

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
CONTRACT CONTROVERSY:)
)
South Carolina Department of Education)
)
v.)
)
American Diesel Power Products)
)
Materials Management Office)
IFB No. 5400005163)
Contract No. 4400006362)

**BEFORE THE
CHIEF PROCUREMENT OFFICER**

CASE NO. 2013-118

ORDER

APPROVING SETTLEMENT

**VOLUNTARY ORDER OF SUSPENSION
AMERICAN DIESEL POWER PRODUCTS**

This matter comes before the Chief Procurement Officer (CPO) pursuant to S.C. Code Ann. § 11-35-4230. The South Carolina Department of Education (SCDE) requested that the CPO resolve a contract controversy between IT and American Diesel Power Products (American Diesel). In order to resolve the matter, the CPO conducted a hearing on September 4, 2013. Appearing before the CPO were SCDE, represented by Shelly Kelly, Esquire; American Diesel represented by Luke Dimattia, III, President; and the State Procurement Office, represented by John Stevens, State Procurement Officer. Following a settlement conference prior to the hearing, the parties asked the CPO for more time. The hearing was suspended.

The CPO reconvened the hearing November 8, 2013 at SCDE's request. Prior to commencement of the hearing, the parties mutually agreed to settle the matter. They ask the CPO to approve the attached settlement according to S.C. Code Ann. Section 11-35-4230(3).

The CPO understands that all parties have considered the settlement carefully, understand the terms, and realize its consequences.

ACCORDINGLY, pursuant to § 11-35-4230(3), the settlement reached by mutual agreement of the parties is approved;

Pursuant to the Agreement, American Diesel consented to suspension as defined in S.C. Code Ann. § 11-35-310(34) (2011), effective immediately and lasting until American Diesel has made payment of all amounts required by the Agreement. The CPO confirmed with Mr. DeMattia his understanding of this provision; and.

FURTHER, all parties have withdrawn their requests for resolution. Therefore, any and all claims pending before the CPO in this matter are dismissed.

IT IS SO ORDERED.



VOIGHT SHEALY
Chief Procurement Officer

Columbia, South Carolina
November 18, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
In Re: American Diesel)
)
_____)

Settlement of Contract
Controversy
Case 2013-118

This Settlement Agreement is by and between the South Carolina Department of Education (SCDE) whose address is 1429 Senate Street, Columbia, SC 29201 and American Diesel Power Products (American Diesel) whose address is 54020 Dimattia Lane, Independence, LA 70443.

Whereas, the Materials Management Office (MMO) of the South Carolina Budget and Control Board, issued an Invitation to Bid, Solicitation Number 5400005163, *Remanufactured Engines for the S.C. Department of Education*, on January 17, 2013;

Whereas, the SCDE is a governmental agency in the state of South Carolina and is the using governmental unit for solicitation number 5400005163;

Whereas, the bid was divided into seven Items and vendors could submit bids on any number of Items;

Whereas, American Diesel submitted a bid which was signed by Luke Dimattia, III, President, on February 4, 2013 and received by MMO on February 7, 2013;

Whereas, MMO posted an *Intent to Award* on February 25, 2013, awarding contract number 4400006362 to American Diesel for Items 00001, 00002, 00003, and 00004. The effective date of the contract was March 08, 2013.

Whereas, shortly thereafter, American Diesel determined that it could not fulfill the terms of the contract and notified MMO of this fact;

Whereas, American Diesel failed to supply any engines according to the terms of contract number 4400006362;

Whereas, the SCDE entered into an emergency procurement with a third party vendor at per engine prices that exceeded American Diesel's bid prices, causing financial hardship and damages to the SCDE;

Whereas, the SCDE filed a *Request for Resolution of Contract Controversy* with the Chief Procurement Officer of the State of South Carolina, on May 17, 2013, requesting damages, debarment or suspension, and that the contract be terminated and an award made to the next lowest bidder;

Whereas, MMO canceled the contract with American Diesel on July 9, 2013, and issued an award of Items 00001 and 00002 to the next lowest bidder on July 10, 2013:

Whereas, the contract prices under the newly issued contract exceeds the contract prices as bid by American Diesel;

Whereas, R. Voight Shealy, Chief Procurement Officer for the State of South Carolina scheduled a hearing on September 4, 2013, and pursuant to the authority as outlined in S.C. Code Ann. § 11-35-4230(3), attempted to settled this matter through mutual agreement;

Whereas, the matter was not settled after that hearing date and R. Voight Shealy, Chief Procurement Officer for the State of South Carolina rescheduled the hearing for November 8, 2013;

Whereas, prior to that date, the SCDE and American Diesel resumed settlement discussions;

Whereas, the SCDE and American Diesel have entered into this agreement voluntarily and have agreed upon a settlement agreement.

Now Therefore, for mutual consideration, the parties agree:

With regard to damages, American Diesel agrees to pay the SCDE an amount of \$22,652. American Diesel shall pay the SCDE an initial payment of \$5000 within 15 days of the execution of this agreement. American Diesel may pay the balance in installments with the final payment being received on or before June 30, 2014.

Payments shall be made to the *S.C. Department of Education* and delivered on to the following address:

Tim Camp, Director, Office of Transportation
S.C. Department of Education
1429 Senate Street
Columbia, SC 29201

With regard to suspension, American Diesel hereby agrees and consents to the issuance by the Chief Procurement Officer of an Order of Suspension, commencing immediately and ending upon the full payment of restitution to the SCDE. American Diesel is responsible for notifying the Chief Procurement Officer that final restitution has been made and that the suspension should be lifted. The SCDE agrees to verify that full restitution has been received upon request.

American Diesel understands that the Order of Suspension, under the authority of S.C. Code Ann. § 11-35-4220, as defined by S.C. Code Ann. § 11-35-310(34), is the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State.

American Diesel also agrees not to bid on any South Carolina Department of Education procurements for an additional one year period beyond the date the suspension is lifted.

American Diesel understands and agrees that failure to may full restitution by June 30, 2014, may result in debarment.

