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## Protest Decision

**Matter of:** Creative Bus Sales

**Case No.:** 2019-122

**Posting Date:** November 15, 2018

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400016183

**Description:** ADA Buses and Purpose Built Vehicles

### DIGEST

Untimely protest is denied. Creative Bus Sales' letter of protest is included by reference.

[Attachment 1]

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (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.

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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

Solicitation Issued	September 06, 2018
Amendment 1 Issued	September 14, 2018
Amendment 2 Issued	September 28, 2018
Amendment 3 Issued	October 08, 2018
Amendment 4 Issued	October 17, 2018
Intent to Award Issued	November 02, 2018
Protest Received	November 14, 2018

## ANALYSIS

Section 11-35-4210(1)(b) grants any actual bidder, offeror, contractor or subcontractor the right to protest the award or intended award of a contract within 10 days of the posting of the award:

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.

Days are defined in Section 11-35-310(11) of the Code as:

"Days" means calendar days. In computing any period of time prescribed by this code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

The Intent to Award for this procurement was posted on November 2, 2018. The tenth day fell on Monday, November 12, 2018. November 12<sup>th</sup> was the day set aside to observe Veterans Day, a federal holiday. By law, the deadline for submission of a timely protest was extended until the end of the next business day or 5:00 PM on November 13, 2018. Creative Bus Sales' protest was received by the CPO at 12:22 PM, November 14, 2018. [Attachment 2] Creative's protest was not received within the statutory time limit and consequently the CPO lacks jurisdiction to consider the protest.

Protest Decision, page 3

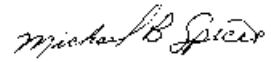
Case No. 2019-122

November 15, 2018

**DECISION**

For the reasons stated above, the protest of Creative Bus Sales is dismissed as untimely.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer



## Creative Bus Sales

State of South Carolina  
SFAA, DIV. of Procurement Services, MMO  
1201 Main Street, Suite 600  
Columbia, SC 29201  
Att: Rob Melpass, Procurement Officer

RE: Intent to Award ADA Buses and Purpose-Built Vehicles

Mr. Melpass,

Thank you for the opportunity to submit an offer on solicitation 5400016183. Our company has received and reviewed the Intent to Award for 5400016183 and there are concerns that bring attention to a formal protest.

Stated below is a reference from 5400016183 on how the contract was going to be awarded to the lowest responsive bidder.

Section VI. Award Criteria  
Page 24

### **CALCULATING THE LOW BID**

Each Offeror will use the attached spreadsheet to provide a "Base Price" that includes all specified items except those identified as "Add" options. Offerors will provide separate pricing for "Add" and "Deduct" options. These are popular options specifically identified in the individual vehicle specifications (see attached spreadsheet). The option prices will be totaled and weighted at 25% of their value as noted in the spreadsheet. The weighted values will then be added to (if an "Add" option) or subtracted from (if a "Deduct" option) the "Base Price" to determine an "Evaluated Amount".

The Intent to Award does not prove the Evaluated Amount as stated above as being the lowest responsive bidder. The Intent to Award states the Lowest Responsive bidder based on the Base Price. This approach does not follow what the State put out in this solicitation. Furthermore, in an FTA contract, if options are not considered in the evaluated method the vehicles are only to be sold as a Base Price vehicle, therefore not giving any flexibility to the end user allowing adjustments as needed.

Please consider our findings above as a protest inquiry. Creative Bus Sales request to see the results of how the State determined the final awards and a better explanation than what was given in the Intent to Award. Also, please postpone all awards until this matter is resolved.

Thank you,

  
Marcus Hoffman  
Bid Manager  
Creative Bus Sales, Inc.

CC: protest-mmo@mmo.sc.gov; remalpass@mmo.sc.gov; tonym@creativebussales.com;  
jeffs@creativebussales.com

## Attachment 2

**From:** Marcus Hoffman  
**To:** [Protest-MMO; Malpass, Rob; Tony Matievich; Jeff Shark](#)  
**Subject:** Protest 5400016183  
**Date:** Wednesday, November 14, 2018 12:21:55 PM  
**Attachments:** [image409417.png](#)  
[CBS Interk to Protest 5400016183.pdf](#)

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Please accept our letter of protest inquiry attached.  
Please contact me if more information is needed.  
Thanks,



**Marcus Hoffman | Bid Manager**

Creative Bus Sales, Inc.  
[MarcusH@creativebussales.com](mailto:MarcusH@creativebussales.com)

O | 602-437-2255 | ext. 508  
C | 602-571-4475

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised June 2018)*

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 2018 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**

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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.**