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Protest Decision

Matter of: AmTab Manufacturing

Case No.: 2018-174

Posting Date: August 9, 2018

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400013739

Description: Educational Furniture Statewide Contract

DIGEST

Protest of improper disqualification is granted. AmTab Manufacturing's (AM) 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	09/08/2017
Amendment 1 Issued	10/05/2017
Amendment 2 Issued	10/24/2017
Amendment 3 Issued	11/01/2017
Amendment 4 Issued	01/10/2018
Amendment 5 Issued	01/22/2018
Amendment 6 Issued	02/05/2018
Amendment 7 Issued	04/04/2018
Amendment 8 Issued	04/10/2018
Intent to Award Issued	06/22/2018
Protest Received	06/26/2018

ANALYSIS

The State Fiscal Accountability Authority (SFAA) issued this Fixed Price Bid (FPB) to establish state term contracts for educational furniture in the following categories:

- Cafeteria Furniture
- Classroom Furniture
- Computer Lab Furniture
- Dormitory/Housing Furniture
- Healthcare Furniture
- Library/Media Center Furniture
- Locker Room Furniture
- Music Room Furniture
- Playground Seating/Outdoor Furniture
- Fixed Seating
- High Density Storage & Shelving Units

Amendment 8 reproduced the entire solicitation including any changes or alterations. The issue of a restocking fee was addressed on page 20:

The State will allow Contractor, at their option, to charge a State user a restocking fee for orders that are cancelled in excess of five (5) days after receipt of the purchase order.

Bidders were to submit their restocking fee in response to mandatory questions on page 48 of Amendment 8 as a percentage and allowed bidders to provide a comment.

AM responded:

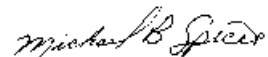
What is the Offeror's restocking fee? (*Section III.H, Page 19*) Percentage 25%
Comment: Restocking fees are handled on a case by case basis.

The procurement officer determined that AM's comment had improperly qualified its bid. This interpretation is inconsistent with the plain language of AM's comment. AM clearly stated that the restocking fee is twenty-five percent. Its comment adds only that the actual fee would be handled on a case by case basis. AM argues that its comment was intended to convey that the maximum restocking fee was 25% but it could be less and sometimes no charge at all to be determined on a case by case basis. While the procurement officer sought clarification regarding certain aspects of AM's bid, she apparently did not ask AM about the comment. The CPO finds the comment is not an improper qualification of the bid, and that it is not a basis for determining the bid non-responsive.²

DECISION

For the reasons stated above, the protest of AmTab Manufacturing is granted. The procurement officer should evaluate AmTab Manufacturing's bid and make award in the cafeteria furniture category in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

² The procurement officer, after seeking clarification, also found AM non-responsive for failing to meet the minimum requirements in all categories except cafeteria furniture. AM has not protested this determination.

Attachment 1



AmTab Manufacturing
Corporation
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Aurora, IL 60506

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greg.swon@amtab.com
www.amtab.com

June 26th, 2018

RE: State of South Carolina, Solicitation # 5400013739
Protest Letter

Ms. Gregg,

We are writing this letter to you in accordance with the Protest Procedure outlined on page 10 of solicitation 5400013739 for Educational Furniture Statewide Contract. We would like to sincerely and humbly request that AmTab Manufacturing Corporation be awarded inclusion on this contract.

We received notice on Friday June 22, 2018 that we were not awarded this contract. When asked why we were not awarded a contract, we received a response that our contract was not considered due to an answer on a restocking fee question on page 48 of the solicitation. The solicitation asked for our restocking fee and also to add any comments. We listed a 25% restock fee and added the comment "restocking fees are handled on a case by case basis". I believe our bid was rejected due to the comment. We add this comment to all our contracts that we bid and we have also added to our previous SC State contract in the past. We believe there may have been some miscommunication as to what this comment meant. This answer was meant to demonstrate that we charge at maximum a 25% restock fee for returns. We added the comment because the restock fee can also be less and sometimes no charge depending on what the product is and the customization of the order. We believe that we should have been allowed to clarify this answer rather than denying us a contract. We have held this contract for many years and we have mutually benefited from it. We have many customers and current projects for this contract and it means a great deal to us. Again, we ask that we please be awarded inclusion on this contract.

Please let us know if there is any other clarification needed. Under review of this evidence and with the confidence that our partnership will continue to add value, we hope that you will find that AmTab should indeed be awarded a contract. We sincerely look forward to your positive response.

Sincerely,

Greg Swon
Accounting Manager
AmTab Manufacturing Corporation

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2018)

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 2018 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.