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Protest Decision

Matter of: Hoffman & Hoffman, Inc.

Case No.: 2021-113

Posting Date: October 5, 2020

Contracting Entity: South Carolina Department of Corrections

Solicitation No.: 5400020219

Description: Commercial Air Cleaners

DIGEST

Protest of specifications is dismissed as untimely. The protest letter of Hoffman & Hoffman, Inc (HH) 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:	08/24/2020
Amendment 1 Issued	09/02/2020
Statement of Award Posted	09/23/2020
Protest Received	09/25/2020

The South Carolina Department of Corrections (DOC) issued Request for Quotations number 5400020219 on August 24, 2020 for commercial air cleaners. A Statement of Award for commercial air cleaners was posted to Vision Aire Solutions, LLC on September 23, 2020. HH filed a protest of the award on September 25, 2020.

ANALYSIS

HH protests

Request project to rebid due to the following:

1- Line Number 0003 PHI PKG14 Package PHI unit is an ozone generating product. See blow from EPA website on harmful effects of ozone.

The PHI PKG14 product creates ozone. Product brochure is misleading. Product does not comply with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions.

This line item description is found in the bidding schedule on page 29 of the original solicitation which was published on August 24, 2020. HH's protest was received by the CPO on September 25, 2020, 32 days after the specification was first published. Section 11-35-4210(1)(a) provides:

A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation shall protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date of issuance of the Invitation For Bids Request for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(emphasis added)

HH's protest was not received within the time set forth in the statute, and consequently the CPO lacks jurisdiction to review this protest.

DECISION

For the reasons stated above, the protest of Hoffman and Hoffman, Inc. is dismissed as untimely filed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Hunter Wilson](#)
To: [Protest-MMO](#)
Subject: [External] Protest Solicitation 5400020219 - Commercial Air Cleaners
Date: Friday, September 25, 2020 12:06:34 PM
Attachments: [image001.png](#)

The following request is to protest solicitation 5400020219

Request project to rebid due to the following:

1- Line Number 0003 PHI PKG14 Package PHI unit is an ozone generating product. See blow from EPA website on harmful effects of ozone.

The PHI PKG14 product creates ozone. Product brochure is misleading.

Product does not comply with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions.

EPA Ozone Generators that are sold as Air Cleaners:

"Whether in its pure form or mixed with other chemicals, ozone can be harmful to health."

"When inhaled, ozone can damage the lungs. Relatively low amounts of ozone can cause chest pain, coughing, shortness of breath and, throat irritation. It may also worsen chronic respiratory diseases such as asthma as well as compromise the ability of the body to fight respiratory infections."

<https://www.epa.gov/indoor-air-quality-iaq/ozone-generators-are-sold-air-cleaners#:~:text=Relatively%20low%20amounts%20of%20ozone,body%20to%20fight%20respiratory%20infections>



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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.