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Protest Decision

Matter of: Transformations by Wieland, Inc.

Case No.: 2019-130

Posting Date: March 26, 2019

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400013739

Description: Educational Furniture Statewide Contract

DIGEST

Protest of a non-responsive determination is denied. Transformations by Wieland's protest is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer¹ (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.

¹ 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 Intent to Award Posted	06/22/2018
Latest Intent to Award Posted	02/01/2019
Protest Received	02/11/2019

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
- Dormitory/Housing Furniture
- Healthcare 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.

Transformations submitted its original bid on April 23, 2018. It bid on lots 1, Cafeteria Furniture; 2, Classroom Furniture; 4, Dormitory/Housing Furniture; and 6, Healthcare/Infirmary Furniture. Each lot includes a variety of furniture typically found in the identified environment. For instance, the lot for dormitory/housing furniture includes beds, tables, desks, chairs, storage/cabinets shelving and common area furniture. In response to a question about its warranty, Transformations identified only its Signature and Foundations product lines. These

product lines are limited to seating and accessories. On June 13, 2018, the procurement officer requested clarifications² from Transformations:

Although you bid on them, the submission does not show evidence that you meet the minimum requirements for the following categories:

This was followed by a list of the categories Transformations had bid with a list of the different items of furniture included in each category. Transformations' response was limited to seating.

In order to receive an award, a bid must be responsive by meeting the material and essential requirements of the solicitation. The Code and Regulations prohibit the modification of a bid to make it responsive after bid opening. Section 11-35-1520(6) requires that:

Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code.

Regulation 19-445.2085(B) provides that:

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

The Procurement Review Panel has ruled that a bid must be determined responsive at the time of bid opening, on the face of the bid, and nonresponsive bids cannot be cured after bid opening.

Appeal by Two State Construction Co., Panel Case 1996-2.

Transformations was advised that its seating-only bids were disqualified on February 1, 2019. In protesting its disqualification on February 11, 2019, Transformations indicated that it meets the requirements for the lot 4, the Dormitory/Housing Furniture category. In response to an inquiry by the CPO, Transformations provided a hyperlink to a South Carolina State Contract web page

² Section 11-35-1520(8) authorizes the procurement officer to contact apparent responsive bidders to clarify their bids. Regulation 19-445.2080 defines "apparent responsive bidder" to mean "a person who has submitted a bid or offer which obviously conforms in all material aspects to the solicitation." Since Transformations failed to include items of furniture required for the categories it bid, the CPO does not understand why the procurement officer deemed it to be an apparent responsive bidder.

that included links to the previously identified Signature and Foundations product lines, a link to a previously unidentified Classic 200 wood residence hall furniture line, and a link to its January 2018 price list. Transformations also included a copy of the January 2018 price list as an attachment to its response to the CPO's inquiry. Neither copy of the January 2018 price list has prices for the Classic 200 product line.

Transformation's original bid was non-responsive and was properly disqualified.

However, this is a fixed price bid that provides for the periodic submission of bids after the initial submission date:

SUBMISSION OF OFFERS AFTER THE INITIAL SUBMISSION DEADLINE.

During the term of this contract, the State will consider additional offers submitted for the Furniture Statewide Term Contract. Vendors that wish to be considered during the contract term must submit offers to the Materials Management Office according to the instructions contained herein by the following Submission Schedule:

Submission Deadline 2: September 10, 2018, 11:00 AM
Submission Deadline 3: February 4, 2019, 11:00 AM
Submission Deadline 4: February 4, 2020, 11:00 AM
Submission Deadline 5: February 4, 2021, 11:00 AM
Submission Deadline 6: February 4, 2022, 11:00 AM

Awards shall be made by the time of the subsequent renewal term.

[Amendment 8, Page 29]

Transformations can submit a responsive bid for consideration at the next scheduled opening date.

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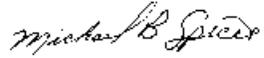
Case No. 2019-130

March 26, 2019

DECISION

For the reasons stated above, the protest of Transformations by Wieland, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



February 11, 2019 @2:00pm (EST)

Stacy Gregg, CPPO, CPPB
Procurement Manager
1201 Main Street
Suite 600
Columbia, SC 29201

Sent via email to: protest-mmo@mmo.state.sc.us

RE: Solicitation 5400013739 – Justification For Determination of Non-responsiveness

Dear Ms. Gregg,

We would like to formally protest the “non-responsiveness determination” of the Educational Furniture Bid. Transformations does meet the essential requirements set-fourth in the bid, and can provide all products in category 4.

We were unaware until receiving this notification that you needed additional supporting documentation to further verify items that we are able to provide. Upon receiving your notification we immediately called and spoke to you to let you know. At that time you asked us to send the appropriate information that supports our capabilities to meet the essential requirements and we sent it to you that same day. Therefore, at this time you should have everything you have requested.

In Category 4: Transformations offers beds, tables, desks, chairs, storage/cabinets shelving and common area furniture. The pricing for all products is at 50% off our list price.

We are asking for your prompt review of these offerings in order to determine that Transformations is responsive to all items in category #4 and therefore should be an approved manufacturer and allowing us to serve our existing clients in South Carolina.

Thank you very much for reviewing this information. We eagerly await your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stu Reynolds".

Stu Reynolds
Owner/Vice President

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.

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**

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.