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Protest Decision

Matter of: Carolina Filters, Inc.

Case No.: 2019-140

Posting Date: May 17, 2019

Contracting Entity: Medical University of South Carolina

Solicitation No.: 5400016374

Description: MUSC Filters & Installation

DIGEST

Untimely protest is dismissed. Carolina Filters' 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
Protest Received

April 10, 2019
May 6, 2019

ANALYSIS

The State Fiscal Accountability Authority (SFAA) published this brand name or equal Invitation for Bids on behalf of the Medical University of South Carolina (MUSC) on April 10, 2019. Carolina Filters protested that the specifications were unduly restrictive on May 6, 2019. Section 11-35-4210(1)(a) requires a prospective bidder, offeror, contractor or subcontractor to protest to the Chief Procurement Officer within fifteen (15) days of the publication of a solicitation or amendment:

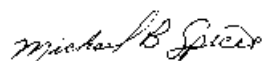
A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or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

Carolina Filters' protest was not received until twenty-six (26) days after publication of the solicitation. There were no amendments to this solicitation. Consequently, Carolina Filters' bid was not filed within the statutory time limit and the Chief Procurement Officer lacks jurisdiction to consider its merits.

DECISION

For the reasons stated above, the protest of Carolina Filters, Inc. is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer



May 6, 2019

State Procurement Services
Attn: Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Solicitation 5400016374 – MUSC Filters & Installation

To Whom It May Concern,

Carolina Filters, Inc. is filing a formal protest in regards to the referenced solicitation. We believe the following aspects of the solicitation unnecessarily and inappropriately limit full and open competition based on State Regulation 19-445.2140 and South Carolina Consolidated Procurement Code Section 11-35-2730.

Our protest items are as follows:

1. Section III. Scope of Work/Specifications

Paragraph 2.4 - This paragraph refers to the Multi-Wedge 95 filter having a minimum operating temperature of 200 degrees Fahrenheit due to the reheat coils in the MUSC/MUHA air handlers. Also, in Section 3.2 regarding this particular filter's test data, it states the resistance at 500 FPM is at 0" w.g.

Carolina Filters has been installing filters in the MUSC/MUHA air handlers for the past 10 years and have had no temperature related problems with the filters that are being installed in any of the air handlers. The filters currently being installed are rated at 180 degrees Fahrenheit. All of the major filter manufacturers located in the United States produce similar filters that are rated at 180 degrees Fahrenheit. Carolina Filters has installed and/or sold air filters to approximately sixty (60) different hospitals and healthcare facilities throughout South Carolina, North Carolina, Virginia, Georgia and Tennessee over the past 20-plus years, and has had no temperature related problems with any filter types. This would include major national filter manufacturers such as Koch, Glasfloss, AAF/Flanders, TRI-DIM and others. In addition, there have never been any questions from MUSC/MUHA about the temperature rating of the filters that Carolina Filters has sold or installed during the term of our business with MUSC/MUHA. Also, the Multi-Wedge 95 test data shown for the initial resistance (0" w.g. @ 500 FPM) is incorrect and misleading.

2. Section III. Scope of Work/Specifications

Paragraph 3.4 - This paragraph refers to the DustLok 3-Ply Panel filter having a minimum rating temperature of 200 degrees Fahrenheit due to the reheat coils in MUSC's air handlers.

Carolina Filters has been installing filters in the MUSC/MUHA air handlers for the past 10 years and have had no temperature related problems with the filters that are being installed in any of the air handlers. The filters currently being installed are rated at 180 degrees Fahrenheit. All of the major filter manufacturers located in the United States produce similar filters that are rated at 180 degrees Fahrenheit. Carolina Filters has installed and/or sold air filters to approximately sixty (60) different hospitals and healthcare facilities throughout South Carolina, North Carolina, Virginia, Georgia and Tennessee over the past 20-plus years, and has had no temperature related problems with any filter types. This would include major national filter manufacturers such as Koch, Glasfloss, AAF/Flanders, TRI-DIM and others. In addition, there have never been any questions from MUSC/MUHA about the temperature rating of the filters that Carolina Filters has sold or installed during the term of our business with MUSC/MUHA.

P.O. Box 716
109 E. Newberry Ave.
Sumter, SC 29151

OFFICE: 803-773-6842
FAX: 803-775-6190

3. Section III. Scope of Work/Specifications

Paragraph 6.2 and paragraph 6.3 – This paragraph states that the offerer must include four (4) installers and one (1) supervisor and that it is estimated at 4 weeks per month and 40 hours per week for each individual. Total time is estimated to be 48 weeks with 40 hours per week for each individual.

Carolina Filters has been in the air filter and filter installation business for 50 years and we have been installing filters in the MUSC/MUHA air handlers for the past 10 years. We understand the metrics relative to the personnel hours required to change various filter types in different styles of air handling units. The Excel spreadsheets provided with the solicitation require hourly labor rates for a manager and installation technician(s) for a set number of hours per week per employee and a set number of weeks per year. The hourly spreadsheet calculations on Lot 3 - Installation: MUSC and Lot 4 - Installation: MUHA require 20 hours per week for a 5-person crew at 48 weeks per year, which equates to 4,800 hours annually to perform the service for each Lot.

Carolina Filters can meet the scope of work required in **much less time** than the current format that is outlined in the solicitation. The current format does not allow the state to take advantage of an offerer who may have a higher hourly rate than their competitors, yet can perform quality workmanship in less time, thus saving the state money on the services performed. Carolina Filters feels that it should have the opportunity to offer a specific time period for completing the work that will meet the customer's requirements.

Carolina Filters appreciates the opportunity to participate in this solicitation, and we are simply asking for a fair and openly competitive bid in which to participate.

Please contact me if you have any questions.

Sincerely,


R. Coles Dwight
Principal & Chief Executive Officer

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Sumter, SC 29151

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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.