

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Staples Business Advantage

Materials Management Office
IFB # 5400006696

Statewide Term Contracts for
Office Supplies & Copy Paper

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2014-116

POSTING DATE: June 10, 2014
MAILING DATE: June 10, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by Staples Business Advantage (Staples) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure statewide term contracts for office supplies and copy paper. After evaluating the bids received, on March 31, 2014, Teresa Watts, MMO Procurement Manager, determined Staple's bid nonresponsive. [Ex. 1 attached] On April 1, 2014, MMO posted its intent to award to Forms & Supply, Inc. [Ex. 2 attached] On April 4, 2014, Staples protested MMO's intent to award alleging "This Determination document claims that Staples failed to provide the required attachments A and B as part of its response to the Solicitation. Staples contends that the SCMMO's findings are erroneous, and the SCMMO has already confirmed this error. The required Attachments A and B were, in fact, submitted correctly by Staples into the SCEIS system prior to the bid opening, along with an additional spreadsheet which detailed the items that would receive the list less 60% discount." [Ex. 3 attached]

On May 6, 2014, John Stevens, State Procurement officer, wrote in a letter to the CPO:

Although the determination indicates that "Staples failed to include the correct Excel spreadsheets known as Attachments A and B" in its bid response submitted

online, the determination was in error. As evidenced by the attached "Output" of the Staples offer from SRM, Staples did, in fact, provide Attachments A and B as attachments to each applicable line item (Line numbers 1, 2, 4, 5, 7, 8, 10 and 11). Further, those attachments were confirmed by this office to be the latest edition of each Excel spreadsheet corresponding to Amendment 7 (Attachment A) and Amendment 5 (Attachment B).

Since the State Procurement Office's finding that Staples offer was non-responsive is in error, I ask that you grant the protest to the extent that we may fully evaluate the Staples offer, notably, protest relief item (b), and, as it may relate to the "No Award" notice for the Region awards only, item (c).

[Ex. 4 attached]

NATURE OF PROTEST

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

DETERMINATION

There is no dispute of fact in this matter. MMO admits that its initial determination of non-responsiveness was in error. Accordingly, the protest of Staples is granted. MMO is directed to continue its evaluation of Staples' bid and proceed in accordance with the Consolidated Procurement Code.



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.

DETERMINATION OF A NON-RESPONSIVE BID

Solicitation Number 5400006696
Submitted by Staples

The following are excerpts from the original solicitation relevant to the Determination of Non-Responsiveness:

Original Solicitation: Page 8, Responsiveness/Improper Offerors

(C.) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

Solicitation Amendment 7 published 01/21/2014 addresses correct Attachment A to be returned. (Attachment A revised 01/21/2014)

Solicitation Amendment 5 published 11/20/2013 addresses correct Attachment B to be returned (Attachment B revised 11/20/2013)

Staples returned incorrect documents.

1. An Excel spreadsheet was attached but is unidentifiable. Staples failed to include the correct Excel spreadsheets known as Attachments A and B.

Determination:

Staples does not meet the requirements set forth in the original solicitation. The possible cost to the State could not be determined. Therefore, Staples is deemed "non-responsive."

In accordance with Regulations 19-445.2070, A., Rejection of Individual Bids

Any bid which fails to conform to the essential requirements of the solicitation shall be rejected.

Theresa L. Watts

March 31, 2014

Theresa L. Watts, CPPB
Procurement Manager

Date

STATE OF SOUTH CAROLINA
MATERIALS MANAGEMENT OFFICE
CAPITAL CENTER
1201 MAIN STREET, SUITE 600
COLUMBIA SC 29201

Intent to Award

Posting Date: April 01, 2014

Solicitation: 5400006696
Description: Office Supplies & Copy Paper
Agency: Statewide Term Contract

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00:00, April 14, 2014**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

NO AWARD IS MADE ON ITEM(S): Region I (4-6), Region II (7-9) and Region III (10-12).

Rejection of Bids: Reference Regulation 19-445-2065, (f) and (h).

The State of SC will rebid these items in the near future.

OFFERS FOR GREENVILLE OFFICE AND OFFICE DEPOT, WERE AT PRICES LOWER THAN THAT OF AWARD ARE NON-RESPONSIVE AS THEY DID NOT MEET THE SOLICITATION REQUIREMENTS.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to protest-mmo@mmo.sc.gov ,

(b) by facsimile at 803-737-0639 , or

(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400008126

Awarded To: FORMS & SUPPLY INC
99 VANTAGE POINT ROAD
WEST COLUMBIA SC 29172

Total Potential Value: \$ 50,000,000.00 *

Maximum Contract Period: April 14, 2014 through April 13, 2019

Item	Description	Unit Price	Total
00001	STATEWIDE Office Supplies	\$ 711,332.08	\$ 711,332.08
00002	STATEWIDE Copy Paper	\$ 1,793,782.00	\$ 1,793,782.00
00003	STATEWIDE discount off catalog	66%	66%

* This amount represents the total spend on office supplies by the State of South Carolina for the five-year contract period and no amount is guaranteed to any awarded vendor.



