

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

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

Protest Decision

Matter of: Herff Jones, LLC

Case No.: 2016-215

Posting Date: July 6, 2016

Contracting Entity: The Citadel

Solicitation No.: Bid3092-KP-05/12/2016

Description: Citadel Sphinx Yearbook

DIGEST

Protest alleging protestor should have received higher scores and irregularities in the bidding process is denied where there is no evidence of bidding irregularities or clearly erroneous, arbitrary, or capricious evaluation or actual bias.

AUTHORITY

The Chief Procurement Officer conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

BACKGROUND

The Citadel issued this Best Value Bid on April 4, 2016 for yearbooks for a one-year period with option to renew for four (4) additional one-year periods.

| <i>Event</i> | <i>Date</i> |
|------------------------|-------------|
| Solicitation Issued | 04/04/2016 |
| Bid Opening | 05/12/2016 |
| Intent to Award Issued | 06/13/2016 |
| Protest Received | 06/10/2016 |

ANALYSIS

Herff Jones alleges that the formal bid opening did not take place and it was not able to view the bids from Jostens or Lifetouch. The Citadel responds “The bid was opened and all vendors that had submitted a bid were announced by one of my buyers on the date and appointed time. Since it was a “Best Value” bid the pricing was not able to be opened at the public opening for anyone to view until the evaluation had taken place.”

This solicitation was a Best Value bid issued under Section 1-35-1528 of the South Carolina Consolidated Procurement Code (Code). Section 11-35-1528(4) of the Code stipulates:

At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award.

The Citadel’s actions announcing actual bidders but denying public review of competing bids at bid opening is consistent with the requirements of the Code. This issue of protest is denied.

Herff Jones complains that the evaluation panel was composed by the yearbook advisor and 2 cadets instead of other non-biased school representatives. The Citadel’s response is “The final accusation that Cadets were involved in the evaluation process is also untrue as the panel members consisted of Brian Dukes, Ruthie Ward and Shelton Milner who are all Citadel Employees.” Aside from being inaccurate, this issue alleges no violation of the Code and is denied as an issue of protest.

Herff Jones alleges that questions it submitted to the Citadel by the deadline of April 15th, 2016 were never answered or amended.

1. What was the cost for shipping last year, 2015?

2. Will you allow an all-expense paid trip for 3 members of the staff to the printing plant?
3. Submission material - is it ok to provide sample yearbooks with our Bid?
4. So the total submission of the bid is one hard copy and 3 thumb drives with the bid material on it? The bid asks for One (1) original (hard copy?), and 3 thumb drives of the bid and one separately sealed original cost proposal? Please explain to clarify.

1 hard copy in a sealed envelope and 3 thumb drives with the bid information from our company. Correct?

The solicitation advises potential bidders to request any explanation or interpretation of the solicitation, drawings, specifications, etc., in writing and that:

QUESTIONS FROM OFFERORS (FEB 2015): (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." We will not identify you in our answer to your question. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation, that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

[Solicitation, Page 6] (emphasis added)

The Citadel responds:

You will see that the questions asked were covered by the document given to Bob Sasena [Herff Jones Publishing Specialist] along with what was previously provided in the bidding document. The additional questions regarding their wish to provide more marketing time or influence were disregarded as they did not affect the bidding process and were taken as simply a marketing tool. You will also note that we are not aware of the shipping cost and couldn't provide this as

that was in the total costing of the previous awarded pricing. It should also be noted that Bob Sasena made repeated attempts to discuss the bid during the solicitation period by walking in to our office unannounced on at least three occasions, one of which is when he gained the previous bid pricing document.

Herff Jones was provided with answers to its questions but the answers did not modify the solicitation or provide Herff Jones a competitive advantage and The Citadel did not publish them in an amendment to the solicitation. There is no statutory requirement that the agency issue an amendment answering every question submitted by a potential bidder. However, there is an obligation created in the solicitation that the agency publish an amendment if the information provided is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. The Citadel's actions were consistent with the obligation created by the solicitation. This issue of protest is denied.

Finally, Herff Jones questions the evaluator scores, specifically the scores for price:

Shannon and I feel that our bid submission outweighed the other companies and wish to have justification on how these decisions and scores were made on the rubric. i.e. Scores for price: Herff Jones received a 60 and so did Jostens. But if the Herff Jones pricing is less than the Jostens price, why would the scores be the same?

The bid tabulation indicates Jostens price was \$44,900. (Attachment 2) However, Jostens reduced its bid of \$44,900¹ with a \$5,000 revenue guarantee for the ability to sell business ads which reduced its bid to \$39,900. (Attachment 3) Herff Jones bid \$39,975. As explained by the Citadel in its response to this protest below, when Jostens' adjusted price was used to calculate the points to be awarded for price, the points for Jostens and Herff Jones were essentially the same:

The bid tabulation sheet actually gives Herff Jones the benefit of the doubt of the .1 points difference of the overall price offered using the calculation used by The

¹ There is an error on the statement of Intent to Award indicating that the annual value of the contract is \$44,908.00. Jostens bid clearly indicates that its bid was \$44,900.00. Note: Section 11-35-1520(10) indicates that an Intent to Award shall be issued when the contract has a total or potential value in excess of \$100,000. It is recommended that award and intent to award statements reflect the total potential value of the contract, not just the annual value of the contract.

