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THE DIVISION OF PROCUREMENT SERVICES

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MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: Hoffman & Hoffman, Inc.

Case No.: 2021-115

Posting Date: October 16, 2020

Contracting Entity: South Carolina Department of Corrections

Solicitation No.: 5400020360

Description: Air Cleaners

DIGEST

Protest by low bidder of a non-responsive determination is denied. The protest letter of Hoffman & Hoffman, Inc (HH) is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer¹ (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.

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

Solicitation Issued:	09/18/2020
Intent to Award Posted	09/23/2020
Protest Received	09/25/2020

The South Carolina Department of Corrections (DOC) issued Invitation for Bids (IFB) number 5400020360 on September 23, 2020 seeking competition for the acquisition of air cleaners under the emergency procurement provisions found in Section 11-35-1570 of the Consolidated Procurement Code. DOC posted an Intent to Award a contract resulting from IFB 5400020360 to Vision Aire Solutions, LLC on September 23, 2020. DOC also published its intent to award a contract under the emergency provisions of the Code to Vision Aire Solutions in South Carolina Business Opportunities as document number 5400020386 on that same day.² (Attachment 2) HH filed a protest of the award on September 25, 2020.

ANALYSIS

HH protests:

- 1- The project did not allow for “or equal” products.
- 2- The timeline for request for quote from Friday 9/18 to Tuesday 9/22 is an unfair amount of time to provide competitive quote.
- 3- Line Number 0003 PHI PKG5 Package PHI unit is an ozone generating product. See blow (sic) from EPA website on harmful effects of ozone. The PHI PKG5 product creates ozone. Product brochure is misleading. Product does not comply with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions.
- 4- Line Number 0004 PHI PKG9 Package PHI unit is an ozone generating product. See blow from EPA website on harmful effects of ozone. The PHI PKG5 product creates ozone. Product brochure is misleading. Product does not comply with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions.

HH’s first protests that the solicitation did not allow for “or equal” bids. The solicitation did allow for “or equal” bids as follows:

² Other than the fact that both documents refer to the same situation, there is no indication in either IFB 5400020360 or document 5400020386 that these two documents are related.

DESCRIPTIVE LITERATURE -- REQUIRED (JAN 2006)

Your offer must include manufacturer's latest literature showing complete product specifications if you are bidding an equal.

[Solicitation, Page 11]

This issue of protest is denied.

HH next protests that the time allowed to respond to this solicitation is inadequate. DOC determined that the Covid-19 pandemic creates an immediate threat to the health and welfare of the people in its care which warrants acquisition of this equipment as quickly as possible to save lives. Attachments 2 and 3) Section 11-35-1570(A) provides:

Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may award or authorize others to award emergency contracts only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

These products are widely available, and bidders were given as much time as was practicable under the circumstances in accordance with the Code. This issue of protest is denied.

HH's third and fourth issues of protest allege that the products listed in line items 3 and 4 of the bidding schedule are ozone producing products that do not comply with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions.

3- Line Number 0003 PHI PKG5 Package PHI unit is an ozone generating product. See blow (sic) from EPA website on harmful effects of ozone. The PHI PKG5 product creates ozone. Product brochure is misleading. Product does not comply with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions.

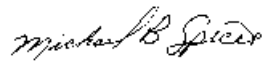
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The solicitation does not require compliance with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions, and alleged violations of federal law are not valid protest grounds S.C. Code § 11-35-40(3). These issues of protest are denied.

DECISION

For the reasons stated above, the protest of Hoffman and Hoffman is denied.

For the Materials Management Office

A handwritten signature in cursive script, reading "Michael B. Spicer".

Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Hunter Wilson](#)
To: [Protest-HHO](#)
Subject: [External] Protest Solicitation 5400020360 - Air Cleaners
Date: Friday, September 25, 2020 12:04:13 PM
Attachments: [image001.png](#)

The following request is to protest solicitation 5400020360.

Request project to rebid due to the following:

1- The project did not allow for "or equal" products.

2- The timeline for request for quote from Friday 9/18 to Tuesday 9/22 is an unfair amount of time to provide competitive quote.

3- Line Number 0003 PHI PKG5 Package PHI unit is an ozone generating product. See blow from EPA website on harmful effects of ozone.

The PHI PKG5 product creates ozone. Product brochure is misleading.

Product does not comply with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions.

EPA Ozone Generators that are sold as Air Cleaners:

"Whether in its pure form or mixed with other chemicals, ozone can be harmful to health."

"When inhaled, ozone can damage the lungs. Relatively low amounts of ozone can cause chest pain, coughing, shortness of breath and, throat irritation. It may also worsen chronic respiratory diseases such as asthma as well as compromise the ability of the body to fight respiratory infections."

<https://www.epa.gov/indoor-air-quality-iaq/ozone-generators-are-sold-air-cleaners#:~:text=Relatively%20low%20amounts%20of%20ozone,body%20to%20fight%20respiratory%20infections>

4- Line Number 0004 PHI PKG9 Package PHI unit is an ozone generating product. See blow from EPA website on harmful effects of ozone.

