

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

In the Matter of:
Request for Cancellation of Award Prior
to Performance:

WRITTEN DETERMINATION

Department of Corrections
IFB # 5400007557

POSTING DATE: July 24, 2014
MAILING DATE: July 24, 2014

Food Service - Equipment

This matter initially came before the Chief Procurement Officer (CPO) pursuant to a protest filed by Thompson & Little, Inc. (T & L) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the South Carolina Department of Corrections (SCDC) attempts to procure kitchen equipment. After evaluating the bids received, on May 29, 2014 SCDC posted its intent to award to CE Holt Refrigeration, Inc. (CE Holt) On June 5, 2014, T&L protested SCDC's intent to award Item #3, 12 tilting gas skillets to CE Holt.

In a letter dated June 9, 2014, Ruthie Bishop, SCDC Procurement Director, asked the CPO to cancel SCDC's award for Item #3 to CE Holt prior to performance under authority of S.C. Code Ann. Reg. 19-445.2085(C)(1), citing inadequate or ambiguous specifications in the invitation. A copy of her letter is attached.

S.C. Code Ann. § 11-35-1520(10) requires award of a contract must be made to the lowest responsive and responsible bidder "[u]nless there is a compelling reason to reject bids as prescribed by regulation of the board...." Section 11-35-1520(7) provides "Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing

agency.” Regulation 19-445.2085(C) authorizes cancellation of an award prior to performance reading:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies, services, information technology, or construction being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the purchasing agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.

Taken together, these provisions authorize the Chief Procurement to cancel an award of a contract before performance begins, when a compelling reason exists and one or more of the grounds listed in the Regulation are present.

DISCUSSION

The IFB required bidders to offer “or equal” bids for “Cleveland Range Model SGL40TR 40 gallon -110V-10 phase.” The tendering text also required both manual hand tilt and power tilt.

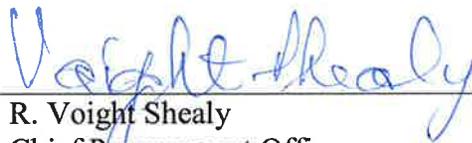
However, Ms. Bishop wrote June 9, 2014, “Based on additional information received after the protest was filed from Mark Schantz with Cleveland Range SCDC specifications are inadequate or ambiguous because Tilting Skillet, Gas: Cleveland Range Model SGL40TR 40 Gallon-110V-10 phase is not available with both a manual tilt and a power tilt. Therefore, SCDC Division of Food Services must determine their need and resubmit a clear and accurate set of specifications to SCDC Procurement Department in order to rebid the item. Therefore, based on

the new information obtained from Mark Schantz at Cleveland Range SCDC is making a motion to the Chief Procurement Officer of South Carolina to rescind the award that SCDC made to C.E. Holt for line item 3.”

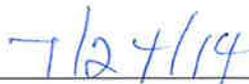
Offerors cannot comply with the specification as drafted. That is, the product described in the tendering text does not exist. SCDC failed to determine whether it needs both power and manual tilt functions, or other salient characteristics of the specified Cleveland Range. These factors combine to furnish a compelling reason not to award the contract. Consequently, the CPO finds that Ms. Bishop’s request to cancel the award prior to performance should be granted.

DETERMINATION

For the foregoing reasons, Ms. Bishop’s request to cancel the award to C.E. Holt for Item #3 is granted; and the solicitation of Item #3 is remanded to SCDC to proceed in accordance with the Consolidated Procurement Code.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determination Appeal Notice (Revised June 2013)

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.

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 108.1 of the 2013 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 S.C. Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6), 11-35-4330, 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 202, 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.



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

June 9, 2014

Mr. Voight Shealy
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suit 600
Columbia, SC 292101

Re: Protest of Intent to Award; Solicitation #5400007557; Items 1 and 3

The purpose of this email is to clarify the Intent to Award for Items 1 and 3 on Solicitation 5400007557.

