

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Petroleum Traders Corporation

Materials Management Office
IFB # 5400007851

Statewide Term Contract
E10 Gasoline Transport - Zone 4

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2014-128

POSTING DATE: July 31, 2014

MAILING DATE: July 31, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed June 13, 2014 by Petroleum Traders Corporation (PTC) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure a statewide term contract for E10 Gasoline Transport-Zone 4 (Coastal). After evaluating the bids received, on June 10, 2014, MMO posted its intent to award to Great Lakes Petroleum Company. PTC protested MMO's intent to award alleging, "Due to a malfunction of the State of South Carolina's procurement website Petroleum Trader's bid submittal was not received."

As the issues to be decided are clear, the CPO makes this decision without benefit of a hearing, based upon an administrative review of the protest letter and the procurement file.

NATURE OF PROTEST

The letter of protest and attachments are attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On May 8, 2014, MMO published the IFB. [Ex. 1]
2. On May 20, 2014, MMO conducted a pre-bid conference.

3. On June 5, 2014, MMO opened the following bids:

<u>Bidder</u>	<u>Bid Amount¹</u>
Great Lakes	\$0.0075
PAPCO, Inc.	\$0.0092
Indigo Energy Partners	\$0.0129
James River Solutions	\$0.0200

[Ex. 2]

4. On June 10, 2014, MMO posted its Intent to Award. [Ex. 3]

5. On June 13, 2014, PTC filed its protest with the CPO.

DISCUSSION

The IFB instructed bidders to submit certain information and to certify compliance with the requirements of the IFB reading:

INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (JAN 2006)

Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]

[Ex. 1, Part VI, Information for offerors to Submit, p. 23]

As with virtually all solicitations, MMO offered to accept bids in either hardcopy or on-line versions. The choice of medium was entirely up to each bidder. PTC chose to submit its bid on-line.

The IFB provided instructions to bidders for submitting bids on-line that read:

ON-LINE BIDDING INSTRUCTIONS (NOV 2007)

IMPORTANT INFORMATION FOR ALL OFFERORS

¹ The bid amounts represent the vendors' mark-up to be added to the index price of each gallon of gasoline.

All Offerors desiring to respond to this solicitation should register and submit your response online. To respond online, you must follow the new South Carolina Enterprise Information System (SCEIS) vendor registration instructions found at the South Carolina Procurement Information Center website address of: <http://www.procurement.sc.gov/> . If you registered as a vendor prior to November 5, 2007, you must either update your existing registration or create a new vendor registration in the new version of the SCEIS system. Once the registration process is complete, the system will generate a SCEIS vendor user ID and password. The Offeror must keep this information current or you will not be able to submit future bids.

OFFERORS ENCOUNTERING REGISTRATION PROBLEMS SHOULD CONTACT:

DSIT Help Desk (803) 896-0001 Select Option 1 then Option 1

Monday – Friday 8:00 AM – 4:30 PM

[SCEIS Service Desk Vendor Ticket Form](#)

Additional vendor instructions concerning submitting offers can be found at:

<http://procurement.sc.gov/PS/vendor/PS-vendor-submitting-offers.phtm>

[Ex. 1, p. 17]

The IFB instructed bidders that chose to submit on line, “After submitting an online response to a solicitation, Offerors may validate their submission with the following steps.” Step 3 of the instructions read, “Make sure the RFX [IFB] you responded to, has your specific bid response number ‘55xxxxxxx’ displayed in the Response Number column and the Response Status column has a status of ‘**Submitted**’ before you log off.” [Ex. 1, Offeror Bid Submission Validation, p. 18]

The link in the IFB leads bidders to South Carolina Enterprise Information System (SCEIS) Vendor Guides and [Simulation for Bid Creation](#).² The instructions contained therein, entitled SRM RFX Bid Creation Guide, include the following:

² <https://uperform.sc.gov/gm/folder-1.11.6068?mode=EU> (last viewed July 30, 2014).

