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Written Determination

Matter of: Cancellation of Award to Irwin Seating Company

Case No.: 2019-150

Posting Date: July 12, 2019

Contracting Entity: The Citadel

Solicitation No.: BID3174-JD-05/17/2019

Description: Remove & Dispose of Existing Seating, Prepare Seating Area for Installation, Provide, Install and Replace Existing Stadium Seating in McAlister Field House

This matter is before the Chief Procurement Officer for Information Technology¹ (CPO) pursuant to a request from The Citadel [Ex. 1], under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code) and Regulation 19-445.2085(C), to cancel an award to Irwin Seating Company to Remove & Dispose of Existing Seating, Prepare Seating Area for Installation, Provide, Install and Replace Existing Stadium Seating in McAlister Field House due to changes in the specifications after award but prior to performance.

BASIS FOR THE REQUEST

The Citadel issued this Best Value Bid BID3174-JD-05/17/2019 on April 19, 2018. Four bids were received from two bidders on May 17, 2019; Irwin Seating Company and Hussey Seating Company. An Intent to Award was issued to Irwin on June 10, 2019. [Ex 2] Hussey filed a

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

protest with the Chief Procurement Officer on June 10, 2019. [Ex 3] On July 2, 2019, The Citadel requested cancellation of the award to Irwin as follows:

The Citadel is requesting that the Intent to Award for B1D3174-JD-5/17/2019 for Replacement of Stadium Seating be canceled and a new solicitation be issued with revised specifications in accordance with Regulation 19-445.2085 para. C, subpara. (2) & (8) of the South Carolina Consolidated Procurement Code. The Citadel has determined that it is in their best interest to rebid with aluminum decking and even numbers of seating with wider seats on each row to maximize usage, comfort and income while ensuring the best longevity of seating appearance.

Regulation 19-445.2085(C) provides:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (2) Specifications have been revised;
- (8) For other reasons, cancellation is clearly in the best interest of the State.

DETERMINATION

For the reasons stated above, the award to Irwin Seating Company is cancelled under Regulation 19-445.2085(C).



Michael B. Spicer
Chief Procurement Officer



Procurement Services
171 Moultrie Street
Charleston, SC 29409-6500
Tel: 843-953-5108
Fax: 843-953-6871
E-mail: proc@citadel.edu

To: Mike Spicer, Chief Procurement Officer
From: James de Luca, Director of Procurement Services
Date: July 2, 2019
Re: Request for Cancellation of Award Prior to Performance

The Citadel is requesting that the Intent to Award for BID3174-JD-5/17/2019 for Replacement of Stadium Seating be canceled and a new solicitation be issued with revised specifications in accordance with Regulation 19-445.2085 para. C, subpara. (2) & (8) of the South Carolina Consolidated Procurement Code. The Citadel has determined that it is in their best interest to rebid with aluminum decking and even numbers of seating with wider seats on each row to maximize usage, comfort and income while ensuring the best longevity of seating appearance.

Your approval is requested.

Respectfully,



James de Luca, CPPO
Director



Intent To Award

Posting Date: June 10, 2019

This is a statement of intent to award a contract and becomes the official statement of award effective **8:00AM, June 21, 2019**, unless otherwise suspended or canceled. Vendors are cautioned not to begin work on the contract or incur any costs associated with the contract prior to the effective date of the contract. The State assumes no liability for the expenses incurred by vendors prior to the effective date of the contract.

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this intent to award. Protest to be submitted in writing to:

John White
Chief Procurement Officer
1201 Main Street, Suite 600
Columbia, SC 29201

Purchase Order To Be Issued By: THE CITADEL

Solicitation : BID3174-JD-05/17/2019
Issue Date : 04/19/2019
Opening Date : 05/20/2019

Description : It is the intent of The Citadel to solicit Best Value Bids to Remove & Dispose of Existing Seating, Prepare Seating Area for Installation, Provide, Install and Replace Existing Stadium Seating in McAlister Field House by December 30, 2019.

