

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Central Poly Corporation

Materials Management Office
IFB No. 5400007037

Can Liners (High Density) - Statewide

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2014-106

POSTING DATE: March 31, 2014

MAILING DATE: March 31, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest dated February 25, 2014 from Central Poly Corporation (Central Poly). With this invitation for bids (IFB), the South Carolina Materials Management Office (MMO) attempts to procure statewide term contracts for high density can liners. Following the evaluation of the bids received, MMO rejected Central Poly's bid as nonresponsive and posted Intent to Award notices to JANPAK, Incorporated and Southeastern Paper Group. Central Poly protested the awards, alleging "Central Poly feels we should not be disqualified, and we are requesting that you please review our bid prices again."

As the issues to be decided are clear, this decision is prepared based on an administrative review of the procurement file without benefit of a hearing.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On December 18, 2013, MMO published the IFB. (Ex. 1)
2. On January 7, 2014, MMO conducted a pre-bid conference.

3. On January 13, 2014, MMO issued Amendment #1 completely rewriting the solicitation. (Ex. 2)
4. On February 21, 2014, MMO posted its Intent to Award notices. (Ex. 3)
5. On February 25, 2014, Central Poly filed its protest with the CPO.

SOLICITATION REQUIREMENTS

MMO solicited statewide term contracts for forty-four different Can Liners (High Density) announcing, “Award will be made to the two lowest offerors.” [Ex. 2, Part VI. Award Criteria, Award to Multiple Offerors, p. 23] Bidders were asked to offer unit prices for all forty-four items, calculate an extended price for each item by multiplying the unit price by the estimated usage for that line item, and sum all forty-four extended prices for a grand total. [Part VI. Award Criteria, Calculating the Low Bids, p. 23] The Bidding Schedule provided the instrument for bidders to offer units prices for all forty-four items, calculate the extended price for each item, and sum all the estimated extended prices. [Part VIII, Bidding Schedule, pp. 38-50] It reiterated the requirement for bidding on all items: “To receive consideration, offers must be tendered for all line items.” [*Id.*, p.35]

CONCLUSIONS OF LAW

Central Poly tendered its bid as instructed, except Central Poly failed to enter a bid price for Item 16 of the solicitation.¹ [Ex. 4]

MMO Procurement Manager Anthony Cromartie rejected Central Poly’s bid writing:

Central Poly Bag Corporation’s offer was submitted online and also included attachments to their online offer. Central Poly neglected to enter in a price for line item #16 of the solicitation and did not include an attached document that supported any pricing. The Offeror also admitted to the exclusion oversight.

¹ Item 16 was displayed as Item 61 in the printed bidding schedule of Ex. 4. Mr. Cromartie developed his bidding schedule by copying the previous solicitation for the same products. Without renumbering the items, the state’s automated procurement system continues the item numbering from the previous solicitation. It has no impact on this case or this decision.

Offerer was the lowest bidder until the discrepancy was discovered. Submitting in this way clearly contains changes that would impact pricing. Therefore, the error cannot be classified as a “minor informality or irregularity.” It would be prejudicial to other offerors for the procurement officer to wave the error or provide the offeror the opportunity to cure it. In accordance with Regulation 19-445.2085, because the offer from Central Poly Bag Corporation did not conform to the essential requirements of the invitation for bids, it must be rejected and deemed nonresponsive.

[Ex. 5]

As noted in Mr. Cromartie’s determination, Central Poly failed to offer a price for Item 16. [Ex. 4] Central Poly acknowledged its oversight in the protest letter, writing, “On item 16, we made an error inputting this item into the online system. All information was entered as requested, except for the unit pricing, which is the same unit price as the item preceding it (\$20.10 per case of 500).” Yet, Central Poly wrote further, “Central Poly feels we should not be disqualified, and we are requesting that you please review our bid prices again.” Central Poly asks that it’s on line bid be treated as a mistake and corrected by adding what it now says was its price for Item 16.

The Consolidated Procurement Code (Code) grants Central Poly no comfort. It reads:

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reward of awards or contracts, after award but prior to performance may be permitted in accordance with regulations promulgated by the board. **After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be permitted.** Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

[§ 11-35-1520: Competitive Sealed Bidding (emphasis supplied)] The supporting regulations explain further:

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such

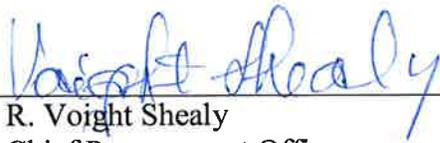
bidder to have the low bid unless the mistake in the judgment of the procurement officer is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition. [S.C. Reg. 19-445.2085: Correction or Withdrawal of Bids; Cancellation of Awards, B. Correction Creates Low Bid.]

The Code only allows limited waiver of a minor informality or irregularity in a bid, which is defined as “one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract.” The Code prohibits, however, waiver of an irregularity in a bid that has more than a trivial or negligible effect on total price, as would certainly be the case here. Further, such waiver cannot be prejudicial to the other bidders, as would be the case here as well. [11-35-1520(13) Minor Informalities and Irregularities in Bids]

According to the regulations, the State is left with a single option when a bidder omits a price offer for an item in an IFB. It reads, “Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.” [S.C. Reg. 19-445.2070: Rejection of Individual Bids. C. Nonresponsive Bids.]

DETERMINATION

For the foregoing reasons the protest is denied.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

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 108.1 of the 2013 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
1105 Pendleton Street, Suite 202, 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.



CENTRAL POLY CORPORATION

Manufacturers of Polyethylene Films, Bags, Drum Liners, Box Liners & Specialties

Nation Wide 2400 Bedle Place – Linden NJ 07036 (908) 862-7570 Fax (908) 862-9019

Tuesday, February 25, 2014

State of South Carolina
Materials Management Office
Capitol Center
1201 Main Street, Suite 600
Columbia, SC 29201

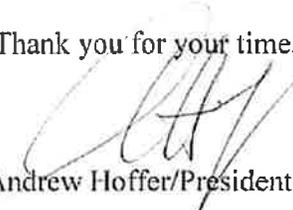
Ref: Sealed Bid: 5400007037/Can Liners (High Density) – Statewide
Our Reference No. 120064

Attention Chief Procurement Officer, Materials Management Office

Central Poly would like to formally protest the award of bid # 5400007037 for high density can liners. We've been in business for over 20 years and we stand behind our products. On item number 16, we made an error when inputting this item into the online system. All information was entered as requested, except for the unit pricing, which is the same unit price as the item preceding it (\$20.10 per case of 500). You will note that item numbers 13-16 were entered with all required information. Item 16 was in the same series as these previous items and it was an honest oversight that this item was left blank on pricing.

Central Poly feels that we should not be disqualified, and we are requesting that you please review our bid prices again. Since this contract is being awarded with the State's best financial interest at stake, please keep in mind that Central Poly's overall pricing is thousands of dollars lower than the awarded vendor's and we would like to be considered for this award.

Thank you for your time,



Andrew Hoffer/President