21. Click **Check** button to ensure there are no **1** errors

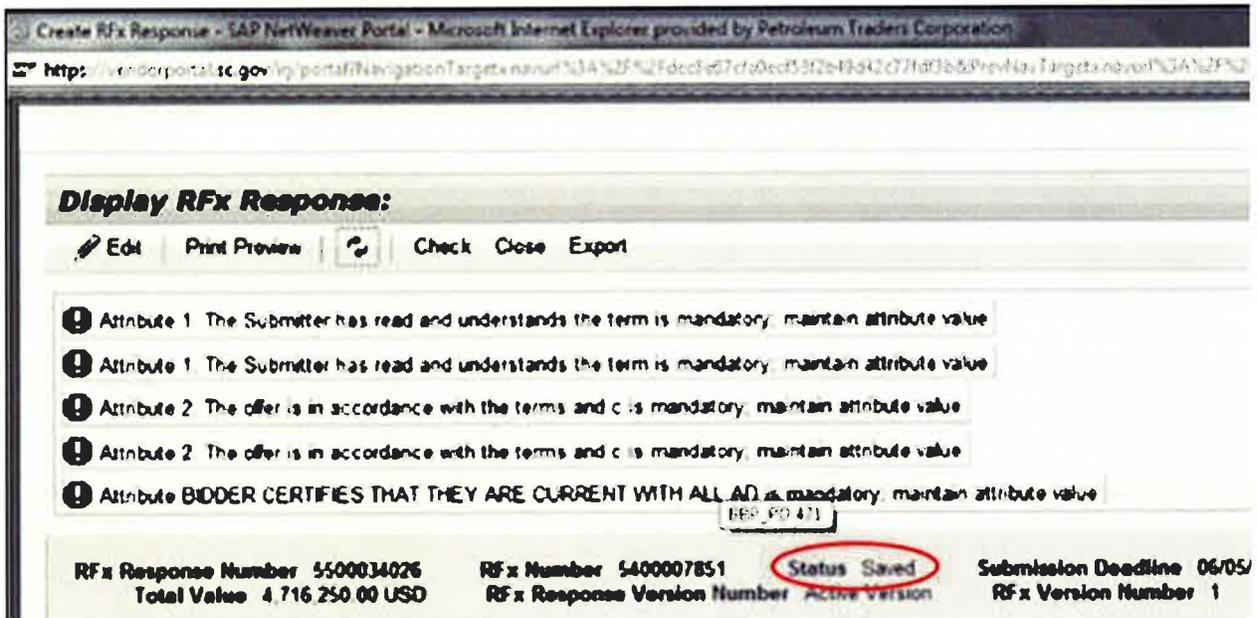
34. Results



It will be the responsibility of each bidder to ensure that their response was submitted properly. The Response Status must indicate 'Submitted'. If the response is in a 'HELD' or 'SAVED' status, you MUST go back in the system and submit the response before it can be accepted by the State.

In its protest letter, PTC wrote, “Petroleum Traders Corporation hit the submit button and received a cryptic error. At that point we logged out and logged back in and the option to hit submit was no longer visible. We reviewed our submission and it appeared that it was input into the system correctly and because there was no option to hit submit it looked as if that [sic] there was no further action needed for our bid submittal to be considered received.”

However, PTC submitted a screen shot view of its on-line response with its protest letter. PTC’s attachment clearly reflects its bid status as “Saved,” not “Submitted.” Further, PTC’s attachment reflects system warnings of five errors in its on-line submittal including:



[Excerpted from Ex. 4] (annotation supplied). The system warnings were identical to those treated in paragraph 19.1 of the published SCEIS guide. There is no claim or indication that PTC followed those instructions and cleared the warnings.

