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Protest Decision

Matter of: AlSCO, Inc.

Case No.: 2019-124

Posting Date: January 7, 2019

Contracting Entity: SC Department of Disabilities and Special Needs

Solicitation No.: 5400016029

Description: Linen Service – Coastal and Pee Dee

DIGEST

Protest that successful bid price was inaccurate is denied. AlSCO's protest is incorporated 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 | September 28, 2018 |
| Amendment 1 Issued | October 23, 2018 |
| Intent to Award Issued | November 28, 2018 |
| Protest received | December 10, 2018 |

The State Fiscal Accountability Authority State Procurement Office issued this Invitation for Bids on behalf of the South Carolina Department of Disabilities and Special Needs to acquire qualified provider(s) of linen and laundry services for the Coastal Center, Pee Dee Center, and Saleeby Center on September 28, 2018. Bids were invited for two lots. Lot 1 was for the Coastal Center and Lot 2 was for the Pee Dee and Saleeby Centers. An Intent to Award was posted to Rae Management Services, LLC dba Sea Island Linen (Sea Island) for Lot 1 and to AlSCO for Lot 2. AlSCO protested the award to Sea Island.

ANALYSIS

AlSCO protested via email to the DDSN Procurement Manager on December 6, 2018. Section 11-35-4210(1)(b) requires that protests be directed to the CPO:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code;

The solicitation and Intent to Award advise bidders to direct their protests to the Chief Procurement Officers. Section 11-35-4210(2)(b) requires that:

A protest pursuant to subsection (1)(b) must be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b).

The DDSN Procurement Manager forwarded AlSCO's protest email to the CPO on December 10, 2018. The Intent to Award was posted on November 28, 2018. The tenth day after posting was Saturday, December 8, 2018. In accordance with Section 11-35-310(13), when the last day falls on a weekend or state or federal holiday, the protest period runs until the end of the next business

day — in this case, December 10, 2018. The CPO received AlSCO's protest at 8:58 AM on December 10, 2018. Consequently, the protest is timely filed.

AlSCO alleges that Sea Island's bid is not accurate. AlSCO bases its allegation on a conversation between its Assistant General Manager and an unnamed Coastal Center employee on December 3, 2018, during which the Coastal Center employee stated that they had met with Sea Island and explained to them about the additional damage fees that they would incur.

Sea Island's attorney responded to AlSCO's protest and stated:

Sea Island can and does herewith assure the CPO that Sea Island was fully responsive to the IFB; took no exception to any part of the IFB; provided its exact bid price for the performance required in the IFB; has agreed to and fully intends to perform per the IFB terms *with no undisclosed or added charges for such performance*; that it has not stated to anyone that it would impose any added charges for its full required performance under the contract;

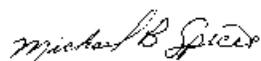
(Attachment 2)

AlSCO's protest fails to state a claim upon which the CPO may grant relief. Sea Island took no exception to the bid and agreed to fully perform the terms of the IFB. Its bid is responsive on its face. *See Appeal by Two State Construction Co.*, Panel Case No. 1996-2 ("The Panel agrees with Two State that a bid must be found responsive on its face and cannot be changed after bid opening."). To the extent AlSCO speculates that Sea Island will be unable to perform, this is a matter of contract administration and not a proper challenge to either responsiveness or responsibility. *E.g., Appeal by Catamaran*, Panel Case No. 2015-2.

DECISION

For the reasons stated above, the protest of AlSCO, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



First in textile services worldwide

November 6, 2018

Re: Protest of the award due to inaccurate costs provided.
Solicitation: 5400016029

Mr. Chris Manos,

Thank you for the opportunity to submit an offer on solicitation 5400016029: Linen Service – Coastal Carolina. Our company has received and reviewed the Intent to Award for 5400016029, and there are concerns that bring attention to a formal protest.

The Assistant General Manager at AlSCO, Bobby Strickland, was told by a Coastal Center employee on 12/3/18, that they had met with Sea Island Linen and they explained to them about the additional damage fees that they would incur. This practice will change the suppliers quote and actually increase the amount of the final bid from Sea Island. AlSCO has incorporated this cost into our existing quote.

AlSCO's argument is that the quote is not accurate that Sea Island Linen has proposed and we would like a more accurate and equal proposal system put in place. We would like both suppliers to be compared equally, with any additional charges noted, up front, in the bid. In addition, we would like the bid to be put on hold until the state has time to review this in greater detail.

Regards,

A handwritten signature in black ink, appearing to read "Bobby Strickland", with a horizontal line extending to the right.

Bobby Strickland
AlSCO, Charleston
4921 Chateau Ave.
North Charleston, SC 29405
843-296-7986



John E. Schmidt, III
803.348.2984
John.Schmidt@TheSCLawfirm.com
Melissa J. Copeland
803.309.4686
Missy.Copeland@TheSCLawfirm.com

December 14, 2018

Via Email: protest-mmo@mmo.state.sc.us

Chief Procurement Officer
SFAA
Materials Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: Initial Response to Protest of Notice of Intent to Award to Sea Island Linen
Solicitation: **5400016029 – Linen Service (“IFB”)**

Dear Chief Procurement Officer:

This firm represents Sea Island Linen (“Sea Island”) in connection with the above matter and submits this initial response to the “Protest of Award Due to Inaccurate Costs Provided” by Alasco concerning the notice of intent to award a contract to Sea Island. Sea Island requests that the protest be dismissed, or due notice and an opportunity to attend any hearing on these issues.

