

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Prisoner Transportation Services
of America, LLC

Materials Management Office
IFB No. 5400004553
Extradition Services for the
Department of Probation, Parole and
Pardon Services

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION CASE

NO.: 2012-135

POSTING DATE: December 21, 2012
MAILING DATE: December 21, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Prisoner Transportation Services of America, LLC (PTS of America). With this invitation for bids (IFB), the South Carolina Materials Management Office (MMO) attempts to procure extradition services for the Department of Probation, Parole and Pardon Services (DPPPS). Following the solicitation, MMO posted an intent to award to U.S. Prisoner Transport (USPT). PTS of America protested the award, alleging "USPT maintains a **Conditional** rating with the Federal Motor Carrier Safety Administration (FMCSA)." (Emphasis per the original) As the controlling issue in this case is a matter of law, this decision is prepared based upon a review of the procurement file and emailed arguments from the parties without the benefit of a hearing.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On June 18, 2012, MMO issued IFB No. 5400004553. The Scope of the solicitation read, "The purpose of this bid invitation is to provide a source to provide extradition services to supplement the South Carolina Department of Probation, Parole and Pardon Services (the Department's) own extradition work, and its use of the U.S. Marshall Service." (Ex. 1, p. 5)

2. On July 27, 2012, MMO posted an Intent to Award the IFB to US Prisoner Transport.
3. On July 30, 2012, PTS of America filed its protest by email to the Protest-MMO address.

DISCUSSION

PTS of America's protest letter alleges:

- USPT maintains a **Conditional** rating with the Federal Motor Carrier Safety Administration (FMCSA).
- According to the FMCSA website, a **Conditional** rating "indicates that the carrier was out of compliance with one or more safety requirements."
- Page 16, number 3, letter b. of the solicitation states that the Contractor shall "follow the Regulations of the Federal Motor Carrier Safety Administration (FMCSA)."

Because USPT maintains a Conditional rating with the FMCSA, it does not comply with all of its regulations and therefore USPT is not a responsive or responsible bidder and its bid should be rejected.

PTS of America alleges USPT was neither responsive nor responsible based upon USPT's alleged non-conformance with one stipulation of the IFB that the contractor must "[f]ollow the Regulations of the Federal Motor Carrier Safety Administration (FMCSA)." (Ex. 1, p.16)

In a response to the protest, Robert Downs of USPT wrote:

I have attached the form from the Federal Motor Carrier Safety Administration (FMCSA) website showing that US Prisoner Transport is registered and does not have, or ever had, an out of service date. USPT's status is active, authorized for hire for the carrying of passengers.

In addition, I have attached a sample what the status form looks like when a company is not authorized by the FMCSA. Mid Florida Extraditions is a transport company that is no longer allowed to transport due to their FMCSA rating. Their operating status states "out of service" and shows the date 10/05/2010.

CONCLUSIONS OF LAW

Regarding award of an IFB, the Consolidated Procurement Code, requires, "notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose

bid meets the requirements set forth in the invitation for bids." Addressing responsiveness, the Code defines a responsive bidder as, "means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." (11-35-1410(7)) Addressing responsibility, the Code defines a responsible bidder as, "a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance." (11-35-1410(6))

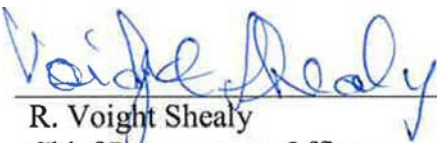
The nonconformance alleged against USPT by PTS of America is addressed in the IFB, but only as a performance requirement of the eventual contractor. Everything in the specifications, and specifically in Section 3 (beginning with the words "Contractor shall"), is a performance obligation, not a responsiveness or responsibility standard. Conjecture as to the ability to perform is not a challenge to responsibility. Rather, it goes to contract administration. In *Kitco, Inc.*, B-221386 (Comp.Gen.) 86-1 CPD 321, 1986 WL 63328 (April 3, 1986), the Comptroller General wrote, "It is beyond the bid protest function of this Office to review matters of contract administration because our procedures are reserved for considering whether an award of a contract complies with statutory, regulatory, and other legal requirements, not postaward performance." *Accord, Northwest Forest Workers Assoc.*, B- 217588 (Comp.Gen.), 85-1 CPD P 99, 1985 WL 52205 (Jan. 24, 1985); *ASC Medicar Service, Inc.*, B- 213724 (Comp.Gen.), 84-1 CPD P 45, 1983 WL 27814 (Dec. 30, 1983); *cf Appeal by Value Options, et al.*, Panel Case No. 2001-7 (allegedly poor former financial condition did not make offeror non-responsive in light of testimony that its financial performance would improve during contract period).

