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Protest Decision

Matter of: Sparrow & Kennedy Tractor Company
File No.: 2023-126
Posting Date: April 11, 2023
Contracting Entity: State Fiscal Accountability Authority
Solicitation No.: 5400024616
Description: STC Grounds Maintenance Equipment Phase I

DIGEST

Protest that the apparent successful bidder is not a responsible bidder is dismissed as untimely. The Sparrow & Kennedy Tractor Company (SK) protest is attached and 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.

BACKGROUND

Solicitation Issued	01/17/2023
Amendment 1 Issues	02/15/2023
Initial Intent to Award Posted	03/24/2023
Revised Intent to Award Posted	03/27/2023
Protest Received	04/07/2023

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

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The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids (IFB) to establish a state term contract for grounds maintenance equipment on January 17, 2023. Amendment 1 was issued on February 15, 2023. An initial Intent to Award was posted to multiple vendors on March 24, 2023, followed by a revised Intent to Award on March 27, 2023. SK filed its protest alleging that the apparent successful bidder is not a manufacturer's authorized reseller on April 7, 2023.

DISCUSSION

Section 11-35-4210(1)(b) provides:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (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 revised intent to award was posted on March 27, 2023. The seventh workday after the posting of the intent to award was April 5, 2023. SK did not file its protest until April 7, 2023. The South Carolina Procurement Review Panel has consistently held that the time for filing a protest is jurisdictional and cannot be waived. See *In Re: Protest of Printmasters Professional Printers, Inc., Appeal of Printmasters Professional Printers, Inc.*, Panel case 2008-3:

The Panel has repeatedly ruled that the time for filing a protest is jurisdictional and cannot be waived by the conduct or consent of the parties. See, e.g., *In re: Protest of Oakland Janitorial Services, Inc.*, Case No. 1988-13; *In re: Protest of National Cosmetology Ass'n*, Case No. 1996-17; *In re: Protest of Jones Engineering Sales, Inc.*, Case No. 2001-8. Moreover, as the Panel has observed in the past, "Persons doing business with the State under the Consolidated Procurement Code are charged with knowledge of the provisions of the Code, including the time limitations on protests." *In re: Protest of Hospital Products, Inc.*, Case No. 1989-15, 1989 WL 1114606, at *3 (September 26, 1989).

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DECISION

The protest by Sparrow & Kennedy Tractor Company is untimely filed and the CPO lacks jurisdiction to review the merits of this protest.



Michael B. Spicer
Chief Procurement Officer

Columbia, South Carolina

Attachment 1

From: [brian.elrod](#)
To: [Protest-MMQ](#)
Subject: [External] solicitation 5400024616
Date: Friday, April 7, 2023 3:24:09 PM

To whom it may concern:

We are a dealer for Stihl, which in South Carolina is exclusively distributed by Mid-Atlantic Stihl. They have chosen the last 14 years to not hold the contract.

We bid on behalf of Stihl for our second consecutive term, and were given the letter by the director of the exclusive distributor. They noted that we had done a great job servicing the state.

We were outbid by a company who didn't get the letter, or didn't get it signed by the appropriate party.

Today is the last day I believe to protest. Our vendor number is 700012356 and we have 7 locations statewide to serve the offices of the state with Stihl products. The awarded company has only a location in Charleston authorized to sell Stihl products.

Please advise.

Brian J. Elrod
Consultant
Sparrow & Kennedy
John Deere Company
Stihl | Gyro-Trac | TigerMowers | ASV | Alamo
State contract & Government sales
(803)692-6969 - office
(803)518-4385 - mobile

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2022)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2022 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
1105 Pendleton Street, Suite 209, 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.