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Protest Decision

Matter of: NWN Holdings, LLC dba AdvantaClean of the Midlands

Case No.: 2019-138

Posting Date: May 17, 2019

Contracting Entity: South Carolina Department of Mental Health

Solicitation No.: 5400017468

Description: Mold Remediation Lexington and Columbia

DIGEST

Protest of specifications is denied. NWN Holdings, LLC dba AdvantaClean of the Midlands' (NWN) letter of protest 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	03/14/2019
Amendment 1 Issued	03/21/2019
Intent to Award Posted	04/02/2019
Protest Received	04/11/2019

The South Carolina Department of Mental Health (DMH) issued this Invitation for Bids to acquire mold remediation services on March 14, 2019. DMH pasted an Intent to Award to Servpro of Richland County on April 2, 2019. NWN's protest was received on April 11, 2019.

ANALYSIS

NWN protests that the pricing scenario set forth in the solicitation was ambiguous and did not accurately reflect the level of effort required to perform the contract in the most efficient and cost effective manner:

The solicitation requested pricing for an example mold remediation project in a patient room. Specifics we were given were to price the project based on removal of 500 square feet of drywall, priced per square foot. However, this only represents one portion, or in some cases no portion, of any mold remediation project....

This non-traditional method of estimating a fairly complex project forced any offeror to simply give best guess pricing, resulting in a non-competitive bid as there were too many assumptions to make individually. The end result being a contract awarded to a bidder at a rate below contractor cost....

In the EPA Guidelines provided in the solicitation, there are four cleaning methods to be used. However, pricing was only requested for one method. While Method 1, 2, or 3 require less material and labor than Method 4, if the unit pricing is based on Method 4, will all projects completed under the contract be billed at the highest method rate, which the solicitation example was based upon?

Section 11-34-4210(1)(b) grants an actual bidder the right to protest the award or potential award of a contract as follows:

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

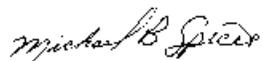
been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added) The issues raised by NWN could have been raised within 15 days of the solicitation or amendment at issue as a protest of the solicitation under Section 11-35-4210(1)(a) and consequently cannot be raised as a protest of the award. The protest is untimely.

DECISION

For the reasons stated above, the protest of NWN Holdings, LLC dba AdvantaClean of the Midlands is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



April 11, 2019

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Protest Solicitation 5400017468

To Whom It May Concern:

Please be advised that NWN Holdings, LLC dba AdvantaClean of the Midlands, an offeror for Solicitation #5400017468, for Mold Remediation services for the Department of Mental Health would like to post a protest of the bid award.

As a well-established contractor in the industry, we feel that we, and every other offeror who submitted a bid on this solicitation, have been aggrieved in this bid process by the terms of the solicitation and award.

The solicitation requested pricing for an example mold remediation project in a patient room. Specifics we were given were to price the project based on removal of 500 square feet of drywall, priced per square foot. However, this only represents one portion, or in some cases no portion, of any mold remediation project. In this specific example 500 square feet of drywall would have to be removed from assumed water damage. However, the affected area requiring remediation work would typically be much larger just the 500 square feet. The entire patient room would traditionally be considered the affected area. While 500 square feet of drywall will need to be removed in this case, all other surfaces such as remaining walls, ceiling, fixtures, flooring, doors, etc., would need to be, at minimum, cleaned in detail by one of four methods, per the specifications provided. Quantities for these additional surface areas or estimating quantities were not provided and thus offerors had to assume these dimensions. This non-traditional method of estimating a fairly complex project forced any offeror to simply give best guess pricing, resulting in a non-competitive bid as there were too many assumptions to make individually. The end result being a contract awarded to a bidder at a rate below contractor cost.

To look at it another way, the terms of this solicitation, in our opinion, is equivalent to asking for an interior painting bid to paint all surfaces of a room, but only stating the area of the interior door is 28 square feet, and requesting pricing of the project based on those 28 square feet. How could two reputable painters fairly compete on those project specs when so much is open to guesswork?

Additionally, this single line item contract could easily result in the State overpaying for remediation services, wasting funds. In the EPA Guidelines provided in the solicitation, there are four cleaning methods to be used. However, pricing was only requested for one method. While Method 1, 2, or 3 require less material and labor than Method 4, if the unit pricing is based on Method 4, will all projects



completed under the contract be billed at the highest method rate, which the solicitation example was based upon?

As aggrieved offerors of this solicitation, we hereby request that the solicitation be offered again for bid. We also request proper specifics to be given for an example project, including full work area dimensions, breaking out line item pricing for each Cleanup Method example given. This will allow qualified offerors to provide pricing under fair competition and no guesswork. This more traditional breakdown of services would also provide the State with a better pricing format that will offer cost controls and minimize monetary waste under the contract for services to be rendered.

Sincerely,

A handwritten signature in black ink, appearing to read "Derik Newton".

Derik Newton
AdvantaClean of the Midlands

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.