There is simply nothing at this point to suggest USPT will not follow FMCSA's regulations. According to the FMCSA website, "Unless a motor carrier in the SMS [FMCSA's

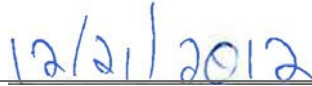
Safety Measurement System] has received an UNSATISFACTORY safety rating pursuant with 49 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways." (ai.fincsa.dot.gov/SMS/InfoCenter/default.aspx#question1 (last viewed Nov. 19, 2012, at 5:10 p.m.))¹

DETERMINATION

For the foregoing reasons the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

¹ FMCSA instituted a different rating system effective December 1, 2012. Accordingly, the link no longer resolves to the page describing the former ratings system. Relevant here, though, is the system FMCSA used at the time award was made. Under that system, a carrier with a "conditional" rating was still an authorized operator.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2012)

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 5:00PM, 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 5:00PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2012 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, an incorporated business must retain 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).

**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.



P.O. Box 121591
Nashville, TN 37212
(615) 352-9798- Phone
(615) 352-9737- Fax
www.prisonertransport.net

PTS of Aft1erica, LLC

July 30, 2012

Chief Procurement Officer
Materials Management Office
Via email: protest-mmo@mmo.state.sc.us

Re: Solicitation Number 5400004553; Extradition Services

Dear CPO;

We are respectfully submitting the following information and requesting that the award of this contract be rescinded.

U.S. Prisoner Transport (USPT) was not a responsive or responsible bidder, and therefore, their BID should be rejected. The following information is submitted in support of this conclusion:

U.S. Prisoner Transport (USPT)

- USPT maintains a **Conditional** rating with the Federal Motor Carrier Safety Administration (FMCSA). Please see the attached screen shot from the FMCSA website.
- According to the FMCSA website, a **Conditional** rating "indicates that the carrier was out of compliance with one or more safety requirements".
- Page 16, number 3, letter b. of the solicitation states that the Contractor shall "follow the Regulations of the Federal Motor Carrier Safety Administration (FMCSA)".

Because USPT maintains a Conditional rating with FMCSA, it does not comply with all of its regulations and therefore USPT is not a responsive or responsible bidder and its bid should be rejected.

PTS and your agency have maintained an excellent partnership. There have been no major incidents and we reduced our pricing to your agency. We understand that the current economic climate requires expense reduction anywhere available. Our pricing reflects the expenses we incur due to our compliance with all Federal Laws in transporting your inmates. We look forward to continuing to provide you excellent, law-abiding service with reduced pricing.

Submitted By:

KentWood
PTS of America, LLC.

USDOT Number
 MC/MX Number
 Name

Enter Value: | ? . - - 9. ERTRANSii

Search ↓

Company Snaps

BREVARD EXRADITION

USDOT Number: 17

[ID/Operations](#) |
 [Inspections/Crashes In US](#) |
 [Inspections/Crashes In Canada](#) |
 [Safety Rating](#)

Carriers: If you would like to update the following 10/Operations information, please complete and submit form [MCS-150](#) which can be obtained online or from your State FMCSA office. If you would like to challenge the accuracy of your company's safety data, you can do so using FMCSA's [DataQs](#) system.

Other Information for Carrier

- ▾ [SMS Results](#)
- ▾ [Licensing & Insurance](#)

Carrier and other users: FMCSA provides the Company Safety Profile (CSP) to motor carriers and the general public interested in obtaining greater detail< particular motor carrier's safety performance than what is captured in the Company Snapshot. To obtain a CSP please visit the [CSP order page](#) or call (800)832-5660 or (703)280-4001 (Fee Required).

For help on the explanation of individual data fields, click on any field name or for help of a general nature go to [SAFER GeneralHelp](#).

The information below reflects the content of the FMCSA management information systems as of 07/29/2012.

| | | | |
|-------------------|---------------------------------------|----------------------|------|
| Entity Name: | Carrier | | |
| Operating Status: | REGISTERED | Out of Service Date: | None |
| Legal Name: | BREVARD EXRADITIONS INC | | |
| DBA Name: | US PRISONER TRANSPORT | | |
| Physical Address: | 415 STAN DRIVE MELBOURNE, FL 32904 | | |
| Phone: | (321) 725-5570 | | |
| Mailing Address: | 415 STAN DRIVE MELBOURNE, FL 32904 | | |
| USDOT Number: | 1758570 | S.... C.... ;,0_. | |
| MC or MX Number: | MC-643115 | DUNS Number: - | |

