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GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Protest Decision

Matter of: Kimball Office, Inc.

Case No.: 2019-132

Posting Date: March 27, 2019

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400013739

Description: Educational Furniture Statewide Contract

DIGEST

Protest of a non-responsive determination is granted. Protest of an improperly documented evaluation is granted. Kimball's 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

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
Initial Intent to Award Posted	06/22/2018
Latest Intent to Award Posted	02/01/2019
Protest Received	02/11/2019

ANALYSIS

The State Fiscal Accountability Authority issued this fixed-price bid on September 8, 2018, for educational furniture. The original solicitation was amended eight times and the initial awards were posted on May 9, 2018. The solicitation sought bids from manufacturers that could provide furniture in eleven different 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

The solicitation also provided that:

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.

* * *

Contractors may refuse cancellation or charge a penalty fee for furniture, which is built to order or customized according to the Using Governmental Unit's specification regarding shape, size, color, materials, fabric, finishes, designs, etc. Cancellation or penalty terms must be placed on the Contractor's quote and presented to the Using Governmental Unit prior to the issuance of the of purchase order.

[Amendment 8, Page 20]

The bidding schedule required bidders to enter their restocking fee as a percentage. Kimball bid a 50% restocking fee and added the following condition:

Merchandise will only be accepted for return under the following conditions:

1 The product is a "made to stock" item; and

2 Return Goods Authorization (RGA)

Is given to you by your Customer Service Team.

All returns are subject to a 50%

restocking fee. All freight charges for returned product are the responsibility of the customer.

Kimball's bid was disqualified, in part, on the basis of this note.

Kimball protests:

The Procurement Officer erred in failing to request clarification or waive a minor irregularity in the form of a footnote in the Bid regarding restocking which was consistent with the solicitation requirements (§ 11-35-1520(13)) and in failing to conduct appropriate discussions with Kimball as a responsive and responsible bidder. (§11-35-1525(6))

Kimball argues:

The record reflects that Kimball responded to the one clarification request submitted to it within hours of the request. The Manager never inquired about the questioned "qualification" nor did she seek further information regarding Kimball's offerings and how they met the specification. In each case, she failed to conform to the requirements of the solicitation and the procurement code to Kimball's detriment.

Although the solicitation limited the restocking fee to orders that are cancelled in excess of five (5) days after receipt of the purchase order, the solicitation also allowed contractors to refuse to cancel an order "which is built to order or customized.". Thus, while Kimball's added condition limited returns to "made to stock" products, the solicitation allowed Kimball to make such a

limitation. Consequently, the procurement officer erred in finding Kimball improperly qualified its bid. This issue of protest is granted.

Regarding the second issue of protest, Kimball offered bids for Cafeteria Furniture, Classroom Furniture, Computer Lab Furniture, Healthcare/Infirmary Furniture, and Library/Media Center Furniture lots. Kimball's bids were disqualified for failure to demonstrate that it is able to meet the minimum requirements for each category.

Kimball protests that the procurement officer's application of the specifications in the solicitation were arbitrary and capricious and argues:

The Procurement Manager provided no basis or indication as to why she believed that Kimball's offerings failed to meet the minimum requirements in the categories identified. This conduct is particularly troubling where she expresses a willingness to evaluate the bid further. Moreover, the fact that the solicitation contained no predefined specifications makes her determinations more troubling.

Kimball alleges that it meets all the requirements enumerated in the various categories as modified by Amendment 8 and the failure to award was arbitrary and capricious in violation of S. C. Code Ann. §§ 11-35-20 and 11-35-30. Kimball argues:

The Procurement officer never sought clarification from Kimball as to the fact that it provided the items enumerated in the solicitation identified in the solicitation. Kimball manufactures and provides the things required in each category. Upon information and belief, the only basis for the Procurement officer to conclude otherwise was to utilize an arbitrary method of evaluation based upon the catalog of a single supplier other than Kimball. Not only does Kimball provide these items but Kimball has provided the same to numerous educational institutions throughout South Carolina.

