

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

In Re: Protest of Myrtle Beach Agent, LLC

CASE NO. 2015-110

Protest of Intent to Award to Solstice  
Transportation Group, Inc. for Vehicle  
Utilization Review, Solicitation No. #  
540008138

POSTING DATE: December 02, 2014

MAILING DATE: December 02, 2014

The South Carolina Consolidated Procurement Code (the Code) grants any actual bidder the right to protest the award or intended award of a contract, except that a matter that could have been raised as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation was issued by the South Carolina Department of Transportation (DOT) for Vehicle Utilization Review. Myrtle Beach Agent LLC (Myrtle Beach) protests the intended award of a contract to Solstice Transportation Group, Inc. (Solstice) [Attachment 1]. The Chief Procurement Officer<sup>1</sup> held a hearing to address this matter on October 1, 2014. Present at the hearing were representatives from Myrtle Beach, Solstice and the Department of Transportation represented by Amanda Taylor, Esquire.

### **Findings of Fact**

Invitation For Bids Published:	07/25/2014
Amendment One Issued	08/08/2014
Proposals Opened	08/19/2014
Intent to Award Posted:	09/05/2014
Protest Letter Dated	09/09/2014
Intent to Award Suspended	09/12/2014

### **Background**

This protest arises from a Best Value Bid for vehicle utilization review issued by the South Carolina Department of Transportation (SCDOT), Office of Public Transit (OPT) for independent experienced contractors/inspectors to perform both the Vehicle Utilization Review and Vehicle Needs Assessment. Contractors/ inspectors are to conduct a comprehensive evaluation of current fleet utilization /vehicles

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<sup>1</sup> The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

purchased with OPT-administered funds to determine current conditions, utilization, and spare ratio; and to assess each agency’s vehicle needs. Successful bidders shall serve as an inspector to SCDOT/OPT. Offerors could submit bids on Lot A (up state) or Lot B (low state) or on both Lot A and Lot B. Myrtle Beach and Solstice were the only bidders and each bid on both Lot A and Lot B. Solstice offered a 10% discount of the total price if it were awarded Lots A & B. The solicitation included two evaluation criteria; Price weighted at 60% and Experience weighted at 40%. The bids received from Myrtle Beach and Solstice were reviewed and scored by three evaluators. Each evaluator executed a “Non-Disclosure Agreement – Procurement Information” and a “Procurement Integrity Representations and Restrictions” certification. Scoring consisted of two parts: An “Evaluator’s Score Sheet,” used to assign a numeric score for each criterion, and an “Evaluator Explanation Summary,” for evaluators to provide a brief explanation for each numeric score given to each evaluation criteria. Since each bidder’s experience applied to both Lots, the evaluators completed one set of forms for each bidder. Myrtle Beach protests the award to Solstice citing inconsistencies in the scoring and comments of the evaluators. The scores for Price were derived from a standard formula and added to the evaluators’ scores for Experience to determine the successful bidder. Myrtle Beach submitted the lowest cost for both Lots and received the maximum points. Solstice<sup>2</sup> received a prorated number of points available for cost based on the relationship between its cost and the lowest cost as follows:

	Solstice	Myrtle Beach
Lot A	\$ 59,234.00	\$ 55,886.00
Score	56.61	60
Lot B	\$ 54,919.00	\$ 42,723.00
Score	46.68	60

The scores for price were combined with the evaluator’s scores for Experience and Solstice was the apparent successful bidder as follows:

Lot A	Solstice		Myrtle Beach	
	Price	Experience	Price	Experience
Evaluator 1	57	35	60	20
Evaluator 2	57	35	60	1
Evaluator 3	57	37	60	36
		<b>278</b>		237

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<sup>2</sup> Solstice included a 10% discount if it received both lots.

Lot B	Solstice		Myrtle Beach	
Criteria	Price	Experience	Price	Experience
Evaluator 1	47	35	60	20
Evaluator 2	47	35	60	1
Evaluator 3	47	37	60	36
		<b>248</b>		<b>237</b>

## Discussion

Myrtle Beach alleges that Evaluator 2 erred in evaluating its experience as demonstrated by the evaluator's notes from the "Evaluator Explanation Summary" compared to the bid submitted and notes of the other evaluators.

Evaluator 2 commented that Myrtle Beach:

Did not submit the required information per BVB: 1) staffing & qualifications 2) Ability to provide services 3) References. No experience with similar contracts and did not propose a methodology/approach.

Evaluator 2 awarded Myrtle Beach 1 out of a possible 40 points.