As noted above, bidders encountering difficulty were advised to call the SCEIS Help Desk. The instructions in the SRM RFx Bid Creation Guide read:

33. Click [Re/resh](#) to update and verify that the response was submitted

 If you are having problems entering your bid, please contact the SCEIS Help Desk at (803) 896-0001. Option 1. NOTE: The Help Desk can only assist you with entering your bid response. If you have any questions regarding the content of the solicitation or your response, you must contact the Procurement Manager listed on the front page of the solicitation document

The CPO inquired with the SCEIS MM (procurement) team and asked for a forensics report. According to Heather Shewchuk, SCEIS Service Center, “No CA Service Desk profiles for Dan Espich, Vicki Himes, Michael Himes, or Adam Denning (representatives of PTC) – so I don’t think they ever called the help desk. It appears that someone named Stephan at Petroleum Traders Corp was the one that completed the response.” Allen Register, MMO Deputy State Procurement Officer, provided “Per Stephan’s email address, his full name is Stephan Reuille.” Ms. Shewchuk responded, “No CA Service Desk profile for Stephan Reuille either. Doesn’t look like he contacted us.” [Ex. 5]

CONCLUSIONS OF LAW

The South Carolina procurement system allows bidders to begin preparing a solicitation response and, if unable to complete the bid during the initial session, “Save” that work and return to it in future sessions. The bidder has the option of completing and submitting the bid or leaving the incomplete bid in a “Saved” status. If the bidder determines to continue with the bidding, it must “Submit” its bid. It is only at this point that the bid becomes a binding offer. The solicitation included instructions for bidders to verify that their bid was actually received into the system. PTC did not follow those instructions. The “uPerform” tutorial in the above screenshots explains how to clear the system warnings about incomplete attributes. PTC did not follow those instructions. The tutorial also explains how a bidder can confirm that her bid has been submitted. PTC did not follow those instructions. Because PTC failed to follow the

instructions, its bid status never changed from "Saved" to "Submitted." Since PTC never submitted its bid, the procurement officer never received it.

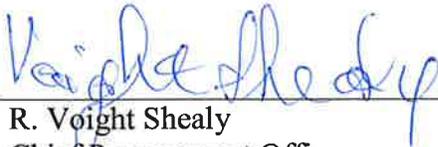
Section 11-35-4210(1)(b) of the South Carolina Consolidated Procurement Code limits the right to protest an award to actual bidders:

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.

Because PTC is not an actual bidder, it has no standing to protest this award.

DETERMINATION

For the reasons stated above, the protest of PTC is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

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>

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 108.1 of the 2013 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 202, 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.



**PETROLEUM TRADERS
Corporation**

7120 Pointe Inverness Way
Fort Wayne, IN 46804
(260) 432-6622

June 13, 2014

State of South Carolina
Chief Procurement officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Solicitation Number 5400007851: E10 Gasoline Transport – Zone 4

Petroleum Traders Corporation would like to protest the award of Solicitation 5400007851 E10 Gasoline Transport – Zone 4. Due to a malfunction of the State of South Carolina's procurement website Petroleum Traders' bid submittal was not received. Per a phone conversation with Allen Register, Deputy State Procurement Officer it was revealed that Petroleum Traders Corporation is not the first company to fall victim to a malfunction of the on-line procurement system. Mr. Register confirmed that the on-line procurement system showed Petroleum Traders Corporation working on their bid and showed it saved, but not submitted.

Petroleum Traders Corporation hit the submit button and received a cryptic error. At that point we logged out and logged back in and the option to hit submit was no longer visible. We reviewed our submission and it appeared that it was input into the system correctly and because there was no option to hit submit it looked as if that there was no further action needed for our bid submittal to be considered received.

The State of South Carolina has not identified that Petroleum Traders Corporation did anything wrong in its submittal. Because the error is a result of a malfunction of the State of South Carolina's procurement system and not an error by Petroleum Traders Corporation we are asking that Petroleum Traders Corporation be recommend as we are the apparent low bidder for Solicitation 5400007851 E10 Gasoline Transport – Zone 4.

Sincerely,

Vicki L. Himes
Vice President

Enclosed attachment

Skinner, Gail

Subject: RE: Bid Tab Report - State of South Carolina Bid not accepted

From: Dan Espich
Sent: Friday, June 13, 2014 1:16 PM
To: Vicki Himes
Subject: RE: Bid Tab Report - State of South Carolina Bid not accepted

Yes I would say so, For instance this screen shot shows he is looking at the Response file. Shows a Bid response number, Shows the Item on the response and shows Price and everything. This was after it was submitted so you can see it's all just read only at this point for them.

