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## Protest Decision

**Matter of:** PS Furniture, Inc.

**Case No.:** 2019-128

**Posting Date:** March 27, 2019

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400013739

**Description:** Educational Furniture Statewide Contract

### DIGEST

Protest failing to state a claim is dismissed. PS Furniture's protest is included by reference.  
(Attachment 1)

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (CPO) 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.

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

## BACKGROUND

|                       |            |
|-----------------------|------------|
| Solicitation Issued   | 09/08/2017 |
| Amendment 1 Issued    | 10/05/2017 |
| Amendment 2 Issued    | 10/24/2017 |
| Amendment 3 Issued    | 11/01/2017 |
| Amendment 4 Issued    | 01/10/2018 |
| Amendment 5 Issued    | 01/22/2018 |
| Amendment 6 Issued    | 02/05/2018 |
| Amendment 7 Issued    | 04/04/2018 |
| Amendment 8 Issued    | 04/10/2018 |
| Initial Awards Posted | 05/09/2018 |
| Latest Bid Submission | 02/04/2019 |

## ANALYSIS

The State Fiscal Accountability Authority issued this fixed-price bid on September 8, 2018, for educational furniture. The original solicitation was amended eight times and the initial awards were posted on May 9, 2018. The solicitation sought bids from manufacturers that could provide furniture in eleven different categories:

- Cafeteria Furniture
- Classroom Furniture
- Computer Lab Furniture
- Healthcare Furniture
- Dormitory/Housing Furniture
- Library/Media Center Furniture
- Locker Room Furniture
- Music Room Furniture
- Playground Seating/Outdoor Furniture
- Fixed Seating
- High Density Storage & Shelving Units

The solicitation specified that award would be made by complete category:

AWARD BY CATEGORY (JAN 2006) - Modified

Award will be made by complete category. Under the terms of the resulting contracts, Offerors may provide only the items included in the category or categories for which they possess an award. [06-6015-1]

[Amendment 8, Page 29] (emphasis added)

The bidding schedule includes the following instructions:

Item Description: Percent Discount on Educational furniture ordered. from ~~Manufacturer's Authorized Dealer/Reseller(s)~~. The State's Minimum Discount Required is 50 Percent from the Manufacturer's List Price. The minimum 50% discounted price must include product, shipping, standard delivery, administrative fee and dealer compensation. At a minimum, Offerors must demonstrate the ability to offer the items listed within the category for which they would like to be awarded. Offerors shall bid on each category by providing their percentage discount from list. Discounts less than the required minimum discount will not be accepted. The products for which the Contractor cannot meet the minimum shall not be eligible for purchase under this contract. All educational furniture products in the catalog meeting the required minimum discount may be offered and eligible for purchase under the contract.

[Amendment 8, Page 45] (strikethrough in original, emphasis added)

Each category begins with a statement that "At a minimum, Offerors must demonstrate the ability to provide" followed by an all-inclusive list of items that might include desks, tables, chairs, carpets, rugs, storage carts, cabinets, etc. For example, the Computer Lab Furniture category required:

At a minimum, Offerors must demonstrate the ability to provide tables, desks, audio visual carts, lecterns and podiums, flat panel and television carts, desks, tables, work stations, ~~projector & television mounts~~, presentation carts, and technology storage. Category may include Training Room Tables and Furniture.

[Amendment 8, Page 46] (strikethrough in original, underline added for emphasis) The category lists were never limited to one item.

PS bid on all eleven lots. However, PS only provides tables, seating, acoustic panels, lecterns, transport carts, and portable flooring. At least one item in each lot is missing from PS's product line.

In the public procurement arena, the solicitation establishes not only the requirements to be met but also the rules by which the competition will be conducted. In this case the solicitation indicated that award would be made by complete category. The solicitation provided potential participants several opportunities to ask questions and suggest changes to the solicitation as

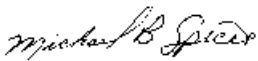
evidenced by the eight amendments. The Procurement Code also provides participants 15 days to request a review of its concerns about a solicitation or amendment by a CPO in the event it feels that its concerns were not adequately addressed. PS did not ask for a change to the solicitation that would have allowed it to submit a bid on part of a category instead of the whole category.

PS states that it has a “very extensive educational furniture product line” and advises that it continues to add new innovative products, but does not contest the basis for its disqualification or allege any violation of the Code. Absent an error in the procurement process or a violation of the Code, the CPO lacks jurisdiction to reverse the decision of the procurement officer.

## **DECISION**

For the reasons stated above, the protest of PS Furniture, Inc. is dismissed.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

Attachment 1



2/6/2019

SFAA  
State Procurement Office  
1201 Main Street  
Suite 600  
Columbia, SC 29201

Subject: RFP #540013739 – Educational Furniture

Dear Stacy Gregg,

I am writing you to file a protest because PS Furniture was not awarded the 540013739 – Educational Furniture contract.

PS Furniture has a very extensive educational furniture product line to service the State of South Carolina. We continue to add new innovated products to our line that will help the State of South Carolina save money using our products. There are several dealers and end users that use this contract to procure our products.

If PS Furniture is awarded this contract this will generate \$100,000+ in sales with \$2,000+ in rebate funds back to the State of South Carolina

Please contact Steven Cook with any questions at 262-302-4687 or [scook@psfurniture.com](mailto:scook@psfurniture.com)

I truly appreciate your reconsiderations!

Thank you,

*Steven Cook*

Steven Cook  
Public Contract Manager  
PS Furniture, Inc.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2018)*

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.

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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 2018 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**

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\_\_\_\_\_  
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: \_\_\_\_\_

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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.**