In her Determination of Nonresponsiveness, the Procurement Manager included items in the required categories which were removed by Amendment. e.g., "projector and television mounts" were included in Computer Lab Furniture. Moreover, the Procurement Officer did not identify any shortcomings in Kimball's bid in these categories nor did she state how Kimball purportedly qualified its bid.

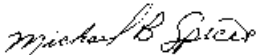
The category listings in the procurement officer's Determination of Nonresponsiveness (Attachment 2) do include items that were deleted from the various categories through amendments. The determination states that Kimball must demonstrate that they are able to meet the minimum requirements for the categories and lists all the various pieces of furniture within

each category without identifying which requirements Kimball failed to meet.² As part of the administrative review, the CPO met with the procurement officer who explained that, upon further review, she could not find a basis for finding Kimball non-responsive. Accordingly, this issue of protest is granted.

DECISION

The protest issues related to Kimball Office, Inc.'s disqualification for conditioning its bid and failure to meet the minimum requirements of the furniture categories are granted. The procurement officer is directed to award contracts to Kimball for the Cafeteria Furniture, Classroom Furniture, Computer Lab Furniture, Healthcare/Infirmarium Furniture, and Library/Media Center Furniture lots.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

² The failure to specifically identify which requirements Kimball failed to meet is more problematic since the State's response to requests to define the specification and desired functionality of various pieces of furniture in the categories was: "For the purposes of this solicitation, there are no predefined specifications related to these items..." The State has an obligation, and it is in its best interest, to explain the disqualification of a bidder with enough particularity to demonstrate that the actions were not arbitrary or capricious and that all persons who deal with the procurement system receive fair and equitable treatment. It is particularly important in reviewing bid responses to a fixed-price bid, that the reasons for rejection be clear and precise since there is usually an opportunity for the bidder to correct any deficiencies and submit a new bid at a later date.

Attachment 1

MONTGOMERY WILLARD, LLC
ATTORNEYS AND COUNSELORS AT LAW
1002 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

(803) 779-3500

MICHAEL H. MONTGOMERY
MHM@MONTGOMERYWILLARD.COM
DIRECT DIAL NO. (803) 753-6484

CERTIFIED CIVIL MEDIATOR

POST OFFICE Box 11886
COLUMBIA, SOUTH CAROLINA 29211-1886
FACSIMILE (803) 799-2755
WORLD WIDE WEB [HTTP://WWW.MONTGOMERYWILLARD.COM](http://www.MONTGOMERYWILLARD.COM)

February 11, 2019

BY EMAIL TO protest-mmo@mmo.sc.gov
FIRST CLASS MAIL AND HAND DELIVERY

Mr. Michael Spicer
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: Protest of Solicitation Number 5400013739
Educational Furniture Statewide Contract
By Kimball Office, Inc.
Date of Issuance of Solicitation: April 4, 2018

FEB 11 '19 MO 16:11

MMO OFFICE

Dear Mr. Spicer:

This firm represents Kimball Office, Inc. ("Kimball"). Pursuant to *S.C. Code Ann.* §11-35-4210(b), this is a protest of an award under Solicitation Number 5400016452 ("the Solicitation"). Kimball is an aggrieved bidder by virtue of providing a conforming, responsible and responsive bid and not receiving an award.

Kimball has enjoyed working with the South Carolina Materials Management Office (MMO) for more than seven years. As one of the State of South Carolina's approved furniture suppliers, Kimball prides itself in providing the State and its agencies with excellent products and service. The State's business has meant a great deal to our company, and we are hopeful that we will have the opportunity to work with MMO into the future.

Over the last seven-plus years, Kimball has provided the State of South Carolina with high-quality furniture at excellent prices. Kimball's products are used by state and local agencies within South Carolina, including the University of South Carolina, Clemson University and School districts in many locations throughout the state. As a result of its sales to State agencies, among other eligible entities, Kimball has provided the State with thousands of dollars in administrative fees each year.

