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## Protest Decision

**Matter of:** Greenville Office Supply

**Case No.:** 2020-110

**Posting Date:** October 4, 2019

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400017374

**Description:** Statewide Contract for Office Supplies

### DIGEST

Protest alleging fatal errors in the evaluation is denied. The protest of Greenville Office Supply (GOS) 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    | 04/24/2019 |
| Amendment 1 Issued     | 05/28/2019 |
| Amendment 2 Issued     | 06/19/2019 |
| Amendment 3 Issued     | 06/28/2019 |
| Intent to Award Issued | 08/16/2019 |
| Protest Filed          | 08/22/2019 |
| Protest Amended        | 08/28/2019 |

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids to establish state term contracts for office supplies. For the purposes of this solicitation, the State was divided into three (3) regions. Bidders had the option to bid to service the entire State or each region. The bidder winning the statewide contract was not eligible for award of a regional contract. Bids for the statewide contract were evaluated first by selecting the lowest bid from all responsive and responsible bidders who elected to bid on the Statewide contract. This awardee was disqualified from the regional evaluations. For each region, award was made to the lowest responsive and responsible bidders for that region.

To determine the low bid, the State published a market basket of office supply products. Some products were designated as “Exact Match”; others were designated as “Private Label” products. If a product was designated “Exact Match,” bidders provided unit prices for those exact products. For products designated as “Private Label,” bidders were allowed to substitute their private label products and provide unit pricing for the substituted items. Bidders had to bid at least ninety percent (90%) of the total number of items provided in the Market Basket to be deemed responsive. The State also created a “Non-Core” market basket and required bidders to submit the list price for select products in various categories and a percentage discount to be applied to the entire category. The low bid was calculated as follows:

$$\text{Bid Cost} = [0.8 \times (\text{Market Basket Pricing})] + [0.2 \times (\text{Non-Core Pricing})]$$

Bidders were to submit their bids via a pre-populated Microsoft Excel spreadsheet. The evaluated market basket included 688 line items. Bids were received from GOS, Staples Business Advantage and Forms & Supply. Staples Business Advantage was awarded the statewide contract and Forms & Supply, Inc. was awarded the contracts for all three regions.

**ANALYSIS**

GOS’ letter of protest reads as follows:

**Solicitation: 5400017374 State of SC Office Supplies Bid Protest Reasons**

- Incorrect evaluations on GOS unit of measure. See spread sheet for some examples.
- Price unreasonableness on many items. See spread sheet for some examples.
- Reduced number of skus on the Staples offering. 10,600 vs 35,000. The GOS discounts from list price on 35,000 items would be a significant savings for the state over the 10,600 items offered from Staples.

GOS included a spreadsheet in support of its argument of incorrect unit of measure evaluations and price unreasonableness. GOS listed eight items<sup>2</sup> that it claims were incorrectly evaluated based on its submission of a price for a unit of measure different from that specified in the market basket.

| Line | Item       | Description   | Discrepancy  | Correction |
|------|------------|---|--|------------|
| 670  | APD1117    | PAPER,COPIER,20#,11X17,92BRT                              | GOS is a case of 5 reams, FSI and Staples is 1 ream    | 7.27       |
| 679  | CASOX9007  | PAPER,92 BRITE #20,WHT                                    | GOS is a case of 5 reams, FSI and Staples is 1 ream    | 7.27       |
| 685  | APD1117    | PAPER,COPIER,20#,11X17,92BRT                              | GOS is a case of 5 reams, FSI and Staples is 1 ream    | 7.27       |
| 686  | APD8514REC | PPR,30% RECY,92BRT,LGL,500/RM                             | GOS is a case of 10 reams, FSI and Staples is 1 ream   | 3.58       |
| 687  | APD85113HD | PAPER,COPY,20#,LTR,92BRT,3HP                              | GOS is a case of 10 reams, FSI and Staples is 1 ream   | 3.63       |
| 574  | SAN65801   | PEN,GEL,207 IMPACT,1.0MM,BE                               | GOS is a box of 12 pens, FSI and Staples is 1 each pen | 1.40       |
| 667  | DMR982001  | Copy Paper, Ultra 98, 8-1/2"x11", 500 Sh/RM, White        | GOS is a case of 10 reams, FSI and Staples is 1 ream   | 3.40       |
| 508  | DIX12872   | Oriole Pencils, No. 2 Lead Grade, Nontoxic, 12/pk, Yellow | GOS is 6 dz, FSI and Staples is 1 dz                   | 0.92       |

For example, GOS line items 670 and 678 asked for the price for one ream (500 sheets) of 20# 11 x 17 copier paper equivalent to Forms & Supply SKU APD1117. GOS submitted a price of \$36.35. In identifying its equivalent product, GOS indicated that its unit of measure was a carton and the quantity of unit of measure was 5. GOS argues that its price was based on its packaging

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<sup>2</sup> GOS bid on 598 line items. To the extent GOS wants to challenge evaluations on anything other than the eight listed items, this fails to state a ground with enough specificity to put all the parties on notice of the issues to be decided. *Appeal by Blue Cross and Blue Shield of South Carolina*, Panel Case No. 1996-9.

of a carton containing 5 reams of paper and that the procurement officer improperly evaluated its bid by not dividing its unit of measure price by 5. GOS argues that the procurement officer should have reduced its unit price to \$7.27 per ream for evaluation purposes. The other six items GOS identified followed the same pattern.

Section 11-35-1520(6) requires that bids be accepted unconditionally and without alteration.

