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Protest Decision

Matter of: Interstate Transportation Equipment, Inc.

Case No.: 2016-127

Posting Date: February 10, 2016

Contracting Entity: South Carolina School for the Deaf and Blind

Solicitation No.: 5400010267

Contract No. 4400012191

Description: School Buses-School for the Deaf and Blind

DIGEST

Protest alleging that the successful bidder's failure to include a floorplan drawing was non-responsive to a material requirement of the solicitation is denied, where procurement officer properly waived the omission as a minor informality.

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 Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

Invitation For Bids Issued	November 16, 2015
Amendment #1 Issued	December 14, 2015
Intent to Award Issued	January 19, 2016
Protest Received	January 29, 2016
Intent to Award Suspended	January 29, 2016

DISCUSSION

Interstate Transportation Equipment, Inc. (Interstate) protests the Intent to Award a contract for two school buses for the South Carolina School for the Deaf and Blind by the Materials Management Office (MMO) to Carolina International Trucks, Inc. (Carolina). Interstate alleges that Carolina's bid was non-responsive to a material requirement of the solicitation, because it failed to include a drawing of the floorplan. Interstate's letter of protest is incorporated by reference. [Attachment 1]

This Invitation For Bids was issued by the Materials Management Office to acquire two school busses for the South Carolina School for the Deaf and Blind. Interstate protests that:

After the Intent to Award was issued, Interstate Transportation Equipment requested a copy of the bid submittal from Carolina International Trucks Inc and an e-mailed copy was promptly received from SCMMO. Upon review of their bid package it was discovered that the required floorplan was not included in their bid package. I noted this in an e-mail to SCMMO/Mr. Speakman and received a follow up e-mail with an attached letter "Memorandum For Record". This issue with the Carolina International bid package's lack of the required floorplan was referenced in Mr. Speakmon's letter and was deemed a minor informality and this required floorplan was now waived after the fact since Carolina International signed their bid as being fully compliant. Signing of the bid as compliant does not relieve the vendor's responsibility to comply with the specifications requirements.

The solicitation included the following statement followed by diagrams of the two floorplans and a note that higher quality diagrams were available to all bidders upon request:

CAPACITY

Required floorplan shown below for each model. (NOTE: Submit floorplan for each model with your proposal) All seats to be spaced at a maximum distance apart as child restraint harnesses will be installed as needed.

[Solicitation, Page 18]

Carolina did not include the requested floorplans with its bid, although it furnished them subsequently. The procurement officer waived this omission as a minor informality as provided for in Section 11-35-1520(13) as follows:

Minor Informalities and Irregularities in Bids. A minor informality or irregularity is 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, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

- (g) failure of a bidder to furnish cut sheets or product literature;

The waiver of Interstate's omission was appropriate and documented in the procurement officer's Memorandum For Record. (Attachment 2) *See, e.g., Protest of National Computer Systems, Inc.*, Panel Case No. 1989-13 (failure to include a sample photocopy of student tests, which were needed to demonstrate that the offeror could supply legible copies, was a minor informality, despite being mandatory). Interstate's requested resolution is:

- Declare Carolina International Trucks as non-responsive and issue award to Interstate Transportation Equipment.
- OR request Carolina International Trucks provide a floorplan for both bus school bus models bid as required, this is as part of Interstate Transportation Equipment's original FOI request for bid copies.

In response to this protest, Carolina provided the CPO with the requested floorplans which are included herein as Attachment 3.

DECISION

The waiver of the requested floorplans and other documentation was appropriate and documented as required by the Code. The protest is denied.

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February 10, 2016

For the Materials Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer
Chief Procurement Officer

Attachment 1



Interstate Transportation Equipment, Inc.

P.O. Box 9163 • 2511 Trotter Road • Columbia, SC 29290

Telephone (803) 776-5041 • Toll Free (800) 726-0779 • Fax (803) 776-3527

January 29, 2016

Chief Procurement Officer
SCMMO
1201 Main St., Suite 600
Columbia, SC 29201

RE: Solicitation 5400010267, School Buses for The South Carolina School for The Deaf and The Blind (SCSDB)

In accordance with State Law [Section 11-35-4210] within 10-days of the Intent to Award date of January 19, 2016, for the solicitation shown above, Interstate Transportation Equipment on January 29, 2016 protests the Intent to Award issued on January 19, 2016 to Carolina International Trucks Inc based on the following. Interstate Transportation Equipment requests a hearing at SCMMO to review with Procurement Officer.