Kimball appreciates your willingness to work with the company in resolving its concerns, and it believes that we can reach a resolution that is fair and beneficial to all parties. Kimball thanks you for your consideration of this protest.

Mr. Michael Spicer
Chief Procurement Officer
February 11, 2019
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We believe that the CPO is in a unique position to resolve this protest because it appears that the Procurement Officer's failure to make an award to Kimball is arbitrary and capricious. Kimball meets the requirements of the solicitation for an award, has provided the information necessary for an award and has not been awarded, apparently as a result of some issue with the Procurement Officer. We are including e-mail and other communications as exhibits to our protest letter which document these issues.

I. SOLICITATION BACKGROUND

MMO initially issued the Solicitation on September 8, 2017. The purpose of the solicitation is to establish multiple sources to supply Educational Furniture to Public organizations throughout the State of South Carolina. The Contract has no limit to the number of awards which can be made and allows additional vendors to submit bids on an annual basis so that the state may continuously add suppliers to the contract.

II. TIMELINESS OF PROTEST

This protest is timely within the deadline set by *S.C. Code Ann. § 11-35-4210(1)(b)*. Kimball received an updated notice that it did not receive an award on February 1, 2019, at 5:08 PM (attached as Exhibit A). This protest was emailed to the Chief Procurement Officer on February 11, 2018, which is within ten days of the date of the point that Kimball became aggrieved in connection with the intended award of a contract.

III. RELEVANT EVENTS

04/18/2018 Kimball submits its bid and bidding schedule offering to provide furniture in the following categories: Cafeteria Furniture, Classroom Furniture, Computer Lab Furniture, Healthcare/Infirmiry Furniture, and Library/Media Center Furniture.

06/14/2018 at 5:32 PM. Procurement officer sends Kimball the following e-mail Message (Exhibit B) "I continue to evaluate bids for Educational Furniture. I am in receipt of your bid' however; I am sending this e-mail to request that you please provide to me your bid submittal as one continuous document as specified in Section IV of my solicitation document.

06/15/2018 at 8:45 AM. Kimball responds to the request. "Please see our attached combined document. I apologize for missing that part of the instructions.

02/01/2019 at 5:08 PM. Procurement officer issues e-mail: "The following Award has been posted by the State of South Carolina. This concludes the second phase of my evaluations. If you did not receive an award, then you should have received a personal e-mail from me with details regarding why. If you would like to further discuss, please follow-up with me." There was no "personal e-mail" attached to Kimball's e-mail, and the company did not receive an award.

Mr. Michael Spicer
Chief Procurement Officer
February 11, 2019
Page 3

02/04/2019 8:17 AM. Kimball contacts the procurement officer with the following e-mail (Exhibit C): "Stacy, I didn't see Kimball on the second round of awards and was wondering if you could send me a debrief as to why Kimball was not awarded."

02/04/2019 9:27 AM Procurement officer responds (Exhibit D) "Tonja, it is attached. sg"

02/04/2019 12:29 PM Kimball responds (Exhibit E): "Stacy, I am sorry if I am missing something . . . But the document you had attached was our submission... so did we get awarded or we didn't (sic)? I didn't see any notes on the attachment as to why we weren't awarded. Could you please clarify a bit more...."

Thank you for the assistance.

In response to that request, the Procurement officer provided an undated Justification for Determination of Nonresponsiveness (Exhibit F) stating: Kimball qualified their bid with terms that are contrary to the terms of the solicitation. I (sic) the would like to remove the qualifying statements, they may resubmit their bid for evaluation.

Also, Kimball must demonstrate that they can meet the minimum requirements for the following categories ... Cafeteria Furniture, Classroom Furniture, Computer Lab Furniture, Healthcare/Infirmary Furniture and Library/Media Center Furniture

This notice on February 4, 2019, was the first communication that Kimball received identifying any of these issues.