The PHI PKG9 product creates ozone. Product brochure is misleading.

Product does not comply with UL 867 Air Cleaner Testing and UL 2998 Air Cleaner Validation for Zero Ozone Emissions.

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"When inhaled, ozone can damage the lungs. Relatively low amounts of ozone can cause chest pain, coughing, shortness of breath and, throat irritation. It may also worsen chronic respiratory diseases such as asthma as well as compromise the ability of the body to fight respiratory infections."

<https://www.epa.gov/indoor-air-quality-iaq/ozone-generators-are-sold-air-cleaners#:~:text=Relatively%20low%20amounts%20of%20ozone,body%20to%20fight%20respiratory%20infections>



Hunter Wilson, P.E.
HVAC Sales Engineer

mobile: (803)-413-1933

office: (803)-451-6364

email: hunter.wilson@hoffman-hoffman.com

104 Vantage Point Drive
Cayce, SC 29172

Attachment 2


South Carolina Business Opportunities

SCBO Online Edition

[Back](#) [Ads Main Page](#)

Ad Title:	NOTICE OF EMERGENCY PROCUREMENT		Ad Publish Date:	September 24, 2020
Purchasing Agent/Entity:	Department of Corrections		Bid/Submittal Due Date:	October 1, 2020 - 10:00am
Description:				
NOTICE OF EMERGENCY PROCUREMENT				
Solicitation #:	5400020387	Direct Inquiries To:	RUTHIE BISHOP	
Buyer Phone#:	803-896-8533		Buyer Email:	Bishop.Ruthie@doc.state.sc.us
Delivery Point:	n/a			
Full Details / Download:	http://webprod.cio.sc.gov/SCSolicitationWeb/solicitationAttachment.do?solicitnumber=5400020387			

 OPEN PRINTABLE VERSION

	State of South Carolina Notice of Emergency Procurement	Solicitation: 5400020387 Date Issued: 9/23/2020 Procurement Officer: RUTHIE H. BISHOP, CPPB Phone: (803)896-8533 E-Mail Address: purchasing@doc.sc.gov Mailing Address: SC Department of Corrections Attn: Purchasing Branch 4420 Broad River Road Columbia SC 29210

DESCRIPTION: **NOTICE OF EMERGENCY PROCUREMENT**

USING GOVERNMENTAL UNIT: **SC Department of Corrections**

The Term "Offer" Means Your "Bid" or "Proposal". Your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Paper Offer or Modification" provision.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:	
MAILING ADDRESS: SC Department of Corrections Attn: Purchasing Branch 4420 Broad River Road Columbia SC 29210	PHYSICAL ADDRESS: SC Department of Corrections Attn: Purchasing Branch 4420 Broad River Road Columbia SC 29210

SUBMIT OFFER BY (Opening Date/Time): **10/01/2020 @ 10:00 AM** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED:

CONFERENCE TYPE: Not Applicable DATE & TIME: (As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)		LOCATION: Not Applicable
AWARD & AMENDMENTS	Award will be posted on 10/01/2020 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov	
You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty(30) calendar days after the Opening Date. (See "Signing Your Offer" provision.)		
NAME OF OFFEROR (full legal name of business submitting the offer)	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.	
AUTHORIZED SIGNATURE (Person must be authorized to submit binding offer to contract on behalf of Offeror.)	DATE SIGNED	
TITLE (business title of person signing above)	STATE VENDOR NO. (Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)	
PRINTED NAME (printed name of person signing above)	STATE OF INCORPORATION (If you are a corporation, identify the state of incorporation.)	

OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.) ___ Sole Proprietorship ___ Partnership ___ Other ___ Corporate entity (not tax-exempt) ___ Corporation (tax-exempt) ___ Government entity (federal, state, or local)

COVER PAGE - PAPER ONLY (MAR. 2015)

PAGE TWO

(Return Page Two with Your Offer)

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	_____ Area Code - Number - Extension Facsimile
	_____ E-mail Address

PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause)	ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
_____ Payment Address same as Home Office Address	_____ Order Address same as Home Office Address
_____ Payment Address same as Notice Address (check only one)	_____ Order Address same as Notice Address (check only one)

ACKNOWLEDGMENT OF AMENDMENTS

Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
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PREFERENCES - A NOTICE TO VENDORS (SEP. 2009): On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences. ***ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.*** [11-35-1524(E)(4)&(6)]

PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE: Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)).

_____ In-State Office Address same as Home Office Address _____ In-State Office Address same as Notice Address (check only one)

Notice of Emergency Procurement

Due to the design of The South Carolina Department of Corrections Facilities the Agency is unable to maintain the necessary social distancing guidelines at all times. Therefore, in an effort to help control the spread of the COVID19 within SCDC's inmate population the SCDC is currently installing Ionizing Devices in all of SCDC's Correctional Facilities. The Ionizing Devices will help control the spread of the COVID19 and other viruses as well as bacteria, and mold by removing the hydrogen molecules which controls and helps prevents their airborne transmission. The only feasible method for SCDC to eliminate the COVID19 virus's ability to be transmitted via air or surface contact is needle point bi-polar ionization. The SC Department of Corrections number one priority to provide a safe living space to its inmate population.

