

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

DECISION

In Re: Protest of Palmetto Traffic Group,  
LLC

CASE NO. 2014-107A

Protest of Intent to Award to Quality  
Counts, LLC for Traffic Data Collection  
Services for the Department of  
Transportation, Solicitation No. #  
5400006878

POSTING DATE: September 15, 2014

MAILING DATE: September 15, 2014

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation was issued by the South Carolina Department of Transportation (DOT) for Traffic Data Collection Services. The intended award to Quality Counts, LLC was protested by prime contractor Short Counts, LLC and its subcontractor Palmetto Traffic Group, LLC (Palmetto). The Chief Procurement Officer for Goods and Services issued a ruling on the Short Counts protest. (CPO Case 2014-108) That ruling is under appeal to the South Carolina Procurement Review Panel. The CPO denied the protest of subcontractor Palmetto on the grounds that it was not an actual or prospective bidder or offeror and therefore lacked standing to protest the award. (CPO Case 2014-107) On appeal, the Panel interpreted Section 11-35-4210(b) to include actual subcontractors. It found that Palmetto, as an actual subcontractor, had the right to protest the award and remanded Palmetto's protest to the CPO. (Panel Case 2014-3) The CPO for Goods and Services retired and the Chief Procurement Officer for Information Technology<sup>1</sup> held a hearing on September 3, 2014 to review the protest of Palmetto. Present at the hearing were Palmetto, Quality Counts represented by John E. Schmidt III, Esquire, and the Department of Transportation represented by Amanda Taylor, Esquire.

### **Findings of Fact**

The following dates are relevant to the protest:

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

RFP Issued:	November 7, 2013[Ex. 1]
Amendment 1 Issued	November 7, 2013 [Ex. 2]
Proposals Opened:	December 10, 2013
Intent to Award Posted	February 21, 2014
Protest of Palmetto Received:	February 25, 2014
CPO Hearing of Palmetto Protest:	May 15, 2014
CPO Decision	May 29, 2014
Panel Remand of Palmetto Protest:	July 31, 2014

## Discussion

This solicitation was issued by the South Carolina Department of Transportation (SCDOT) seeking firms or individuals to provide **Traffic Data Collection Services**, in relation to the collecting, processing, uploading, and reporting of traffic data. All the collected traffic data counts are for a calendar year at traffic data collection sites designated by the SCDOT and located in one of the forty-six (46) counties in South Carolina. This is a 3 year contract with the right to extend for up to 2 additional years. During the first year, the SCDOT anticipates approximately 7,000 hourly volume counts, 750 ramp hourly volume counts, 1300 classification counts (to include volume and speed), and 30 portable Weigh-in-Motion counts. The solicitation included three evaluation criteria:

1. Cost associated with the Scope of Work and terms and conditions as outlined in the solicitation for the total potential five (5) year contract. - 50%
2. Experience and Qualifications as detailed in the Scope of Work - 30%
3. Traffic Data Collection Methodology and Equipment as detailed in the Scope of Work - 20%

The cost proposal consisted of two lots. Lot A included 82 line items comprised of various classifications e.g. non-directional, directional, and ramp volume counts with multiple volume bands for each classification. The solicitation also included a weighting factor for each volume band. Lot B had 8 line items.

Palmetto protests the Intent to Award Lot A stating that it had “questions and concerns” about the following:

- A few particular issues with how the RFP was worded and structured.
- The numbers that Quality Counts, LLC submitted do not add up.
- Short Counts, LLC had cheaper prices for a per ADY count in many categories.
- How Short Counts, LLC scored compared to Quality Counts LLC

