STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

In the Matter of Protest of:

Greenville Office Supply

Materials Management Office
IFB # 5400006696

Statewide Term Contracts for
Office Supplies & Copy Paper

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2014-120

POSTING DATE: June 10, 2014
MAILING DATE: June 10, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by Greenville Office Supply (GOS) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure statewide term contracts for office supplies and copy paper. After evaluating the bids received, on March 31, 2014, Teresa Watts, MMO Procurement Manager, determined GOS's bid nonresponsive. On April 1, 2014, MMO posted its intent to award to Form & Supply, Inc. On April 9, 2014, GOS protested MMO's intent to award alleging "Greenville Office Supply is by far the lowest bidder and reasons for being declared nonresponsive are inconsequential and are not in the best interest of the State."

As the issues to be decided are clear, the CPO makes this decision without benefit of a hearing, based upon an administrative review of the protest letter [Ex. 1 attached]; Ms. Watts' written determination declaring GOS's bid nonresponsive [Ex. 2 attached]; and the procurement file.

NATURE OF PROTEST

The letter of protest and Ms. Watts written determination are attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On August 14, 2013, MMO conducted a pre-solicitation conference with all the previous contractors.

2. On September 26, 2013, MMO published the IFB. [Ex. 3]

3. On October 7, 2013, MMO conducted a Pre-bid Conference.

4. On October 8, 2013, MMO closed the period allowed for questions from prospective bidders.

5. On October 10, 2013, MMO issued Amendment #1. [Ex. 4] The amendment provided answers to bidders' questions and extended the question period until October 14, 2014.

6. On October 15, 2013, MMO issued Amendment #2 answering more questions raised by the prospective bidders. [Ex. 5] Attachment B, the copy paper bidding schedule, was amended to reduce the line items to be bid from sixty-nine (69) to twenty-four (24).

7. On October 30, 2013, MMO issued Amendment #3 with little relevance to this protest. [Ex. 6]

8. On November 5, 2013, MMO issued Amendment #4 with little relevance to this protest.[Ex. 7]

9. On November 20, 2013, MMO issued Amendment #5 with significant relevance to this protest, as Amendment #5 provided the final amended Attachment B, the copy paper bidding schedule. [Ex. 8]

10. On December 5, 2013, MMO issued Amendment #6 with little relevance to this protest. [Ex. 9]

11. On January 21, 2014, MMO issued Amendment #7 with significant relevance to this protest, as Amendment #7 provided the final amended Attachment A, the office supplies bidding schedule. [Ex. 10]

12. On February 5, 2014, MMO issued Amendment #8 with little relevance to this protest. [Ex. 11]

13. On February 11, 2014, MMO issued Amendment 9 with no relevance to this protest. [Ex. 12]

14. On February 18, 2014, MMO opened the bids received, including GOS's. [Ex. 13]

15. On February 20, 2014, Ms. Watts determined GOS's bid nonresponsive. [Ex. 2]

16. On April 1, 2014, MMO posted its Intent to Award. [Ex. 14]

17. On April 11, 2014, GOS filed its protest with the CPO. [Ex. 1]

DISCUSSION

MMO solicited bids for statewide term contracts for office supplies and copy paper. Upon review of the GOS bid, Ms. Watts determined it nonresponsive to the requirements of the IFB for three (3) reasons, as follows:

> Greenville Office Supply returned the following incorrect documents:
>
> 1. Excel spreadsheet attachment A and B dated 10/15/2013.
> 2. The bidder's schedule was also used from the original solicitation dated 9/26/2013.
> 3. Only amendments 1-3 were acknowledged in its offer.

GOS did not dispute the accuracy of Ms. Watts' statements, but rather argued the relevance of the exceptions writing, "Amendment 7 did **not** add additional items. Greenville Office Supply's offering included the original list of items. Reducing the number of items in amendment 7 actually improves Greenville Office Supply's overall offering", "Changes to amendment 5 are irrelevant to our offering. Number of items, lines and specifications were not changed, only a brand name was struck through", and "As stated above we filed on the original due date and at that time the other amendments were not published. Through the entire process with all amendments Greenville Office Supply has attended meetings, had numerous emails, phone calls and conference calls. It is known by both Theresa Watts and John Stevens that we were aware and actively engaged in each amendment and its impact on Greenville Office Supply."