Kimball has not qualified its terms and is willing to remove any alleged qualification. Secondly, Kimball meets the minimum requirements in the categories, has done business with the State under state contract for many years and has pending requests for furniture from Educational Institutions.

It is also important to note the responses to questions included in the amendments to the Solicitation:

Questions Regarding Classroom Furniture

19 Could you clarify the specification and desired functionality of art room furniture?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used in elementary, middle, high school, and higher education art classrooms for teaching, making, drafting, creating, and storing art projects.

**20 Could you define the specification and desired functionality of the following?
Workstations?**

For the purposes of this solicitation, there are no predefined specifications related to these

items, which shall be appropriate for use in the classroom setting for a variety of purposes as needed by the teacher or instructor.

Classroom tables?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be appropriate for use in Early Learning and K-12 classrooms for student and teacher activities.

21 Could you define the specification and desired functionality of collaborative learning furniture?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used by students in the K-12 or Higher Education learning environment; and designed specifically to support the Collaborative Learning approach to education.

22 Could you clarify the function and desired functionality of a letter / directory board? Letter and directory boards are not a requirement of this solicitation.

23 Could you clarify the specification and desired functionality mobile classroom?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used by students and teachers and designed for easy portability and movement within or between classroom settings.

24 Could you clarify the specification and desired functionality of technology workstations?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used in the school environment as student technology workstations.

25 Could you clarify functional difference between teacher and student task chairs?

No such distinction is required by the scope of this solicitation.

Questions Regarding Library/Media Center Furniture

26 Could you define the specification and desired functionality of meeting room furniture?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be tables, chairs, and any furniture placed in Library or Media Center meeting rooms for use by groups and individuals to study or meet.

27 Could you define the specification and desired functionality of collaborative learning pieces?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used by students in the K-12 or Higher Education environment; and designed specifically to support the Collaborative Learning approach.

28 Could you define the specification and desired functionality of workstations?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used in the library or media center setting for a variety of purposes as needed by the Librarian or Media Specialist.

29 Could you define the specification and desired functionality of library shelving?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used to hold and display books and other related materials.

30 Could you define the specification and desired functionality of display pieces?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used to display exhibits, books, magazines, digital media, and related other items.

Questions Regarding Gym/Locker Room Furniture

31 What are the desired dimensions of the tables?

There shall be no requirement for tables.

32 What is the seating requirement?

There shall be no requirement for seating.

33 Could you clarify the specification and desired functionality of storage cabinets?

The solicitation and amendments makes no requirement for storage cabinets.

Questions Regarding Music Room Furniture

34 Could you define the specification and desired functionality of sheet music cabinets and filing systems?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall offer solutions to hold, store, and organize sheet music and folios; and allow easy access by the instructor for the entire group of files or individual students for one file.

35 Could you define the specification and desired functionality of musician chairs and benches?

For the purposes of this solicitation, there are no predefined specifications related to these items; however, Musician seating shall be specifically designed for band or choral students to support proper posture and maximum breathing capability.

Page 5 - Amendment 5

36 Could you define the specification and desired functionality of music whiteboards?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be traditional dry erase boards with permanent music staff lines.

Questions Regarding Healthcare/Infirmary Furniture

37 Could you clarify the specification and desired functionality of desks?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used in a healthcare setting for the purposes of activities such as reading, writing, or using a computer or other equipment.

38 Could you define the specification and desired functionality of storage?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used to store or secure medical supplies, equipment, personal items, clothing, specimens, or other items related to the healthcare environment.

39 What are the functional requirements needed to be considered a medical cabinet?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used to store or secure medication and other supplies as needed.

40 What are the functional requirements needed to be considered a table not used for therapy, overbed, massage, examination, recovery, side and mobile?

For the purposes of this solicitation, there are no predefined specifications related to these items, which may be used for general purposes; and not directly related to patient treatment.