In contrast, Evaluator 1 observed that Myrtle Beach had a:

Through understanding of bid. Detailed methodology/approach to include a step-by-step process. Provided sample forms to be used/modified. No disputes. Past experience w/SCDOT. Only 2 references submitted. Identified staff, but did not indicate # of yrs. employed w/ firm & did not specify roles/resp. relevant to this offering. Has access to several mechanics across the State. Similar contracts & svcs section not completed. Minority participation section not answered. Was certified as a DBE but no indication if any MBEs will be working w/firm selected.

Evaluator 1 awarded Myrtle Beach 20 out of a possible 40 points

Evaluator 3 observed that Myrtle Beach:

Seems to understand tasks to be completed. Has an insurance & liability background rather than a vehicle insp. Knowledge/ Expertise - Previous contracts/services have more to do with heavy vehicles/ such as trucks rather than vans, buses. Offeror is a DBE

Evaluator 3 awarded Myrtle Beach 36 out of a possible 40 points.

S. C. Code Ann. Section 11-35-2410 provides for the finality of determinations under the BVB process unless "clearly erroneous, arbitrary, capricious, or contrary to law". The Procurement Review Panel and the CPOs have consistently held that they would not substitute their judgment for the judgment of the evaluators, or disturb their findings so long as the evaluators follow the requirements of the Procurement

Code and the BVB, fairly consider all bids, and are not actually biased. The evaluators did not appear at the hearing to explain their evaluations and given the disparity between the evaluator's comments and scores the CPO is left to conclude that Evaluator 2 erred in his or her evaluation of Myrtle Beach's bid. If Evaluator 2's scores are eliminated from the tabulation, Solstice is still the highest ranked offeror for Lot A.

Lot A	Solstice		Myrtle Beach	
Criteria	Price	Experience	Price	Experience
Evaluator 1	57	35	60	20
Evaluator 2				
Evaluator 3	57	37	60	36
		<b>186</b>		176

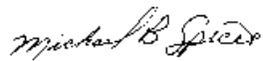
However Myrtle Beach becomes the highest ranked bidder for Lot B as follows:

Lot B	Solstice		Myrtle Beach	
Criteria	Price	Experience	Price	Experience
Evaluator 1	47	35	60	20
Evaluator 2				
Evaluator 3	47	37	60	36
		166		<b>176</b>

### Determination

For the reasons stated above, the protest of Myrtle Beach Agent is granted. Myrtle Beach Agent is the highest ranked offeror and is awarded Lot B. Solstice Transportation Group remains the highest ranked offeror and winner of Lot A.

For the Materials Management Office



Michael B. Spicer  
Chief Procurement Officer

**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.

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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 108.1 of the 2014 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**

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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.**

REC'D 316 CONTROL

SEP 14 11 31 AM

**MYRTLE BEACH AGENT, LLC**

**P. O. Box 15875**

**Surfside Beach, SC 29587-5875**

**(843) 655-2126; fax 1.877.335.0561**

**Hollywatsonagent.com**

**Email: [hollyawatson@gmail.com](mailto:hollyawatson@gmail.com)**

Via: Certified Mail:  
7012 2920 0001 0641 3745

September 9, 2014

Chief Procurement Officer  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

Ref: Solicitation Number 5400008138  
Vehicle Utilization Review  
**Protest:** Intent to Award posted 09/05/2014; Contract 4400009217 to  
Solstice Transportation Group, Inc., Atlanta, Ga for \$102,738 both Lot A and Lot B

Dear Sir/Madam:

I am protesting the above award within 10 days of the date of notification of award posting. The grounds of my protest are as follows:

The bid was a "best value bid" assigning 60% weighting to pricing and 40% weighting to experience for a "Vehicle Utilization Review and a Vehicle Needs Assessment" (page 3 of the Scope of Solicitation).

1) The request for proposal package specifically asked for an asset condition rating based upon the mechanical condition of the busses to be examined. I personally have over 15 years in mechanical examinations of transportation equipment and previously owned a shop that performed repairs and inspections on busses for many years, both on Waccamaw EOC busses and other commercial passenger coaches. Two pages of the bid package were dedicated to explaining these rating values. Since I owned and operated a heavy vehicle repair shop for over ten years and operated several trucking units, both locally and nationally for over 25 years, I am familiar with mechanical components and their wear and useful life. I do not believe my competitor (in business since 2007) is expert in this area, and according to the *needs assessment* portion of this solicitation, that is over half of the examination since the remainder of the review is questioning the agency about usage, peaks, etc.

Chief Procurement Officer  
Materials Management Office  
September 9, 2014  
Page Two

- 2) The best value bid was based upon 60% price value. Lot B was a unit price of \$54,919; after adjusting for the prompt pay discount the value remains at **\$49,427.10**.

