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Protest Decision

Matter of: Continental Flooring Company

Case No.: 2018-168

Posting Date: June 11, 2018

Contracting Entity: College of Charleston

Solicitation No.: 18.57.DB.B

Description: Flooring Replacement - Kelly House Apartments

DIGEST

Protest that awarded bidder cannot perform contract at bid price is denied. Continental Flooring's letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file and applicable law and precedents.

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	04/11/2018
Addendum 1 Issued	04/13/2018
Addendum 2 Issued	04/20/2018
Addendum 3 Issued	04/24/2018
Intent to Award Issued	05/10/2018
Protest Received	05/16/2018

ANALYSIS

The College of Charleston issued this Invitation for Bids on April 11, 2018, for the removal and replacement of floor coverings in the Kelly House Apartments in downtown Charleston. The suite-flooring specifications required Armstrong Natural Creations Classics- Wood, 6” x 48” planks, Fruitwood Natural TP071 or equal with salient features listed as follows:

Luxury Vinyl Plank Tile for All Remaining Suite Flooring: Preferred product (for standardization throughout housing properties) and Basis of Specification is (Manufacturer) Armstrong / (Pattern) Natural Creations Classics- Wood, 6” x 48” planks / (Color) Fruitwood Natural TP071. Installation shall be in a random, ashlar plank pattern. The specified product has a wear layer thickness of 0.5mm, overall thickness of 3.2mm, UV-cured finish layer for protection from staining/discoloration, a minimal texture (no linear/grained embossing) for easier no-wax / no-buff cleaning, a manufacturing defects warranty of one year (labor and materials), two years (50% labor and 100% materials) and a commercial wear warranty of 20 years. The specified product positively contributes to the sustainability mission of the College, a 100% ortho-phthalate free product, in compliance with the following environmental standards/regulations:

- ☐ Floorscore: Indoor Air Quality Certified to SCS-EC10.3-2014 v4.0. Conforms to the CDPH/EHLB Standard Method v1.2-2017 (California Section 01350), effective April 1, 2017, for the school classroom and private office parameters when modeled as Flooring. Measured Concentration of Total Volatile Organic Compounds (TVOC): Less than/equal to 0.5 mg/m³ (in compliance with CDPH/EHLB Standard Method v1.2-2017)
- ☐ Environmental Product Declaration (EPD) third party certified
- ☐ REACH (Registration, Evaluation, Authorization and Restriction of Chemicals): The end use product and materials do not contain substances that meet REACH criteria for substances of very high

concern. The product does not contain ingredients listed on the REACH Authorization or Candidate list.

Acceptable alternates must equal or exceed a wear layer thickness of 0.5mm, an overall thickness of 2.5mm, a minimum plank size of 6" x 48" (for minimal seams), a minimal texture (no linear/grained embossing) for easier no-wax / no-buff cleaning, a manufacturing defects warranty of at least one year (100% labor cost and materials) and commercial wear warranty of at least 12 years. Acceptable alternates must have UV-cured top finish layer, and meet or exceed the slip resistance and ecological properties of the Basis of Specification.

[Scope of Work, Page 3]

Six bids were received as follows:

Vendor	Bid/No Bid Decision	Quantity Required	Bid
Ceiling & Floor Restorations, Inc.	Bid	1	\$268,900.00
Palmetto Carpet and Floorcoverings, Inc.	Bid	1	\$277,000.00
Bonitz Flooring Inc.	Bid	1	\$314,017.00
Schroder's Services	Bid	1	\$322,850.00
Continental Flooring Company	Bid	1	\$320,200.00
McWaters	Bid	1	\$350,620.00

On May 7, 2018, Ceiling & Floor Restorations, Inc. (CFR) affirmed that its bid was for the brand name products requested. (Attachment 2) An Intent to Award was posted to CFR on May 10, 2018.

Continental Flooring protests:

Based on the pricing in the marketplace for the Armstrong Natural Creations product it is a practical impossibility for Ceiling & Floor Restorations, Inc. to be able to provide a product that meets or exceeds all the salient characteristics of the specified Armstrong product for the sum of their Bid.

Accordingly, we protest any award to Ceiling & Floor Restorations, Inc. on this basis.

CFR was determined to be a responsible bidder and has agreed to perform in accordance with the contract at the price bid. Continental's allegation that CFR will be unable to fully perform the contract because of its pricing is based upon speculation and conjecture. This is matter of contract administration, and there is no basis for rejecting CFR's bid based on a belief that it may

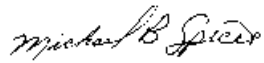
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violate the contract. *See, e.g., Appeal by Otis Elevator Company*, Panel Case No. 2017-1; *Appeal by Catamaran*, Panel Case No. 2015-2.

DECISION

For the reasons stated above, the protest of Continental Flooring Company is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



9319 N. 94th Way • Suite 1000 • Scottsdale, AZ 85258
Fax: (480) 945-2603 • www.continentalflooring.com
Phone: (480) 949-8509 • Toll Free: (800) 825-1221

May 16, 2018

Via: e-mail protest-mmo@mmo.sc.gov

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Protest per Section 11-35-4210
Flooring Replacement—Kelly House
Bid Due: May 7, 2018, 4:00 P.M.

Sir or Madam;

Under Section VII. Scope of Work/Specifications, 3. Specifications Luxury Vinyl Plank Tile for all Remaining Suite Flooring the preferred product (for standardization throughout housing properties) and Basis of Specification is (Manufacturer) Armstrong/ (Pattern) Natural Creations Classics-Wood, 6" x 48" planks (color) Fruitwood Natural TP071.

The specification reads on to include various salient characteristics of the Armstrong product including an overall thickness of 3.2mm, a UV-cured finish layer and a commercial wear warranty of 20 years.

Our Bid was based upon this specified Armstrong Natural Creations product.

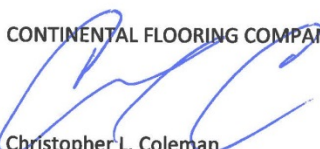
Based on the pricing in the marketplace for the Armstrong Natural Creations product it is a practical impossibility for Ceiling & Floor Restorations, Inc. to be able to provide a product that meets or exceeds all the salient characteristics of the specified Armstrong product for the sum of their Bid.

Accordingly, we protest any award to Ceiling & Floor Restorations, Inc. on this basis.

If you need any further information please feel free to contact us.

Sincerely,

CONTINENTAL FLOORING COMPANY



Christopher L. Coleman
President

Your nationwide government floor & ceiling systems specialist • installation & material only

Attachment 2

From: Brian Plombon
To: [Bennett, Dustin J](#)
Subject: Re: Substitutions
Date: Monday, May 07, 2018 8:10:21 PM

No substitutions for us Dustin. We bid the products that were specified.
Thank you very much for the opportunity to bid this work.
Regards
Brian Plombon
President
Ceiling & Floor Restorations, Inc

Sent from my iPhone

On May 7, 2018, at 4:41 PM, Bennett, Dustin J <bennettjdj@cofc.edu> wrote:

Good Afternoon,

Did you have any substitutions for the products that were requested on the College of Charleston's solicitation for the Kelly House Apartments?

Thank You,

Dustin Bennett, C.P.M.
Procurement Officer
Office of Procurement & Supply
College of Charleston
Office: (843) 953-9939
Fax: (843) 953-5444
Email: bennettjdj@cofc.edu

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 2016 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
1205 Pendleton Street, Suite 367, 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.