

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Staples Contract & Commercial, Inc.

Materials Management Office
IFB # 5400006696

Office Supplies & Copy Paper
Statewide Term Contract

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2013-135

POSTING DATE: January 7, 2014

MAILING DATE: January 7, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by Staples Contract & Commercial, Inc. (Staples) 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 desktop delivery of office supplies and copy paper. The IFB stated MMO's intent to award contracts as follows:

AWARD TO MULTIPLE OFFERORS (M)

Contracts will be awarded to

1. one (1) contractor that will provide services statewide, and
2. one (1) contract per region of the State for service to each of the three (3) regions identified in the attachment.

All told, the State intends to award up to four (4) contracts.

[Ex. 1, Part VI, Award Criteria, p. 24]

Staples protested the specifications, specifically Amendment #2, alleging it was aggrieved by MMO's answers to questions posed by prospective bidders prohibiting them from offering: (1) private label copy paper; (2) private label office supplies for the market basket

items; and (3) national brand office supplies other than the brands specified for the market basket items.

In order to resolve the matter, the CPO conducted a hearing December 19, 2013. With a known population of contractors from previous contracts, all six contractors currently under contract: Staples, Forms & Supply, Office Depot, Wilburn-Koval, Harold Office Supply, and Greenville Office Supply, were invited to attend. Staples attended represented by Wayne Hall, Jennifer Vroon, and others. Forms & Supply attended represented by Mark Leazer and Larry Abrams. Office Depot attended represented by Hardy Meyer and Charrell McLean. Wilburn-Koval attended represented by Michael Epps. Harold Office Supply attended represented by Julie Snyder. Greenville Office Supply did not attend.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

WITHDRAWAL OF PROTEST GROUND

During the hearing, Staples withdrew its protest ground regarding “bid as specified” copy paper requirements because MMO had already amended the specification for copy paper to allow other manufacturers’ products.

The remaining grounds of protest are MMO’s prohibitions against bidders offering their private label office supplies for the market basket items, and against bidders offering national brand office supplies other than the brands specified for the market basket items.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On August 14, 2013, MMO conducted a pre-solicitation conference with all these current contractors.
2. On September 26, 2013, MMO published the IFB. [Ex. 1] Regarding how the awards would be determined, the IFB read:

CALCULATING THE LOW BID (M)

The low bid(s) will be calculated as follows:

The sum total of the spreadsheet for office supplies (the market basket) will be added to the sum total of the spreadsheet for copy paper to establish a **Grand Total**. The Grand Total will determine the lowest responsive and responsible bidders.

Awards will be made to the lowest responsive and responsible bidders determined by the "Grand Total" for "statewide" service, Regions I, II and III.

[Ex. 1, Part VI, Award Criteria, p. 24]

The IFB included a market basket of 175 different office products. (Attachment A, Office Supply Spreadsheet) It listed some products by "Manufacturer's Item Number", but did not list manufacturer names of the market basket items.

Regarding bidders offering private label office products for the market basket, the IFB read, "In order to compare products against one another, Private label office supply products shall not be offered." [Part III, Scope of Work/Specifications, p. 18]

3. On October 7, 2013, MMO conducted a pre-bid conference.
4. On October 10, 2013, MMO issued Amendment #1 [Ex. 2] answering questions raised by the prospective bidders, and revising Attachment A, the Office Supply Spreadsheet, by listing 173 office supply products, all by national brand name, make and model, and adding lines for bidders to submit prices statewide, as well as Regions I, II, and III. Related to office supplies, the tendering text of the bidding schedule reads, as follows:

- Item 1, Office Supplies (STATEWIDE): Complete spreadsheet and return with your offer. Enter the total from the spreadsheet under Annual Price. This line will total one year.
- Item 3, Office Supply Catalog (STATEWIDE): Enter the discount from catalog for remaining office supplies not included on the spreadsheet. Lot 3 is for information only and will not be evaluated as part of the award.

Only one percentage discount will be accepted. Multiple percentages will deem your offer non-responsive. A minimum of sixty (60%) percent discount from the manufacturer's suggested retail price is required. Discounts offered less than the minimum will be deemed non-responsive.