Item 1 of Solicitation 5400007557

SCDC specification for Item 1 on Solicitation 5400007557 states the following:

<p>Item Description: Hobart Convection Oven Model HGC502 Natural set of 2 stacked with exhaust kit-110v-10 phase</p> <p>Tendering Text: Convection Oven, 2-deck, 60 minute timers, solid state controls 500 degrees F, 2-spd motors, porcelain int'r, (5) racks each, simultaneous doors 2/glass, s/s front, sides & top, 8 s/s legs, 120/60/1, 1/2hp, 44,000BTU each sea level 2000' Standard warranty - 1 Year parts, labor & travel time during normal working hours (8:00 AM to 4:00 PM) Altitude: All 14 oven locations are above sea level between 1 to 1,999 ft. Types of gas: 9 Natural Gas ovens 5 LP Gas ovens Simultaneous opening doors with windows Set of four, 8" casters (front swivel with brakes and two rear rigid) Standard Features: Stainless Steel Front, Sides, Top and Back Painted Legs Stainless Steel Doors with Windows 44,000 BTU/hr. Burner per Section Electric Spark Ignition ½ H.P Two Speed Oven Blower Motors; 115/60/1 with 6' Cord and Plug, 9 Amps Solid State Temperature Controls Adjust from 150 to 500 degrees F 60 Minute Timer per Section with Audible Alarm Oven Cool Switch for Rapid Cool Down Porcelain Enamel on Steel Oven Interior Five Nickel Plated Oven Racks with Eleven Rack Positions per Section ¼" Rear Gas Connection with Combination Gas Pressure Regulator and Safety Solenoid System Manual Controls</p>

Thompson Little, Inc., filed a protest against the Intent to Award on Line Item 1, June 2, 2014, stating: Several reasons are behind this protest. 1- The model Southbend that Thompson & Little, Inc bid for item 1 exceeds the model bid by CE Holt, and at a lower cost. 2- The basis of the Intent to Award to CE Holt is a spark ignition, rather than a hot surface igniter. We have written documentation from the VP of Sales of Southbend stating that the model bid by CE Holt has the exact same hot surface igniter as the model bid by Thompson & Little, Inc. We believe

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<http://www.doc.sc.gov> E-mail: corrections.info@doc.sc.gov

that the manufacturer of the product is providing the correct information regarding the type of electronic ignition on these ovens. Therefore, it would not be in the best interest of the SC DOC to purchase an oven of lesser value at a higher cost, because the bidding dealer is saying that the oven has electronic spark ignition, when (see attached letter) it clearly does not.

Thompson Little Inc., submitted Southbend Convection Oven Model SL-Series (SLGS/22SC) a product they determined as an equal to the Hobart Convection Oven Model HGC502 for \$4,77.31 per oven (14) for a total price of \$66,882.34. Once all bids were tabulated and reviewed the descriptive literature submitted by Thompson Little, Inc., was sent to SCDC Division of Food Services and SCDC Facilities Management Division to determine if the equal submitted by Thompson Little, Inc., was indeed an equal to the Hobart Convection Oven Model HGC502 Natural set of 2 stacked with exhaust kit-110v-10 phase as stated in SCDC specifications. SCDC Division of Food Services and SCDC Facilities Management Division determined that the Southbend Convection Oven Model SL-Series (SLGS/22SC) was not an equal because the Southbend Convection Oven Model SL-Series (SLGS/22SC) has a hot surface igniter and not a electronic spark ignition as stated in SCDC specifications.

