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Protest Decision

Matter of: GFG Supply, Inc.

Case No.: 2019-145

Posting Date: June 26, 2019

Contracting Entity: South Carolina Department of Transportation

Solicitation No.: 5400017848

Description: Steel H Pile for District 1 Bridge Crew

DIGEST

Protest alleging inappropriate application of preferences is denied as untimely. GFG Supply's (GFG) 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	April 30, 2019
Intent to Award Posted	May 22, 2019
Protest Received	May 28, 2019

The South Carolina Department of Transportation (DOT) issued this Invitation for Bids for H Piles on April 30, 2019. Four bids were received. All four bidders applied for and received the benefit of the US manufactured preference authorized by Section 11-35-1524 of the Code. Taylor & Burns Coating also applied for and received the benefit of the resident vendor preference. An Intent to Award was posted to Taylor & Burns on May 22, 2019. GFG protests that, because the H Piles are used in construction and the preferences do not apply to supplies or services related to construction, the preferences should not have factored in the award to Taylor & Burns.

ANALYSIS

This Invitation for Bids was issued on April 30, 2019. Page 2 of the solicitation includes a description of the applicable preferences. As noted in the letter of protest, page 15 of the solicitation alerts bidders to the availability of the end-product and resident-vendor preferences. The bidding schedule found on page 28 of the solicitation requires bidders to indicate whether they are applying for the resident-vendor, South Carolina-made, or US-made preferences. In submitting its bid, GFG specifically declined the resident-vendor and South Carolina-made preferences and claimed the US-made preference. (Attachment 2)

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.

GFG was put on notice that the preferences would apply to this solicitation at the time the solicitation. GFG's argument that "I assumed that these construction supplies (H PILES) should be exempt from preference advantage and, thus, we participated accordingly," is a bit disingenuous since its bid applied for the US-made preferences. GFG was aware of the application of the preferences to this solicitation at the time the solicitation was issued and 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 GFG Supply, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Jerry Funk](#)
To: [Protest-MMO](#)
Cc: [Candis L. Golston](#)
Subject: [External] FW: SC Award: STEEL H PILE FOR DISTRICT 1 BRIDGE CREW 5400017848 RVP
Date: Tuesday, May 28, 2019 8:10:32 AM
Attachments: [Bid Tabulation .xls](#)

Good morning.

GFG SUPPLY was the apparent low bidder on the referenced SOL, per the attached bid tabulation. However, the purchase will be awarded to 4th place, Taylor & Burns Coating, a South Carolina Resident Vendor. The difference in price is \$5,400.00.

I spoke in length to procurement officer, Candis Goldston, on Friday 5/24, trying to understand the application of Vendor Preferences to this commodity. I opened the link on page 15 of this Solicitation in the paragraph entitled "PREFERENCES-A NOTICE TO VENDORS"; then scrolled to "FREQUENTLY ASKED QUESTIONS FROM THE VENDOR'S PERSPECTIVE". On page 4 of those guidelines, in response to when preferences do not apply, it reads, "The preferences do not apply to acquisitions of motor vehicles.....or supplies or services relating to construction." Surely, these H PILES are used in construction. Note Attachment "A" included in the Solicitation (Section 709) "....contains specifications for.....furnishing, fabricating and erecting steel structures...."

Candice explained to me that the exempt construction supplies mentioned above, refers to material purchased by a contractor doing work for the state of South Carolina, not supplies purchased by SC procurement. That explanation may be the intent of the clause, but it is not stated as such. To this vendor's perspective, I assumed that these construction supplies (H PILES) should be exempt from preference advantage and, thus, we participated accordingly.

On that reasoning, we hereby exercise our right to protest an award to any Vendor other than the lowest responsible bidder.

Respectfully submitted,

Gerald F Funk
Vice President

GFG SUPPLY INC
2319 Newburn Lane
The Villages FL 32162
CELL: (757) 650-4317
FAX: (352) 633-8363



State of South Carolina

Bid

Status: 5500064636 Bid Submitted
Created: 05/14/2019 17:58:24 EST
GERALD FUNK
Last upd: 05/14/2019 18:14:30 EST
GERALD FUNK

Bidder

GFG SUPPLY INC
2319 NEWBURN LANE
THE VILLAGES FL 32162-3594

Invitation For Bid

Version: 3
Bid invitation number: 5400017848
Description: STEEL H PILE FOR DISTRICT 1
Buyer name:
Buyer email:
Buyer phone:
Follow-on document: Contract
Estimated award date: 05/22/2019
SCBO catg: Supplies

Bid invitation rules

Bidding procedure: Public bid invitation
Requested price information: Normal price
Timezone: EST
End date/time: 05/17/2019 15:30:00 EST

Bids required for all items? No
Bid may be changed? Yes
Bidder can add items? No

Bid Basic Data

Terms of Payment: net 30 days
Currency: USD United States Dollar

Information from purchaser - header attachment(s)

Description
Solicitation
Attachment A

Bidder's remarks

QUOTING ON A 572 GRADE 50.
THIS OFFER IS TENDERED FOR PROMPT ACCEPTANCE

Header attributes

- The Submitter has read and understands the terms and conditions of this solicitation.
Bidder Response: Yes. I have read and understand the terms and conditions.
Permitted Values - Yes. I have read and understand the terms and conditions.
- The offer is in accordance with the terms and conditions of this solicitation.
Bidder Response: Yes, I am in accordance with the terms and conditions.
Permitted Values - Yes, I am in accordance with the terms and conditions.

Bid details

Invitation For Bid

Version: 3

Bid invitation number: 5400017848

Description: STEEL H PILE FOR DISTRICT 1 BRIDGE
CREW

Line Number: 0001

12" H Piles 50' Long

Item Category: Material

Product Category: 15508 - Bridges Prefabricated (Not Installed)

Internal Item Number: 1

Target Quantity of Bid Invitation: 100.00 each

Price: 1,231.00 (United States Dollar) Per 1 each

Delivery Time (Duration): 42 days

Information from purchaser - item tendering text

Provide pricing for furnish and delivery to 7201 Fairfield Road, Columbia, SC 29203 per the requirements in Section III Scope of Work/Specifications.

Item attributes

Are you requesting the SC Resident Vendor Preference? See the SC Procurement Code, Section 11-35-1524(C)(1)(I)&(II) and Section IIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc/preferences

Bidder Response: N

SC End-Product Pref. Section 11-35-1524 (B)(2). Select SC End Product Preference if product is made, manufactured or grown in SC. Select No, if not claiming a preference.

Bidder Response: N

US End-Product Pref. Section 11-35-1524, (B)(1). Select US End Product if product is made, manufactured or grown in the US. Select No, if not claiming a preference.

Bidder Response: Y

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.