41 What are the functional requirements needed to be considered a cart?

For the purposes of this solicitation, there are no predefined specifications related to these items. Examples of cart types may be treatment, wound care, emergency, anesthesia, isolation, medication, or casting.

42 Could you define the specification and desired functionality of tables for reception?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be placed in the reception or waiting area for multiple purposes.

43 Could you define the specification and desired functionality of seating for treatment?

For the purposes of this solicitation, there are no predefined specifications related to these items, which shall be used by patients during office visits, as hospital patients, or in lab

environments.

Page 6 - Amendment 5
Page 7 - Amendment 5

IV. GROUNDS OF PROTEST

1. **Kimball Meets all of the requirements enumerated in the Cafeteria Furniture, Classroom Furniture, Computer Lab Furniture, Healthcare/Infirmary Furniture, Library/ Meda Center furniture categories as modified by Amendment 8 and the failure to award was arbitrary and capricious in violation of S. C. Code Ann. §§ 11-35-20 and 11-35-30.**

The Procurement officer never sought clarification from Kimball as to the fact that it provided the items enumerated in the solicitation identified in the solicitation. Kimball manufactures and provides the things required in each category. Upon information and belief, the only basis for the Procurement officer to conclude otherwise was to utilize an arbitrary method of evaluation based upon the catalog of a single supplier other than Kimball. Not only does Kimball provide these items but Kimball has provided the same to numerous educational institutions throughout South Carolina.

In her Determination of Nonresponsiveness, the Procurement Manager included items in the required categories which were removed by Amendment. E.g., “projector and television mounts” were included in Computer Lab Furniture. Moreover, the Procurement Officer did not identify any shortcomings in Kimball’s bid in these categories nor did she state how Kimball purportedly qualified its bid.

2. **The application of the specifications in the Solicitation by the Procurement Office was arbitrary and capricious in that it appears that the Procurement Officer relied upon definitions of products based upon the catalog of a single manufacturer rather than considering the variety of products available and previously used by the State in the educational markets.**

The Procurement Manager provided no basis or indication as to why she believed that Kimball’s offerings failed to meet the minimum requirements in the categories identified. This conduct is particularly troubling where she expresses a willingness to evaluate the bid further. Moreover, the fact that the solicitation contained no predefined specifications makes her determinations more troubling. Kimball would prefer that the Procurement Manager correctly evaluated its bid and issued an appropriate award. However, it appears that the failure to award places it in a quandary on this protest as to whether there is a way to complete that evaluation. For that reason, Kimball has been forced to file this protest to protect its rights to administrative review of the Procurement Manager’s actions and decision in this process.

3. **The Procurement Officer erred in failing to issue an award to Kimball under S.C. Code Ann. §11-35-1520 where there was no compelling reason to reject the bids.**

The purposes of the code are best met when the state and its agencies are provided maximum opportunity to obtain the products that they need at the best possible prices. In this instance, it seems that the Procurement Manager is interpreting the offerings in a manner

inconsistent with the solicitation. The solicitation describes broad general types of furniture – and there are many interpretations of what constitutes compliance in each of those categories. Kimball would suggest that the reason for those broad general categories is a recognition that different institutions at varying levels have a wide variety of needs. Here, the Procurement Manager is interpreting those needs in a manner inconsistent with industry and customer interpretations and is acting in an unduly restrictive fashion without any compelling reason. There is no basis to deny an award to Kimball as the Procurement Manager has not demonstrated any compelling reason to reject the bid.

4. **The Procurement Officer erred in failing to request clarification or waive a minor irregularity in the form of a footnote in the Bid regarding restocking which was consistent with the solicitation requirements (§11-35-1520(13)) and in failing to conduct appropriate discussions with Kimball as a responsive and responsible bidder. (§11-35-1525(6)).**

The record reflects that Kimball responded to the one clarification request submitted to it within hours of the request. The Manager never inquired about the questioned “qualification” nor did she seek further information regarding Kimball’s offerings and how they met the specification. In each case, she failed to conform to the requirements of the solicitation and the procurement code to Kimball’s detriment.