Discounts shall apply to the quantity ordered and will be firm, net, delivered prior to the ordering agencies or local procurement units as applicable. The percentage is to include all, factors necessary to the bidder, such as overhead, profit, handling and delivery charges, less stated otherwise herein.

MMO provided identical bidding schedules for Regions I, II, and III repeating this same tendering text.

Relevant to the grounds of protest, MMO offered the following answers to the questions raised:

9. The solicitation instructs vendors to exclude private label products from the office supply bid file. Will the state require vendors to exclude private label products from the minimum 60% off discount on the full line catalog items?

Response: See section III Scope of Work, page 18 item S.

12. Pg 20, –Letter S.: It states “*In order to compare products against one another, Private label office supply products shall not be offered.*”

Questions: In the price files for Office Supplies there are many products without manufacturer numbers: **a.** Some lines on Attachment A clearly indicate a Staples private brand item; we assume vendors cannot use a private brand product of similar size, quality, form and function for those items? Can you please remove the private brand items from Attachment A?

Response: See revised Attachment A.

b. Attachment A: In order to ensure a fair apples to apples comparison, can the state please provide exact item numbers (manufacturer or current vendor number) for all items on attachment A?

Response: See revised Attachment A.

[Exhibit 2, p. 2]

23. Page 18 / Section III / Item S - Private Label Items

Does this statement about private label items apply to the core list only?

Does this statement apply to the core list and non-core list?

Response: Yes, And only the core list.

[Exhibit 2, p. 4]

35. During the Pre-Bid conference, a statement was made that SP Richards and United Stationers Private Label product is not allowed to be used in response to the Office Product bid list. We agree with that restriction. Please confirm that the State of South Carolina expects that responding vendors should not respond utilizing these Private Label products.

Response: See section III, page 18 item S and recognize the revised Attachment A.

[Exhibit 2, p. 5]

In sum, Amendment No. 1 clearly restated MMO's prohibition, as stated in the IFB, against bidders offering private label products. As revised, Attachment A listed 173 office products, all by national brand name. The revised Attachment A listed no Staples private label products by manufacturer name. However, it did list 9 products under Description by the name "Staples." [Items 12, 25, 49, 70, 92, 101, 115, 143, and 144]

5. On October 15, 2013, MMO issued Amendment #2. [Ex. 3] Amendment #2 reduced the number of office supply products list on the market basket to 165, reiterated its prohibition against private label products and answered questions clearly prohibiting alternative national brand products as follows:

2. There are still 8 lines of generic brand items on the revised Attachment A list (lines 103, 107, 117, 121, 125, 139, 171, 174). Are we to quote an equivalent generic brand?

Response: Attachment A has been revised to remove any remaining private label products.

4. There still seems to be several private label item numbers on the Revised Attachment A. Lines 3 and 17 - APDFFLTR (not an OEM number), F10M97182 (Office Max number); Line 120 - F10M01619 (Office Max number); Line 171 - J4OM01093 (Office Max Number). Can these be removed since all bidders do not have access to these items?

Response: These items have been removed.

[Exhibit 3, p. 1]

7. We understand that private brands cannot be substituted for national brands. Can quality national brands be substituted for quality national brands? There might be times where the State is requesting a Smead item but we stock an Esselte item. If we cannot provide the Esselte item we would need to source the Smead item through a wholesaler at a premium price and possible delay in delivery time.

Response: Bid as requested on the core list of items. Secondly, see page 16, H-Delivery & Additional Ordering Requirements. This section depicts the contractor's responsibility for delivery time.

8. The State of South Carolina has requested that we submit the exact name brand products for that which is asked. Please note that several name brand products are exclusive to an incumbent vendor and not available to other vendors. Please explain how these should be handled.

Response: To the best of the State's knowledge any remaining private label items have been removed. Bid as specified on the Amendment 2 worksheet.

9. The State of South Carolina has requested Universal and SPARCO items. Please note that these are Private Label generic items from each of the two wholesalers. Are we able to offer our generic items for these generic items?

Response: No. See response to question 8.

[Exhibit 3, p. 2]

19. Attachment A Revised: Line 107 and 139 still show as a private brand items. Universal is a private brand from various Wholesalers. Can the State remove these items?

Response: These items have been removed.

