

HENRY MCMASTER, CHAIR
GOVERNOR
CURTIS M. LOFTIS, JR.
STATE TREASURER
RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE
G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
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

Determination to Lift Automatic Stay

Matter of: PS Furniture
Special-T, LLC
Transformations by Wieland, Inc.
Kimball Office, Inc.
National Office Furniture, Inc.

Case No.: 2019-128, 129, 130, 132, 133

Posting Date: March 8, 2019

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400013739

Description: Educational Furniture Statewide Contract

DIGEST

Request to Lift Automatic Stay is granted. The CPO makes this determination following a written request from the head of the purchasing agency, pursuant to S.C. Code Ann. §11-35-4210(7) which is included by reference. [Attachment 1]

ANALYSIS

The South Carolina Consolidated Procurement Code (the Code) grants any actual bidder the right to protest the award or intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This Fixed Price Bid was issued by the State Fiscal Accountability Authority (SFAA) on September 8, 2017, to establish a statewide term contract for Educational Furniture. The Fixed Price Bid allows for the submission of bids after the initial awards at the end of the first and second six month periods and annually thereafter. Twenty-five awards were issued on June 27,

2018. They reflected evaluation of many, but not all, of the bids received. A protest was filed and all awards were consequently suspended on July 5, 2018. After resolution of the protest, the twenty-five initial awards were reinstated on December 4, 2018. Additional bids were received February 4, 2019. SFAA continued evaluating bids that remained from the initial submission date, and began evaluating the additional bids received by the February 4, 2019 submission date. On February 1, 2019, SFAA posted ten additional awards. On February 11, 2019, the CPO received six protests from bidders that had not received an award on February 1, 2019. Each protest alleges mistakes by the Procurement Manager that resulted in the protestant's disqualification. The protests do not challenge any of the ten awards that were made on February 1, 2019.

Section 11-35-4210(7) stipulates that:

In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the State.

This provision was intended to prevent contract formation until after protests are resolved, thereby preserving an effective remedy for a successful protest. As a result of the protests, the ten bids awarded on February 1, 2019 are stayed.¹

On March 7, 2019, the Chief Procurement Office received the attached request to lift the automatic stay from the SFAA Procurement Director, endorsed by the Executive Director of the State Fiscal Accountability Authority, the head of the purchasing agency.

DETERMINATION

The protest provisions prohibit the state from proceeding further with the award of a contract to prevent contract performance until after resolution of any protests. However, in this case 25

¹ Since contract formation has already occurred for the twenty-five contracts previously awarded, the automatic stay does not affect them.

contractors have already begun performance and are not affected by the stay of award. In addition, the ten awards made on February 1, 2019 were not protested, but are adversely affected by the protests of unsuccessful bidders. In addition, agencies of the State are adversely affected by the lack of additional competition available from the ten uncontested awardees. After careful consideration of the request and consultation with the head of the procuring agency, it is my determination that proceeding with the solicitation and award of these contracts without further delay is necessary to protect the best interests of the State. Accordingly, the automatic stay of procurement is lifted pursuant to S.C. Code Ann. § 11-35-4210(7), effective immediately.

For the Materials Management Office

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

Michael B. Spicer
Chief Procurement Officer

Attachment 1

HENRY MCMASTER, CHAIR
GOVERNOR
CURTIS M. LOFTIS, JR.
STATE TREASURER
RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE
G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
GRANT GILLESPIE
EXECUTIVE DIRECTOR

March 4, 2019

To: Mike Spicer, Chief Procurement Officer

From: Kimber Craig, CPPO, Procurement Director

RE: Fixed Price Bid 5400013739

As the Procurement Director for the Procurement Services Division of the State Fiscal Accountability Authority, I am writing to request that the automatic stay be lifted in the above mentioned solicitation. This solicitation is Fixed Price Bid for the Educational Furniture State Term Contract. Twenty-five awards were issued on June 27, 2018. A protest was filed and all awards were subsequently suspended on July 5, 2018. After the resolution of the protest, the twenty-five initial awards were reinstated on December 4, 2018. On February 1, 2019, 10 additional awards were issued against this Fixed Price Bid. On February 11, 2019, we received 4 protests from National Office Furniture, Kimball Office Furniture, Brodart Company, and Transformations. The State currently has received 24 additional offers which need to be evaluated and potentially awarded.

I am requesting the CPO lift the stay on the procurement to allow the 10 awards issued on February 1, 2019 to move forward as well as to allow for the evaluation of the additional offers received for this fixed price bid. The 4 protests received are all challenges to the Procurement Manager's Determination of Non-responsibility related to their specific offers. None of the protests are challenging the awards issued to 10 vendors on February 1, 2019. The purpose of this solicitation is to establish a State Term Contract for Educational Furniture with multiple sources of supply. The State needs to continue issuing awards against this solicitation to maximize the sources of supply available. Many State Agencies, Higher Education Institutions, and K-12 Schools are experiencing difficulties in placing orders due to the limited number of contractors currently available. These users are trying to place orders to match existing furniture already in place, but are not able to do so since new contracts are not being awarded. It is critical that the evaluation and award process for this fixed price bid continue without further delay.

Sincerely,

Kimber H. Craig, CPPO
Procurement Director

From: [Craig, Kimber](#)
To: [Spicer, Michael](#)
Subject: FW: Educational Furniture - Lifting of the Stay
Date: Thursday, March 07, 2019 4:38:11 PM

From: Gillespie, Grant <GGillespie@sfaa.sc.gov>
Sent: Thursday, March 07, 2019 4:37 PM
To: Craig, Kimber <kcraig@mmo.sc.gov>
Cc: White, John <jswwhite@mmo.sc.gov>; Singleton, Delbert <delbert@sfaa.sc.gov>
Subject: RE: Educational Furniture - Lifting of the Stay

I have reviewed the letter and approve the lifting of the stay. Thanks.



Grant Gillespie
Executive Director
SC State Fiscal Accountability Authority
1200 Senate Street; Suite 600
Columbia, SC 29201

Office: (803) 734-9414
Cell: (803) 528-6129
Fax: (803) 734-2117

From: Craig, Kimber
Sent: Thursday, March 07, 2019 2:34 PM
To: Gillespie, Grant <GGillespie@sfaa.sc.gov>
Cc: White, John <jswwhite@mmo.sc.gov>; Singleton, Delbert <delbert@sfaa.sc.gov>
Subject: Educational Furniture - Lifting of the Stay

Grant, We have received a protest for awards on the state term contract for educational furniture. Educational furniture is solicited using a fixed price bid. The initial awards were made last June and these contracts are currently in effect. We issued subsequent awards in February and these have been protested. I'm requesting the CPO lift the stay on the procurement due to this protest (see attached letter). I'm requesting to lift the stay in order to continue evaluating the offers received and issuing awards. Our agency customers have a need for additional vendors on the contract. The CPO requires the approval of the head of the purchasing agency in order to consider lifting the stay. Can you please review and provide your approval via e-mail? If you have any additional questions,

please let me know. Thanks.



Kimber H. Craig | Procurement Director
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-2527 | kcraig@mno.sc.gov

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Written Determinations Appeal Notice (Revised June 2018)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
(b) requests for review of other *written determinations, decisions, policies, and procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) *See generally Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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.