Palmetto’s first issue indicates that it has “A few particular issues with how the RFP was worded and structured.” This issue is vague and lacking of any notice of the issues to be decided and is also a protest

of the solicitation. Section 11-35-4210(2)(b) provides that “At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b).” There is nothing in the record to indicate that Palmetto amended its protest. Section 11-35-4210(2)(b) requires that “[a] protest ... must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.” The Procurement Review Panel has ruled numerous times that a protestant must notify all parties of the issues to be decided with sufficient particularity. See *Appeal by NBS Imaging Systems*, Panel Case No. 1993-16 (challenge to broad areas of the RFP were too vague; more complex solicitations require greater specificity in protest). The Procurement Review Panel has eschewed overly technical analyses of protest letters. The Panel has required that the protest must in some way alert the parties to the general nature of the grounds for protest. *Protest by Sterile Services Corporation*, Panel Case No. 1983-17. An effective way to do this is by alleging that some provision of the solicitation has been ignored, or that the award of the contract has violated some statute or regulation. *Appeals of Logisticare Solutions, LLC, and Medical Transportation Management, Inc.*, Panel Cases Nos. 2011-1 and 2011-2 (Order on motion to dismiss issued May 11, 2011); *cf Appeal by Coastal Rapid Public Transit Authority*, Panel Case No. 1992-16 (protestant must show the State departed from standards set forth in the Procurement Code and the RFP). In similar fashion, Palmetto’s third issue of protest, that its prices are cheaper in many categories, lacks enough specificity to put the parties on notice of the issue of protest since this was an RFP with other evaluation criteria.

Palmetto’s second issue is that the numbers that Quality Counts, LLC submitted do not add up. Quality Counts submitted the same price for all the volume bands in each classification. Short Counts and Palmetto submitted a slightly higher price for the lower volume bands and lower pricing as the volume increased. In the lower volume bands Quality had the lower price and in the higher volume bands Short Counts had the lower price. Palmetto argues that if the cost evaluation were based on the highest volume band for each classification, Short Counts would have the lowest overall price. However, the converse is also true, that if the evaluation were based on the lowest volume band in each classification, Quality Counts would have the lowest cost. Regardless, the procedure to be used to evaluate cost was set forth in the solicitation. Each volume band in each category was assigned a weight and that weight was published in the solicitation. Any protest of that process should have been made as a protest of the solicitation and cannot be made as a protest of the award.

The fact that Short Counts had the lower price in some volume bands would indicate that Quality's pricing was not significantly out of line with the cost to perform the service and not materially unbalanced.<sup>2</sup>

Palmetto's third point was that Short Counts, LLC had cheaper prices for a per ADT count in many categories. Again, this was a Request for Proposals and the evaluation of cost was established and published in the solicitation. There is no evidence in the record to indicate that SCDOT failed to execute the cost evaluation exactly as prescribed in the solicitation.

Palmetto did not address the final issue: How Short Counts, LLC scored compared to Quality Counts LLC and that issue is dismissed.

### **Determination**

For the reasons stated above, the protest of Palmetto Traffic Group, Inc. is denied.

For the Materials Management Office



Michael B. Spicer  
Chief Procurement Officer

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<sup>2</sup> The Procurement Review Panel recently established the standard for determining if a bid or cost proposal is unbalanced. *Appeal by Advanced Imaging Systems, Inc.*, Panel Case 2013-7. There, the Panel ruled that:

... the following elements must be proven in the instant case to establish a materially unbalanced bid: (1) there must be evidence showing that some prices are significantly less than cost for some line items; (2) there must be evidence showing that some prices are significantly more than cost for some line items; and (3) there is a reasonable doubt that the bid will result in the lowest overall cost to the State despite being the low evaluated bid.

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised June 2013)*

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 108.1 of the 2014 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  
1105 Pendleton Street, Suite 202, 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.**

Attachment 1

**From:** Thomas B White

**Sent:** Tuesday, February 25, 2014 11:56:25 PM (UTC-05:00) Eastern Time (US & Canada)

**To:** Protest-MMO

**Subject:** Protest for Solicitation 5400006878 Lot A Traffic Data Collection Services

Mr. Covey,

We would like to protest this Intent of Award for Lot A Solicitation number **5400006878**. We would like to go before the review panel as we have several questions and concerns to be asked.

- A few particular issues with how the RFP was worded and structured
- The numbers that Quality Counts, LLC submitted do not add up
- Short Counts, LLC had cheaper prices for a per ADT count in many categories
- How Short Counts, LLC scored compared to Quality Counts, LLC

Also, Short Counts, LLC has a few concerns that they would like to share with the review panel as well.

Thanks,



*Transportation Planning and Data Collection*

Palmetto Traffic Group, LLC

Thomas B. White

102 Pressley Dr.

Clemson, SC 29631