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Protest Decision

Matter of: Company Wrench, LTD

Case No.: 2019-141

Posting Date: June 26, 2019

Contracting Entity: South Carolina Department of Transportation

Solicitation No.: 5400016930

Description: Brush Chippers

DIGEST

Protest alleging awarded bid is not responsive is denied. Company Wrench's (CW) 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	03/11/2019
Amendment 1 Issued	04/04/2019
Intent to Award Posted	05/02/2019
Protest Received	05/09/2019

The SC Department of Transportation (DOT) issued this Invitation for Bids for brush chippers on March 11, 2019 and posted an Intent to Award to Salsco, Inc. on May 2, 2019. CW protested on May 9, 2019 alleging that the equipment bid by Salsco did not meet solicitation requirements and consideration should have been given to companies with a significant presence in South Carolina.

ANALYSIS

CW's first issue of protest alleges that the equipment bid by Salsco does not comply with section 6.3 of the solicitation as follows:

Per Solicitation specifications listed under section 6.3. "Access panels to inspect chip box and disc and to clear jammed material shall be provided. Panels shall be hinged, pinned, latched to allow quick access. Bolted connections will be unacceptable due to tools required, loss of hardware, and down time associated". After review of product specifications for the awarded contract to SALSCO Inc. We believe this section is not within specification required. There are multiple locations on SALSCO brush chippers where bolted designs are used to access areas such as chip box, impeller, feed wheel yoke springs, bed knives adjustment and impeller feed sensing location. Bandit Industries brush chippers fully adhere to specifications required. Bandit Chippers have hinged and spring loaded lockable pin designs to allow quick access to internal components which would reduce downtime and potential risk of machine damage due to lost hardware inside chip box area.

(Attachment 1)

Salsco included product literature with its bid, and DOT determined that the equipment bid by Salsco was responsive to the requirements of the solicitation. In response to this protest, Salsco's sales representative responded to DOT procurement manager Emmett Kirwan: "Emmett yes we do meet the specs. Someone is misinformed. I am going to forward this to the factory and let them answer this in a more technical manner."

The President of Salsco responded:

Salsco's pinned door for impeller access is pinned for easy access, but has three safetys [sic] to prevent potential accidents.

- a) Salsco has a mechanism which prevents the pin from being removed while the impeller is rotating.
- b) With Salsco, there is a safety electric plug which must be unplugged to remove the door pin. When this is unplugged, the engine cannot be started.
- c) Salsco has options for management: •
 - Management can choose to bolt the access pin.
 - Management can choose to padlock the access pin.
 - Management can choose neither...The safety features will still prevent accidents.

Bed Knife Adjustment:

Bandit – To adjust Bandit bed knife, the service technician must raise the feed wheel, pin it in the up position, and crawl into the machine under the feed roll to set the bed knife clearance.

Salsco – To adjust the bed knife on the Salsco, the technician removes 4 bolts and reaches in to set the bed knife clearance.

Would you rather “reach in” or “crawl under” the feed roll into the machine?

In response to this protest, Salsco also provided photographs of its pinned and hinged access points. (Attachment 2) This issue of protest is denied.

CW next protests that:

We are a local business who employs over 30 people in South Carolina. In a market that prides itself on relationships and value we feel the bid was awarded to a company that has no vested interest in South Carolina, pays no taxes in South Carolina, currently has less than two percent of the chipper population in the state, and has no viable parts and service support within South Carolina.

As South Carolina tax payers and residents, we take pride in our state doing commerce with local businesses. We believe that the state agencies should give preference to local businesses. We also believe that the best customer service and customer product support is the most important element when purchasing over \$700,000 worth of machines for a contract period.

