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MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: McCoy & McCoy Laboratories, Inc.

Case No.: 2018-130

Posting Date: January 12, 2018

Contracting Entity: South Carolina Department of Health and Environmental Control

Solicitation No.: 54000143741

Description: Drinking Water Analysis – UCMR4 Methodology

DIGEST

Protest requesting reconsideration of a responsibility determination is denied. McCoy & McCoy Laboratories' (MML) 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.

BACKGROUND

Event
Solicitation Issued

Date
10/18/2017

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

<i>Event</i>	<i>Date</i>
Amendment One	11/07/2017
Bid Submission	11/21/2017
Intent to Award Issued	12/15/2017
Protest Received	12/19/2017

ANALYSIS

The South Carolina Department of Health and Environmental Control (DHEC) issued this Competitive Best Value Bid (CBVB) on October 18, 2017, to establish a contract to include all necessary documentation, work and equipment to perform drinking water analyses on South Carolina's public drinking water systems for the Unregulated Contaminant Monitoring Rule (UCMR4). Bids were received on November 21, 2017, and an Intent to Award was posted to Euro Fins Eaton Analytical, Inc. on December 15, 2017.

On December 19, 2107, MML protested:

McCoy & McCoy Laboratories, Inc. (MMLI) greatly appreciates the opportunity to bid on the above listed solicitation. We are writing to formally protest this award. MMLI was listed as non-responsive for not meeting the solicitation requirements. Specifically, the reason given was not providing proof of certification.

The solicitation required the successful bidder be certified by the EPA to conduct the required testing:

Section III. Scope of Work/Specifications:

3.2.1. Each Offeror (contract laboratory) must be certified by the EPA (UCMR4) Laboratory Approval Program to perform and report regulatory monitoring data under the Unregulated Contaminant Monitoring Rule (UCMR4) for each Assessment Monitoring bid. The certification must be in effect at the time of submission of the CBVB.

The solicitation also required bidders to provide evidence of its certification by the United States Environmental Protection Agency (EPA):

Section IV. Information for Offerors to Submit- Evaluation

4.3. Certification

4.3.1. Provide proof of certification by the Environmental Protection Agency (EPA) Laboratory Approval Program to perform and report regulatory monitoring data under the Unregulated Contaminant Monitoring Rule (UCMR4) for each Assessment Monitoring bid.

MML did not submit an EPA certification with its bid. DHEC contacted the EPA about MML's certification and got the following response:

In determining the Offeror is Environmental Protection Agency (EPA) authorized to analyze all UCMR4 methods, UCMR Sampling Coordinator@.EPA.gov on November 28, 2017 responded to an email from Mary Ann Fuller stating: "We are in the process of evaluating PT #5 (the final PT for UCMR4). Until that evaluation is complete, we can not say whether McCoy & McCoy will be approved to analyze all UCMR4 methods. That's another way of saying that @ this moment in time, they are not approved to run all the UCMR4 methods. The plan is to have all the approved labs w/ all their approved methods posted on our UCMR4 Website before the end of the year (12/29/17)."

By its own admission, MML did not receive EPA certification until December 15, 2017, the day the Intent to Award was issued:

MMLI received full certification from the EPA for all methods under UCMR4 on December 15, 2017. The EPA had a delay in releasing results from PT #5, which resulted in a hardship of us losing the contract to another bidder. In light of this new information, we ask that consideration be given to our pricing for Lot 1, AM2 and Lot 2, AM3. Assuming a quantity of 1360 samples, MMLI's price is \$73,004.80 lower for Lot 1, AM2, and assuming a quantity of 344 samples, MMLI's price is \$24,348.32 lower for Lot 2, AM3 than the awarded bidder. Awarding this part of the contract to MMLI will result in substantial savings to the state of South Carolina.

Section 11-35-1528(8) requires:

Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the State, taking into consideration all evaluation factors set forth in the best value bid.

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

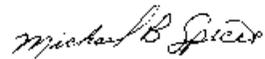
which will assure good faith performance which may be substantiated by past performance.

MML lacked the required EPA certification, was not a non-responsible bidder, and consequently ineligible for award.

DECISION

For the reasons stated above, the protest of McCoy & McCoy Laboratories, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



P.O. Box 907 – 825 Industrial Rd – Madisonville, KY 42431
270.821.7375 – www.mccoylabs.com

December 19, 2017

Solicitation: 5400014374

Description: CBVB – DRINKING WATER ANALYSIS – UCMR4

Agency: SC Dept of Health & Environmental Control

ATTN: Chief Procurement Officer, Materials Management Office

Dear Rebecca Nichols,

McCoy & McCoy Laboratories, Inc. (MMLI) greatly appreciates the opportunity to bid on the above listed solicitation. We are writing to formally protest this award. MMLI was listed as non-responsive for not meeting the solicitation requirements. Specifically, the reason given was not providing proof of certification.

MMLI received full certification from the EPA for all methods under UCMR4 on December 15, 2017. The EPA had a delay in releasing results from PT #5, which resulted in a hardship of us losing the contract to another bidder. In light of this new information, we ask that consideration be given to our pricing for Lot 1, AM2 and Lot 2, AM3. Assuming a quantity of 1360 samples, MMLI's price is \$73,004.80 lower for Lot 1, AM2, and assuming a quantity of 344 samples, MMLI's price is \$24,348.32 lower for Lot 2, AM3 than the awarded bidder. Awarding this part of the contract to MMLI will result in substantial savings to the state of South Carolina.

In this case, we feel that the EPA delay caused our laboratory to lose the contract. We completely understand that the state of South Carolina needed to make a decision with the information on hand. Again, we ask that in light of new information, a new decision be made. Our intent is to perform the work for Lot 1, AM2 and Lot 2, AM3 based on pricing we submitted. We thank you again for the opportunity to bid on this project and look forward to working with you and your team in the future.

Sincerely,

Colin Menser, Director - Sales & Marketing
McCoy & McCoy Laboratories, Inc
P.O. Box 907
Madisonville, KY 42431



McCoy & McCoy LABORATORIES, Inc.



Providing tomorrow's analytical capabilities today

**ISO/IEC
17025:2005
Accredited**



P.J.L.A.
Testing

Accreditation #80812



TNI
460210



STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 367, 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.