5. **The Procurement Officer erred in failing to properly document discussions and clarification with Kimball pursuant to S.C. Code Ann. §11-35-1520(8) and failed to respond and reply reasonably and equitably all causing injury to Kimball in violation of the Code.**

Kimball received no notice of any deficiency in its bid or product offerings in any manner. The Procurement Officer’s general ambivalence about working with the vendors and the state on this solicitation is reflected in multiple ways, but in no more than her lack of requests for clarification if explanation was required. Upon information and belief, many vendors with similar catalogs were awarded – this being further evidence that the issues with Kimball were arbitrary and in violation of requirements of good faith and fair dealing implicit in the Code coupled with an abject failure to follow the rules.

V. RELIEF REQUESTED

In light of the arguments raised herein, Kimball requests the following relief:

That the CPO issue an Order instructing the Procurement Manager to properly evaluate Kimball’s proposal, seek clarification of any alleged qualification (which Kimball will remove if one is present) and issue Awards to Kimball in the categories bid.

Mr. Michael Spicer
Chief Procurement Officer
February 11, 2019
Page 10

VI. CONCLUSION

Several major agencies and institutions within the State of South Carolina currently use Kimball products in their facilities. To protect their investment and have the ability to match existing products, it is critically important that Kimball remain a current vendor. The arbitrary and improper actions in managing and evaluating this bid have caused prejudice to Kimball and those educational institutions.

Kimball appreciates the CPO's consideration of this protest. Kimball believes that the CPO should take action to protect the integrity of the process and award the relief requested.

Very truly yours,

MONTGOMERY WILLARD, LLC



Michael H. Montgomery

MHM/CB

Tonya Blackgrove

-----Original Message-----

From: sgregg@mmo.sc.gov <sgregg@mmo.sc.gov>

Sent: Friday, February 1, 2019 5:08 PM

To: KOGOV <KOGOV@kimball.com>

Subject: SC Award: EDUCATIONAL FURNITURE STATEWIDE CONTRACT

ATTENTION: This message was received from an EXTERNAL source. Please exercise caution. Do not open attachments or click on links from unknown senders.

Hello,

The following Award has been posted by the State of South Carolina. This concludes the second phase of my evaluations. If you did not receive an award, then you should have received a personal e-mail from me with details regarding why. If you would like to further discuss, please follow-up with me.

It is my goal to complete evaluations of bids submitted in September 2018 and February 2019 within the next two weeks.

The Award is available on the State Web site and can be accessed from the following address:

<https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwebprod.cio.sc.gov%2F5CSolicitationWeb%2FcontractSearch.do%3Fsollicitnumber%3D5400013739&data=02%7C01%7CTonia.Blackgrove%40kimball.com%7C8553daaa39ba49219e3a08d68aacda1a%7Cf9b07b9243c24f5c8024d2531c665bb9%7C1%7C0%7C636848873348095985&data=2c%2F9HTf6AuKMYl%2FzIAOvd13lr6PxFNOYZ%BdCioz5gk%3D&reserved=0>

Solicitation Number: 5400013739

Description: EDUCATIONAL FURNITURE STATEWIDE CONTRACT

Sincerely,

STACY GREGG

South Carolina State Government

EXHIBIT A

Tonja Blackgrove

EXHIBIT B

From: Tonja Blackgrove
Sent: Friday, June 15, 2018 8:46 AM
To: Gregg, Stacy
Subject: RE: Educational Furniture Bid 5400013739
Attachments: Kimball Office_ Solicitation 5400013853 submission.pdf

Stacy,

Please see our attached combined document. I apologize for missing that part of the instructions.