Once it was determined that Thompson Little's submittal did not meet SCDC specifications Jonathan Eckstrom, the Buyer overseeing this solicitation moved to the second low bidder. The next vendor was C.E. Holt. C.E. Holt submitted a Southbend B-Series Model: BGS/22SC. The descriptive literature submitted by C.E. Holt was sent to SCDC Division of Food Services and SCDC Facilities Management Division to determine if the equal submitted by C.E. Holt was indeed an equal to the Hobart Convection Oven Model HGC502 Natural set of 2 stacked with exhaust kit-110v-10 phase as stated in SCDC specifications. According to descriptive literature that was submitted by C.E. Holt the specifications stated electronic ignition. Jonathan Eckstrom the SCDC Buyer overseeing this solicitation emailed Melissa Turner with C.E. Holt for clarification that the electronic ignition as stated in their descriptive literature would have electronic spark igniter and not a hot surface igniter. Ms. Turner wrote back that Item 1 will be an electronic spark igniter. Therefore, based on the clarification that Mr. Eckstrom received from Ms. Turner, SCDC Division of Food Services and SCDC Facilities Management Division made the determination that the Southbend B-Series Model BGS/22SC met SCDC specification therefore, an Intent to Award was issued for line item 1.

Based on additional information received after the protest was filed from Brian Jurasek , VP of Sales-Southeast Southbend, the hot surface igniter ignition system is used in both the BGS and the SLGS convection ovens. This system uses a 24v, silicon carbide, hot surface igniter that lights the burner system for both series. [REDACTED]

Based on the new information obtained from the Brian Jurasek, SCDC is making a motion to the Chief Procurement Officer of South Carolina to rescind the award that SCDC made to C.E Holt and allow SCDC to issue a New Amended Intent to Award for Line Item 1 to General Sales whose price was \$5,420.00 per oven (14) for a total price of \$75,880.00. General Sales bid as specified as stated in SCDC specifications: Hobart Convection Oven Model HGC502 Natural set of 2 stacked with exhaust kit-110v-10 phase.

Item 3 of Solicitation 5400007557

SCDC specifications for Item 3 on Solicitation 5400007557 state the following:

Item	Quantity	Unit of Measure	Unit Price	Extended Price
3	12.000	each		
Product Catg.: 16507 - Cafeteria & Kitchen Equip. (Not Otherwise Class.)				
Item Description: Tilting Skillet, Gas: Cleveland Range Model SGL40TR 40 gallon -110V-10 phase				
<p>Tendering Text: DuraPan Tilting Skillet, Gas, 40-gallon capacity, modular open base, standard with electric tilt mechanism, stainless steel construction, includes spring-assisted cover, gallon markings and electronic spark ignition, food strainer, stainless steel level adjustable feet, CE, NSF 1-year limited warranty, standard Gas type to be specified 120v/60/1-ph, 1.8 amp, standard ██████████</p> <p>Cleveland Standard Features: Leg or Modular Base Full 30/40 Gallon (115/150 Liters) Capacity Rating to Bottom of Pouring Lip ██████████ Stainless Steel Clad 5/8" Cooking Surface Guaranteed against warping Stainless Steel Coved Cornered Pans with both Gallon and Liter Markings All Stainless Steel Construction for durability and easy cleaning Adjustable, Electronic Thermostat controls temperature from 100 to 425 degrees F. High Efficiency Heating System with even heat distribution Electronic Spark Ignition (ESS) Fast Heat-Up and Recovery Time-Preheats in 11 minutes, full capacity from cold to boiling in 60 minutes Spring Assist Cover with Adjustable Vent and Full Width Handle On/Off Switch, Thermostat Knob and Pilots, recessed to avoid breakage Four Stainless Steel, Level adjustable feet, rear flanged for bolting All Controls are serviceable from the front of the unit Two pilot lights: Green = Power on, Amber = Temperature Cycling Splash Proof Controls and Water Tight Electrical Connections High Limit Safety Device set at 475 F (246 C) Anti-Splash Pouring Lip Supplied with Cord & Plug for 115-volt controls Typical approvals include AGA, CSA, CE and NSF</p>				

