

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON BEHALF OF THE ADMINISTRATIVE DIRECTOR OF THE ALASKA COURT  
SYSTEM**

In the Matter of YOUNG'S FIREHOUSE )  
(Bid Protest—Automated External )  
Defibrillators) )

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OAH No. 06-0466-PRO  
ACS ITB 06-016

**RECOMMENDATION**

**I. Introduction**

Young's Firehouse, an unsuccessful bidder, protests the award of a contract to purchase 69 automated external defibrillators and associated equipment to ZOLL Medical Corporation. Young's bid, which was lower than ZOLL's, was rejected as nonresponsive.

The court system referred Young's protest to the Office of Administrative Hearings ("OAH") for a hearing and recommendation. Pursuant to AS 36.30.030, both the bidding process and this appeal are governed by the Alaska Court System Procurement Guidelines ("Guidelines"). By memorandum dated July 5, 2006, the Administrative Director waived the ten-day deadline for a hearing on the protest.

At a prehearing conference on July 10, 2006, counsel for the court system staff raised a threshold issue as to the timeliness of Young's protest. The parties agreed to resolve that issue through expedited motion practice, with the staff to file a motion to dismiss by July 14 and Young's to respond within ten days. The staff filed its motion on July 12. Young's submitted no response.

Because the motion to dismiss is well taken, this Recommendation concludes that the contract award ought to be upheld.

**II. Facts**

The facts relevant to the motion to dismiss are not disputed. On June 6, 2006, the Alaska Court System issued an invitation to bid for the automatic external defibrillators and associated equipment. As it is permitted to do by the Guidelines, the ACS fiscal office shortened the time to submit bids to ten days, in order to complete the procurement by the

close of the fiscal year. The ITB was closely modeled on an earlier ITB for the same devices issued by the Department of Health and Social Services.

Specification I.3.C on page 8 of the ITB required that "Batteries must be easily replaceable and be separate from the electrode unit." The same specification in the DHSS ITB had said simply that "Batteries must be easily replaceable."

No vendor commented on or objected to the specifications prior to the June 16 bidding deadline. Eight bids were received.

Young's bid was the lowest of the eight received. However, the fiscal office rejected the bids of Young's and one other bidder as nonresponsive for failure to meet Specification I.3.C. On June 20, 2006, ACS gave notice of its intent to award the contract to ZOLL. It is undisputed that ZOLL did meet Specification I.3.C.

Young's agrees that it did not meet Specification I.3.C. At the recorded prehearing conference, its representative said the "a few words added to the specs right at the end" operated to "exclude my device."

On June 28, 2006 Young's protested the award, arguing in its protest document that the ZOLL system, with its multiple batteries, is inferior to the Samaritan Pad marketed by Young's. Young's observes that the simplicity of the Samaritan Pad's single battery pack could be a lifesaving feature during an emergency battery replacement.

### **III. Discussion**

Young's is not protesting that any provision of the ITB was misapplied. Instead, it is protesting that Specification I.3.C was misguided.

Guideline 4-401.02.1(1) sets out the procedure for protesting the "provisions" of an ITB. It provides for such protests to be filed and considered in advance of bid opening. In a procurement on shortened time such as this one, a protest to a provision is due "by the date set out in the invitation to bid." This ITB, at page 2, paragraph 2, urged bidders to review the ITB immediately for objectionable requirements and further stipulated:

Bidders' protests based upon any omissions, errors, or the content of the Invitation to Bid will be disallowed if not made in writing and received by the Purchasing Department no less than 3 calendar days before bid opening.

In this case, protests of the terms of the ITB were therefore due by June 13. Young's did not protest until June 28, long after bid opening and selection of the winning vendor. The ITB is unequivocal in requiring that such a late protest "will be disallowed."

**IV. Conclusion**

Regardless of the merits of the Young's Firehouse critique of the wisdom of Specification I.3.C, Young's has raised its objection too late. In keeping with the ITE's directive on the disposition of protests to ITB provisions made after the deadline, the protest should be disallowed.

Under section 4-401.04.1 of the Alaska Court System Procurement Guidelines, I recommend that the Administrative Director reject the protest.

DATED this 31<sup>st</sup> day of July, 2006.

By:

Christopher Kennedy  
Administrative Law Judge



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Received  
AUG 09 2006  
State of Alaska  
Office of Administrative Hearings

**DECISION**

The recommendation of Administrative Law Judge Christopher Kennedy in the above-captioned matter is accepted, and therefore this protest is rejected. This decision may be appealed to the superior court within 30 days of its distribution.

Dated this 9 day of August 2006.

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Stephanie Cole  
Administrative Director  
Alaska Court System

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of August 2006, a true and accurate copy of the foregoing document was

faxed

mailed to:

Scot Woolsey (Young's Firehouse) 907-677-1481  
Marc Ashton (Zoll Medical Corp.) 978-421-0005  
Administrative Law Judge Kennedy, 907-269-8172

By \_\_\_\_\_  
Lesia Robertson