Procurement Officer
 THERESA L. WATTS, CPPB

April 3, 2014

Mr. Voight Shealy, Materials Management Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Written Protest of Intent to Award #: 5400006696 (Office Supplies and Copy Paper) and Determination of a Non-Responsive Bid

Dear Mr. Shealy:

On April 1, 2014, the Intent to Award for Solicitation 5400006696 (the "Solicitation") was published by the South Carolina Materials Management Office (the "SCMMO"). A copy of that document is enclosed with this letter. The statewide portion of the Solicitation was awarded, while the three regional portions of the solicitation were not awarded.

On April 2, 2014, Staples Contract & Commercial, Inc. ("Staples") received a Determination of a Non-Responsive Bid from the SCMMO, a copy of which is also enclosed with this letter. This Determination document claims that Staples failed to provide the required Attachments A and B as part of its response to the Solicitation.

Staples contends that the SCMMO's findings are erroneous, and the SCMMO has already confirmed this error. The required Attachments A and B were, in fact, submitted correctly by Staples into the SCEIS system prior to the bid opening, along with an additional spreadsheet which detailed the items that would receive the list less 60% discount. This was confirmed by John Stevens of the SCMMO in a phone conversation on April 3, 2014, between John Stevens and Jennifer Vroon of Staples. Staples' Solicitation response was thus complete and submitted in a timely manner, and should have been given full consideration by the SCMMO in its evaluation of the various Solicitation responses.

Accordingly, by this letter Staples (a) protests the aforesaid Intent to Award, (b) requests that the SCMMO retract its Determination of a Non-Responsive Bid with regard to Staples' response to the Solicitation, and (c) requests that the SCMMO withdraw its Intent to Award and include Staples' Solicitation response in the SCMMO's re-evaluation of the various responses to the Solicitation. Staples also reserves the right to supplement this protest.

Please feel free to contact me if you have any questions. Thank you for your consideration.

Sincerely,

Wayne Hall
Regional Vice President

Enclosures

NIKKI HALEY, CHAIRMAN
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

THE DIVISION OF PROCUREMENT SERVICES
DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-2320

R. VOIGHT SHEALY
MATERIALS MANAGEMENT OFFICE
(803) 737-0600
FAX (803) 737-0639

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

May 6, 2014

R. Voight Shealy, CPM
Chief Procurement Officer for Supplies and Services
South Carolina Budget & Control Board
Division of Procurement Services
1201 Main St., Suite 600
Columbia, SC 29201

Re: Solicitation No. 5400006696 – Office Supplies and Copy Paper
Response to Protest of Staples Advantage

Dear Mr. Shealy,

Please find below a response from the State Procurement Office to the protest filed by Staples Advantage on April 4, 2014.

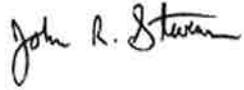
Attached separately, please find the “Determination of a Non-responsive Bid” as prepared by responsible Procurement Manager Theresa Watts.

Although the determination indicates that “Staples failed to include the correct Excel spreadsheets known as Attachments A and B” in its bid response submitted online, the determination was in error. As evidenced by the attached “Output” of the Staples offer from SRM, Staples did, in fact, provide Attachments A and B as attachments to each applicable line item (Line numbers 1, 2, 4, 5, 7, 8, 10 and 11). Further, those attachments were confirmed by this office to be the latest edition of each Excel spreadsheet corresponding to Amendment 7 (Attachment A) and Amendment 5 (Attachment B).

Since the State Procurement Office’s finding that Staples offer was non-responsive is in error, I ask that you grant the protest to the extent that we may fully evaluate the Staples offer, notably, protest relief item (b), and, as it may relate to the “No Award” notice for the Region awards only, item (c).

Thank you for your consideration.

Sincerely,



John R. Stevens, CPPB, CPM
State Procurement Officer

Attachments

Cc: W. Hall – Staples Advantage
C. McDonald – Robinson McFadden
K. Leazer – Forms and Supply, Inc.
D. Robertson – B&CB – Office of General Counsel
T. Watts – State Procurement Office