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CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE  
CHAIRMAN, HOUSE WAYS AND MEANS

## Protest Decision

**Matter of:** MTM Recognition Corporation

**Case No.:** 2016-126

**Posting Date:** February 16, 2016

**Contracting Entity:** State Fiscal Accountability Authority', Division of Procurement Services

**Solicitation No.:** 5400010118

**Contract No.** 4400012291

**Description:** Service Award Pins

### DIGEST

Protest alleging that the successful bidder is not capable of performing the contract for the price bid is denied.

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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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.

## **DISCUSSION**

MTM Recognition Corporation (MTM) protests the Intent to Award a state term contract for Service Award Pins by the Materials Management Office (MMO) to Digital Jewelry Company (Digital) alleging that Digital's bid was non-responsive to a material requirement of the solicitation is denied. MTM's letter of protest is incorporated by reference. [Attachment 1]

MMO issued this Invitation For Bids to establish a state term contract for service award pins for recognition of South Carolina state government employees. These pins are given to state employees as awards for 10, 20, 30, 40, and 50 years of service. The contract to be awarded as a result of this IFB will replace a contract awarded on October 11, 2010. Digital held the previous contract. This IFB includes the same specifications as the previous contract. The 10 and 20 year pins are to be 1/10th karat yellow gold filled. The 30, 40, and 50 year pins are to be 10 karat plumb yellow gold. An Intent to Award was issued to Digital on January 22, 2016 as the lowest responsive and responsible bidder.

MTM protests that, based on gold prices on the global market, it believes Digital did not and is not providing service award pins that meet the specifications provided in the bid.

Section 11-35-1520(10) states that:

Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location specified in the invitation for bids.

Regulation 19-445.2090 requires that:

The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.

Section 11-35-1410(7) defines a responsive bidder:

“Responsive bidder or offeror” means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

Digital’s bid is responsive in that it agreed to meet all the material requirements in the IFB. The solicitation did not include a requirement for the submission of samples or testing of samples prior to award. In response to a question from a potential bidder whether the State sampled from previous orders and performed analysis for metal quality verification, the procurement officer wrote that it “may and reserves the right to do so.” (Amendment 1, page 1)

Section 11-35-1410(6) defines a responsible bidder:

“Responsible bidder or offeror” means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

Digital is the incumbent contractor in good standing and has provided service award pins matching the same specifications since 2012. The quality of those pins has not been questioned. The procurement officer determined that Digital was a responsible bidder. Upon receipt of this protest, the procurement manager sought and received confirmation from Digital of the quality and pricing included in its bid. [Attachment 2]

S. C. Code Ann. § 11-35-2410 provides for the finality of determinations under the IFB process unless “clearly erroneous, arbitrary, capricious, or contrary to law.” MTM has the burden to prove by a preponderance of the evidence that the procurement officer’s determination is clearly erroneous, arbitrary, capricious, or contrary to law.

The Procurement Review Panel has “observed that procurement officers are given broad discretion in making their responsibility determinations because these are a matter of business judgment.” *Appeal by Allied Waste Services*, Panel Case No. 2013-12. The Panel sets a high bar for one challenging these determinations:

In reviewing a determination of non-responsibility, the Panel must decide whether the determination is “clearly erroneous, arbitrary, capricious, or contrary to law.”

S.C. Code Ann. § 11-35-2410(A) (2011). Because Trinity 7 has not challenged the accuracy of the financial information relied upon and has not alleged a statutory or regulatory violation with regard to the non-responsibility determination, the only issue before the Panel is whether or not Ms. Langdale's determination was arbitrary or capricious. Moreover, as the appealing party, Trinity 7 bears the burden of proof before the Panel.... In addition, the Panel has noted that it will not overturn a finding of non-responsibility on the grounds that it is arbitrary or capricious unless the appellant demonstrate[s] a lack of reasonable or rational basis for the agency decision.

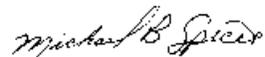
*Appeal by Trinity 7 Security, LLC, Panel Case No. 2012-8 (internal quotations and citations omitted).*

MTM has failed to prove that the procurement officer's findings were clearly erroneous, arbitrary, capricious, or contrary to law.

## **DECISION**

For the reasons stated above, the protest is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

# Attachment 1



## Company Headquarters • Oklahoma City

3201 S.E. 29th Street | Oklahoma City, Oklahoma 73115 | 405.609.6900

### **NOTICE OF PROTEST**

**Contract Number: 4400012291**

**Solicitation 5400010118**

**Service Award Pins**

**Statewide Term Contract**

To: Chief Procurement Officer, Materials  
Date: January 26, 2016

MTM Recognition, hereby timely protests the award of this Solicitation as defined in the attached award.

The information below was provided in MTM's response to the bid. Based on this information, MTM believes the awardee did not bid and is not providing service award pins that meet the specifications provided in the bid.