Sincerely,

Tonja L. Blackgrove
State Contract Specialist

Tonja L. Blackgrove

State Contract Specialist
Kimball Office_ Solicitation 5400013853 Bid # 54
tonja.blackgrove@Kimball.com
View Kimball Lookbook

From: Gregg, Stacy [mailto:sgregg@mmo.sc.gov]
Sent: Thursday, June 14, 2018 5:32 PM
To: Gregg, Stacy <sgregg@mmo.sc.gov>
Subject: Educational Furniture Bid 5400013739

EXHIBIT B

ATTENTION: This message was received from an EXTERNAL source. Please exercise caution. Do not open attachments or click on links from unknown senders.

Good Morning,

I continue to evaluate bids for Educational Furniture. I am in receipt of your bid; however, I am sending this e-mail to request that you please provide to me your bid submittal as one continuous document as specified in Section IV of my solicitation document.

Thank you. I look forward to receiving this by e-mail quickly.

Stacy



Stacy Gregg, CPPO, CPPB | Procurement Manager, State Procurement Office
SC State Fiscal Accountability Authority
1111 Main Street, Suite 600 | Columbia, SC 29201 | (Office) (803) 737-2600
sgregg@mmo.sc.gov www.procurement.sc.gov

Tonja Blackgrove

EXHIBIT C

From: Tonja Blackgrove
Sent: Monday, February 4, 2019 8:17 AM
To: sgregg@mmo.sc.gov
Subject: FW: SC Award: EDUCATIONAL FURNITURE STATEWIDE CONTRACT

Stacy,

I didn't see Kimball on the 2nd round of awards and was wondering if you could send me a debrief as to why Kimball was not awarded.

Sincerely,

Tonja L. Blackgrove
State Contract Specialist

Tonja L. Blackgrove
State Contract Specialist
P 812.482.8573 | M 812.630.6338 | tonja.blackgrove@Kimball.com Kimball® | 1600 Royal Street | Jasper, IN, 47549-1022 View Kimball Lookbook

-----Original Message-----

From: Gregg, Stacy <sgregg@mmo.sc.gov>

Sent: Monday, February 4, 2019 9:27 AM

To: Tonja Blackgrove <Tonja.Blackgrove@kimball.com>

Subject: RE: SC Award: EDUCATIONAL FURNITURE STATEWIDE CONTRACT

EXHIBIT D

ATTENTION: This message was received from an EXTERNAL source. Please exercise caution. Do not open attachments or click on links from unknown senders.

Tonja,

It is attached.

sg

Tonja Blackgrove

EXHIBIT E

From: Tonja Blackgrove
Sent: Monday, February 4, 2019 12:29 PM
To: Gregg, Stacy
Subject: RE: SC Award: EDUCATIONAL FURNITURE STATEWIDE CONTRACT

Stacy,

I am sorry if I am missing something...but the document you had attached was our submission...so we did get awarded or we didn't? I didn't see any notes on the attachment as to why we weren't awarded. Could you please clarify a bit more....

Thank you for the assistance.

Tonja

**JUSTIFICATION FOR
DETERMINATION OF NONRESPONSIVENESS**

Solicitation 5400013739 Statewide Contract for Education Furniture

Based upon the standards of Responsiveness set forth by the solicitation, the following determination concerning the bid's conformity to the mandatory or essential requirements contained in the solicitation.

(1) Kimball Office, Inc.
1600 Royal Street
Jasper, IN 47549-1022
E-mail: kcoqov@kimball.com Telephone: 812-481-6174

(2) Kimball qualified their bid with terms that are contrary to the terms of the solicitation. If they would like to remove the qualifying statements, they may resubmit their bid for evaluation.

Also, Kimball must demonstrate that they are able to meet the minimum requirements for the following categories:

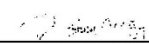
At a minimum, Offerors must demonstrate the ability to provide folding tables, combination tables, stationary tables, convertible tables and benches, cafeteria seating, dollies (*chair & table*), and restaurant & café style tables, chairs, stools, booths, and fixed seating. Exception: Offerors not offering convertible tables & benches and seating may be included in this category.