Thompson Little, Inc., filed a protest against the Intent to Award on Line Item 3 on June 5, 2014 stating: I have reviewed the specs for the item and have also been told by both manufacturer's Cleveland and Southbend for which I bid the spec and an alternate, that manual hand tilt is what was requested. CE Holt bid a power tilt model. Both manufacturers' quoted me the hand tilt, because that was what was requested. It stated for the Cleveland model that electric tilt was standard, but in the specs below it requested the option of manual hand tilt, which is what I bid for both

Thompson Little Inc., submitted Southbend Gas Tilting Skillet with Manual Tilt Model: BGLM-40 a product they determined as an equal to the Tilting Skillet, Gas: Cleveland Range Model SGL40TR 40 gallon -110V-10 phase for \$8,747.13 per tilt (12) for a total price of \$104,965.52. Once all bids were tabulated and reviewed the descriptive literature submitted by Thompson Little, Inc., was sent to SCDC Division of Food Services and SCDC Facilities Management Division to determine if the equal submitted by Thompson Little, Inc., was indeed an equal to the Tilting Skillet, Gas Cleveland Range Model SGL40TR 40 gallon -110V-10 phase as stated in SCDC specifications. SCDC Division of Food Services and SCDC Facilities Management Division determined that the Southbend Gas Tilting Skillet with Manual Tilt Model: BGLM-40 does not have a power tilt as stated in SCDC specifications.

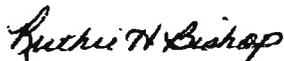
Once it was determined that Thompson Little's submittal did not meet SCDC specifications Jonathan Eckstrom, the Buyer overseeing this solicitation moved to the second low bidder. The next vendor was C.E. Holt. C.E. Holt submitted a Southbend Gas Tilting BGLTS Model 40. The descriptive literature submitted by C.E. Holt was sent to SCDC Division of Food Services and SCDC Facilities Management Division to determine if the equal submitted by C.E. Holt was indeed an equal to the Tilting Skillet, Gas: Cleveland Range Model SGL40TR 40 gallon - 110V-10 phase as stated in SCDC specifications. Therefore, based on the descriptive literature submitted SCDC Division of Food Services and SCDC Facilities Management Division made the determination that the Southbend BGLTS Model 40 met SCDC specification therefore, an Intent to Award was issued for Item 3.

Based on additional information received after the protest was filed from Mark Schantz with Cleveland Range SCDC specifications are inadequate or ambiguous because Tilting Skillet, Gas: Cleveland Range Model SGL40TR 40 gallon -110V-10 phase is not available with both a manual tilt and a power tilt. Therefore, SCDC Division of Food Services must determine their need and resubmit a clear and accurate set of specifications to SCDC Procurement Department in order to rebid the item.

Therefore, based on the new information obtained from Mark Schantz at Cleveland Range SCDC is making a motion to the Chief Procurement Officer of South Carolina to rescind the award that SCDC made to C.E Holt for line item 3.

Your prompt attention to this matter would be greatly appreciated because funding expires on June 30, 2014.

Sincerely,



Ruthie H. Bishop, CPPB
Procurement Director
SC Department of Corrections

Enclosure or attachment

Attachment 1 – Original Bid
Attachment 1A –Amendment 1
Attachment 2 - Intent to Award
Attachment 3 – Amended Intent to Award (Suspension of Items 1 and 3)
Attachment 4 – Thompson Little, Inc., Alternate Bid
Attachment 4 A – Thompson Little, Inc., clarification emails
Attachment 5 – C.E. Holt Alternate Bid
Attachment 5 A – C.E. Holt clarification emails
Attachment 6 SCDC Research Hot Surface Igniter vs. Spark Ignition
Attachment 7 - Clarification email Thompson Little
Attachment 8 - Clarification email C.E. Holt
Attachment 9 - Clarification email from Cleveland Range
Attachment 10 – Letter from Brian Jurasek
Attachment 11 - Bid Tabulation
Attachment 12 - Preference Sheet for Item 1
Attachment 12A – Preference Sheet for Item 3