Prior to the award, we respectfully requested that the pins be tested to see if required specifications were met. We were told in answer to a timely posed question that they had not been tested.

MTM would be glad to quote pins at this price point, but they would be a different pin specification - specifically electroplated, not gold filled.

MTM asks in this protest that all bidders be held to the same specifications as required in the bid information. To do otherwise, invalidates this bid process.

We would be glad to provide any additional information or samples as required to resolve this protest. We look forward to speaking with you soon.

Regards,

Jeff Thompson  
National Accounts Manager  
(405) 609-6844

### **ADDITIONAL INFORMATION AND A REQUEST TO DISCUSS PIN COMPARISONS**

In the questions and responses you provided earlier in this process, you responded that you had not checked the metal quality of the pins you had been receiving but reserved the right to do so.

Our bid is for the pin specified in this bid. MTM is a jewelry manufacturer, not a broker. You will be buying from the manufacturer. We ask you to check the metal quality of our pin to confirm that we have met specifications. If you would like to provide other specifications such as for a gold plated pin, which is much less expensive, we can do that as well.

We simply ask that all suppliers be held to providing pricing for the pin as specified to ensure the integrity of the bid process.

*Recognition...lifts the human spirit*

The reason we raise this issue is you had provided the pricing you are paying for these pins from the last contract. As shown below, it is impossible for the pin as specified to have been priced as provided in the previous contract unless there was some sort of sponsorship or donation to the state by the supplier.

All pin suppliers buy gold at the same rates on the global market. This is a published price. No one is getting a better deal. The difference in price applies to labor, refining, mark-up, shipping, broker fees, etc.

Scenario #1 (using the gold market at the time of the contract award date which is published)

Given:

- London Fix PM close on the date of the contract letter, October 11, 2010, was \$1351.50 per ounce of 24K gold, or \$67.58 per dwt. (pennyweight)
- Converting 24K to 1/10 10K Gold Fill would adjust the pennyweight price to approximately \$5.30. This excludes refining costs to alloy the 24K gold to 1/10 10K Gold Fill.
- The specifications specify a piece weight of 1.2 dwt.
- The contract sell price per unit for the 10 year pins (no stones) was \$2.95

Therefore:

- At a minimum, the total 1/10 10K Gold Fill material cost of the piece is \$6.36
- The material cost exceeds the sell price of \$2.95

Conclusion:

- Is the State of South Carolina receiving an award pin made of 1/10 10K Gold Fill as specified?

Scenario #2 (using the gold market at the lowest market close of 2010 which is published)

Given:

- London Fix PM close on the date of the lowest market close, February 5, 2010, was \$1058.00 per ounce of 24K gold, or \$52.90 per dwt. (pennyweight)
- Converting 24K to 1/10 10K Gold Fill would adjust the pennyweight price to approximately \$4.10. This excludes refining costs to alloy the 24K gold to 1/10 10K Gold Fill.
- The specifications specify a piece weight of 1.2 dwt.
- The contract sell price per unit for the 10 year pins (no stones) was \$2.95

Therefore:

- At a minimum, the total 1/10 10K Gold Fill material cost of the piece is \$4.92
- The material cost exceeds the sell price of \$2.95

Conclusion:

- Is the State of South Carolina receiving an award pin made of 1/10 10K Gold Fill as specified?

We look forward to discussing this with you prior to the award of this pin. Please call us at (405) 609-6844.

Regards,

Jeff Thompson  
National Accounts Manager  
MTM Recognition

## Attachment 2

**From:** [Gordon, Kristen](#)  
**To:** [Spicer, Michael](#)  
**Subject:** FW: Protest of Service Award Pins award of Solicitation 5400010118  
**Date:** Wednesday, February 03, 2016 10:12:12 AM

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Mike,

Below are the emails in which Billy Colucci of Digital Jewelry confirmed that the pins bid meet specifications and confirmed pricing to those specifications.

Thank you,  
Kristen

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**From:** Billy Colucci [mailto:coluccibilly@gmail.com]  
**Sent:** Friday, January 29, 2016 9:57 AM  
**To:** Gordon, Kristen  
**Subject:** Re: Protest of Service Award Pins award of Solicitation 5400010118

Correct

Sent from my iPhone

On Jan 29, 2016, at 9:36 AM, Gordon, Kristen <[kgordon@mmo.sc.gov](mailto:kgordon@mmo.sc.gov)> wrote:

Good morning,

Just to confirm:

The 10 year pins and 20 year pins are 1/10<sup>th</sup> karat yellow gold filled?

The 30, 40, and 50 year pins are 10 karat plumb yellow gold?

Thank you,

<image001.jpg>

Kristen Gordon | Procurement Manager, State Procurement Office  
Division of Procurement Services | SC State Fiscal Accountability Authority  
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-2772 | [kgordon@mmo.sc.gov](mailto:kgordon@mmo.sc.gov)

**NOTE:** Act 121 of 2014 (SC Restructuring Act of 2014) abolished the Budget and Control Board. Effective July 1, 2015, the Division of Procurement Services has been transferred to the State Fiscal Accountability Authority. Please update your contact information.