Create Rfx Response - SAP NetWeaver Portal - Microsoft Internet Explorer provided by Petroleum Traders Corporation

https://vendorportal.sc.gov/portal/NavigationTarget.na?url%3A%2F%2Fdecd67cf0e0f5362e49342c711df1b5&prevNavTarget.na.url%3A%2F%2F221798fa147925614ff07a2c880965a005/tx/Model3&Curr...

Display Rfx Response:

| | | |

- Attribute 1 The Submitter has read and understands the term is mandatory. maintain attribute value
- Attribute 1 The Submitter has read and understands the term is mandatory. maintain attribute value
- Attribute 2 The offer is in accordance with the terms and c is mandatory. maintain attribute value
- Attribute 2 The offer is in accordance with the terms and c is mandatory. maintain attribute value
- Attribute BIDDER CERTIFIES THAT THEY ARE CURRENT WITH ALL AD is mandatory. maintain attribute value

Rfx Response Number 5500034026 Rfx Number 5400007851 Status Saved Submission Deadline 06/05/2014 11:00:00 EST Opening Date 06/05/20
 Total Value 4,716,250.00 USD Rfx Response Version Number Active Version Rfx Version Number 1

| | | |

Item Overview

| | | | |

Line Number	Description	Item Type	Product ID	Product Category	Product Category Description	Required Quantity	Submitted Quantity
•	E10 Gasoline - Transport - Zone 4	Material			Gasoline Automotive	1,375,000	1,375,000

Details for Item E10 Gasoline - Transport - Zone 4

| | | | |

From: Vicki Himes
Sent: Friday, June 13, 2014 12:26 PM
To: Dan Espich
Subject: RE: Bid Tab Report - State of South Carolina Bid not accepted

Do the screenshots show any pricing that was submitted? V.

From: Dan Espich
Sent: Friday, June 13, 2014 10:24 AM
To: Michael Himes; Adam Denning
Cc: Vicki Himes
Subject: RE: Bid Tab Report - State of South Carolina Bid not accepted

We have a lot of screen shots of Stephen filling out the bid information. He spent a lot of time filling out the forms on the website and because they didn't give clear instructions this took him a long time (probably more than an hour). The Bid was then submitted and their system gave some sort of cryptic error. We have a screenshot of the error. Anyways it got to the point where they could not even attempt to submit it any more but they could review what was submitted. They did review what was submitted and it did appear to be in their system correctly and since there was no option to submit anymore they assumed they were done. We have screen shots of them reviewing the bid after it was submitted. This was all on the 3rd and bid was due on the 5th.

Someone from South Carolina afterward did acknowledge in a phone conversation that basically the website is flawed and because of its flaws that's why our bid was not accepted. I don't think they really indicated we did anything wrong on our end.

It seems to me that we can prove we submitted a bid or at least made every effort to do so with the system they provided. They may be able to claim that it was submitted incorrectly or missing some information somehow though. The fact that afterward they acknowledge a problem with the website and don't identify what we did wrong seems like we should win any dispute about it.

Dan

From: Michael Himes
Sent: Friday, June 13, 2014 9:05 AM
To: Adam Denning; Dan Espich
Cc: Vicki Himes
Subject: RE: Bid Tab Report

How can we prove we sent an electronic bid? michael

From: [Dixon, Wanda](#)
To: [Register, Allen](#)
Cc: [Shealy, Voight](#); [Robertson, Dixon](#); [Skinner, Gail](#); [Stevens, John](#)
Subject: FW: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest
Date: Tuesday, June 17, 2014 11:17:14 AM

You're welcome, Allen. I'm forwarding Heather's response.
Wanda

From: Shewchuk, Heather
Sent: Tuesday, June 17, 2014 11:14 AM
To: Dixon, Wanda
Cc: Powers, Tracy
Subject: RE: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

Hi Wanda,

No CA Service Desk profile for Stephen Reuille either. Doesn't look like he contacted us.