[Exhibit 3, p. 3]

20. I have a question to clarify how vendors should respond with Non-Private brand alternate items on Attachment A. In the email titled Office Supply Solicitation sent on October 1st, 2013 answering questions that had been already been asked states, "First, the data to be furnished deadline has been extended until Monday, October 7, 2013 at 8:00 a.m., not to be confused with the bid deadline.

Response: That request has already been processed to make a more definable market basket. Non-Private brand alternate items are not part of this market basket. The core list of items will be bid as specified.

Secondly, the Unit of Measure and Packaging columns are to be used for the number of products you have to include the number of purchasing methods. For example, Product code #abc123 –binder – Manufacturer – Avery – UOM- case – packaging 12 each to a case. Now if you sell them in another measurement that should be listed as a separate line item. If there is another manufacturer you sell, except private label items, you may list that as well. So, there may be several manufacturers and packaging sizes for one product code."

Response: This request has already been processed to make a more definable market basket. Bid the core list of items as specified.

21. To clarify and ensure The State is able to compare one product to another regarding responding with Non Private brand alternate items on Revised Attachment A:

1. Should we add the Non Private brand alternate line item vertically or horizontally on the spreadsheet?
2. Should we also provide Manufacturer, Manufacturer #, Description, UOM, Pack Quantity, Sell Price, and EXT sell for each Non Private brand Alternate Item on revised Attachment A?

Response: Question 1 - Neither. Non Private brand alternates are no longer an option in the model.

Response: Question 2 – See response to question 1.

22. After reviewing the revised Attachment A, we noticed that several Private Label products were still specified. Those items are listed below. Sparco, Universal and Business Source are Wholesale Private Label brands. In the pre-bid conference and the Amendment 1 to the Solicitation, you clearly identified that Private Label Product is not permitted. Can you please revise the items to “Non-private label” products? Otherwise, all vendors should be allowed to bid their vendor specific private label to those products below to ensure a fair evaluation for those items.

Response: These items have been removed from the core list of items.

[Exhibit 3, p. 4]

6. On October 29, 2013, Staples emailed its protest to the CPO.
7. On October 30, 2013, MMO issued Amendment #3 extending the bid opening and projected award dates. [Ex. 4]
8. On November 5, 2013, MMO issued Amendment #4 extending them again. [Ex. 5]
9. On November 20, 2013, MMO issued Amendment #5 revising Attachment A, Office Supply Spread Sheet, to delete some duplicate entries and reducing the number of office supply items on the Office Supply Spreadsheet to 123. [Ex. 6]

SETTLEMENT ATTEMPTS

As required by S.C. Code Section 11-35-4210(3) and faced with an immediate need for office supplies due to the impending expiration of the previous contracts, the CPO devoted significant time in an attempt to settle the matter being of the opinion and hope that this protest of specifications might be ripe for settlement. John Stevens, State Procurement Officer, offered to meet with one representative from each prospective bidder (all current contractors for office supplies) in order to determine national brands for all 123 items listed in the Office Supply Spreadsheet acceptable to all bidders. The other bidders agreed to participate, but Staples

refused. Further, Staples officials stated they only wanted to talk about 15 of the 123 market basket items.

DISCUSSION

The only way to perfectly determine the award which would yield the lowest cost to the State in this case is to calculate bids using every office supply product state and local agencies might order. It is impossible to predict with complete accuracy those future purchases. The evaluation problem is compounded because some vendors—the “big box” national retailers—include some 30,000 items in their catalogues, while smaller, regional companies may offer half as many. Because of the burden to the State and vendors of evaluating prices for thousands of items, MMO has utilized a “market basket” approach to bidding this contract. Offerors were to submit fixed item prices for a market basket of representative items to be supplied. The market basket was developed after receiving actual usage information from all incumbent contractors, including Staples. It was amended in a collaborative manner with extensive input from all known prospective bidders, including Staples, via a pre-solicitation meeting, a pre-bid meeting, and at least two rounds of questions and answers. The market basket is intended to include only those items available to any vendor for resale—that is, private label pricing is not allowed. The pricing each bidder offers for the market basket items is demonstrative of the competitiveness of that bidder’s entire catalog. Unit prices for market basket components are weighted, reflecting actual spend experience, to mitigate attempts at unbalanced bidding.