CONCLUSIONS OF LAW

MMO processed this solicitation as an invitation for bids. Unlike a request for proposals, which are evaluated subjectively, the basis for awarding an IFB is, in theory, simple – lowest price compliant with the specifications wins. Regarding award of an invitation for bids, the Consolidated Procurement Code reads, "notice of an award or an intended award of a contract [must be given] to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids." [11-35-1520(10) Award] The supporting regulations add, "Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." [S.C. Code Ann. Reg. 19-445.2070A, Rejection of Individual Bids]. The Code defines a responsive bidder as "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." [11-35-1410(7)]

The CPO incorporates Ms. Watts' determination into this decision with CPO Analysis following matters critical to this decision.

Ms. Watts wrote:

> **Solicitation Amendment 7 published 01/21/2014 addresses correct Attachment A to be returned. (Attachment A revised 01/21/2014) Solicitation Amendment 5 published 11/20/2013 addresses correct Attachment B to be returned (Attachment B revised 11/20/2013).**
>
> **Greenville Office Supply returned the following incorrect documents:**
>
> 1. **Excel spreadsheet attachment A and B dated 10/15/2013.**

CPO Analysis: Amendment 7, Attachment A, published 01/21/2014, provided the final market basket for office supplies and removing seven remaining items specifically naming Staples in house brands. The revised market basket listed one hundred twenty-three (123) national brand

office supply products. Bidders were instructed to discard all previous editions of Attachment A. Amendment #7 read:

> When submitting your offer, use only the revised Attachment A referenced in this amendment for Office Supplies. Discard all previous editions of the referenced attachment.
>
> A. The following modifications have been made to the office supplies spreadsheet attachment entitled, "Attachment A revised as of 11_20_2013".
> 1. The remaining references to the vendor name, "Staples," found in the "Description" column have been removed from the above-referenced attachment. See revised attachment entitled, "Attachment A rev 01212014". Specifically, refer to item numbers 58, 95, 97, 104, 110, 112, and 124 for modified descriptions.

[Ex. 10, p. 1] Instead, GOS submitted a previous Attachment A from Amendment #2, dated October 15, 2014, which contained one hundred sixty-four (164) office supply products, not one hundred twenty-three (123) altering the Attachment A substantially. GOS's bid even included the Staples private label products removed from the market basket.

In its protest letter, GOS argued, "Amendment 7 did **not** add additional items. Greenville Office Supply's offering included the original list of items. Reducing the number of items in amendment 7 actually improves Greenville Office Supply's overall offering."

GOS's argument ignores the fact that it bid 164 office supply products, not 123, as requested by the final Attachment A. MMO made substantive changes to the office supply products listing as well as the manufacturers listed as acceptable on bidding schedule.

Presumably, GOS asks MMO to compare prices for individual line items one by one, locate the 123 items specified in the final bidding schedule, determine each of the 123 line items responsive and then compare GOS's prices with those of the other bidders. To ask MMO to compare the individual lines items of the two bidding schedules, the right one and the one GOS

submitted, determine that 123 lines items match exactly, extract the matching 123 items, and determine GOS responsive would be an onerous task.

Amendment 5, published November 20, 2013, provided the final bidding schedule, Attachment B, for copy paper. Bidders were asked to submit prices for a market basket of 24 paper products specifying the manufacturers acceptable to the State. Bidders were instructed to discard previous editions of Attachment B. Amendment #5 read:

> When submitting offers, use only the revised Attachments A and B referenced in this amendment. Discard all previous editions of the referenced attachments.
>
> A. The following modifications have been made to the office supplies spreadsheet attachment entitled, "Attachment A revised as of 11_20_2013".
>
> a. Duplicate vendor item/manufacturer item numbers have been deleted. Should duplicate items remain, however, each is intentionally left on the spreadsheet due to different package sizes. Bid all items.
>
> B. The following modifications have been made to the copy paper spreadsheet attachment entitled, "Attachment B revised as of 11_20_2013".
>
> a. The following manufacturers are acceptable for bidding:
> Domtar, International Paper, Georgia Pacific, Neenah, Weyerhauser and Boise Cascade. Bidder's private label paper will be accepted along with documentation from the above-referenced manufacturers that such paper meets the identical specifications of the non-private label branded equivalent.
> b. The brand name Boise Cascade has been deleted from lines 34 and 35.

[Ex. 8, p. 1] Instead, in violation of the instructions, GOS submitted a previous Attachment B from Amendment #2, dated October 15, 2013, which was prohibited by Amendment #5.

In its protest letter, GOS argued, "Changes to amendment 5 are irrelevant to our offering. Number of items, lines and specifications were not changed, only a brand name was struck through."

