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## Protest Decision

**Matter of:** Thyssenkrupp Elevator Corporation

**Case No.:** 2018-118

**Posting Date:** October 5, 2017

**Contracting Entity:** Winthrop University

**Solicitation No.:** 5400013068

**Description:** Elevator Maintenance for Winthrop University

### DIGEST

Untimely protest is denied. Thyssenkrupp Elevator Corporation's (TEC) 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	07/17/2017
Amendment One Issued	08/18/2017
Intent to Award Issued	09/19/2017
Protest Received	10/04/2017

## ANALYSIS

The State Fiscal Accountability Authority (SFAA) issued this Invitation For Bids (IFB) on behalf of Winthrop University for elevator maintenance on July 17, 2017 and posted an Intent to Award to Charter Elevator on September 19, 2017. TEC protested the award on October 4, 2017. The South Carolina Consolidated Procurement Code authorizes the Chief Procurement Officer to conduct an administrative review of the protest of any actual bidder, offeror, contractor, or subcontractor in accordance with Section 11-35-4210(1)(b) as follows:

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) In this case, the Intent to Award was posted on July 17, 2017. Protests must be received by the Chief Procurement Officer no later than the close of business on the tenth day or, in this case, September 29, 2017. TEC's protest was not received until October 4, 2017 and consequently the Chief Procurement Officer lacks jurisdiction to review TEC's issues of protest.

## DECISION

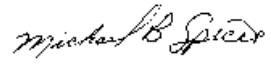
For the reasons stated above, the protest of Thyssenkrupp Elevator Corporation is dismissed as untimely.

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October 5, 2017

For the Materials Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

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Michael B. Spicer

Chief Procurement Officer

# Attachment 1

**From:** [Boemer, Michael D.](#)  
**To:** [Protest-MMO](#)  
**Cc:** [michael.boemer@thyssenkrupp.com](mailto:michael.boemer@thyssenkrupp.com)  
**Subject:** Winthrop Elevator Maintenance RFP: Protest  
**Date:** Wednesday, October 04, 2017 6:42:32 AM  
**Attachments:** [Intent to Award.pdf](#)

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Thyssenkrupp Elevator formally protests this bid due to the following:

Apparent Low Bidder/Low Bidder needs prove/illustrate they can provide the below within the qualifications:

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## V. QUALIFICATIONS

### QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MODIFIED)

(a) This section establishes special standards of responsibility. UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER:

- "Call Back Service" requirements listed in section III under Specifications letter "h".

(b) Provide a detailed, narrative statement with adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation. If you intend for us to consider the qualifications of your key personnel, predecessor business(es), or subcontractor(s), explain the relationship between you and such person or entity. [R. 19-445.2125(F)]  
[05-5010-2]

*Requirement Referenced above.....*

#### a) Call Back Service

##### 1. Response Time:

Response time is defined as the elapsed time between the service call and the Contractor's arrival at the elevator in need with appropriate equipment/tools. Winthrop University shall be billed at agreed upon contracted rate only for work that occurs after normal working hours. The Contractor shall provide twenty-four (24) hour answering service. An answering machine is not acceptable.

##### 2. Normal Working Hours:

Normal working hours are defined as 7:00 am – 5:00 pm, non-holiday Monday through Friday. All other hours are considered After Hours.

##### 3. Critical/Emergency Response Time:

Contractor will be required to provide a thirty (30) minute response time from 7:00 am to 5:00 pm, Monday through Friday, and one (1) hour at all other times for any Critical/Emergency situation reported by Winthrop University.

The Contractor shall provide Service Coverage that is capable of responding to at least two (2) Critical or Emergency Calls simultaneously to any of the elevators under this contract during normal working hours. Critical Service Calls are for elevator failures or operational problems that render the elevator unusable. Emergency calls are for stranded elevators carrying passengers and

shall be responded to within thirty (30) minutes, during normal working hours.

The Contractor shall provide Service Coverage that is capable of responding to one (1) Critical or Emergency Call to any of the elevators under this contract within one (1) hour after normal working hours.

4. Non Emergency Response Time:

The Contractor shall provide two-hour (2) call back response twenty-four (24) hours per day, seven (7) days per week, for all elevators not defined as "critical" or "emergency".

The Contractor shall provide Non Emergency Service Call Coverage for all elevators not defined as "critical", or "emergency". It is intended that Non Emergency Calls be handled as soon as practical and may be deferred outside the twenty-four (24) hour time limit as long it is agreed to by the Facility Maintenance Director or designee. Non Emergency Calls are for non-critical elevator shutdowns or problems with critical elevators that do not effect basic operation such as doors sticking, indicator lights out or other problems that do not hinder the elevator from being operated safely.

The Contractor is advised that a situation might arise whereas a Non Critical Elevator failure may need to be repaired after the designated hours Monday through Friday or on weekends due to events or needs of Winthrop University. In these cases the Contractor will be allowed to bill their normal overtime rate for the time the Elevator Technician is required to repair the problem.

If a service will be charged, the 24 hour Call Center shall notify the Maintenance Contract Manager that the work would be charged before responding. Under no circumstances shall any travel time, mileage, or other expenses be charged to Winthrop University under this contract. All parts and supplies for repairs are covered in the maintenance portion of this contract.

Michael Boerner  
Regional Director Service Sales, Southeast  
ET-AMS/FLD

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[Facebook](#) · [Blog](#) · [Twitter](#) · [LinkedIn](#) · [Google+](#) · [YouTube](#)

**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

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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.**