Sea Island has endeavored to review the purported protest and, in addition to the fact that it is unfounded factually, would point out several conclusive defects in the protest which require that the protest be dismissed.

The relevant statute governing the protest provides in part:

SECTION 11-35-4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement.

(1) Right to Protest; Exclusive Remedy.

(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests 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 Request 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.

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

(c) The rights and remedies granted in this article to bidders, offerors, contractors, or subcontractors, either actual or prospective, are to the exclusion of all other rights and remedies of the bidders, offerors, contractors, or subcontractors against the State.

* * *
(2) Protest Procedure. (a) A protest pursuant to subsection (1)(a) must be in writing, filed with the appropriate chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the appropriate chief procurement officer within the time provided in subsection (1).

(b) A protest pursuant to subsection (1)(b) must be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b). At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b). A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

First, the protest fails because it was not made to the appropriate chief procurement officer and was not submitted as directed in the IFB. As such the purported protest is ineffective, a nullity. In this case, the purported “protest” of AlSCO was directed and submitted to an MMO employee or former employee (Chris Manos) who was not the Buyer designated for the solicitation and who was not a chief procurement officer. The requirement for a protest in the Code is that an actual bidder aggrieved by an award must “protest to the appropriate chief procurement officer”, not any MMO employee or former employee. The IFB was also clear that the protest was to be submitted and addressed properly to the CPO:

PROTEST - CPO - MMO ADDRESS (JUN 2006)

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to protest-mmo@mmo.state.sc.us , or;

(b) by post or delivery to 1201 Main Street, Suite 600, Columbia,
SC 29201

IFB at 13. Because the protest was not submitted to the CPO and was not delivered in accordance with the Code and the IFB, it must be dismissed.

Second, a protest to be valid must “must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided” S.C. Code § 11-35-4210 2.(b); *Protest by Sterile Services Corp., Panel Case No.1983-17*. This protest does not meet those requirements. The letter sent to Mr. Manos does not state any cognizable ground for protest. It states that it is a “Protest of Award Due to Inaccurate Costs Provided” but never states what inaccurate costs were provided. It is at best vague, stating that the price bid is not “accurate” or that the quote will be changed somehow in performance, and it does not state why this is so. In addition to being vague, the protest appears to suggest some mistake or omission related to Sea Island’s bid price or cost. Just as in *Protest of Catamaran, LLC, Case No. 2015-153*, Sea Island denies there is a mistake in its bid, and its competitor’s charge does not state a claim. Further, the law is clear that complaints about an “anticipated” or “surmised” future failure of performance issue do not state a claim. *See, e.g. Protest of Schindler Elevator, Case No.2015-120*. The argument that the actual submitted bid price is not the price that will be applied simply fails to state any protest claim. *Id.*

Third, the relief requested appears to show that the protest is also, if anything, untimely. It asks that a) “we would like a more accurate and equal proposal system put in place” (*plainly, an untimely specification challenge under S.C. Code § 11-35-4210 1. (a)*) and b) “we would like both suppliers to be compared equally with additional charges noted up front” (*likewise, plainly, an untimely specification challenge under S.C. Code § 11-35-4210 1. (a)*). While Sea Island denies that there are, were or would be any charges under the contract other than those in the bid Sea Island submitted, regardless, both of these points raise untimely specification protests.

Finally, although the lack of specificity of the protest letter makes it impossible for Sea Island to respond directly to the vague charge of some purported statement by unnamed persons *after notice of award* (such statements could have no effect on the bid itself in any event), Sea Island can and does herewith assure the CPO that Sea Island was fully responsive to the IFB; took no exception to any part of the IFB; provided its exact bid price for the performance required in the IFB; has agreed to and fully intends to perform per the IFB terms *with no undisclosed or added charges for such performance*; that it has not stated to anyone that it would impose any added charges for its full required performance under the contract; and has instead only contacted the using agency to fully assure readiness and timely performance. *Indeed, Sea Island has already secured all needed materials and stands ready to perform fully*. Further, Sea Island took the time to explain to the using agency some of the advantages it offers to its customers *at no charge or obligation and on no condition whatsoever*. (These advantages are confidential and proprietary to Sea Island and

Chief Procurement Officer
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give Sea Island competitive advantage over its competitors. They do not change any of the contract obligations of any of the parties in any way whatsoever.

Also's protest amounts to little more than speculation that Sea Island may not perform the contract according to its terms. As a matter of contract administration, this cannot be protested by claiming that a bid is somehow non-responsive or that the process was flawed. *See Matter of Otis Elevator Company, Case No. 2015-001 (aff'd by Panel); Appeal by Maddock Construction Equipment, LLC, Panel Case No. 2016-3.*

CONCLUSION

If you should need any further information for this matter, please let me know. Based on the grounds set forth herein, Sea Island requests that the CPO deny and dismiss the protest.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Schmidt, III". The signature is fluid and cursive, with the first name "John" being the most prominent.

John E. Schmidt, III

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2018)

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 2018 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.