Classroom Furniture - At a minimum, Offerors must demonstrate the ability to provide combination desks, classroom tables, technology workstations, boards (*dry erase, bulletin, letter/directory, message, cork, chalk, and combination*), carpets and rugs, art room furniture (*art tables, drafting tables, CAD tables, work benches, stools, flat files/paper storage, storage cabinets, easels*), kindergarten and early childhood furniture (*tables, chairs, desks, cubbies, ,*) cabinets, storage carts, technology carts and cabinets, chairs (*teacher, student, task*), teacher desks and workstations, mobile classroom, collaborative learning furniture, lecture hall & fixed seating, and folding chairs. Exception: Bidders who do not offer Seating, Boards, Carpets and Rugs, and for lecture hall and other fixed seating will still meet the standard minimum requirements for award of the Classroom Furniture category. ALL OTHER ITEMS MUST BE PROVIDED under this contract category.

Computer Lab Furniture - At a minimum, Offerors must demonstrate the ability to provide tables, desks, audio visual carts, lecterns and podiums, flat panel and television carts, desks, tables, work stations, projector & television mounts, presentation carts, and technology storage.

Healthcare/Infirmity Furniture - At a minimum, Offerors must demonstrate the ability to provide treatment beds & couches, medical cabinets, lockers, & storage, seating (*reception, treatment, & stools*), carts, tables, tables (therapy, overbed, massage, examination, recovery, side, mobile, reception), and desks. and records storage. Exception: Offerors not offering seating may be included in this category. %

Library/Media Center Furniture
At a minimum, Offerors must demonstrate the ability to provide library shelving, carts, work stations, collaborative learning pieces, student lounge seating & tables, display pieces, computer work stations, ottomans, stacked/nesting seating, tables (*work, end, coffee, side, cocktail*), reception area seating and tables, and meeting room furniture. Exception: Offerors not offering seating may be included in this category.

<hr/> <p>DATE</p>	<hr/> <p>State Fiscal Accountability Authority, DPS GOVERNMENTAL BODY</p> <hr/> <p> SIGNATURE</p> <hr/> <p>Procurement Manager TITLE</p>
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JUSTIFICATION FOR
DETERMINATION OF NONRESPONSIVENESS

MANDATORY QUESTIONS

What is the Offeror's restocking fee? (Section III.H, Page 19) Percentage 50 %
Comment:
See Below

Does the manufacturer's standard warranty meet the State's Requirement? (See Section VII, Page 43) Yes No
Comment: Yes

Offeror: Kimball Office Inc. dba Kimball

Merchandise will only be accepted for return under the following conditions:
1 The product is a "made to stock" item; and
2 Return Goods Authorization (RGA) is given to you by your Customer Service Team.
All returns are subject to a 50% restocking fee. All freight charges for returned product are the responsibility of the customer

JUSTIFICATION FOR
DETERMINATION OF NONRESPONSIVENESS

Solicitation 5400013739 Statewide Contract for Education Furniture

Based upon the standards of Responsiveness set forth by the solicitation, the following determination concerning the bid's conformity to the mandatory or essential requirements contained in the solicitation.

(1) Kimball Office, Inc.
1600 Royal Street
Jasper, IN 47549-1022
E-mail: kogov@kimball.com Telephone: 812-481-6174

(2)
Kimball qualified their bid with terms that are contrary to the terms of the solicitation. If they would like to remove the qualifying statements, they may resubmit their bid for evaluation.

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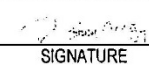
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DATE

State Fiscal Accountability Authority, DPS

GOVERNMENTAL BODY


SIGNATURE
Procurement Manager

TITLE

JUSTIFICATION FOR
DETERMINATION OF NONRESPONSIVENESS

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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.