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THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

MICHAEL B. SPICER  
INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

## Protest Decision

**Matter of:** Econolite Control Products, Inc.

**Case No.:** 2017-137

**Posting Date:** April 4, 2017

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400011681

**Description:** Statewide Traffic Signal Controllers

### DIGEST

Protest of award by single lot is denied, protest of a determination of non-responsiveness is denied, and the protest of an improper award granted. Econolite Control Products' (Econolite) letter of protest is included by reference. [Attachment 1]

### 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 Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

## BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	06/20/2016
Amendment 1 Issued	06/30/2016
Amendment 2 Issued	02/14/2017
Intent to Award Issued	03/17/2017
Protest Received	03/24/2017

This Invitation for Bids was issued by the State Fiscal Accountability Authority (SFAA) to establish a state term contract for Traffic Signal Controllers including replacement parts and associated equipment. The solicitation included specifications for 26 items and required that each item bid be produced by pre-qualified manufacturers. Bids were received from Econolite, TrafficWare Group, Inc., Walker Brothers, Inc., and JQ&G Company. Both Econolite's and JQ&G's bids were determined to be non-responsive and awards were made to TrafficWare and Walker Brothers on March 17, 2017.

## ANALYSIS

Econolite raises four issues of protest. Econolite's initial issue of protest is that the award was made as if there were only one lot comprised of all 26 line items instead treating each line item as a separate lot.

The bidding schedule included 26 line items with estimated quantities and requested Offerors submit a unit price that would be multiplied by the estimated quantities to create an extended price:

The extended price amount is the sum total of the "Quantity" times the "Unit Price" for each line item.

For example, Item 1: Controller Model 2070:  $500 \times \$100.00 = \$5,000.00$

[Amendment 2, Page 33]

The solicitation went on to state that the evaluated amount for award would be the sum of the extended prices for each item:

The “Evaluated Award Amount” will be the sum total of the extended price amounts for each item. The “Evaluated Award Amount” will represent the estimated cost to provide this product for one year. [06-6050-1]

[Amendment 2, Page 33]

This information was published in the original solicitation on June 20, 2016 [Solicitation, Page 34], and was not modified by the subsequent amendments.

Section 11-35-4210(2)(b) requires that:

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added)

Offerors were made award of the State’s intention to award the contract based on the sum of the extended prices of each line item, essentially creating a single lot. The solicitation did not indicate that there would be separate lots. Prospective offerors could have submitted questions, or could have protested the solicitation under Section 11-35-4210(1)(a); but they cannot raise this matter as a protest of the award. This issue of protest is denied.

Econolite protests the disqualification of its bid as non-responsive for failure to bid products on the qualified products list.

#### **QUALIFIED PRODUCTS LIST (JAN 2006)**

Offer only products that are on the qualified products list. [02-2B125-1]

This solicitation requires that all manufactures be pre-qualified by SCDOT to supply Controllers, Cabinets, and Components before they can be eligible to bid. It does not require bidders to be pre-qualified producers of controllers, cabinets, and components in order to bid, but rather that all controllers, cabinets, and components delivered under the proposed contract be produced by a pre-qualified

manufacturers. Therefore, any supplier can bid as long as the source of the controllers, cabinets and components are from a pre-qualified manufacturer.

[Amendment 2, Page 14] (emphasis added)

The products bid by Econolite did not appear on the qualified products list and thus the bid was properly rejected. The requirement that bids would only be accepted on pre-approved products was published in Amendment 2 on February 14, 2017 and could have been timely protested as a protest of the solicitation, but not as a protest of the award. This issue of protest is denied.

Econolite also protests that the award to TrafficWare was improper as the solicitation required Offerors submit prices for each line item and for the complete lot, and TrafficWare submitted a “NO BID” for item 25, a Suitcase Tester for 170 and 2070 control.

The solicitation required:

**OFFERING BY LOT (JAN 2006)**

Offers may be submitted for one or more complete lots. Failure to offer on all items within a lot will be reason for rejection. [02-2B095-1]

[Amendment 2, Page 14] (emphasis added).

**UNIT PRICES REQUIRED (JAN 2006)**

Unit price to be shown for each item. [02-2B170-1]

[Solicitation, Page 16; Amendment 2, Page 15] (emphasis added).

TrafficWare did not submit a unit price for each item nor an offer for the complete lot and was therefore not responsive. The Code only permits awards to responsive offerors. S.C. Code Ann. § 11-35-1520(10). The award to TrafficWare was not made in accordance with the Code. This issue of protest is granted and the award to TrafficWare is cancelled.