- The specifications and requirements for this solicitation were developed by SCSDB for a purpose-built special needs school bus to be used for local and Statewide travel.
- A key requirement to the bid specifications is for each prospective vendor to submit a floorplan to show that they comply with the location and seat spacing requirements for these purpose-built buses. (Solicitation Page # 18 CAPACITY is the requirement to submit a floorplan for each model with your proposal)

After the Intent to Award was issued, Interstate Transportation Equipment requested a copy of the bid submittal from Carolina International Trucks Inc and an e-mailed copy was promptly received from SCMMO. Upon review of their bid package it was discovered that the required floorplan was not included in their bid package. I noted this in an e-mail to SCMMO/Mr. Speakmon and received a follow-up e-mail with an attached letter "Memorandum For Record". This issue with the Carolina International bid package's lack of the required floorplan was referenced in Mr. Speakmon's letter and was deemed a minor informality and this required floorplan was now waived after the fact since Carolina International signed their bid as being fully compliant. Signing of the bid as compliant does not relieve the vendor's responsibility to comply with the specifications requirements. It was also noted in this Memorandum of Record that a floorplan was not received from Interstate Transportation Equipment, I promptly e-mailed Mr. Speakmon for the record that Interstate Transportation Equipment's paper bid package submitted in our sealed bid included this floorplan stapled with the other signed/completed solicitation documents. I provided a scanned copy of my bid package back to Mr. Speakmon for the record.

Resolutions:

- Declare Carolina International Trucks as non-responsive and issue award to Interstate Transportation Equipment.
- OR request Carolina International Trucks provide a floorplan for both bus school bus models bid as required, this is as part of Interstate Transportation Equipment's original FOI request for bid copies.

I'll look forward to hearing from you soon to resolve this matter.

Sincerely,

A handwritten signature in black ink that reads "Todd B. Manuel".

Todd B. Manuel

Attachment 2

January 15, 2016

Memorandum for Record, Solicitation 5400010267

The purpose of this memorandum is to complete the record of the subject solicitation and to document actions taken on my part in determining the award to Carolina International.

For the record, there were two respondents to this solicitation; Carolina International and Interstate Transportation.

1. Floor Plans. Section III of the solicitation contained the following statement (emphasis added):

CAPACITY

Required floorplan shown below for each model. *(NOTE: Submit floorplan for each model with your proposal)* All seats to be spaced at a maximum distance apart as child restraint harnesses will be installed as needed.

The requirement to submit a floor plan was not located in Section IV, Information for Offerors to Submit.

2. Warranty Information. Section IV of the solicitation contained the following statement, in part:

Documentation verifying the following Minimum Warranty Requirements:

Diesel Engine- 5-years or 100,000 miles, whichever occurs first.
Towing coverage for a minimum of 2 years at no charge.
Authorized engine warranty repair facility to be located in South Carolina.
Automatic Transmission- 5 years or unlimited miles.
Air Conditioning System- 2 years or unlimited miles.
Chassis- minimum of 1 year or unlimited miles.
Body- minimum of 1 year or unlimited miles.
These exact warranty requirements were also listed in Section VIIB of the solicitation.

Responses to the Solicitation.

Neither of the respondents to this solicitation provided floor plans or the warranty information as requested in the solicitation.

Floor Plans-Resolution

The requirement to submit floor plans was listed in Section III but not in Section IV. While not specifically being listed in Section IV does not excuse an Offeror from the requirement to submit, the solicitation already established the floor plan that was acceptable to meet the specifications of the solicitation. Since any floor plan other than what was specified by the State in Section III would not be acceptable, and the Offeror would still be required to provide the floor plan that was predefined by the State, I deem the lack of a floor plan to be a minor informality and waive that requirement through this memorandum.

