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Protest Decision

Matter of: SharkBanz

Case No.: 2021-104

Posting Date: August 4, 2020

Contracting Entity: University of South Carolina

Solicitation No.: USC-FPB-3635-AS

Description: Furnish and Deliver Personal Protection Equipment

DIGEST

Intent to Protest dismissed as untimely. The Intent to Protest letter SharkBanz is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer¹ (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file 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

Solicitation Issued:	06/02/2020
Amendment 1 Issued	06/11/2020
Amendment 2 Issued	06/16/2020
Intent to Award Posted	07/17/2020
Intent to Protest Received	07/29/2020

The University of South Carolina issued this Fixed Price Bid on June 2, 2020 to obtain multiple sources for the supply of Personal Protection Equipment. Bids were received on June 24, 2020. An Intent to Award was posted to multiple bidders on July 17, 2020. Sharkbanz filed an Intent to Protest on July 29, 2020.

ANALYSIS

SharkBanz protests:

We have intent to protest bid awards for the following:

Solicitation: USC-FPB-3635-AS

Issue Date: June 2, 2020

Opening Date: June 24, 2020

Description: Furnish and Deliver Personal Protection Equipment

Initial Contract Term: July 29, 2020 through July 28, 2021

Maximum Contract Term: July 29, 2020 through July 28, 2022

We submitted bids for this equipment but we are not even listed as having done so in the final awards document.

Section 11-35-4210(1)(b) provides:

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added)

The Intent to Award was posted on July 17, 2020. The seventh business day thereafter fell on July 28, 2020. SharkBanz's intent to protest was not received by the Chief Procurement Officer until July 29, 2020 at 11:23 PM. SharkBanz protest was not received within the statutory time allowed for protest and consequently the CPO lacks jurisdiction to review any subsequent protest.

DECISION

For the reasons stated above, the protest of SharkBanz is dismissed as untimely.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: David Garrison <david@sharkbanz.com>
Sent: Wednesday, July 29, 2020 11:23 PM
To: Protest-MMO
Subject: [External] Protest

We have intent to protest bid awards for the following:

Solicitation: USC-FPB-3635-AS
Issue Date: June 2, 2020
Opening Date: June 24, 2020
Description: Furnish and Deliver Personal Protection Equipment
Initial Contract Term: July 29, 2020 through July 28, 2021
Maximum Contract Term: July 29, 2020 through July 28, 2022

We submitted bids for this equipment but we are not even listed as having done so in the final awards document.

David


David Garrison | Co-Founder | 843-343-3315

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2019)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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.