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Protest Decision

Matter of: Creative Bus Sales, Inc.
Interstate Transportation Equipment, Inc.

Case No.: 2022-113, 2022-114

Posting Date: November 9, 2021

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400021385

Description: STC ADA Buses and Purpose Built Vehicles

DIGEST

Protests that apparent successful bidder is not responsive is granted. The protest letters of Creative Bus Sales, Inc. (CBS) and Interstate Transportation Equipment, Inc. (ITE) are included by reference. (Attachments 1 and 2 respectively)

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:	06/09/2021
Amendment 1 Issued	07/16/2021
Amendment 2 Issued	08/18/2021
Amendment 3 Issued	09/01/2021
Intent to Award Posted	10/19/2021
CBS Protest Received	10/14/2021
ITE Protest Received	10/28/2021

The South Carolina State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids (IFB) on June 9, 2021, to establish a state term contract for ADA Buses and Purpose Built Vehicles. The solicitation included five (5) line items:

- Item 1 - ADA Cutaway Bus 12x2x1
- Item 2 - ADA Cutaway Bus 12x2x1 Low Floor
- Item 3 - ADA Cutaway Bus 20x2x1
- Item 4 - ADA Cutaway Bus 24x2x1
- Item 5 - Purpose Built, Specialty, ADA Compliant

Award was to be made to the two lowest priced responsive and responsible bidders for each line item. Bidders were instructed to submit their pricing via a spreadsheet attached to the solicitation to determine the “Evaluated Amount” for each line item they wished to bid on. (Solicitation, Page 47) In addition to a description of the vehicle being bid, bidders were required to provide a base price and prices for each of the listed option that could be either added or deleted to the base price. The “Evaluated Amount” was calculated by adding 25% of the total of all add option prices to the base price and subtracting 25% of the total delete option prices.

CBS submitted bids for all five vehicles, including a second bid for line item 2, and all were all determined to be non-responsive for failure to offer all add-on and deductions as follows:

- 1. Attachment D 12x2x1 StarTrans** – No engine downgrade
- 2. Attachment E 12x2x1 Low Floor Arboc** – No chassis upgrade, no engine downgrade
- 3. Attachment E 12x2x1 Low Floor Champion** – No chassis upgrade, no engine downgrade, no alternate chassis engine brand.
- 4. Attachment F 20x2x1 StarTrans** – No chassis upgrade, no engine downgrade, no alternate chassis engine brand
- 5. Attachment G 24x2x1 StarTrans** – No chassis upgrade

ITE bid on two (2) vehicles and was determined to be non-responsive for line item 1 for failure to offer on all add-on and deductions as follows:

1. **Attachment D 12x2x1 Coach and Equipment** – No engine downgrade, and no alternate chassis/engine brand offered.

Palmetto Bus Sales (PBS) submitted bids for four (4) vehicles, including two (2) for line item 5, three (3) of which were determined to be non-responsive as follows:

1. **Attachment H ADA Bus and Purpose-Built Vehicle Med- Transit MTR-27-1-B** - No chassis upgrade
2. **Attachment F 20x2x1 StarCraft** – No Chassis Upgrade
3. **Attachment G 24x2x1 StarCraft**- No Chassis Upgrade

An Intent to Award was posted on October 19, 2021 to ITE for line item 5 and to PBS for line items 1 and 5. There was no award for line items 2, 3, or 4. CBS filed an initial protest of this award on October 26, 2021 followed by an amended letter of protest on October 29, 2021. ITE filed its letter of protest of this award on October 28, 2021.

ANALYSIS

CBS protests the award for Line Item 1:

Both competitors submitted an incomplete price workbook. This should deem their proposal non responsive. We find this to be a similar issue to our discussion of not completing the price sheet to entirety as deeming our proposal non responsive. On the 12 x 2 x 1 neither competitor had a line item or price for the 3 point seating that was removed from the specifications during Amendment #3, however, 3 point seating was always listed as an option to price. Both competitors removed the listing from the price sheet or did not complete the price sheet properly. It is clearly stated that proposers are not to alter or amend the price proposal workbook.

Attachment D to the original solicitation included the following requirement for Line Item 1:

1. Each seat position shall be equipped with 3-pt seat retractable (USR) restraint belts with push button release and heavy-duty under seat retractors must meet all applicable FMVSS regulations.

This requirement was modified in the Attachment D to Amendment 3 as follows:

1. Each seat position shall be equipped with 2 ~~3~~-pt ~~GO-ES~~ bench seat retractable (USR) restraint belts with push button release and heavy-duty under seat retractors must meet all applicable FMVSS regulations.

