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EXECUTIVE DIRECTOR

Protest Decision

Matter of: Hiers Lawn Care, LLC

Case No.: 2017-120

Posting Date: December 7, 2016

Contracting Entity: SC Department of Parks, Recreation & Tourism

Solicitation No.: 5400011887

Description: Grounds Maintenance at 6 Welcome Centers

DIGEST

Protest of an award alleging successful bidder is non-responsible is denied. Hiers Lawn Care's (Hiers) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence 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

<i>Event</i>	<i>Date</i>
Solicitation Issued	08/19/2016
Award Issued	10/20/2016
Protest Received	10/26/2016

ANALYSIS

The South Carolina Consolidated Procurement Code (Code) grants any actual bidder, offeror, contractor, or subcontractor the right to protest the award or intended award of a contract. S.C. Code Ann. §11-35-4210(1)(b). This Invitation for Bids was issued by the Department of Parks, Recreation & Tourism on August 19, 2016, to acquire contractors to perform monthly grounds maintenance services and as-needed Clear Zone Area mowing services at six (6) Welcome Centers:

- Dillon Welcome Center
- Fair Play Welcome Center
- Hardeeville Welcome Center
- Landrum Welcome Center
- Little River Welcome Center
- Santee Welcome Center

All the work to be performed at a particular welcome center was included in a single lot and award was made by lot. Bidders were required to complete and return a Lot Calculation Spreadsheet that asked for unit prices for the monthly mowing and for clear zone mowing. An Intent to Award was posted to Landscaping and Mower, Inc. (L&M) on October 20, 2016 for the Dillon, Fair Play, and Landrum welcome centers. The Intent to Award showed the winning monthly mowing and clear zone pricing. L&M bid \$0.00 for the clear zone mowing.

Hiers first issue of protest is that:

After reviewing Landscaping and Mower's bid and award, it is evident that this company did not fully consider the entire scope of the work of this contract. We feel that this is evident by the \$0.00 bid offered on the Clear Zone Mowing contract.

L&M included on its bid form for each lot where it bid \$0.00 for clear zone mowing, a handwritten statement, dated and initialed, that its price includes the clear zone mowing. As an example, L&M's response to Lot 1 is included as Attachment 2. L&M indicates that it can perform the contract at the price bid and since the price for the lot includes all services requested, there is no reason to believe that L&M cannot perform. This issue of protest is denied.

Hiers next alleges that L&M does not have a current Pesticide Applicators License. Attachment A to the solicitation included the following:

LICENSES, REGULATIONS AND STANDARDS:

A valid Driver's License is required for all vehicle operators. All herbicide applicators shall have a valid South Carolina Certified Pesticide Applicator License certified in Category 3, Ornamental and Turf Category.

L&M responds that, while the license is not in L&M's name, it employs a licensed applicator, and provided a copy of that license. (Attachment 3) This issue of protest is denied.

Finally, Hiers protests:

In conclusion to our appeal, it is evident after reviewing the hardcopy bid that Landscaping and Mower Inc. did not follow South Carolina Procurement Law Section 11-35-1520 Item 6 that states "Bid acceptance and bid evaluation; Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code." It is evident that Landscaping and Mower did not spend the required time to complete this bid document based on the untidiness presented and based on mathematical errors that had to be corrected throughout the document. One error that was not corrected was the Hardeeville Welcome Center bid.

Section 11-35-1520(6) requires that:

Bid Acceptance and Bid Evaluation. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code.

Alterations and corrections were made by L&M prior to the bids submission to the State. All corrections and alterations were initialed and dated. No corrections or alterations to L&M's bid were permitted after its acceptance by the State in accordance with Section 11-35-1520(8). This issue of protest is denied.

Hiers is correct that L&M failed to submit a complete price for the Hardeeville Welcome Center. The solicitation specifically contemplated, though, that a bidder might commit this type of error:

To ensure that line item totals were calculated correctly, bidders must include the completed "LOT CALCULATION SPREADSHEET" with their bid submission. If the bidder's numbers do not match (meaning the Bidding Schedule line does not match the total extended price on the spreadsheet), their bid for that item will be negated. *Failure to provide the spreadsheet data for all line items bid on will negate the line items missing spreadsheet data. For example, if Bidder A bids on all six lots, but only provides spreadsheet data for Lots 1 through 5, their bid for Lot 6 will not be accepted even if it is the lowest bid for the lot.*

(italics supplied). The italicized language clearly communicated the Department's intention to accept valid bids on individual line items, even if other line items were incomplete or incorrect. Since the Hardeeville lot was not awarded to L&M, this issue of protest is denied.

