18, 2017

Contracting Entity: SC Department of Education First Steps

Solicitation No.: 5400012622

Description: Accounting for First Steps

DIGEST

Protest of award alleging apparent successful bidder will not perform in accordance with the requirements of the contract is denied. Cherry Bekaert's (Bekaert) 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	02/07/2017
Amendment 1 Issued	02/23/2017
Intent to Award Issued	04/26/2017
Protest Received	05/04/2017

ANALYSIS

This Request for Proposals was issued by the State Fiscal Accountability Authority on behalf of SC Department of Education First Steps on February 7, 2017, to acquire financial management and accounting services for two fiscal regions that make up the First Steps County Partnerships encompassing the state of South Carolina as well as for private 4K Program and teacher training. An award was made for each financial region (Lots 1 and 2), and the private 4K program and teacher training (Lot 3). Contractors will serve as Regional Finance Managers (RFMs) for their respective lot(s).

Bekaert protests the award of Lot 1 (Region A) to Manley Garvin, LLC alleging Manley Garvin will not be able to perform the contract for the amount awarded. Manley Garvin's original proposed price for Lot 1 was \$200,000 per year. During negotiations this annual amount was reduced to \$186,000 or \$930,000 for the potential five years of the contract. Bekaert observes that Garvin's \$186,000 fee for the 27 counties in Lot 1 equals \$6,888.89 per county and historically RFMs charging less than \$10,542 per county were dismissed for substandard performance or their contracts were not renewed under adverse circumstances. As an incumbent provider of these services Bekaert believes the required work cannot be performed for the amount awarded for Lot 1.

Section 11-35-1810(1) requires the responsibility of a bidder be determined prior to award:

Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.

Section 11-35-1410(6) defines a responsible bidder as:

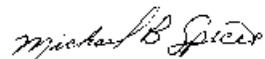
“Responsible bidder or offeror” means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

First Steps is apparently satisfied that Garvin can perform as it negotiated a reduction in the proposed cost for the services in Lot 1. Performance is a post-award contractual obligation with potential consequences described in the contract, South Carolina Consolidated Procurement Code, and Regulations. Bekaert does not allege a violation of the Code or Regulations with regard to the award of this contract. *See, e.g., Appeal by Otis Elevator Company*, Panel Case No. 2017-1 (speculation about an offeror’s future contract performance does not raise a proper challenge to responsibility).

DECISION

For the reasons stated above, the protest of Cherry Bekaert, LLP is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



May 4, 2017

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Accounting for First Steps – RFP #5400012224

Dear Sir or Madam:

Please be advised of our protest of the award dated April 26, 2017 for Lot 1 for the referenced RFP cited above.

Based upon our extensive experience, including our previous engagement by the Office of First Steps (“OFS”) to takeover Accounting for First Steps duties from previous Regional Finance Managers (“RFM”) whose substandard performance was a result of unsustainable fee arrangements and significant quality problems, including defalcation in Region 3 resultant therefrom, we hereby protest the award of Lot 1.

We present the following historical information regarding previous RFMs that were either dismissed for substandard performance or whose contracts were not renewed under adverse circumstances.

Region 4: Fees of \$73,800 for 7 counties (\$10,542 per county) were paid by Office of First Steps (“OFS”) to an RFM whose contract was terminated early (RFM was PeeDee Community Action Center whose contract was terminated in 2003 for substandard performance).

Region 3: Fees of \$118,267 for 10 counties (\$11,826 per county) were paid by OFS to DESA who was dismissed from their service for alleged improprieties.

Region 5: Fees of \$144,000 for 7 counties (\$20,571 per county) were paid by OFS to an RFM whose contract was not renewed under adverse circumstances. (RFM was John Singletary whose contract was not renewed under adverse circumstances in 2011).

By contrast to the above failed RFMs, whose fees were at a minimum of \$10,542 per county, the award winner for Lot 1 has quoted fees of \$6,888 per county (Lot 1 award is \$186,000 for 27 counties or \$6,888 per county) that are substantially lower than even those failed service providers.

Accordingly, based upon our direct experience, and the direct experience of the Office of First Steps, the historical pattern of failed RFMs due to low fees and the resultant unsustainable financial burden and substantial loss proposed to be undertaken, we request reconsideration of the award made for Lot 1. We further request to be kept apprised of any and all subsequent contract renegotiations that may occur for the



Chief Procurement Officer
May 4, 2017
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five year duration of the award and reserve our rights for reconsideration in the event of a failure by the award winner in a manner consistent with those aforementioned incidences of RFM replacement.

On behalf of Cherry Bekaert, I once again thank you for your assistance in this matter. If I may answer any further questions, please contact me any time.

Cordially,

A handwritten signature in black ink that reads 'Alan Robinson'.

Alan Robinson, Partner
arobinson@cbh.com
864.240.5148

Cherry Bekaert LLP

Filename: First Steps Protest - final
Directory: C:\Users\kleonelli\Desktop
Template: C:\Users\kleonelli\AppData\Roaming\Microsoft\Templates\Normal.dotm
Title:
Subject:
Author: Aaron Taylor
Keywords:
Comments:
Creation Date: 5/4/2017 3:35:00 PM
Change Number: 2
Last Saved On: 5/4/2017 3:35:00 PM
Last Saved By: Kirsten Leonelli
Total Editing Time: 0 Minutes
Last Printed On: 5/4/2017 3:35:00 PM
As of Last Complete Printing
Number of Pages: 2
Number of Words: 420 (approx.)
Number of Characters: 2,395 (approx.)

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.