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Protest Decision

Matter of: Steelcase Inc.

Case No.: 2018-166

Posting Date: May 7, 2018

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400013853

Description: Office Furniture Statewide Contract

DIGEST

Protest of award alleging unfair and biased solicitation specifications is denied. Steelcase's letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file and applicable law and precedents.

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

Event	Date
Solicitation Issued	09/28/2017
Amendment One Issued	10/16/2017
Amendment Two Issued	10/26/2017
Intent to Award Issued	03/16/2018
Protest Received	03/23/2018

ANALYSIS

The State Fiscal Accountability Authority issued this Invitation for Bids (IFB) on September 28, 2017 to establish a state term contract for office furniture. The bid schedule was published with the solicitation on September 28, 2017. The Intents to Award were posted on March 16, 2018. Steelcase protest the award on March 23, 2018, as follows:

After careful consideration please be advised that Steelcase protests the award of Solicitation Number: 5400013853 for the OFFICE FURNITURE STATEWIDE CONTRACT.

We believe that Steelcase seating was obviously used as the product standard for the seating portion of the RFQ. While this reference may be considered a positive reflection on Steelcase, its use was disproportionate (17 of the 30 seating items were identified as Steelcase by name and model number). We believe this disproportionate reference to Steelcase products provided other manufacturers an unfair advantage by being able to reasonably anticipate a Steelcase RFQ response and pricing strategy.

We request the State rebid the Seating portion of the RFQ utilizing a fair and unbiased specification process. If a wide range of seating manufacturers were referenced or if a generic specification was used, Steelcase would have been in an equal position to provide “functionally equivalent” recommendations.

The South Carolina Consolidated Procurement Code authorizes the CPO to conduct an administrative review of the protest of any actual bidder, offeror, contractor, or subcontractor in accordance with Section 11-35-4210(1)(b) as follows:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is

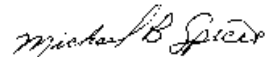
earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added) In this case, the bid schedule was published with the solicitation on September 28, 2017. Steelcase knew that 17 of the 30 seating items in the IFB were identified as Steelcase by name and model number at the time the solicitation was posted. This issue could have been raised as a protest of the solicitation within fifteen days of the posting of the solicitation but cannot be raised as a protest of the award.

DECISION

For the reasons stated above, the protest of Steelcase, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Gregg, Stacy](#)
To: [Skinner, Gail](#); [Spicer, Michael](#)
Subject: FW: Solicitation Number: 5400013853 for the OFFICE FURNITURE STATEWIDE CONTRACT
Date: Wednesday, March 28, 2018 1:08:32 PM

Did you all receive this one?

sg

From: Ussery, Jacque [mailto:jussery@steelcase.com]
Sent: Friday, March 23, 2018 9:37 PM
To: Gregg, Stacy
Subject: Solicitation Number: 5400013853 for the OFFICE FURNITURE STATEWIDE CONTRACT

Hi Stacy,

After careful consideration please be advised that Steelcase protests the award of Solicitation Number: 5400013853 for the OFFICE FURNITURE STATEWIDE CONTRACT.

We believe that Steelcase seating was obviously used as the product standard for the seating portion of the RFQ. While this reference may be considered a positive reflection on Steelcase, its use was disproportionate (17 of the 30 seating items were identified as Steelcase by name and model number). We believe this disproportionate reference to Steelcase products provided other manufacturers an unfair advantage by being able to reasonably anticipate a Steelcase RFQ response and pricing strategy.

We request the State rebid the Seating portion of the RFQ utilizing a fair and unbiased specification process. If a wide range of seating manufacturers were referenced or if a generic specification was used, Steelcase would have been in an equal position to provide "functionally equivalent" recommendations.

Thank you for your consideration in this matter.

Respectfully submitted,

[Jacque M. Ussery, LEED® AP](#) | Strategic Account Manager | Southeast | 912.507.4797 | www.steelcase.com

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 2016 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
1205 Pendleton Street, Suite 367, 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.