The market basket is a tool for evaluating bids from different vendors, each of whom offers unique catalogs and enjoys access to various, though distinctive, private label brands.¹ The

¹ The IFB uses a similar method for evaluating pricing for copy paper. It also requires bidders to offer a discount of at least sixty percent (60%) for all other items from their respective catalogs of office supply products.

eventual contract will not be limited to the market basket items. Once awarded, each contractor can accept orders and deliver products from its entire catalog, including other national brands and private label products. [See Amendment #1, Question #23] Thus, the use of a market basket for evaluation in no way restricts the products a vendor may sell to the State or other public procurement units under the contract.

CONCLUSIONS OF LAW

In its protest, Staples wrote its reasons for protest were:

In the office supply industry, no two vendors stock the same merchandise. Each vendor has to make decisions as to the products for it to carry. By not allowing the respondents to offer products that are substantially similar in fit, form, and function to those listed in the Solicitation, the State is again preventing the respondents from making their most competitive offers to the State, and the State will in turn lose the potential savings it might have realized from such offers.

Staples did not protest MMO's use of a market basket. In fact, of the one hundred twenty (123) items listed in the market basket (as revised by Amendment 5), Staples stated they only wanted to discuss other brand options for fifteen of them.² During the hearing, all four of the other prospective bidders in attendance, Forms & Supply, Office Depot, Wilburn-Koval, and Harold Office Supply, stated emphatically they were satisfied with the market basket as it is. All of them indicated their satisfaction with the national brand products listed in the Office Supply Spreadsheet. All prospective bidders present, including Staples, stated they could buy and deliver to the State the national brand products listed. Unanimously, the other bidders opined the Office Supply Spreadsheet offered a level, competitive playing field. Unanimously, the other bidders

The amount of the discount is not considered for purposes of award. No party, including Staples, has protested this method of evaluation.

² Staples did not opine who would determine if a substituted product was "substantially similar in fit, form, and function;" or how that determination should be made; or whether a dissatisfied offeror could protest the determination. Because the CPO determines the protest fails to state a claim for relief under the Procurement Code, he does not reach the practical issues that permitting wholesale substitution would engender.

opposed Staples' request to allow Staples' private label house brand products because Staples outright prohibits or limits their access to Staples' private label products – they cannot buy them.

Staples does not contend that the market basket evaluation method is illegal, only that it is imperfect. The Procurement Review Panel has explicitly recognized that, in cases like this one, a market basket approach is an acceptable alternative to a perfect calculation of the cost to the State:

General Services correctly points out that the only way to determine the true cost effective bidder in this case is to calculate bids using all 40,000 items in the bidders' catalogues. This method would obviously burden both the State and the vendors beyond reason. General Services and the winning vendors argue that the market basket as designed is representative of the State's needs in this case and is a reasonable, cost effective way to procure laboratory supplies without the burden.

The Panel finds that, viewing the evidence as a whole, the procedure used in this case was fair to all vendors and to the State and did not result in an arbitrary procurement. The State consulted with both the using agencies and the incumbent vendors in drawing up the shopping list for Lot A. The State further allowed the participation of all the vendors, including Fisher, in calculating final bid prices.

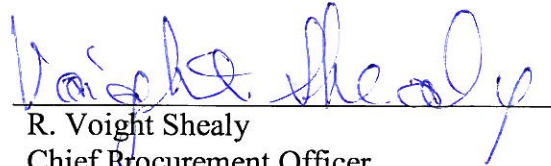
Protest of Fisher Scientific Company, Panel Case No. 1990-7(II).

The Code provides prospective bidders the privilege of protesting a solicitation if they are "aggrieved" by it. [11-35-4210(1)(A)] A protestant must state his grievance with "enough particularity to give notice of the issues to be decided." [11-35-4210(2)] Implicit in the statute is a requirement that a protestant allege and prove a violation of the Consolidated Procurement Code. In its protest, Staples has cited no statute or stated any violation of the Code. It merely

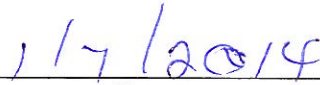
speculates that changes to the market basket might result in the State paying less for its office supplies.³ Staples' protest, therefore, fails to state a claim for relief and must be dismissed.

