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## Protest Decision

**Matter of:** H-too-o, Inc. d/b/a Water Mart

**Case No.:** 2021-105

**Posting Date:** August 13, 2020

**Contracting Entity:** Department of Motor Vehicles

**Solicitation No.:** 5400019940

**Description:** Grounds Maintenance Services

### DIGEST

Protest dismissed as untimely and because the protestor was not an actual bidder. The protest letter of H-too-o, Inc. d/b/a Water Mart (WM) 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:	06/09/2020
Amendment 1 Issued	07/07/2020
Intent to Award Posted	07/24/2020
Protest Received	08/06/2020

The Department of Motor Vehicles issued this Invitation for Bids on June 9, 2020 to obtain grounds maintenance services. Intents to Award were posted to multiple bidders on July 24, 2020. WM filed a protest with the CPO on August 6, 2020.

## ANALYSIS

WM protests:

We would like to formally protest the awards for the above solicitation....

We have just found out that above solicitation was sent out and we are a registered vendor and were not notified of it,

We receive emails for all grounds maintenance solicitations and for some reason we did not receive one for this. I believe our name was removed from the list as we have been a contractor with the DMV for 12 years and I want to appeal the award and need to know what steps need to be done to do that.

Three of the contracts were awarded to out of state contractors two of which are the same company using two different names and addresses and FEIN numbers.

Please advise ASAP.

Section 11-35-4210(1)(b) provides:

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have

been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

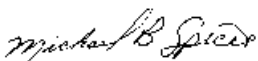
(emphasis added)

The Intent to Award was posted on July 24, 2020. The seventh business day thereafter fell on August 4, 2020. WM's protest was not received by the Chief Procurement Officer until August 6, 2020. WM's protest was not received within the statutory time allowed for protest and consequently the CPO lacks jurisdiction to review any subsequent protest. Further, Section 11-35-4210(1)(b) allows only actual bidders to protest awards. Having failed to submit a bid to the solicitation, WM lacks standing to challenge the award. Finally, even if the CPO had received WM's protest within the statutory limits to protest an award, its failure to received notice of a solicitation could have been raised as a protest of the solicitation and cannot be raised as a protest of the award.<sup>2</sup>

## DECISION

For the reasons stated above, the protest of H-too-o, Inc. d/b/a Water Mart is dismissed as untimely.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

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<sup>2</sup> Even if timely, WM's protest would fail to state a claim. Contractors seeking to do business with the State have an obligation to monitor SCBO and cannot depend on individualized notice from the State.

## Attachment 1

**From:** [H-too-o, Inc. d/b/a Water Mart](#)  
**To:** [Protest-MMO](#)  
**Subject:** [External] Fw: Solicitation 5400019940  
**Date:** Friday, August 7, 2020 8:47:55 AM  
**Attachments:** [CAM Award Statement.pdf](#)  
[Lovin Statement of Award.pdf](#)  
[DBI Statement of Award.pdf](#)

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----- Forwarded Message -----

**From:** H-too-o, Inc. d/b/a Water Mart <jelinekn@bellsouth.net>  
**To:** mspicer@mmo.sc.gov <mspicer@mmo.sc.gov>  
**Sent:** Thursday, August 6, 2020, 09:44:28 PM EDT  
**Subject:** Fw: Solicitation 5400019940

We would like to formally protest the awards for the above solicitation.

Please see below.

Thank you,

Susan Dietrich

----- Forwarded Message -----

**From:** H-too-o, Inc. d/b/a Water Mart <jelinekn@bellsouth.net>  
**To:** William T. Guess <william.guess@scdmv.net>  
**Sent:** Thursday, August 6, 2020, 05:13:03 PM EDT  
**Subject:** Solicitation 5400019940

We have just found out that above solicitation was sent out and we are a registered vendor and were not notified of it,

We receive emails for all grounds maintenance solicitations and for some reason we did not receive one for this. I believe our name was removed from the list as we have been a contractor with the DMV for 12 years and I want to appeal the award and need to know what steps need to be done to do that.

Three of the contracts were awarded to out of state contractors two of which are the same company using two different names and addresses and FEIN numbers.

Please advise ASAP.

Thank you,

Susan Dietrich  
H-too-o, Inc. d/b/a Water Mart  
803-665-9230

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

### *Protest Appeal Notice (Revised June 2019)*

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>

**FILING FEE:** Pursuant to Proviso 111.1 of the 2019 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.**