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MATERIALS MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: Corrections Products Company, LTD

Case No.: 2024-110

Posting Date: October 24, 2023

Contracting Entity: Department of Corrections

Solicitation No.: 5400025892

Description: Folger Adams Key Locks & Key Blanks

DIGEST

Protest of unduly restrictive specifications is denied. 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	09/12/2023
Protest Received	09/12/2023

The Department of Corrections (DOC) issued this Request for Quotations on September 12,

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

2023. The purpose of this solicitation is to establish a source of supply for the purchase of new Folger Adams locks and key blanks as specified for the South Carolina Department of Corrections Lock Shop. This is a brand name specification, and the competition is limited to Folger Adams authorized dealers:

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 3] (highlighting in original)

Folger Adams Locks – Brand name Folger Adams **substitutions will not be permitted. In order to maintain inventory for installation continuity among institutions this bid is for Folger Adams brand – any vendor submitting an offer must supply documentation they are an authorized Folger Adams Dealer. Failure to provide Folger Adams authorization with your offer will result in your offer being deemed nonresponsive.**

[Solicitation, Page 13] (highlighting in original)

CPC filed a protest on September 18, 2023, alleging that these requirements are unduly restrictive.

DISCUSSION

CPC protests:

Corrections Products Company (CPC) provides identical competitive products to the items specified in solicitation 5400025892.

SCDC has purchased many of the listed items requested in this solicitation numerous times from CPC in the past.

The yellow highlighted 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 is not valid considering these items offered by CPC are identical, not just equal.

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 (currently known as Southern Folger Detention Equipment Company).

Corrections Products Company has identical competitive product replicated off the original designs of both Southern Steel and Folger Adam requested in this solicitation. As we are competitors to Folger Adam (currently known as Southern Folger Detention Equipment Company) their respective "authorized dealers" will not sell offer our competitive products and naturally Folger Adam (currently Southern Folger) 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 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.

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 any other documents or internal memorandum from Ms. Ruthie Bishop, Director of Procurement for Departments of Corrections, that states explicitly that Corrections Products Company product is comparable in quality to Folger Adam we will be happy to provide.

Thank you for your consideration

DOC justified the use of this brand name as follows:

Folger Adams are installed across SCDC institutions, Inventory must be maintained to allow quick and seamless replacements when locks or keys are damaged or a new installation is required. There are multiple Folger Adams Dealers authorized to sell FA locks. These authorized dealers have access to the records maintained by (FA) of SCDC Locks and Keys. SCDC does not share copies for vendors to bid equals, as this could become a security risk.

Folger Adams (FA) products are inspected and tested for tolerances of the keys, tumblers, and internal parts. Other products supplied by unauthorized dealers are not inspected or tested for (FA) tolerances. These other product parts may become an issue when interchanged with (FA) sets for maintenance or replacement

causing unreliable operation or damage. The records of others parts would not be maintained by (FA) for ready access when needed.

[Form MMO #139, Justification for Brand Name Specification]

Section 11-35-2730 of the Consolidated Procurement Code provides that "all specifications shall be drafted so as to assure cost effective procurement of the State's actual needs and shall not be unduly restrictive."

Regulation 19-445.2140 authorizes the use of a brand name specification but explains:

The purpose of a specification is to serve as a basis for obtaining a supply, service, information technology, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specification shall be drafted with the objective of clearly describing the State's requirements. All specifications shall be written in a non restrictive manner as to describe the requirements to be met.

The South Carolina Procurement Review Panel set the standard for review of a specification in the *Protest of Cambex Corporation, Appeal of Cambex Corporation*, Panel Case 1992-7:

To summarize, a specification can be restrictive so long as it is not "unduly" so - in other words, it must be written in such a manner as to balance the reasonable, objective needs of the State against the goal of obtaining maximum practicable competition. In analyzing whether a specification meets the requirement that it not be unduly restrictive, the Panel will not substitute its judgment for the judgment of the using and procuring agencies so long as the choice of specification is not unreasonable, arbitrary, capricious or contrary to the Procurement Code.

In this case, CPC has the initial burden of proving by a preponderance of the evidence that the State's decision that Folger Adams manufactured equipment best meets the needs of the state is unreasonable, arbitrary, capricious, or contrary to law and that it unreasonably restricts competition. CPC has not shown that limiting competition due to compatibility with the installed base and the desire to avoid a multi-vendor environment which could negatively affect maintenance, and repair, and security is unreasonable, arbitrary, capricious, contrary to law, or unduly restrictive.

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Case No. 2024-110
October 24, 2023

DECISION

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



Michael B. Spicer
Chief Procurement Officer

Columbia, South Carolina

Attachment 1

From: [Christian Hunter](#)
To: [Protest-MMO](#)
Cc: [Wade Mullins](#)
Subject: [External] Solicitation: 5400025892
Date: Friday, September 15, 2023 2:50:13 PM
Importance: High

Description : Folger Adam Key Locks & Key Blanks
Solicitation: 5400025892
Issue Date: September 12, 2023
Opening Date: September 21, 2023

Dear MMO officer,

Corrections Products Company (CPC) provides identical competitive products to the items specified in solicitation 5400025892.

SCDC has purchased many of the listed items requested in this solicitation numerous times from CPC in the past.

The yellow highlighted 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 is not valid considering these items offered by CPC are identical, not just equal.

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 (currently known as Southern Folger Detention Equipment Company).

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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 any other documents or internal memorandum from Ms. Ruthie Bishop, Director of Procurement for Departments of Corrections, that states explicitly that Corrections Products Company product is comparable in quality to Folger Adam 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 July 2023)

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 2023 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.