DETERMINATION

For the reasons stated above, the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

³ Given that no other prospective offeror has protested or even objected to the market basket, one might suspect that Staples' complaint is that the evaluation criteria are *too* fair.

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

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.

October 29, 2013

Mr. Voight Shealy
Materials Management Officer
Materials Management Office
State of South Carolina
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Written Protest of Solicitation #: 5400006696 / Office Supplies and Copy Paper

Dear Mr. Shealy:

On behalf of Staples Contract & Commercial, Inc. ("Staples"), I want to thank you for the opportunity to respond to Solicitation # 5400006696 (Office Supplies and Copy Paper). Unfortunately, we believe that the Solicitation, as revised by Amendment 2, provides an unfair advantage to the incumbent vendor and could result in an award that would not be in the best interests of the people of the State of South Carolina.

In accordance with the PROTESTS (2006) section of the Solicitation, Staples is hereby filing a protest regarding:

- o Amendment 2 – Date issued 10/15/2013 – Response to questions 7, 8, and 11

The questions noted above were asked by certain bidders, and Amendment 2 provided the answers shown below:

Amendment 2 – Date Issued: 10/15/2013

11. The state's response to questions 13 a and 13 b was to "bid as specified." Since the paper bid file only provides specs such as size, weight, color and not manufacturers, mills or vendors, will the State accept any brand of paper as long as it meets the noted specs?

Response: Private label products are not to be bid.

Reason for protest: By excluding private label paper from the bid, Staples contends that the State's end users may incur higher costs to procure paper. Private label paper is manufactured by name brand manufacturers and adheres to the same quality standards as any name brand paper. The bidders receive reduced costs based on the volume of private label paper purchased, resulting in a lower cost to end users. In addition, the State's current contract utilizes Boise Cascade paper. This is in essence a private label item as the incumbent currently owns a 20% share of Boise Cascade Co. (see link below) and would thus benefit as a shareholder of the manufacturing company.

<http://online.wsj.com/article/BT-CO-20130731-709643.html>

The grid below shows the final paper items for bid per Amendment 2. The yellow highlighted line items provide no specifications for mill or manufacturer. The green highlighted items specify Boise Cascade/Aspen paper and provide the incumbent's item numbers.

1	Recycled Index Paper, 90# 8.5 x 11, #4 stock, white	89	CS
2	Recycled Index Paper, #11 x 8.5 x 11 #4 white	80	CS
3	Recycled Index paper colors 90# 8.5 x 11 #4 Colors: canary, blue, salmon, cherry, green, buff	134	CS
4	Recycled Envelopes #9 white wove, 24lb diagonal seam, die cut (round flap)	1	CS
5	Recycled Envelopes #10 white wove, 24lb diagonal seam, die cut (round flap)	400	CS
6	Recycled Envelopes #10 window white wove, 24 lb diagonal seam, die cut (round flap)	1200	CS
7	Envelopes #9 regular white wove, 24lb side seam, round flap	1010	CS
8	Envelopes #10 regular white wove, 24 lb side seam, round flap	1300	CS
9	Envelopes #10 window white wove, 24lb side seam, round flap	400	CS
10	Standard Bond 8.5 x 11 desktop delivery 20b white recycled 30% Paper	33295	CS
11	Standard bond 8.5 x 14 desktop delivery 20b white recycled. This paper is standard bond and suitable for all uses.	963	CS
12	Standard bond 11 x 17 desktop delivery recycled 20b. This paper is standard bond and suitable for all uses. 30% recycled.	230	CS
13	Standard bond 8.5 x 11 color desktop delivery recycled. This paper is standard bond and suitable for all uses. Colors: blue, buff, canary, pink, green, goldenrod	16826	CS
14	Standard bond 8.5 x 11.3 hole desktop delivery 20b white recycled. This paper is standard bond and suitable for all uses. Boise Cascade paper - Aspen 20% recycled product code P105401PCTH	844	CS
15	Color printer/copier 8.5 x 11 desktop 74lb, 90 brightness, smooth surface. This paper is specifically for use in color printers & color copiers. Boise Cascade paper - Vista	836	CS
16	Recycled Standard Bond - 8.5 x 11 3-hole	4745	CS
17	Recycled standard bond 8.5 x 11 20b white. This paper is standard bond and suitable for all uses.	1321	CS
18	Recycled standard bond 8.5 x 14 20b white. This paper is standard bond and suitable for all uses.	134	CS
19	Recycled standard bond 11 x 17 20b white. This paper is standard bond and suitable for all uses.	1	CS
20	Recycled standard bond - colored 20b color 8.5 x 11. This paper is standard bond and suitable for all uses.	1	CS
21	Color printer & Copier paper 8.5 x 11 24lb 96 brightness, smooth surface 8.5 x 11. This paper is specifically for use in color printers & color copiers.	31	CS
22	Laser printer/copiers paper 8.5 x 11 20b white. This paper is specifically designed for use in laser printers/copiers.	1793	CS
23	Laser printer/copiers paper 8.5 x 14 20b white. This paper is specifically designed for use in laser printers/copiers.	147	CS
24	Laser printer/copiers paper 11 x 17 20b white. This paper is specifically designed for use in laser printers/copiers.	1436	CS