The solicitation alerted bidders of potential issues with the units of measure:

Please bid accordingly to the unit of measure (UOM) indicated in Attachment A Cost Submittal Spreadsheet Amend 2. By bidding on a SKU you understand and acknowledge that the UOM provided is accurate and that the bid price provided is binding. The bidder will be responsible for any potential discrepancies in UOM.

[Solicitation, Page 39]

Regulation 19-445.2085(B) provides:

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.

(emphasis added)

Applying the discrepancies identified by GOS reduced its market basket price from \$6,866,141 to \$6,685,294. The original market basket bid prices were as follows:

| Market Basket Comparison |                      |
|--------------------------|----------------------|
| Vendor                   | Total Evaluated Bid* |
| Greenville               | \$6,866,141          |
| FSI                      | \$6,106,238          |
| Staples                  | \$5,887,835          |

\*570 items out of the potential 633 total items were bid on by all 3 vendors

Correcting for the eight instances raised by GOS does not change the relative standing of the bidders:

| Market Basket Comparison |                      |   |
|--------------------------|----------------------|---|
| Vendor                   | Total Evaluated Bid* | Greenville's Original Market Basket Bid |
| Greenville               | \$6,685,294          | \$6,866,141                             |
| FSI                      | \$6,106,238          |   |
| Staples                  | \$5,887,835          |   |

\*570 items out of the potential 633 total items were bid on by all 3 vendors

Even if the bid modifications are allowed there is no change in the result. This issue of protest is denied.

GOS next alleges that in eleven instances<sup>3</sup> the prices bid by Staples are unreasonably low:

| Line | Item         | Description   | Issue                             | Staples Price Bid | GOS Bid Price | FSI Price |
|------|--------------|---|-----------------------------------|-------------------|---------------|-----------|
| 292  | AVES160      | Laser Labels, Mailing, 1"x2-5/8", 3000/BX, White            | Staples Price is Unreasonably Low | 13.02             | 20.69         | 16.89     |
| 665  | FSICS8511    | PPR,CPY,8-1/2X11,20#,92 BRIGHT                              | Staples Price is Unreasonably Low | 26.13             | 29.99         | 30.50     |
| 668  | APD8511      | PAPER,COPY,20#,8.5X11,92 BRT                                | Staples Price is Unreasonably Low | 26.13             | 29.99         | 30.50     |
| 37   | MMM559VAD6PK | Easel Pads, Self-stick, Plain, 30 Shts, 25"x30',6/CT, White | Staples Price is Unreasonably Low | 61.54             | 93.50         | 72.17     |
| 674  | CASOX9001    | PAPER,XERO,WHT,8.5X11,20#                                   | Staples Price is Unreasonably Low | 26.13             | 29.99         | 30.50     |
| 420  | SWI74535     | Electric Punch, 28 Sht Cap, 3HP, 9/32" Size, Platinum       | Staples Price is Unreasonably Low | 75.96             | 125.02        | 105.59    |
| 547  | 30001        | SHARPIE FINE PERM BLACK 12/DZ                               | Staples Price is Unreasonably Low | 4.10              | 6.98          | 5.48      |
| 473  | BICWOTAP10   | Correction Tape, 1/5"x39.4', Single Line, 10/BX, White      | Staples Price is Unreasonably Low | 5.63              | 11.17         | 8.81      |
| 410  | OIC99914     | Paper Clips, Giant, .045 Gauge, 1000/PK, Silver             | Staples Price is Unreasonably Low | 0.33              | 3.90          | 2.83      |
| 505  | 451078       | TICONDEROGA YELLOW #2 PENCL 72                              | Staples Price is Unreasonably Low | 5.20              | 12.88         | 7.14      |
| 100  | SAN80001     | Dry-erase Markers,Chisel Point,Nontoxic,12/DZ, Black        | Staples Price is Unreasonably Low | 5.93              | 9.91          | 7.83      |

GOS does not allege unbalanced bidding or that some line-item prices were overstated. The Code does not prohibit the State from accepting below-cost bids from responsible bidders. Regulation 19-445.2070 does authorize the contracting officer to reject unreasonably priced bids, but a bid is not unreasonable simply because it is below-cost. For example, the bidder may be attempting to buy-in to the market, might have excess inventory, or the products solicited might be at end-of-life. Whether the awardee can perform the contract at the price offered is a matter of contract performance. *See Appeal by Catamaran*, Panel Case No. 2015-2. This issue of protest is denied.

<sup>3</sup> See footnote 2, above.

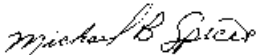
Finally, GOS states that it offers 35,000 “Non-Core” products while Staples only offers 10,600 “Non-Core” products and that its larger inventory would result in greater savings to the State for “Non-Core” items.

The solicitation did not require bidders to provide a minimum number of “Non-Core” items and the quantity of “Non-Core” inventory items did not factor in the evaluation or award of these contracts. If GOS considered this to be a significant issue for evaluation, it could have raised this issue during the question and answer period or as a protest of the solicitation. However, Section 11-35-4210(1)(b) prohibits raising this as a protest of the award. This issue of protest is denied.

## **DECISION**

For the reasons stated above, the protest of Greenville Office Supply is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

Attachment 1

**08.28.19**

**To: Chief Procurement Officer  
Materials Management Office  
STATE OF SOUTH CAROLINA  
1201 MAIN STREET, SUITE 600  
COLUMBIA SC 29201**

**From: Greenville Office Supply  
310 E Frontage Road  
Greer SC 29651**

**Solicitation: 5400017374 State of SC Office Supplies Bid Protest Reasons**

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- Reduced number of skus on the Staples offering. 10,600 vs 35,000. The GOS discounts from list price on 35,000 items would be a significant savings for the state over the 10,600 items offered from Staples.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2019)*

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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.**