The South Carolina Department of Corrections has entered in to an Emergency Procurement with Vision Aire Solutions of Little Mountain, SC to install air cleaning/purification devices in the Level 2 & Level 3 institutions. These units will be installed in the air handling units located within living areas of SCDC Correctional Facilities. The air handling units will transmit ions throughout the inmate living area utilizing the existing ductwork. These ions will prevent the COVID19 virus from being transmitted through the air. .

The South Carolina Department of Corrections selected Vision Aire Solutions by soliciting quotes from multiple Vendors. Vision Aire Solutions was the only Vendor to respond and they have they have the ability to install the units in every Level 2 & 3 Correctional Institution throughout South Carolina. Vision Aire Solutions, LLC can complete one institution per week.

This Emergency Procurement has been put in place in order to avoid a potential threat to public health, welfare, or safety of SCDC Employees and SCDC Inmates as well as the safety and welfare of the private citizens that live in the communities surrounding the SCDC Institutions.

This notice is being posted in the South Carolina Business Opportunities (SCBO) for at least (5) business days as required by SC Code 11-35-4210 (1) (c) Right to Protest

SECTION 11-35-4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement.

(1) Right to Protest.

(c) Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract pursuant to Section 11-35-1560 or Section 11-35-1570 **shall notify the appropriate chief procurement officer in writing of its intent to protest within five business days** of the date that award or notification of intent to award, whichever is earlier, is posted in accordance with this code. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of such 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 in accordance with this code; except that a matter that could have been raised pursuant to sub item (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

Chief Procurement Officer -Materials Management Office
1201 Main Street, Suite 600 -Columbia, SC 29201
Facsimile: 803-737-0639

Attachment 3

JUSTIFICATION FOR

EMERGENCY PROCUREMENT

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of Section 11-35-1570 of the South Carolina Procurement Code and 19-445.2110 of the Rules and Regulations, 1976 South Carolina Code of Laws.

This governmental body proposes to procure _____ Ionizing Devices for _____

_____ all Level II & III Institutions throughout The South Carolina Department of Corrections.

as a emergency procurement from Vision Aire Solutions _____

The basis for this emergency determination and the reason no other vendor is suitable is: _____ Due to the design of The South Carolina Department of Corrections Facilities the Agency is unable to maintain the necessary social distancing guidelines at all times. Therefore, in an effort to help control the spread of the COVID19 within SCDC's inmate population the SCDC is currently installing Ionizing Devices in all of SCDC's Correctional Facilities. The Ionizing Devices will help control the spread of the COVID19 and other viruses as well as bacteria, and mold by removing the hydrogen molecules which controls and helps prevents their airborne transmission. The only feasible method for SCDC to eliminate the COVID19 virus's ability to be transmitted via air or surface contact is needle point bi-polar ionization. The SC Department of Corrections number one priority to provide a safe living and working space to its inmate population along with SCDC employees

At this time SCDC has the following COVID19 statistics:

Employees:	
Staff	Stat
1. Number of COVID-19 POSITIVE employees:	482 (418 Recovered)
2. Number of employees being monitored at home secondary to illness (isolation):	134
3. Number of employees being monitored at home secondary to exposure (quarantine):	18
4. Number of employees being monitored at home secondary to travel (quarantine):	0
5. Number of employees who have completed monitoring to date:	4073
6. Number of employee COVID-19 related Deaths:	2

Inmates	Stat
1. Number of inmates tested:	6692
2. Number of COVID-19 POSITIVE inmates:	2168 (1534)
3. Number of inmates being monitored secondary to illness (isolation):	603
4. Number of inmates being monitored secondary to exposure (quarantine):	5013
5. Number of inmates who have completed monitoring to date:	9339
6. Number of inmate Deaths:	31

The South Carolina Department of Corrections selected Vision Aire Solutions by soliciting quotes from multiple Vendors. Vision Aire Solutions was the only Vendor to respond and they have the ability to install the units in every Level 2 & 3 Correctional Institution throughout South Carolina. Vision Aire Solutions, LLC can complete one institution per week. These units will be installed in the air handling units located within living areas of SCDC Correctional Facilities. The air handling units will transmit ions throughout the inmate living area utilizing the existing ductwork. These ions will prevent the COVID19 virus from being transmitted through the air. . It is the duty of The South Carolina Department of Corrections to ensure the safety and welfare of all SCDC inmates, employees and the public.

September 30, 2020
DATE

SC Department of Corrections
GOVERNMENTAL BODY

AUTHORIZED SIGNATURE

Deputy Director of Administration
TITLE

NOTES: (1) Enter description of goods or services to be procured.
(2) Enter name of emergency contractor.
(3) Enter the determination and basis for emergency procurement.

THE DRUG FREE WORK PLACE ACT APPLIES TO ALL EMERGENCY PROCUREMENTS OF \$50,000 OR GREATER.

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.

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**

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.