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|---|-----------------|---------------|-----------|-----------------|-------------------|----------------------|-----------------------------|--|-------------------|----------------|--------------------|-----------|----------------|-----------|----------------|----------------------------|------------------|-----------|--------------------|----------------|----------------------------|--------------|----------------|--------------|--------------------------|---------|------------|---------------|--|--|
| Power Units: 110 | Drivers: 21 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MCS-150 FormDate: 01/31/2012 | MCS-150 Mileage (Year): 900,000 (2011) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Operation Classification: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> Auth. For Hire | <input type="checkbox"/> Priv. Pass.(Non-business) | <input type="checkbox"/> State Gov't | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Exempt For Hire | <input type="checkbox"/> Migrant | <input type="checkbox"/> Local Gov't | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Private(Property) | <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> Indian Nation | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Priv. Pass. (Business) | <input type="checkbox"/> Fed. Gov't | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Carrier Operation: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> Interstate | <input type="checkbox"/> Intrastate Only (HM) | <input type="checkbox"/> Intrastate Only (Non-HM) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="1"> <tr> <td>General Freight</td> <td>Liquids/Gases</td> <td>Chemicals</td> </tr> <tr> <td>Household Goods</td> <td>Interrnodal Cont.</td> <td>Commodities Dry Bulk</td> </tr> <tr> <td>Metal: sheets, coils, rolls</td> <td><input checked="" type="checkbox"/> Passengers</td> <td>Refrigerated Food</td> </tr> <tr> <td>Motor Vehicles</td> <td>Oilfield Equipment</td> <td>Beverages</td> </tr> <tr> <td>Drive/Tow away</td> <td>Livestock</td> <td>Paper Products</td> </tr> <tr> <td>Logs, Poles, Beams, Lumber</td> <td>Grain, Feed, Hay</td> <td>Utilities</td> </tr> <tr> <td>Building Materials</td> <td>Coal/Coke Meat</td> <td>Agricultural/Farm Supplies</td> </tr> <tr> <td>Mobile Homes</td> <td>Garbage/Refuse</td> <td>Construction</td> </tr> <tr> <td>Machinery, Large Objects</td> <td>US Mail</td> <td>Water Well</td> </tr> <tr> <td>Fresh Produce</td> <td></td> <td></td> </tr> </table> | | | General Freight | Liquids/Gases | Chemicals | Household Goods | Interrnodal Cont. | Commodities Dry Bulk | Metal: sheets, coils, rolls | <input checked="" type="checkbox"/> Passengers | Refrigerated Food | Motor Vehicles | Oilfield Equipment | Beverages | Drive/Tow away | Livestock | Paper Products | Logs, Poles, Beams, Lumber | Grain, Feed, Hay | Utilities | Building Materials | Coal/Coke Meat | Agricultural/Farm Supplies | Mobile Homes | Garbage/Refuse | Construction | Machinery, Large Objects | US Mail | Water Well | Fresh Produce | | |
| General Freight | Liquids/Gases | Chemicals | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Household Goods | Interrnodal Cont. | Commodities Dry Bulk | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Metal: sheets, coils, rolls | <input checked="" type="checkbox"/> Passengers | Refrigerated Food | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Motor Vehicles | Oilfield Equipment | Beverages | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Drive/Tow away | Livestock | Paper Products | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Logs, Poles, Beams, Lumber | Grain, Feed, Hay | Utilities | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Building Materials | Coal/Coke Meat | Agricultural/Farm Supplies | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Mobile Homes | Garbage/Refuse | Construction | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Machinery, Large Objects | US Mail | Water Well | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Fresh Produce | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

10/Operations | Inspections/Crashes In US | Inspections/Crashes In Canada | Safety Rating

US Inspection results for 24 months prior to: 07/29/2012

Total inspections: 0

Note: Total inspections may be less than the sum of vehicle, driver, and hazmat inspections. Go to [Inspections Help](#) for further information.

| Inspection Type | Vehicle | Driver | Hazmat |
|-----------------------------|---------|--------|--------|
| Inspections | 0 | | 0 |
| Out of Service | 0 | 0 | 0 |
| Out of Service % | 0% | 0% | 0% |
| Nat'l. Average% (2009-2010) | 20.72% | 5.51% | 4.50% |

Crashes reported to FMCSA by states for 24 months prior to: 07/29/2012

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

| Crashes | Fatal | Injury | Tow | Total |
|---------|-------|--------|-----|-------|
| 0 | 0 | 0 | 0 | 0 |

10/0 Operations | Inspections/Crashes In US | Inspections/Crashes In Canada | Safety Rating

Canadian Inspection results for 24 months prior to: 07/29/2012

Total inspections: 0

Note: Total inspections may be less than the sum of vehicle and driver inspections. Go to [Inspections Help](#) for further information.

| Inspection Type | Vehicle | Driver | Hazmat |
|------------------|---------|--------|--------|
| Inspections | 0 | | 0 |
| Out of Service | 0 | 0 | 0 |
| Out of Service % | 0% | 0% | 0% |

Crashes results for 24 months prior to: 07/29/2012

Note: Crashes listed represent a motor carrier's involvement in reportable crashes, without any determination as to responsibility.

| Type | Fatal | Injury | Tow | Total |
|---------|-------|--------|-----|-------|
| Crashes | 0 | 0 | 0 | 0 |

10/Operations | Inspections/Crashes In US | Inspections/Crashes In Canada | Safety -Rating

The Federal safety rating does not necessarily reflect the safety of the carrier when operating in intrastate commerce.

Carrier Safety Rating:

The rating below is current as of: 07/29/2012

Review Information:

| | | | |
|--------------|-----------------|--------------|-------------------|
| Rating Date: | 05/13/2010 | Review Date: | 03/23/2010 |
| Rating: | ★ Conditional ★ | Type: | Compliance Review |