My firm's quote for Lot B was **\$42,723.00**, a difference of **\$6704.10**, or **16% lower** than the award amount.

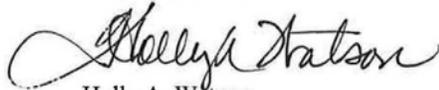
My proposal was delivered UPS on 08/15/2014 (signed by Jackson) prior to the 8/19/2014 opening date. I am wondering whether my competition delivered their quote by 8-19-2014 since the buyer's email was marked "extension of opening date" on the email but the attachment was shown as an extension of award posting.

Because physical mechanical assessment is the majority of this solicitation to properly assess the **vehicle needs** of the agencies involved and the **utilization** of these vehicles is mainly a question and answer process with form fills, I believe we should be awarded this solicitation since we were low on both lots even after the prompt pay discount.

Although there was no preference given to in-state or minority endeavors, since I have already performed several contracts over eighteen years with SCDOT my experience and previous stellar performance should at least qualify my firm with the above mechanical aptitude making up any difference toward the 40% experience value rating. The fact that I pay homage to the State of SC and employ personnel and pay tax here is just another point I would like to bring attention to.

At the very least, my relief requested is that you rescind your award of Lot B and award it instead to my firm based upon pricing and experience.

Very truly yours,



Holly A. Watson  
President

STATE OF SOUTH CAROLINA  
PROCUREMENT OFFICE  
955 PARK STREET ROOM 101  
COLUMBIA SC 29201-3976

**Intent to Award**  
Posting Date: September 05, 2014

**Solicitation: 5400008138**

**Description: Vehicle Utilization - Rebid**  
**Agency: SC Department of Transportation**

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective, **09/16/2014 @ 8:00:00 AM EST**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

**Contract Number:** 4400009217

**Awarded To:** SOLSTICE TRANSPORTATION GROUP INC  
5825 GLENRIDGE DR BLDG 2 STE 211  
ATLANTA GA 30328

**Total Potential Value:** \$ 102,738.00 Both Lot A and Lot B

**Maximum Contract Period:** September 05, 2014 through December 31, 2014

Item	Description	Unit Price	Total
00001	Transit Management Services Lot A	\$ 59,234.00	\$ 59,234.00
00002	Transit Management Services Lot B	\$ 54,919.00	\$ 54,919.00

**Procurement Officer**

VICKIE W. STEPHENS, CPPO, CPPB

114,153<sup>00</sup>

**MYRTLE BEACH AGENT, LLC**  
**Post Office Box 15875**  
**Surfside Beach, SC 29587-5875**

SOLICITATION NO. 5400008138

Vehicle Utilization Review  
South Carolina Department of Transportation

Proposal for Lot A ..... \$55,886.00

Proposal for Lot B ..... \$42,723.00

~~\_\_\_\_\_~~  
98,609



Holly Watson <hollyawatson@gmail.com>

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**SC Solicitation: Vehicle Utilization - Rebid**

1 message

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**SCProcure@sceis.sc.gov** <SCProcure@sceis.sc.gov>  
To: hollyawatson@gmail.com

Sat, Aug 30, 2014 at 2:00 AM

You may be interested in the following solicitation...

Solicitation Number: 5400008138  
Description: Vehicle Utilization - Rebid  
Submission Ending Date/Time: 09/05/2014 10:00:00

Solicitation -  
<http://webprod.cio.sc.gov/SCSolicitationWeb/solicitationAttachment.do?solicitnumber=5400008138>

Sincerely,  
VICKIE STEPHENS  
South Carolina State Government  
10055387

STEPHENS VW@SCDOT.ORG

\*\*\* You received this e-mail notification because your business has been designated by a SC State Government procurement officer as a potential bidder for the solicitation above. \*\*\*

<https://mail.google.com/mail/u/0/?ui=2&ik=bcd852e1c5&view=pt&search=inbox&th=1482...> 9/9/2014

	<b>SCDOT EXTENSION OF AWARD POSTING #1</b>	Solicitation Number: Date Issued: Procurement Officer: Phone: E-Mail Address:	5400008138 08/29/2014 Vickie W. Stephens, CPPO, CPPB 803-737-1530 <a href="mailto:Stephensvw@scdot.org">Stephensvw@scdot.org</a>
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**DESCRIPTION: Vehicle Utilization Review - Rebid**

In accordance with The Budget and Control Board Regulations, Section 19-445.2090 (B), this Extension of Award Posting serves as official notice that a longer review time is required. The new award posting date is: 9/5/2014

**Procurement Manager:**

**Vickie W. Stephens, CPPO, CPPB**