The CPO has reviewed all amendments to Attachment B, the copy paper worksheet. The copy paper line items did not change after September 26, 2013 with the exception of the

specified manufacturer for line items 34 and 35. GOS did not bid that manufacturer's copy paper. Therefore, the CPO finds GOS' inappropriate use of an older version of Attachment B inconsequential.

2. The bidder's schedule was also used from the original solicitation dated 9/26/2013.

In its protest, GOS argued, "This does not change or affect our offering or the outcome of the solicitation. As stated above we filed on the original due date and did not see where our offer would change."

The CPO agrees and also finds this exception inconsequential. In its on-line bid, GOS included ever line item required of the bidders.

3. Only amendments 1-3 were acknowledged in its offer.

In its protest letter, GOS argued, "As stated above we filed on the original due date and at that time the other amendments were not published. Through the entire process with all amendments Greenville Office Supply has attended meetings, had numerous emails, phone calls and conference calls. It is known by both Theresa Watts and John Stevens that we were aware and actively engaged in each amendment and its impact on Greenville Office Supply."

CPO Analysis: According to instructions, GOS acknowledged Amendments 1, 2, and 3 in its bid. [Ex. 13, p. 2] The IFB required each bidder to acknowledge every amendment, reading as follows:

> (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: www.procurement.sc.gov (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

[Ex. 3, Amendments to Solicitation, p. 4] Amendments 2, 3, 4, 5, 6, 7, 8, and 9 repeated the same requirement that each bidder acknowledge every amendment. In violation of MMO's instructions, GOS did not acknowledge Amendments 4-9, including Amendments 5 and 7 that modified the attached bidding schedules substantially.

Whether GOS' claim that it in fact received each amendment is true or not, GOS was not relieved of the requirement to acknowledge each amendment. Only by expressly acknowledging the terms of the IFB, as amended, could GOS assure the State that agreement has been reached between GOS and the State. By not acknowledging all the amendments, GOS's bid was nonresponsive. *See Protest of General Sales Co.*, Case No. 1989-20 (failing to acknowledge an amendment that includes substantive changes in the scope of work is not a minor informality and makes the bid non-responsive).

DETERMINATION

For the reasons noted above, the protest of GOS is denied.

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

June 10, 2014
Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

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 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 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
1105 Pendleton Street, Suite 202, Columbia, SC 29201

_____ _____
Name of Requestor Address

_____ _____
City State Zip Business Phone

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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.

Exhibit
1

Charles Scales
PRESIDENT / CEO

everything for your office...

04/09/14

State of South Carolina

Chief Procurement Officer

Materials Management Office

1201 Main Street

Columbia SC 29201

Protest for Solicitation 5400006696

Greenville Office Supply is protesting the award of solicitation 540000669 on the grounds that Greenville Office Supply is by far the lowest bidder and reasons for being declared nonresponsive are inconsequential and are not in the best interest of the State.

Greenville Office Supply completed and filed our bid via SAP within the first published deadline for this solicitation. All amendments posted after our bid were reviewed by Greenville Office Supply to ensure that it would not affect our offering to the state.

Below is the detail given for declaring GOS nonresponsive with a brief explanation of why we feel that this solicitation should be reviewed and awarded to the lowest bidder.

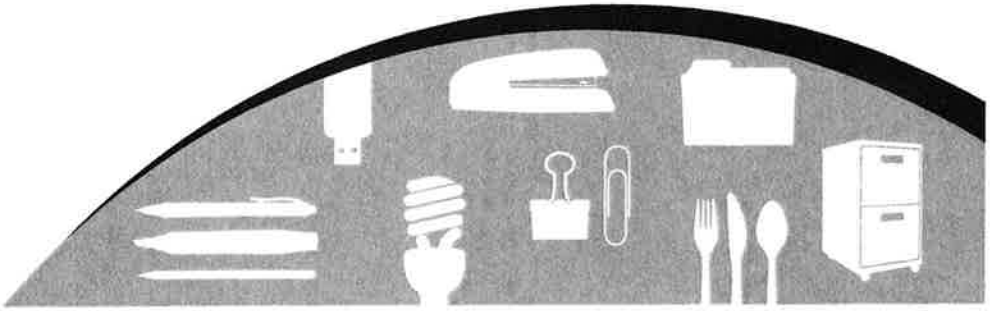
Solicitation Amendment 7 published 01/21/2014 addresses correct Attachment A to be returned. (Attachment A revised 01/21/2014) *Amendment 7 did* ***not add additional items. Greenville Office Supply's offering included the original list of items. Reducing the number of items in amendment 7 actually improves Greenville Office Supply's overall offering.***

Solicitation Amendment 5 published 11/20/2013 addresses correct Attachment B to be returned (Attachment B revised 11/20/2013). ***Changes to amendment 5 are irrelevant to our offering. Number of items, lines and specifications were not changed, only a brand name was struck through.***

Greenville Office Supply returned the following incorrect documents:

1. Excel spreadsheet attachment A and B dated 10/15/2013. ***This is addressed in the explanations above and does not change our offering; in fact it reduces our overall price further.***

Since 1968
310 E Frontage Road, Greer, SC 29651-6913
864-233-5346 Fax 864.232.3974
cscales@gos1.com
www.gos1.com



gos

everything for your office...