Finally, Econolite protests that the bid from TrafficWare should be rejected as unreasonable as to price for line items 2 and 3. Since the award to TrafficWare is cancelled this issue of protest is moot.

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Case No. 2017-137

April 4, 2017

## **DECISION**

Based on the above, the protest of Econolite Control Products, Inc. is granted. Econolite did not protest the award to Walker Brothers and it is not affected by this decision. The decision to award a second contract is remanded to the procurement officer for processing in accordance with the Code.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**From:** [Jim Madden](#)  
**To:** [Protest-MMO](#)  
**Cc:** [Willis, Sheila](#); [Mark Nogaki](#); [Greg Groves](#)  
**Subject:** Protest: Solicitation 5400011681 "SW Traffic Signal Cabinet/Controller Equipment, Replacement Parts & Associated Equipment"  
**Date:** Friday, March 24, 2017 9:09:13 AM

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Ms. Sheila Willis,

Econolite Control Products, Inc would like to formally protest the Intent to Award of Solicitation# 5400011681, dated March 17, 2017. Per the specifications noted in Solicitation Number 5400011681, we have ten days from the date of the notification of award. The solicitation also states that we have the option to submit a protest in writing and send via email or mail a hardcopy of such protest, therefore this email shall serve as our official protest. Please confirm receipt of this protest.

The solicitation referenced above states it is awarded by LOTs in efforts for the state to have competitive bidding environment on each component. Of the 26 line items on the solicitation, Econolite Control Products, Inc. (Econolite) was low-bidder on 6 line items and second low-bidder on 7 line items. The notification of award is shown as a lump sum from what appears to be based off the QPL approvals of three main line items. Line items 1, 2 and 3 are the main components that SCDOT placed on their QPL and what appears to be the reason that the MMO office is awarding a vendor that is \$1,528,116.60 higher than the "approved" lowest offer, being Walker Brothers. However, the MMO is not taking advantage of what should be a competitive environment, by any measure, in awarding this as lump sum. Econolite would request that the procurement office review the section of Responsiveness/Improper Offers section (d) Price Reasonableness. TrafficWare's bid prices of line items 2 and 3 should disqualify them due to unreasonable prices.

The following are questions and comments we would like to bring up for your consideration and response:

1. Why is TrafficWare's bid accepted as they did not bid all line items and their pricing is extremely high compared to the other 3 vendors for line items 2 and 3. How can SCDOT award a contract as lump sum without the vendor bidding all line items? They did not bid nor could you or did you award them Line Item 25 "Suitcase Tester for 170 and 2070 Controllers" which means the MMO is awarding by line items not lump sum bid. If you are awarding by line items, Econolite Control Products should then be reconsidered for the 13 of 26 line items that we were low bidder or second low bidder on.
2. Why is the SCDOT not awarding by low bid "Lot" items? On Line Item# 1 alone, per MMO calculations, by choosing Econolite, SCDOT would recognize a savings of \$172,500 over TrafficWare, under the Total Evaluated Amount, and \$200,905 over Walker Brothers, under the Total Evaluated Amount. This award also has a 5X multiplier stated as the Total Potential Value which then would translate, for the SCDOT, a cost savings of \$862,500 over TrafficWare and \$1,004,525 over Walker Brothers by using the Econolite unit. Econolite is the low bidder on Line Item number 1 and its Controller Model 2070 is on the SCDOT QPL.

3. If our bid was rejected in any fashion, Econolite respectfully requests and explanation as to why.
4. Econolite would like to request the manufacturer that TrafficWare is using for line item 17. (Aluminum Base Extender)

The following two excerpts from the solicitation are the basis for our formal protest:

- *Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]*
- *(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].*

For over 83 years, Econolite has provided transportation departments around the United States with the very best in traffic management solutions. Today, Econolite enjoys the biggest market share in the industry and its equipment can be found at over 1/3<sup>rd</sup> of the intersections across America. It is our desire to bring our solutions to the Great State of South Carolina, and with it, new frontiers in mobility and safety.

Sincerely yours,

**Jim Madden**  
District Sales Manager | Econolite – Carolinas & Virginia

PO Box 11605  
Rock Hill, SC 29731  
Phone: (704) 728-1617  
[www.econolite.com](http://www.econolite.com)

**\*\*\* For Technical Support please call Keith Wilson at (919) 599-8447 \*\*\***

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## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised November 2016)*

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 2016 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 473, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

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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.**