

Emergency Procurement

The Medical University of South Carolina (MUSC), Department of Engineering & Facilities (E&F) in accordance with §11-35-1570 (B) of the SC Consolidated Procurement Code, and in accordance with Regulation 19-445.2110 (1), (3) is announcing the award of an emergency procurement to Petroleum Recovery Services in the amount of \$72,696.00.

The emergency procurement to Petroleum Recovery Services is for the annual Diesel Fuel Testing and Cleaning Services. This annual service is to test and clean the fuel within the MUSC Enterprise diesel fuel tanks; as well as the requirement for life safety systems. These diesel fuel tanks provide fuel for emergency generators that support life safety equipment throughout the MUSC Enterprise campus.

Solicitation 5400018858 was advertised in South Carolina Business Opportunity Newsletter (SCBO) on March 17, 2020.

Amendment 1 was issued on March 26, 2020 to facilitate South Carolina's Executive Order 2020-13 issued by the Governor's and the City of Charleston Emergency Ordinance 2020-042 issued by its Mayor, in response to the COVID-19 pandemic for social distancing and stay at home advisories.

Amendment 2 was issued on April 17, 2020 to facilitate the extension of the opening date to May 29, 2020 @ 2:00 p.m.

Amendment 3 was issued on May 28, 2020 to facilitate the extension of the opening date to July 10, 2020 @ 2:00 p.m.

Amendment 4 was issued on June 30, 2020 to facilitate the extension of the opening date to August 10, 2020 @ 2:00 p.m. and update to section III Scope of Work/Specification; Item 1. Fuel Testing/Cleaning Standards and Item 4. Inspection and Approval.

Amendment 5 was issued on August 4, 2020 to facilitate the extension of the opening date to October 9, 2020 @ 2:00 p.m. and the following;

Amendment 6 was issued on October 6, 2020 to facilitate the following;

- Pre-bid/Proposal Conference plus Site Visit October 26, 2020 @ 2:00 p.m. and Location
- Question and Answered (Q&A) period of October 27, 2020 @ 2:00 p.m.
- Extension of the opening date to November 16, 2020 @ 2:00 p.m.
- Award posting date to November 18, 2020
- Maximum Contract period to December 2, 2020 to December 1, 2025

Amendment 7 was issued on October 27, 2020 to facilitate the Q&A responses.

The November 16, 2020 opening date and time had arrived and there were two (2) offers submitted and received for solicitation 5400018858 (Petroleum Recovery Services, LLC and Tank Kleen).

There were two (2) offers submitted by mail. The Procurement Officer performed the electronic surrogate bid process in SCEIS (South Carolina Enterprise Information System) on behalf of Petroleum Recovery Services, LLC and Tank Kleen.

Petroleum Recovery Services and Tank Kleen LLC had to submit the spread sheet in Attachment G and Attachment C with their offer for all MUSC and MUHA tank locations. The spread sheets include items such as, Clean, Sample, Treat, Disposal, Analysis, and Employee Hourly Rate pricing.

The following is the solicitation total potential value for each offer;

Petroleum Recovery Service, LLC.	Five (5) year term for the amount of \$491,174.00
Tank Kleen	Five (5) year term for the amount of \$539,537.21

Petroleum Recovery Service LLC appeared to be the apparent low bidder at \$491,740.00. Petroleum Recovery response was sent to E&F (Engineering and Facility) for review.

During the review and the responsiveness/responsibility check, the Procurement Officer notice that Petroleum Recovery had submitted pricing in its offer that was not clearly stated in the solicitation document nor did the solicitation state how the pricing should be applied.

However, during the Q&A, it was stated;

“Q-3 Would it be acceptable to add a column in the pricing showing the cost of circulating the fuel & treatment in tanks larger than 2,000 gallons? (II.SOW: 1. G.)

A-3 Yes, please add a cost column

The Procurement Officer did not want to assume that the cost for the transfer fee was include in the apparent low bidder's price.

Therefore, submitted a question to Petroleum Recovery to whether or not the transfer fee was included in its submission. Petroleum Recovery response was no they did not add the fee in their submission.

Understanding that the transfer fee submitted by Petroleum Recovery was not factored into its submission based on the Q&A response herein. The Procurement Officer calculated the .40 cent to every fuel tank that was 2,000 gallons or more.

Once the .40 cent fee had been applied to Petroleum's offer, Petroleum was no longer the apparent low bidder.

The Procurement Officer then asked the same question of Tank Kleen and the answer was that the transfer fee to the Q&A was included in its response amount of \$539,537.21.

This fact was brought to the attention of E&F and it was stated by E&F that it was not their intent to evaluate the transfer fee in the contract but merely obtain a price so that it may be applied as need.

The Q&A response herein it's self on how to apply the fuel transfer in the solicitation scope of work/specification and Amendment 7 appeared to have made it difficult to determine the apparent low bidder based off of the answer. The answer in its self is ambiguous.

Furthermore, with the absent of instructions in how the excel spread sheet should have been used in the price of the service also cause major concerns.

However, each of the vendors had failed in one (1) way or another to fill in the pricing for all of the headings on the spread sheet that generated the total cost for the service for the individual tanks.

Based upon the State's standards for responsiveness of an offer in the South Carolina Consolidated Procurement Code..., Section 11-35-1410 (9) the following determination concerning "a person who submitted a bid or proposal which conform in all material aspect to the invitation for bid..."

Both offers did not complete the spread sheet as intended. Therefore, neither offer met the definition of material aspect as out lined in 11-35-1410 (9) responsiveness.

Therefore, the Procurement Officer has no other choice but to deem Petroleum Recovery Services, LLC and Tank Kleen offer non-responsive for solicitation 5400018858, per 11-35-1520 (6) "... based on the requirements in the invitation for bid..."

The position of the Procurement Officer is that the ambiguity that existed in the solicitation scope of work/specification, Amendments, and attachments was the contributing factor.

The Procurement Officer will not issue an award as outlined in 11-35-1520 (10) award....

However, the Procurement Officer is compel to reject both offers and issue a no award for solicitation 5400018858 as outlined in 11-35-1710 Cancellation..... and 19-445-2065 rejection of bids (B), (1),(a) inadequate or ambiguous specifications

A revise scope of work/specifications will be developed and issued under a new solicitation number in accordance with 11-35-1520.

The Procurement Officer has deemed this an emergency in accordance with Section 19-445-2110 (1),(3) of the South Carolina Procurement Code as the annual diesel Fuel testing and cleaning, is vital to the functioning of the campus, health, safety, and life of these diesel tanks are essential- the Campus enterprise.

Bidder's right to protest as listed in Section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this announcement of an emergency procurement.

PROTESTS (MAY 2019) If you are aggrieved in connection with the intended award of this contract, you may be entitled to protest, but only as provided in §11-35-4210. To protest an intended award of a contract pursuant to §11-35-1560, you shall (i) notify the chief procurement officer in writing of your intent to protest within five (5) business days of the date this intent to award is posted, and (ii) if the appropriate chief procurement officer has been timely notified of your intent to protest, you may submit your actual protest within fifteen days of the date this notice of intent to award is posted. Days are calculated as provided in §11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

Any protest or notice of intent to protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to: protest-mmo@mmo.state.sc.us or (b) by post or delivery to: 1201 Main Street, Suite 600, Columbia,