The Consolidated Procurement Code recognizes the contributions of businesses that reside in South Carolina through a 7% preference under certain circumstances. These products were solicited through an Invitation for Bids published on March 11, 2019. Page two of the

solicitation describes the preferences for instate vendors, South Carolina end products, and the United States end products, and clearly states that the preferences do not apply to this solicitation. Section 11-35-4210(1)(b) grants actual bidders, offerors, contractors or subcontractors the right to protest the award of a contract but stipulates that an issue that could have been raised as a protest of the solicitation cannot be raised as a protest of the award:

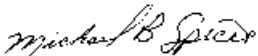
Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award,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

CW was put on notice that the preferences would not apply to this solicitation at the time the solicitation was issued and had the opportunity to protest at that time. However, CW is barred from raising that issue as a protest of the award. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of Company Wrench, LTD is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Kevin Culbreath](#)
To: [Protest-MMO](#)
Subject: [External] Protest of Bid Solicitation #5400016930
Date: Thursday, May 09, 2019 9:48:04 AM

Chief Procurement Officer,

Company Wrench (SC vendor #7000150957) as an authorized sales, parts, and service dealer for Bandit Industries would like to protest the intent to award contract for Solicitation #5400016930.

Our reason for protest is listed below. We would kindly appreciate your valued time in this matter.

- 1) Per Solicitation specifications listed under section 6.3. "Access panels to inspect chip box and disc and to clear jammed material shall be provided. Panels shall be hinged, pinned, latched to allow quick access. Bolted connections will be unacceptable due to tools required, loss of hardware, and down time associated". After review of product specifications for the awarded contract to SALSCO Inc. We believe this section is not within specification required. There are multiple locations on SALSCO brush chippers where bolted designs are used to access areas such as chip box, impeller, feed wheel yoke springs, bed knives adjustment and impeller feed sensing location. Bandit Industries brush chippers fully adhere to specifications required. Bandit Chippers have hinged and spring loaded lockable pin designs to allow quick access to internal components which would reduce downtime and potential risk of machine damage due to lost hardware inside chip box area.

Lastly,

Bids can be tricky for everyone involved. On one hand, the vendor must give their absolute best price on a machine in a business that is relationship driven and most machines are sold on value, on the other hand, the buyer must weigh the differences in the machines versus the final cost. In this particular bid, the vendor chosen for award won the award by a difference of \$250.44 per machine ordered. This vendor submitted the bid directly from the manufacturer in Connecticut. We feel that this results in an unfair advantage in terms of price for all of the other prospective vendors. All of the other bids were submitted from local distributors in the area. Vermeer, Bandit, and Morbark, which are the top three chipper manufacturers, have local dealers throughout South Carolina. The awarded company does not have a dealer in South Carolina, and although they do have a location within 2 hours of South Carolina, they do not stock any parts and as of now, they do not have a factory trained technician at that dealership.

Company Wrench does business with SCDOT almost daily. There are SCDOT employees ordering/picking up parts from our location in Lexington, SC frequently. We feel like we have a trusted partnership with SCDOT. Our location in Lexington, SC has 5 trained service technicians plus an additional 4 designated road technicians that are all factory trained from Bandit. We currently have 3 trained parts specialist at our location certified to sell Bandit parts. We keep over \$80,000 worth of replacement parts in inventory for Bandit products

which reduces freight costs on purchases. We have a fully committed staff, if needed to hand deliver replacement parts for emergencies to maximize uptime for chippers. We have similar chippers in stock to use as loaner machines, when available, to minimize downtime when a purchased machine is in need of major service repairs.

We are a local business who employs over 30 people in South Carolina. In a market that prides itself on relationships and value we feel the bid was awarded to a company that has no vested interest in South Carolina, pays no taxes in South Carolina, currently has less than two percent of the chipper population in the state, and has no viable parts and service support within South Carolina.

As South Carolina tax payers and residents, we take pride in our state doing commerce with local businesses. We believe that the state agencies should give preference to local businesses. We also believe that the best customer service and customer product support is the most important element when purchasing over \$700,000 worth of machines for a contract period. We feel that the chipper awarded this contract is unacceptable to SCDOT because of the previous stated concerns, but more importantly we believe that the important factors of parts availability and local service are crucial to SCDOT performing their work safely, efficiently, and productively as possible.

Again, we appreciate your time and hope the above referenced information will allow Company Wrench the potential to provide increasing support for all SCDOT equipment needs.

Regards,

Kevin Culbreath
Bandit Product Sales Manager-SC
Company Wrench
k.culbreath@companywrench.com
Office 803-520-0032
Cell 803-509-2825

Attachment 2





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.