By not specifying paper quality standards, the State is exposing itself to potential bidders that may provide a lesser quality paper. As noted above, the State should not equate private label paper with low quality paper. Many of the respondents to this Solicitation may have their own high-quality private label paper offering. So long as the respondents are required to offer paper products that meet specific quality standards, the branding of such products would be irrelevant, and the State would have established a "level playing field" for the respondents to offer their best value paper products.

By specifying Boise Cascade paper for two of the highest usage SKUs, we believe the State is unintentionally giving the incumbent an unfair advantage due to the incumbent's relationship with that paper manufacturer. While Boise Cascade paper is available to all office products distributors for purchase, it would be made available at a higher price than the incumbent's, which would then be passed on to the State. The Solicitation as currently written may even let the incumbent bid a much higher price due to its relationship with Boise Cascade, with the incumbent keeping any additional profits.

Staples proposes that all bidders be allowed to bid their private label paper as long as it meets the specifications noted by the State and is produced by one of the major paper mills that support the office products industry. These mills include: International Paper, Domtar, Georgia Pacific, and Boise Cascade. Bidders should be required to document their paper mills with letters from the respective mills. Staples also notes that it would be in the best interest of the State to include language preventing bidders from offering or substituting paper of a lesser quality.

Amendment 2 – Date issued: 10/15/13

- 7) We understand that private brands cannot be substituted for national brands. Can quality national brands be substituted for quality national brands? There might be times where the State is requesting a Smead item but we stock an Esselte item. If we cannot provide the Esselte item we would need to source the Smead item through a wholesaler at a premium price and possible delay in delivery time.

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Reason for protest: In the office supply industry, no two vendors stock the same merchandise. Each vendor has to make decisions as to the best products for it to carry. By not allowing the respondents to offer products that are substantially similar in fit, form, and function to those listed in the Solicitation, the State is again preventing the respondents from making their most competitive offers to the State, and the State will in turn lose the potential savings it might have realized from such offers.

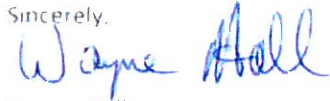
In summary, Staples contends that the current Solicitation may result in the State of South Carolina paying more for its office supplies and paper than if the Solicitation was bid in a truly competitive fashion. Based on our experience, we also know that every penny that the State of South Carolina saves on the procurement of office supplies and paper can be channeled to other productive uses, including creating jobs and improving the business climate in the State.

Please note that the concerns set forth above apply to all of the respondents to the Solicitation, other than the incumbent paper supplier and one of the incumbent office products suppliers. As a good corporate citizen, with almost 1000 associates located throughout South Carolina, we are very concerned about these apparent flaws in the Solicitation.

In accordance with the PROTESTS (June 2006) section of Solicitation # 5400006696, Staples hereby files this written protest within 15 days of the date of issuance of the applicable solicitation document at issue, and requests relief in the form of an amendment that (a) allows the respondents to offer their respective own-brand products, subject to such products meeting standardized quality requirements; (b) allows the respondents to offer products that are substantially similar in fit, form, and function to those listed in the Solicitation; and/or (c) such other additional relief as the State may deem appropriate.

Please feel free to contact me if you have any questions. Thank you for your consideration

Sincerely,



Wayne Hall
Regional Vice President