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Protest Decision

Matter of: Corrections Products Company, LTD

Case No.: 2024-102

Posting Date: August 7, 2023

Contracting Entity: Department of Corrections

Solicitation No.: 5400025438

Description: Folger Adam Paracentric Locks and Keys

DIGEST

Protest of unduly restrictive specifications is dismissed. The protest by Corrections Products Company, LTD (CPC) 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. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

Solicitation Issued	06/27/2023
Intent to Award Posted	07/26/2023
Protest Received	07/31/2023

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

The Department of Corrections (DOC) issued this Invitation for Bids to acquire Folger Adams Paracentric Locks and Keys on June 27, 2023. An Intent to Award was posted to Craftmaster Hardware on July 26, 2023. CPC filed a protest on July 31, 2023.

DISCUSSION

CPC protests that rejection of its low-priced bid for an identical competitive product was based on a “fraudulent” brand name justification and inclusion of unduly restrictive “Authorized Dealer” language. These requirements first appeared in the solicitation which was published on June 27, 2023:

This solicitation is for Folger Adams Paracentric Locks and Keys as specified in the bidding schedule.

Substitutions or equals are not permitted as The South Carolina Department of Corrections currently stocks and installs Folger Adams Paracentric Locks and Keys. To maintain integrity and ease of replacement by maintaining a Folger Adams inventory.

Any vendor submitting an offer must supply documentation they are an authorized dealer. Failure to provide Folger Adams authorization with your offer will result in your offer being deemed nonresponsive.

[Solicitation, Page 12] (emphasis and highlighting in original)

Section 11-35-4210(1)(a) grants a prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation the right to protest that solicitation within fifteen days of publication:

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

The CPC protest was received on July 31, 2023, 34 days after publication of the solicitation and 5 days after posting of the Intent to Award. Section 11-35-4210(1)(b) provides 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.”

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The CPC protest was not filed within the time allowed for the protest of a solicitation. Consequently, the CPO lacks jurisdiction to review the merits of the protest.

DECISION

For the reasons stated above, the protest of Corrections Products Company, LTD is dismissed.



Michael B. Spicer
Chief Procurement Officer

Columbia, South Carolina

Attachment 1

From: [Christian Hunter](#)
To: [Protest-MMO](#)
Subject: [External] Protest Solicitation 5400025438
Date: Monday, July 31, 2023 11:11:28 PM

Description : Folger Adam Paracentric Locks and Keys
Solicitation: 5400025438
Issue Date: June 26, 2023
Opening Date: July 18, 2023

Dear MMO officer,

Corrections Products Company (CPC) provided an offer for an identical competitive product to the specified "Folger Adam" lock in this solicitation 5400025438. SDOC was notified that this identical competitive product existed in writing for a previously issued solicitation (email dated 5/19 pertaining to solicitation 5400025217) where the scope of products being offered are the same as this most recent solicitation.

SCDC has purchased this identical unit numerous times from CPC when purchasing was requesting an identical equal to the Folger Adam gate lock specified in this solicitation to insure their stated desire of uniformity of inventory, parts, etc.

After purchasing was notified that an identical product and thus competition existed, solicitation 5400025217 was cancelled due to "ambiguous specifications" and then then re-solicited to the above bid 5400025438 adding specific language regarding sole branding ("no substitution / or equal allowed") based on the stated justification to "maintain inventory and ease of replacement by maintaining a Folger Adam inventory"

This justification is fraudulent on its face. As stated, SCDC was notified in writing prior to solicitation 5400025438 that the CPC product being offered is 100% identical in terms of internal parts, form and function. All internal parts can be interchanged with the Folger Adam lock, thus utilizing the current stock inventory of Folger Adam inventory to meet their stated desire to "maintain inventory and ease of replacement by maintaining a Folger Adam inventory".

In addition to the sole source / branding restriction, SCDC included the additional "authorized dealer" language with the explicit intended purpose to exclude the possibility of any identical lock product being offered by any other detention lock manufacture in the industry who either doesn't sell to those authorized dealers or who isn't authorized to do so by Folger Adam.

Corrections Products and other recognized manufacturers, have identical competitive product replicated off the Folger Adam lock in this solicitation. As we are competitors to Folger Adam, Folger Adam "authorized dealers" will not sell offer our competitive products and naturally Folger Adam has no desire to authorize us to offer our competitive product to their authorized dealers.

The inclusion of the additional "Authorized Dealer" language or the required documentation of such insured SCDC intended desire to eliminate the possibility of any detention lock manufacturer being

able to offer or even participate in the above solicitation where Folger Adam product is listed. This is clearly anti-competitive and against the stated mission of any procurement department.

If currently awarded, the actions of SCDC detailed above would result in an additional \$147,287.00 being spent by the taxpayers of South Carolina for a "Folger Adam" product that is indistinguishable from those offered by Corrections Products Company.

The results of the bid tab are public knowledge are as follows

Craftmaster Hardware	\$205,407.00
Corrections Products Company, LTD	\$58,120.00

We sincerely hope justice will prevail and the taxpayers of South Carolina will get to enjoy the cost savings that competition fosters and that procurement departments should encourage and foster, not by taking explicit steps in an effort to eliminate it from the marketplace.

We encouraged MMO to cancel this solicitation and request a reissuance of another solicitation where an "or identical" specification can be submitted reflecting the reality that identical competitive products are available and allowing those additional brands to be listed.

If you need respective engineering documents or internal memorandum from Ms. Ruthie Bishop, Director of Procurement for Departments of Corrections, that states explicitly that Corrections Products Company locks are **identical** to Folger Adam locks we will be happy to provide.

Thank you for your consideration

Christian Hunter
Owner
Corrections Products Company, LTD

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

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 2020 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.