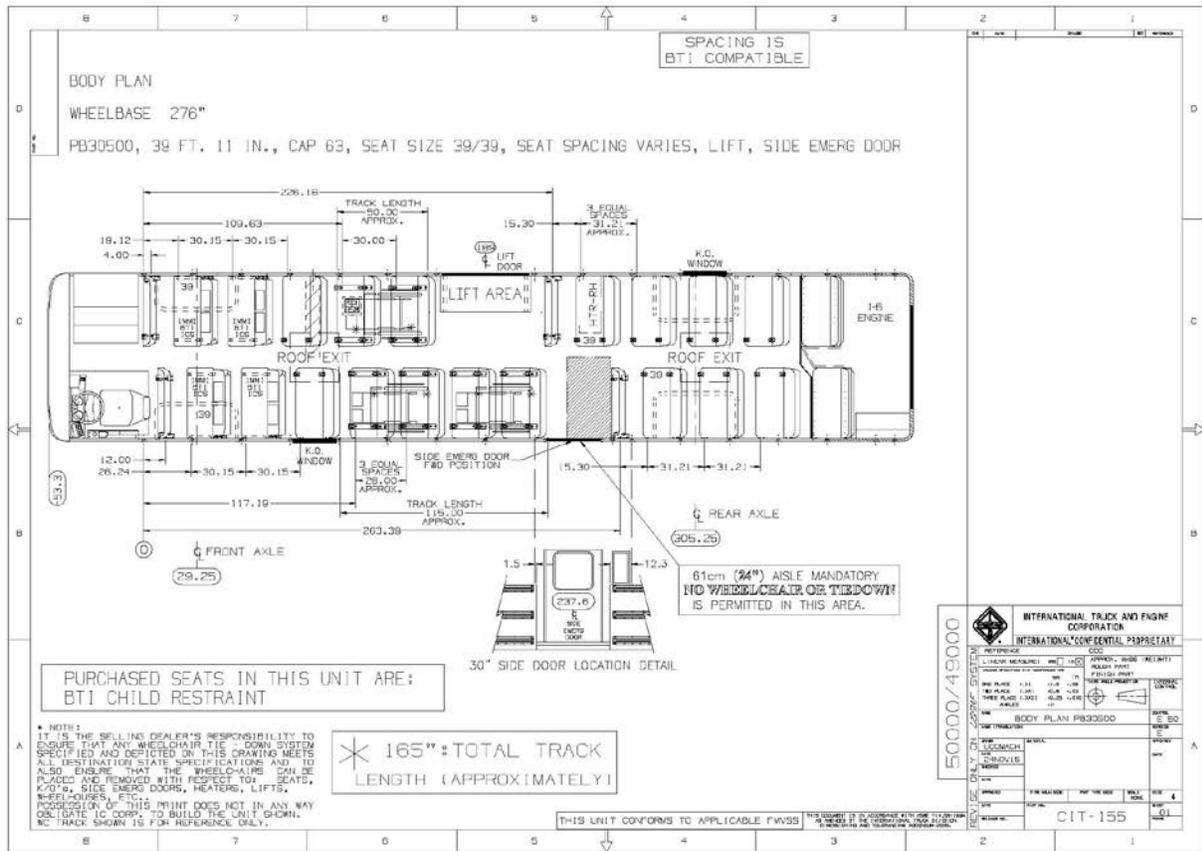
Warranty Response-Resolution

The requirement to submit warranty information I also deemed a minor informality. The identical warranty requirements are listed in Section VIIB, which would have order of precedence over any warranty information provided by an Offeror, to include any exclusions. However, in this case I decided

to request the information from the apparent low bidder, Carolina International, as a means of completing the record. I made that request on January 15, 2016 giving them a response time of 5:00 PM on January 18, 2015. If no addendum to this memorandum exists, that means that Carolina International responded in the allotted time and that I deemed their response acceptable.

A handwritten signature in blue ink, appearing to read 'MS', is positioned above the name of the signatory.

Michael Speakmon, Procurement Manager



BODY PLAN

WHEELBASE 276"

PB30500, 39 FT. 11 IN., CAP 63, SEAT SIZE 39/39, SEAT SPACING VARIES, LIFT, SIDE EMERG DOOR

SPACING IS
BTI COMPATIBLE

PURCHASED SEATS IN THIS UNIT ARE:
BTI CHILD RESTRAINT

• NOTE:
IT IS THE SELLING DEALER'S RESPONSIBILITY TO
ENSURE THAT ANY WHEELCHAIR TIE-DOWN SYSTEM
SPECIFIED AND DEPICTED ON THIS DRAWING MEETS
ALL DESTINATION STATE SPECIFICATIONS AND TO
ALSO ENSURE THAT THE WHEELCHAIRS CAN BE
PLACED AND REMOVED WITH RESPECT TO SEATS,
K.O.'s, SIDE EMERG DOORS, HEATERS, LIFTS,
WHEELHOUSES, ETC.
POSSESSION OF THIS PRINT DOES NOT IN ANY WAY
OBLIGATE IC CORP. TO BUILD THE UNIT SHOWN.
KC TRACK SHOWN IS FOR REFERENCE ONLY.

✳ 165" TOTAL TRACK
LENGTH (APPROXIMATELY)

61cm (24") AISLE MANDATORY
NO WHEELCHAIR OR TIEDOWN
IS PERMITTED IN THIS AREA.

THIS UNIT CONFORMS TO APPLICABLE FMVSS

50000/49000		INTERNATIONAL TRUCK AND ENGINE CORPORATION INTERNATIONAL CONFIDENTIAL PROPRIETARY	
REV	DATE	BY	CHKD
1			
BODY PLAN PB30500			
CIT-155			

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised September 2015)

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 2015 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 209, 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.