The spreadsheet used to determine the “Evaluated Amount” was published as an attachment to Amendment 2 and requested pricing for the addition of the following option:

3pt GO-ES Seat (per seat)

There were no subsequent modifications to the spreadsheet. PBS deleted this row from the spreadsheet and no pricing for this option was included in its “Evaluated Amount.” PBS’ bid for Line Item 1 should have been rejected as non-responsive.

ITE also took exception to the PBS bid:

Palmetto Bus Sales

Offered a compliant base bid on a Ford E-350 chassis with Starcraft bus body. Palmetto was awarded a contract. Alternate brand chassis, entered \$0., no description listed. no brand/model as required by the pricing entry worksheet to "be specific" (Attachment D in the solicitation) Engine downgrade option, entered \$300. deduct, no description listed, no brand/model as required by the pricing entry worksheet to "be specific" (Attachment D in the solicitation) (NOTE: there is no engine downgrade available from Ford Motor Company that meets the solicitation requirements of minimum of 305HP, see attached) (as confirmed by the other 2 bidders: Interstate provided "not applicable" as none is available, Creative Bus Sales offered no response as none is available) Driver's Seat Upholstery upgraded, entered \$0. no description listed, no brand/model as required by the pricing entry worksheet to "be specific" (Attachment D in the solicitation)

We are protesting the ITA to Palmetto Bus Sales as being non-compliant based on their bid submitted.

The spreadsheet requested price to be deducted for an “Engine Downgrade – one Level below standard spec (same manufacturer).” PBS submitted a \$300.00 price for this option. ITE did not submit a price and included a comment that this option was “not applicable.”

CBS did not submit a price or comment for this option and in its letter of protest confirmed the unavailability stating:

Palmetto Bus Sales stated in their 12 x 2 x 1 proposal that a engine down grade is available. Ford Motor Company does not offer any other engines than a 7.3L V-8 Gasoline in a E-Series product.

CBS protests that providing pricing for options that are not available violates the Certificate of Independent Price Determination found on page 6 of the Solicitation.

From Page 6

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)
GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON
THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION
UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS
AND OTHER APPLICABLE LAWS

CBS is of the understanding by offering products on line items listed in the Price Workbook that are not available to the industry falls under violation of the statement above. The proposers making offers with engine downgrades and chassis adjustments where not available is considered giving false, misleading, or incomplete information to the State. Palmetto Bus Sales stated in their 12 x 2 x 1 proposal that a engine down grade is available. Ford Motor Company does not offer any other engines than a 7.3L V-8 Gasoline in a E-Series product. To propose this as an option is False, Misleading, and Incomplete Information given. Interstate Transprotation (sic) Equipment also stated in their proposal Not Applicable.

However, in this case the fault lies with the Solicitation. An IFB must be awarded to the lowest priced responsive and responsible bidder. Requiring pricing for an option that is not available renders this solicitation inoperable since the flawed requirement is material and cannot be waived as a minor informality or irregularity.

While not an issue of protest, the examination of the pricing necessitated by these protests did give rise to concerns about unbalanced bidding. Regulation 19-445.2122(C) provides:

All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. If the responsible procurement officer determines that unbalanced pricing may increase performance risk (e.g., it is so unbalanced as to be tantamount to allowing an advance payment) or could result in payment of unreasonably high prices, she may conclude that the offer is unreasonable as to price.

Reviewing the bids for the following two options shows a wide variation in pricing which may indicate unbalanced bidding:

Passenger Seats: Upgrade to next upholstery level above standard (Including Moisture Barrier)
PBS bid \$25.00, ITE bid \$57.00, CBS bid \$607.00

Driver Seat: Upgrade to next upholstery above standard
PBS bid \$0.00, ITE bid \$193.00, CBS bid \$18.00

DECISION

For the reasons stated above, protests of Creative Bus Sales and Interstate Equipment are granted. The award to Palmetto Bus Sales is cancelled. The solicitation is cancelled as inoperable, and the procurement is remanded to the State Fiscal Accountability Authority for resolicitation.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



Letter of Protest - Formal

State of South Carolina
1201 Main Street Suite 600
Columbia, SC 29201
Attn: Chief Procurement Officer
CC: protest-mmo@mmo.state.sc.us

Thank you and the State of South Carolina for the opportunity to submit a response to Solicitation 5400021385, STC ADA Buses and Purpose-Built Vehicles.

After careful review of the submittals and our discussion with your team, CBS would like to continue to pursue a formal protest of the intent to awards for Solicitation 5400021385.