Thanks,

Heather Shewchuk

SCEIS Service Center
1628 Browning Road
Columbia, SC 29210
803-896-0001



From: Dixon, Wanda
Sent: Tuesday, June 17, 2014 11:09 AM
To: Powers, Tracy; Shewchuk, Heather
Subject: FW: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

Heather,
Here's Stephen's full name to determine whether he called the help desk.
Thanks, Wanda

From: Register, Allen
Sent: Tuesday, June 17, 2014 11:08 AM
To: Dixon, Wanda; Shealy, Voight
Cc: Robertson, Dixon; Skinner, Gail; Stevens, John
Subject: RE: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

Wanda,

Thank you for providing the help desk information. Per Stephen's email address, his full name is Stephen Reuille (sreuille@PetroleumTraders.com)

Thanks again for the support.

Allen

Allen Register, CPPO, ASCPM | Deputy State Procurement Officer | Desk: 803.737.3410 | Fax: 803.737.0639 |
www.procurement.sc.gov

From: Dixon, Wanda
Sent: Tuesday, June 17, 2014 10:57 AM
To: Shealy, Voight
Cc: Robertson, Dixon; Skinner, Gail; Register, Allen; Stevens, John
Subject: RE: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

Voight,
I highlighted the response below from the help desk. Let us know if you have Stephen's last name and want them to verify.

Wanda

From: Powers, Tracy
Sent: Tuesday, June 17, 2014 10:23 AM
To: Dixon, Wanda; Lanouette, Paul; Waites, Jim
Cc: Hanvey, Sam
Subject: RE: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

Wanda:

Below and attached is a follow up message from Heather. Please let me know if we need to check the ticket log using a different name.

Tracy

Hi Tracy,

No CA Service Desk profiles for Dan Espich, Vicki Himes, Michael Himes, or Adam Denning - so I don't think they ever called the help desk. It appears that someone named Stephen at Petroleum Traders Corp was the one that completed the response. If we can get his last name, I can check to see if he ever contacted us.

Thanks,

Heather Shewchuk
SCEIS Service Center
1628 Browning Road
Columbia, SC 29210
803-896-0001

From: Dixon, Wanda
Sent: Tuesday, June 17, 2014 9:33 AM
To: Lanouette, Paul; Waites, Jim; Powers, Tracy
Cc: Hanvey, Sam
Subject: FW: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

Paul and Jim,

Would you provide log on for this vendor, Petroleum Traders, 7000036689, ID- VN.PTRADERS, please? The protest letter does not indicate the dates and times the vendor claims to have been in the system but the opening date was 6/5/14 at 11am. If there's nothing on this date, perhaps try a couple of days prior.

SUBMIT OFFER BY (Opening Date/Time): **06/05/2014, 11:00 A.M.**

Tracy,

Would you check the help desk logs to verify whether anyone representing this vendor called for assistance?

Thanks, Wanda

From: Shealy, Voight
Sent: Monday, June 16, 2014 9:40 AM
To: Dixon, Wanda
Cc: Robertson, Dixon; Skinner, Gail; Stevens, John; Shealy, Voight; Register, Allen
Subject: FW: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

Wanda,

I have a protest filed regarding electronic submission of a bid in SCEIS. Please do the forensics and report what you find.

Thanks,

Voight

From: Protest-MMO
Sent: Friday, June 13, 2014 4:53 PM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

From: Adam Denning
Sent: Friday, June 13, 2014 4:52:28 PM (UTC-05:00) Eastern Time (US & Canada)
To: Protest-MMO

Subject: Solicitation: 5400007851 E10 Gasoline Transport Zone 4 - Protest

Good afternoon,

Please see attached protest letter.

Respectfully,

Adam Denning

Petroleum Traders Corporation

7120 Pointe Inverness Way | Fort Wayne IN 46804

Tel 260.207.6361 | Fax 260.203.2820

adenning@petroleumtraders.com