Citadel. If scored more exactly Herff Jones would have obtained 59.899 point compared to Jostens 60 points. Since we believed the score to be in affect identical at the time of scoring due to only being \$67.00 in difference they both were given 60 points. What was not documented for the record clearly enough on the tabulation sheet was the added \$5000.00 guaranteed discount offered by Jostens that affectively reduced their overall evaluated pricing.

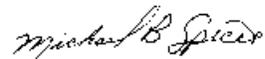
The Citadel did provide the observations of one evaluator, Bryan Dukes, supporting his scoring of the bids received. (Attachment 4) Herff Jones asked for some justification of the scoring, but does not allege a violation of the Code and this request is not considered an issue of protest.

As a rule, The Citadel does not require evaluators to provide any insight into the scores they award when evaluating Best Value Bids. The CPO recommends The Citadel review the report titled "A Limited-Scope Review of State Purchasing Overseen by the Budget and Control Board," issued by the Legislative Audit Council in 2005.

DECISION

For the reasons stated above, the protest of Herff Jones, LLC is denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

HERFF JONES, LLC
Bob Sasena
400 W. 7th North Street
Summerville, SC 29483

t 843.709.3898

rjsasena@herffjones.com



Voight Shealy
The Citadel
Chief Procurement Officer
1201 Main St., Ste 600
Columbia, SC 29201

Dear Voight,

I am writing this letter in behalf of myself, Shannon Spaulding and Herff Jones LLC, protesting bid# 3092-KP. We have received information from the Citadel procurement office indicating the rubric scores from 2 other companies that were based on; Cost, Consulting Services, On-Site Training & Experience with Higher Ed Yearbook Publishers.

We are not only questioning the scores, but also some of the items listed in the bid that never took place:

1. The formal bid opening for all vendors on May 12th @ 3:00 PM. Shannon Spaulding and I were the only ones present. Karen Pressley, procurement officer, did not show for the bid opening, therefore the opening never took place. See page 6 under title: Public Opening. Her secretarial staff located her on campus attending another meeting, and requested that nothing get opened. Therefore, we never viewed the other bids from Jostens or Lifetouch.
2. Questions asked by the deadline April 15th, 2016 were never answered or amended. The amendment website address listed on the bid never worked: <http://www.citadel.edu/proc/index.shtml>. I still have the email trail for proof that we did send our questions to Karen if you wish to see them.
3. The yearbook advisor and 2 cadets were chosen for the panel for the decision-making process and rubric scoring, versus other non-bias school representatives. Karen Pressley informed me of this.

Shannon and I feel that our bid submission outweighed the other companies and wish to have justification on how these decisions and scores were made on the rubric. i.e. Scores for price: Herff Jones received a 60 and so did Jostens. But if the Herff Jones pricing is less than the Jostens price, why would the scores be the same? I am enclosing the scores of the rubric for you to review.

We wish to have a meeting with LTC James P. DeLuca, CPPO – Director of Procurement Services to discuss our concerns and questions. Please let me know what the next step in the process will be.

Respectfully,

Bob Sasena

Herff Jones Publishing Specialist



GRADUATION



CLASS RINGS &
JEWELRY



YEARBOOKS



MOTIVATION &
RECOGNITION

Attachment 3

We Serve You



Your Jostens Representative, John Bumgarner, is a Certified Journalism Educator and will work with Bryan and the yearbook staff to create the yearbook they desire. Incorporating the 30 Life Skills that yearbook staff members learn as they work on the yearbook, we will develop a servicing schedule that meets your needs.

We are experts in all aspects of yearbook creation and production and can provide training and resources for your team on any of the following:

1. **Virtual Cover Artist:** attend a virtual session online with one our professional artists to breathe life into your ideas.
2. **Plant Tour:** visit the Jostens production facility in Clarksville, TN to see the processes and procedures that take your yearbook pages from creation to completion.
3. **Photoshop:** We can train the team on using the latest version of the Adobe Photoshop program.
4. **Photography:** we will teach basic and advanced methods to taking amazing pictures.
5. **Design:** Creating a journalistically sound layout that is also pleasing to the eye.

We have hand-picked these topics based on our experience with The Citadel yearbook program. We can offer training in all areas of yearbook journalism.

NEW FOR 2017:

With your permission, we have the ability to sell business ads in *The Sphinx* and guarantee you \$5,000 in revenue from business ads. We will contact the businesses, coordinate the ads sales and create the ads in The Citadel yearbook. While other yearbook companies only focus on costs, we are working to help you generate additional revenue.

Attachment 4

Karen Pressley

From: Bryan Dukes
Sent: Thursday, May 19, 2016 4:18 PM
To: Karen Pressley
Subject: yearbook bid

The main factors I used for my grading were –

- Cost ended up being equal between Herff and Jostens after Jostens offer to sell ads to work towards a \$5,000 credit on our final cost. Lifetouchw as way out of the ballpark in cost.
- Consulting and onsite consulting – I felt that Jostens was stronger in these areas. I know my rep is available for onsite and Jostens offers seminars and training sessions for advisers and staffmembers during the year. Herff had a training itinerary in their onsite folder but it wasn't clear if that was actual onsite instruction or web based video training. It all ends up being a sales pitch with promises and unknowns and with Jostens, there are no unknowns.
- Higher Ed experience – Favored Jostens here with more local and regional college yearbook experience and with more service academy yearbook contracts.

bd

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised September 2015)

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 111.1 of the 2015 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 209, 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.