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Protest Decision

Matter of: Tidal Basin Government Consulting, LLC

Case No.: 2017-157

Posting Date: July 21, 2017

Contracting Entity: Emergency Management Division

Solicitation No.: 5400013442

Description: Emergency Recovery Support Personnel for the Adjutant Generals Office- Emergency Management Division

DIGEST

Protest claiming a competitive disadvantage is denied. Tidal Basin Government Consulting's (Tidal Basin) 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 a review of procurement documents 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 5400013442 Issued	05/02/2017
Amendment 1 Issued	05/11/2017
Intent to Award Posted	06/20/2017
Protest by Tidal Basin Received	06/27/2017

This is the second Request for Proposals issued by the State Fiscal Accountability Authority (SFAA) on behalf of the Emergency Management Division (EMD) to acquire Recovery Support Personnel to assist EMD in recovery from hazards or events. The first solicitation (5400012547) was issued on December 21, 2016. Proposals were received from nine (9) offerors. One of the nine offerors, Adjusters International, Inc., (Adjusters), submitted an online response that, due to an administrative error, was not considered by the evaluation committee. After awards were posted to CDR Mcguire, Inc. (CDR), Hagerty Consulting, Inc., and MB3, Inc., SFAA discovered that Adjuster's proposal had not been evaluated. At the request of the procurement officer, the CPO canceled all three awards under Regulation 19-445.2085(C). On April 26, 2017, the procurement manager emailed all offerors that the award was cancelled and included copies of the Determination Canceling the Award, the Vendor Response form, the Composite Score sheet, the Intent to Award, the Award Suspension, and the Cancellation of Award. All subsequent requests for additional documents were denied.

The second solicitation (5400013442) was issued on May 2, 2017. Proposals were received and evaluated by a different evaluation committee and Intents to Award were posted to Hagerty Consulting, Inc., Atkins North America, Inc., and MB3, Inc. on June 20, 2017. Adjusters did not submit a proposal in response to the second solicitation, but Tidal Basin did. Tidal Basin protests that the fact that Adjuster's proposal in response to the first solicitation was not evaluated denied it feedback provided to the evaluated offerors putting it at a competitive disadvantage.

ANALYSIS

Tidal Basin protests as follows:

Our protest is based upon the fact that all respondents, except Tidal Basin, to the initial RFP release were provided with scoring feedback. This feedback allowed companies to make targeted improvements to their second proposal response which would improve their scoring/position upon review. The response submitted by Tidal Basin in response to the first bidding opportunity was not opened, and therefore not scored, singling our firm out as the only one not provided with specific scoring feedback. We can clearly see from the second round of submissions, and offers of awards, that firms made significant changes resulting in major changes to the final evaluation scores/reviews.

According to a web site maintained by The Tidal Basin Group, “Adjusters International and Tidal Basin are now one organization.”² However, each company is registered as a separate entity with the South Carolina Enterprise Information System (SCEIS). Each has a unique federal tax ID. The South Carolina Secretary of State lists them as separate companies, with Tidal Basin Government Consulting, LLC, formed in the District of Columbia, and Adjusters International, Inc., in Delaware. To the extent any offeror was “aggrieved” by the failure to evaluate Adjuster’s proposal, It was Adjusters, not Tidal Basin. Tidal Basin lacks standing to complain. *Protest of ACMG, Inc.*, Panel Case No. 1990-4; *see Protest of Cathcart and Associates, Inc.*, Panel Case No. 1990-13 (only an entity intending to be contractually bound to the State has standing to protest); *Protest of Dictaphone Corporation*, Panel Case No. 1991-10 (only actual offeror, not an agent or affiliate, has standing to protest).³

² <https://tidalbasingroup.com/about/> last viewed 7/6/2017

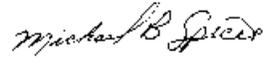
³ Even if the CPO were to ignore Tidal Basin’s standing problem, he would not grant the protest. Tidal Basin attempts to treat the two solicitations as a single continuous event. Once it was discovered that Adjusters proposal was not evaluated and the determination was made to cancel the awards on April 25, 2017, the situation changed from an awarded contract to the cancellation of the solicitation without award. Except for a possible protest of the determination to cancel the awards prior to performance, the acquisition process was ended. In addition, the feedback received by the other bidders was inconsequential. All bidders responding to the first solicitation received an email on April 26, 2017, announcing the cancellation and included copies of the following documents:

- Determination Cancelling Award
- Vendor Response Form
- Composite Score Sheet
- Email from Adjusters International
- Award Suspension
- Cancellation of Award Request
- Award Cancellation

DECISION

For the reasons stated herein, the protest of Tidal Basin Government Consulting, LLC is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

The composite score sheet showed each evaluators' score, for each evaluation criteria, for each bidder, and the resulting totals. It did not provide insight into the evaluators' subjective analysis of the proposals leading to the raw scores. All bidders except Tetra Tech received the same information. Tetra Tech, the only bidder to receive redacted proposals from the first solicitation, did not submit a proposal in response to the second solicitation. Due to the subjective nature of the evaluation of responses to a Request for Proposals, without more detailed information about the scoring or a wider distribution of the redacted proposals from the first solicitation, the numerical scores offered little insight into the evaluator's analysis of the proposals and no significant advantage to the other bidders or inequitable treatment of Tidal Basin. This is particularly relevant since the second solicitation was evaluated by a completely different evaluation committee. While it is regrettable that the events unfolded like they did, there was no violation of the Code and Tidal Basin was not disadvantaged by the failure to evaluate its response to the first solicitation.

Attachment 1



Protest of Intent to Award for RFP # 5400013442
Emergency Recovery Support Personnel

June 27th, 2017

SFAA, Div. of Procurement Services, MMO
Attn: Allen Register, CPPO, ASCPM
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Mr. Register,

Tidal Basin has reviewed the results from both rounds of the South Carolina RFP bidding process. Based on our review of this process, we regret to advise the State that Tidal Basin has decided to protest the published results. Our protest is based upon the fact that all respondents, except Tidal Basin, to the initial RFP release were provided with scoring feedback. This feedback allowed companies to make targeted improvements to their second proposal response which would improve their scoring/position upon review. The response submitted by Tidal Basin in response to the first bidding opportunity was not opened, and therefore not scored, singling our firm out as the only one not provided with specific scoring feedback. We can clearly see from the second round of submissions, and offers of awards, that firms made significant changes resulting in major changes to the final evaluation scores/reviews.

Tidal Basin proposes the following remedy to fairly correct this unfortunate situation. We propose that the State of South Carolina accept all respondents who met the minimum requirements on the second RFP be placed onto a vendor's list. When work is available, South Carolina can issue a task order proposal to this list of vendors who will provide a brief response to include resumes, approach and pricing for the task order. The state can then make their selection from this set of responses, and can select any of the respondents. This method is commonly used by states for emergency management contracts. For example, the Commonwealth of Virginia uses a similar method.

While we regret having to submit this protest, it is hoped that the proposed solution will offer a fair and equitable solution for all entities. Please don't hesitate to contact me at JMarini@tidalbasingroup.com or (315) 415-2963 if you have anything further you would like to discuss.

With Respect,

A handwritten signature in blue ink that reads "John Marini".

John Marini
President & CEO

CC: Sheila O. Willis, CPPB

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.