Agency: THE CITADEL

Awarded To: Irwin Seating Company
3251 Fruit Ridge Ave. NW
Grand Rapids, MI 49544

Total Cost: \$559,624.87 - For VersaTract Seating with price reduction for Panalam Plywood Decking including Seating variation #3 with Padded 936 Integra and Solara Model 135.135.25.25 Chair Seating.



LTC James P. de Luca, CPPO
Director of Procurement Services



June 10, 2019

The Citadel
Mr. John White
Chief Procurement Officer
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Bid Protest – Bid 3174-JD-05/17/2019

The following items make up Hussey Seating bid protest. We are asking for consideration for a Re-Bid or to select Hussey Seating based upon the items below.

Disputed Item 1:

2.01 Manufacturers Basis of Design – 1. Manufactures proposing an alternate to the proposed telescopic must have 10 years' experience manufacturing the **telescopic model** they are proposing along with 10 years of installations of **this telescopic model** in similar building.

Dispute: Although Irwin Seating has been manufacturing telescopic platforms for 10 years. The Versa Tract system you listed is a new model for this company and it appears they do not have 10 years of installed product of this model in the field. We ask that you verify the versa tract references for 10 years and provide this list to Hussey Seating company as well for confirmation.

Disputed Item 2:

2.05 Seat Fabrication – A.1 Chair System: Seats attached to the metal deck must be the same seat with the same beam attachment but without the fold forward mechanism.

Dispute: You have indicated in your award letter that you are accepting the Solara seat to attach to the metal deck. The Solara is not considered an equally to the Metro seat specified. To verify this, I would suggest you request samples from Hussey Seating and Irwin seating to see the difference in the Metro to the Solara to the Integra. In addition, Irwin needed to bid the Integra for all seat on both the telescopic and fixed metal deck seats as per specifications. Since no points were award to "options" under Irwin variation 3, their base bid did not meet specifications to provide the same seat in all locations. The integra and Solara are not the same seat. Hussey Seating did bid the Metro seat in all locations.

Disputed Item 3:

2.05 Seat Fabrication – A.2.d. Metro seat shall fold forward on the telescopic platforms. The seat mechanism to fold the seats forward must use gas struts and not springs. The fold forward set mechanism must fold a minimum of 14 seats forward at a time.

Dispute: Please confirm that the Integra platform seat you have pick matched specification to fold up to **14 seats** at a time with gas struts, and where has this been done before?

Disputed Item 4:

2.05 Seat Fabrication – A.7 Beam Support: Shall be cast steel support arms. Closed seam steel tube standards are unacceptable.

Dispute: Please confirm that the Solara beam supports are cast steel arms as it does not appear that they are.

Disputed Item 5:

2.09 Accessories/ Standard Telescopic Accessories – H.1: Coin round or roll all edges of exposed metal on top and underneath bleacher to eliminate sharp edges.

Dispute: This is not as much of a dispute as it is a confirmation that this is part of the versa tract as we have not seen this safety feature before in Irwin products. This takes a considerable effort and expense to accomplish.

Disputed Item 6:

Experience / References – Points Awarded

Disputed: Hussey Seating showed very similar projects in size and scope to The Citadel with the same product we proposed to include the Maxam Plus with Metro seats. This scope included various market segments from High School, Collegiate, Private to Professional. This was done to show the various markets that chose this product and how we work with all groups on a professionally level. We have never been ranked this low before with detailing the same product that was proposed, with this cross-market experience. Please clarify why we received so few points for this item.

Disputed Item 7:

Seating Layout – Points Awarded

Disputed: Please clarify why we got so few points for seating layout. Our Layout included 1,212 seats with open space on one end for ADA seating. If you wish this location to include seats, we can easily add seats here.

Sincerely,

Todd Vigil
Director of Project Development
207.251.7187
tvigil@husseyseating.com

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.