Our findings are as follows:

Both competitors submitted an incomplete price workbook. This should deem their proposal non responsive. We find this to be a similar issue to our discussion of not completing the price sheet to entirety as deeming our proposal non responsive. On the 12 x 2 x 1 neither competitor had a line item or price for the 3 point seating that was removed from the specifications during Amendment #3, however, 3 point seating was always listed as an option to price. Both competitors removed the listing from the price sheet or did not complete the price sheet properly. It is clearly stated that proposers are not to alter or amend the price proposal workbook. See Attached Amendment #2 Pricing Workbook.

From Page 6

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008) GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS

CBS is of the understanding by offering products on line items listed in the Price Workbook that are not available to the industry falls under violation of the statement above. The proposers making offers with engine downgrades and chassis adjustments where not available is considered giving false, misleading, or incomplete information to the State. Palmetto Bus Sales stated in their 12 x 2 x 1 proposal that a engine down grade is available. Ford Motor Company does not offer any other engines than a 7.3L V-8 Gasoline in a E-Series product. To propose this as an option is False, Misleading, and Incomplete Information given. Interstate Transprotation Equipment also stated in their proposal Not Applicable.

CBS would also like the State of South Carolina to conduct an independent cost estimate on Palmetto Bus Sales proposed offer. Interstate and CBS are relatively close in comparison in price. Palmetto Bus Sales proposal does not line up with industry standard pricing given in other similar state contracts that

Contact Us

888.633.8380

CreativeBusSales.com



Creative Bus Sales

THE NATION'S LARGEST BUS DEALER SINCE 1980

CBS holds with same manufacture offered. Please confirm Palmetto Bus Sales has included all required materials per the specifications and that they will hold their pricing firm for the initial term.

CBS appreciates you evaluating our protest. Our company never likes to protest, however, we feel in this case there is just cause to protest an award.

Sincerely,

Marcus Hoffman | Bid Manager

Creative Bus Sales, Inc.

800-326-2877 x508

marcush@creativebussales.com



Interstate Transportation Equipment, Inc.

P.O. Box 9163 • 2511 Trotter Road • Columbia, SC 29290

Telephone (803) 776-5041 • Toll Free (800) 726-0779 • Fax (803) 776-3527

October 28, 2021

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

Re: Solicitation # 5400021385, Intent to Award (ITA) for Line Item # 1 (ADA Bus, 12 x 2 x 1)

Thank you for the opportunity to participate in the above solicitation for ADA Buses and Purpose-built vehicles. We received the copies of the submitted bid documents for Line Item 1, from our FOIA request, these copies were received via e-mail 10/27/21 at 3:47PM from Vivian Alston. After reviewing these items, Interstate Transportation Equipment submits the following to SCMMO:

Palmetto Bus Sales

Offered a compliant base bid on a Ford E-350 chassis with Starcraft bus body.
Palmetto was awarded a contract.
Alternate brand chassis, entered \$0., no description listed, no brand/model as required by the pricing entry worksheet to "be specific" (Attachment D in the solicitation)
Engine downgrade option, entered \$ 300. deduct, no description listed, no brand/model as required by the pricing entry worksheet to "be specific" (Attachment D in the solicitation)
(NOTE: there is no engine downgrade available from Ford Motor Company that meets the solicitation requirements of minimum of 305HP, see attached) (as confirmed by the other 2 bidders: Interstate provided "not applicable" as none is available, Creative Bus Sales offered no response as none is available)
Driver's Seat Upholstery upgraded, entered \$ 0. no description listed, no brand/model as required by the pricing entry worksheet to "be specific" (Attachment D in the solicitation)

We are protesting the ITA to Palmetto Bus Sales as being non-compliant based on their bid submitted.

Interstate Transportation Equipment

Offered a compliant base bid on a Ford E-350 chassis with Coach & Equipment bus body.
Interstate was excluded from a contract award based on not having available an OPTIONAL "Engine downgrade" or "alternate brand chassis". The pricing entry worksheet (Attachment D) in the solicitation, clearly states in the instructions "NOTE: If add below is included in the base price or not available" ... be specific. Interstate listed for alternate chassis "not available, Ford only" and engine downgrade "not applicable" (see attached from Ford Motor Company)

We are protesting the ITA and we are seeking a remedy of our fully-compliant bid with Ford E-350/Coach & Equipment bus be awarded a contract.

Thank you for your assistance in this matter.

Yours truly,

A handwritten signature in blue ink that reads "Robert D. Coleman".

Robert D. Coleman
President

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2020 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.