2. The bidder's schedule was also used from the original solicitation dated 9/26/2013. *This does not change or affect our offering or the outcome of the solicitation. As stated above we filed on the original due date and did not see where our offer would change.*

3. Only amendments 1-3 were acknowledged in its offer. *As stated above we filed on the original due date and at that time the other amendments were not published. Through the entire process with all amendments Greenville Office Supply has attended meetings, had numerous emails, phone calls and conference calls. It is known by both Theresa Watts and John Stevens that we were aware and actively engaged in each amendment and its impact on Greenville Office Supply.*

Determination:

Greenville Office Supply does not meet the requirements set forth in amendment seven. *Amendment 7 did* ***not*** *add additional items. Greenville Office Supply's offering included the original list of items. Reducing the number of items in amendment 7 actually improves Greenville Office Supply's overall offering. All of the items in amendment 7 are listed on our offering that was submitted on Excel spreadsheet attachment A dated 10/15/2013.*

Greenville Office Supply summary-this solicitation included a total of 9 amendments with 23 documents and has gone on over 7 months. Only 1 offer out of 7 was deemed responsive by the state and that 1 offer is being awarded the solicitation by default. To say the least this has been an arduous process. It is in the state's best interest to award the solicitation to the lowest bidder which also happens to be the only South Carolina based supplier for this bid.

Greenville Office Supply is now at a disadvantage regarding any rebid since our pricing has been made public to all other competitors.

Charles Scales

PRESIDENT CEO

Charles Scales III

Since 1968
310 E Frontage Road, Greer, SC 29651-6913
864-233-5346 Fax 864.232.3974
cscales@gos1.com
www.gos1.com

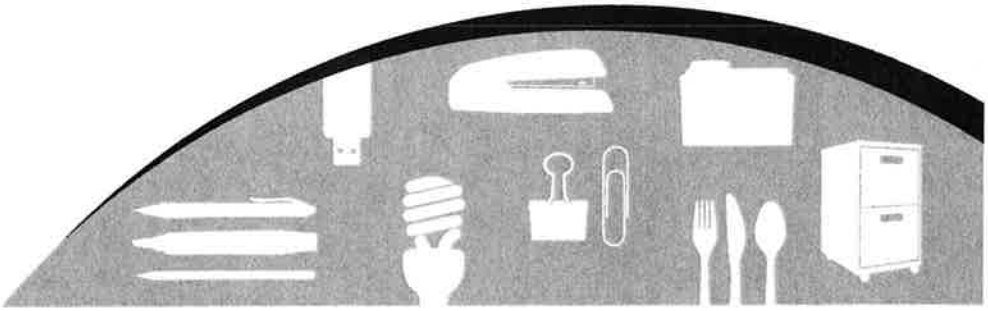


Exhibit 2

DETERMINATION OF A NON-RESPONSIVE BID

Solicitation Number 5400006696
Submitted by Greenville Office Supply

The following are excerpts from the original solicitation relevant to the Determination of Non-Responsiveness:

Original Solicitation: Page 8, Responsiveness/Improper Offerors
(C.) Responsiveness. *Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive*. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

Solicitation Amendment 7 published 01/21/2014 addresses correct Attachment A to be returned. (Attachment A revised 01/21/2014)
Solicitation Amendment 5 published 11/20/2013 addresses correct Attachment B to be returned (Attachment B revised 11/20/2013).

Greenville Office Supply returned the following incorrect documents:

1. **Excel spreadsheet attachment A and B dated 10/15/2013.**
2. **The bidder's schedule was also used from the original solicitation dated 9/26/2013.**
3. **Only amendments 1-3 were acknowledged in its offer.**

Determination:
Greenville Office Supply does not meet the requirements set forth in amendment seven.

In accordance with Regulations 19-445.2070, A., Rejection of Individual Bids.
Any bid which fails to confirm to the essential requirements of the solicitation shall be rejected.

Theresa L. Watts

March 31, 2014

Theresa L. Watts, CPPB
Procurement Manager

Date