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**From:** DJC [<mailto:coluccibilly@gmail.com>]  
**Sent:** Friday, January 29, 2016 8:56 AM  
**To:** Gordon, Kristen  
**Subject:** Re: Protest of Service Award Pins award of Solicitation 5400010118

Good morning Kristen ...

I will get this reply to you right away ... but I must ask that my information I share with you remain confidential to your office. I don't want my competition to know my costs ... we have relationships with all of our suppliers for over 40 years now ... so we get extremely favorable pricing ...

but the short answer to all your questions is Yes ... pricing is as quoted - we have reasons why our pricing is lower than most - but I would prefer to explain that over the phone ...

Billy

**Billy Colucci**

*Executive Director*  
*Digital Jewelry Company, LLC*  
<http://www.digitaljewelry.com/>  
<http://djsportawards.webs.com/>  
<https://www.youtube.com/user/billycolucci>  
[www.pinterest.com/billycolucci](http://www.pinterest.com/billycolucci)  
<https://twitter.com/billycolucci>  
<https://www.facebook.com/digitaljewelrycompany>

[info@digitaljewelry.com](mailto:info@digitaljewelry.com)  
877-ANY LOGO

*Phil 4:13*

----- Original Message -----

From: "Gordon, Kristen" <[kgordon@mmo.sc.gov](mailto:kgordon@mmo.sc.gov)>  
To: "Billy Colucci" <[coluccibilly@gmail.com](mailto:coluccibilly@gmail.com)>; "[info@digitaljewelry.com](mailto:info@digitaljewelry.com)" <[info@digitaljewelry.com](mailto:info@digitaljewelry.com)>  
Sent: 1/28/2016 2:04:04 PM  
Subject: Protest of Service Award Pins award of Solicitation 5400010118

Good afternoon,

A protest of the Service Award Pins award of Solicitation 5400010118 has been received.

Please provide confirmation that the prices provided in your bid are the prices to provide the pins per Solicitation 5400010118 specifications.

**10 YEAR PINS SPECIFICATIONS**

1. Metal – 1/10<sup>th</sup> karat yellow gold filled.

2. Stones – None (Delete area on pins for stones)
3. Weight of Pin – 1.2 dwt (+/- 0.1 dwt)
4. Pin must have Antique finish in recessed area(s) and Bright finish in all other areas.

Unit Price: \$2.90

Yes

No

### DIAMOND/AMETHYST SPECIFICATIONS FOR 20, 30, 40, AND 50 YEAR PINS

1. Clarity – SI<sub>2</sub>
2. Color – H through I
3. Size – 0.04
4. Diamonds are to be genuine and full cut
5. Amethyst stones may be genuine or simulated as specified below
6. Pin must have Antique finish in recessed area(s) and Bright finish in all other areas.

### 20 YEAR PIN SPECIFICATIONS

1. Metal – 1/10<sup>th</sup> karat yellow gold filled.
2. Stones – (left to right) simulated amethyst, amethyst, amethyst
3. Weight of Pin – 1.3 dwt (+/- 0.1 dwt)
4. Pin must have Antique finish in recessed area(s) and Bright finish in all other areas.

Unit Price: \$3.90

Yes

No

### 30 YEAR PIN SPECIFICATIONS

1. Metal – 10 karat plumb yellow gold
2. Stones – (left to right) amethyst, diamond, amethyst
3. Weight of pin – 1.8 dwt (+/- 0.1 dwt)
4. Pin must have Antique finish in recessed area(s) and Bright finish in all other areas.

Unit Price: \$85.00

Yes

No

### 40 YEAR PIN SPECIFICATIONS

1. Metal – 10 karat plumb yellow gold
2. Stones – (left to right) diamond, amethyst, diamond
3. Weight of pin – 1.8 dwt (+/- 0.1 dwt)

4. Pin must have Antique finish in recessed area(s) and Bright finish in all other areas.

Unit Price: \$95.00

Yes

No

#### 50 YEAR PIN SPECIFICATIONS

1. Metal – 10 karat plumb yellow gold
2. Stones – (left to right) diamond, diamond, diamond
3. Weight of pin – 1.8 dwt (+/- 0.1 dwt)
4. Pin must have Antique finish in recessed area(s) and Bright finish in all other areas.

Unit Price: \$105.00

Yes

No

**Please provide your response by 5:00 P.M. EST on 2/1/2016.**

<image002.jpg>

Kristen Gordon | Procurement Manager, State Procurement Office  
Division of Procurement Services | SC State Fiscal Accountability Authority  
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-2772 | [kgordon@mmo.sc.gov](mailto:kgordon@mmo.sc.gov)

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## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised September 2015)*

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 111.1 of the 2015 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 209, 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: \_\_\_\_\_

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.**