DECISION

For the reasons stated above, the protest of Hiers Lawn Care, LLC is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

Hiers Lawn Care LLC

Matthew Hiers

October 26, 2016

SC Department of Parks, Recreation & Tourism
Attn: Chief Procurement Officer
1205 Pendleton Street, Room 517
Columbia, SC 29201

Dear Chief Procurement Officer,

Please accept this email confirmation as our appeal to the award of original solicitation number 5400011887 and intent to award contract number 4400014534 to Landscaping and Mower Inc, located at 2756 Gaston Farm Road, Chester, SC 29706.

After reviewing Landscaping and Mower's bid and award, it is evident that this company did not fully consider the entire scope of the work of this contract. We feel that this is evident by the \$0.00 bid offered on the Clear Zone Mowing contract. We feel that it is unfair to consider a bid from a company when they did not bid on the entire contract. We question the intent of Landscaping and Mower of how to accomplish the Clear Zone Mowing at a \$0.00 price that provides no profit and only provides additional cost incurred to their company. We are concerned that Landscaping and Mower have no intentions to complete this Clear Zone Mowing or that Landscaping and Mower knows inside information, such as, Clear Zones are never mowed by SCPRT and/or that the four (4) mowing's from SCDOT are adequate. Below is listed documentation to support this decision:

1. SC Law prohibits the award to Landscaping and Mower Inc, under Chapter 19 of the State Budget and Control Board Laws. Under 19-445.2070 Section A, it states that "any bid which fail to conform to the essential requirements of the invitation for bids shall be rejected."
2. Located in the invitation to bid document, Offering by Lot says "offers may be submitted for one or more complete lots. Failure to offer on all items within a lot will be reason for rejection."

It is also not clear that Landscaping and Mower has a current Pesticide Applicators License. After completing our investigation, we cannot find any evidence that Landscaping and Mower holds such required license. After researching the Clemson Department of Pesticide Regulation website and contacting their respected office, no evidence can be found that Landscaping and Mower holds the required Pesticide License. If this is found true, Landscaping and Mower should be disqualified from this bid award because of the following rules/regulations set forth in the Invitation to Bid document:

1. Licenses and Permits says "During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by the state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract."
2. Specification-Monthly Grounds Maintenance says "A valid Driver's License is required for all vehicle operators. All herbicide applicators shall have a valid South Carolina Certified Pesticide Applicator

Hiers Lawn Care LLCMatthew Hiers

License certified in Category 3, Ornamental and Turf Category. All work shall comply with laws, ordinances and regulations of all legally constituted authorities having jurisdiction over any part of work. It shall be the responsibility of the contractor to ensure that any necessary licenses, permits, etc. are in place.”

In conclusion to our appeal, it is evident after reviewing the hardcopy bid that Landscaping and Mower Inc did not follow South Carolina Procurement Law Section 11-35-1520 Item 6 that states “Bid acceptance and bid evaluation; Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code.” It is evident that Landscaping and Mower did not spend the required time to complete this bid document based on the untidiness presented and based on mathematical errors that had to be corrected throughout the document. One error that was not corrected was the Hardeeville Welcome Center bid. Please take time to consider this protest and we look forward to your response.

In Protest,

Matthew Hiers

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

NOTE: See Section VI. You must use the LOT CALCULATION SPREADSHEET to calculate your bid for each Lot (Welcome Center). To ensure that line item totals were calculated correctly, bidders must include the completed LOT CALCULATION SPREADSHEET with their bid submission.

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	1	LOT	2500 2300	2500 27600
Product Catg.: 98836 - Grounds Maintenance: Mowing Plant (not tree) etc.				
Item Description: Lot 1-Dillon WC				
Tendering Text: Grounds maintenance services at Dillon Welcome Center as per specifications and completed LOT CALCULATION SPREADSHEET (must be submitted with bid submission).				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Preferences	Mandatory	No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	


9-2-16

Lot 1 - Dillon Welcome Center

Vendor Name: [REDACTED]

ITEM NUMBER	ITEM DESCRIPTION	QUANTITY	UNIT OF MEASURE
1	Monthly Grounds Maintenance	12	Months
2	Clear Zone Mowing	4	Each



UNIT PRICE	EXTENDED PRICE
2300	27,600 \$0:00
0	\$0.00
Total Extended Price for Lot 1:	27,600 \$0:00

ow

Includes clear zones

9-7-16



CLERMSON
UNIVERSITY AND PUBLIC SERVICE PROGRAMS
VETERINARY MEDICAL CENTER



Department of Parasitology & Entomology
511 Memorial Gymnasium
Clemson, SC 29634
(864) 646-2150 (Main Office)
(864) 646-2175 (Fax)
<http://dpr.clemson.edu>

This is to attest that WILLIAM B. DRENNON, JR.
is certified as a Commercial Applicator.

Certification Date: 5/27/1992
License Number: C0008289



STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised November 2016)

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 2016 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 473, 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.