

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

JH Global Services, Inc.

Materials Management Office
IFB No. 5400005684
Statewide Term Contract for Low Speed
Vehicles

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2013-120

POSTING DATE: July 18, 2013

MAILING DATE: July 18, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest dated May 31, 2013, from JH Global Services, Inc. (JHGS). With this invitation for bids (IFB), the South Carolina Materials Management Office (MMO) attempts to procure statewide term contracts for seven different models of low speed vehicles, or LSV. Following the evaluation of the bids received, MMO posted its intent to award. The notice awarded line item #3, LSV Utility Truck with Cargo Bed and Fold-Down Tailgate (Short Bed) and line item #5, LSV with Lockable Box with Shelves (Short Bed), to Gator Moto Utility Vehicles & More, LLC dba Moto Electric Vehicles (Gator Moto). JHGS protested the awards of line items #3 and 5, alleging: (1) "Gator Moto Utility Vehicles & More does not have dealers...they are an internet seller of vehicles they buy from China....It is impossible that they have 'trained and qualified dealers' in South Carolina;" (2) "Gator Moto does not stock spare parts and they do not have servicing dealers to carry out after sales service support;" (3) "Gator Moto states that they have a three year warranty. This is simply not true;" and (4) "We are familiar with dozens of remorseful end users who have failed to receive after sales support from Gator Moto."

In order to resolve the matter, the CPO conducted a hearing July 2, 2013. Appearing before the CPO were JHGS, represented by Joe Wallington; Gator Moto, represented by Brett Jackrel; and the State Procurement Office, represented by John Stevens, State Procurement Officer.

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 March 14, 2013, MMO issued the IFB. [Ex. 1]
2. On March 28, 2013, MMO conducted a pre-bid conference.
3. On April 1, 2013, MMO issued Amendment #1, which totally rewrote and replaced the original IFB. [Ex. 2]
4. On April 23, 2014, MMO opened the bids received. The bids received for the line items protested were as follows:

For Item #3, LSV Utility Truck with Cargo Bed and Fold Down Tailgate (Short Bed)

<u>Bidder</u>	<u>Unit Price</u>
Gator Moto	\$12,556.25
Club Car LLC	13,651.00
JHGS (Star EV)	13,801.25
Greengo Tek, LLC	22,656.50

For Item #5, LSV with Lockable Box with Shelves (Short Bed)

<u>Bidder</u>	<u>Unit Price</u>
Gator Moto	\$14,032.25
Club Car LLC	14,906.25
JHGS (Star EV)	15,001.00
Greengo Tek, LLC	27,656.50

[Ex. 3]

5. On May 23, 2013, MMO posted its Intent to Award. [Ex. 8]
6. On May 31, 2013, JHGS filed its protest with the CPO. The protest was timely filed.
7. On June 3, 2012, according to law, MMO suspended its Intent to Award Item #3 and 5. [Ex. 9]

SOLICITATION REQUIREMENTS

JHGS's protest grounds were the same for Item #3 and 5. Specific to the grounds of protest, MMO required bidders to submit:

A list of service/maintenance facilities and their locations in South Carolina which are trained and qualified in servicing your company's LSVs. Facilities must have been in business more than 6 months prior to the date of issuance of this solicitation.

[Ex. 2, Part IV. Information for Offerors to Submit, p. 21, Item 2]

The qualifications required of bidders included:

To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810. [05-5005-1]

One of the contractual requirements is the ability of the Offeror to provide sufficient service and maintenance support throughout the life of the contract. **If an offeror is unable to provide sufficient service and maintenance support, the State reserves the right to reject that offer....**

[Ex. 2, Part V. Qualifications, p. 23 (emphasis in original)]

The dealer responsibilities prior to delivery included:

Warranty:

Each unit shall carry the manufacturer's standard warranty, which shall begin when the purchaser places the unit into service. The contractor shall perform the administrative details of adjusting the warranty start date upon written notification from the purchaser. Warranties must be "bumper to bumper," covering all items, and at least one (1) year in length.

[Ex. 2, Part VII. Terms and Conditions – B. Special, 4. Dealers Responsibilities Prior to Delivery, Item D, p. 31]

The terms and conditions included:

MOBILE MAINTENANCE SERVICES

If Contractor must offers mobile maintenance service; it must pick up any vehicle in need of service from the customer's designated location within 72 hours of receipt of a request for service. Pick-ups will be made during normal business hours (8:30 am – 5:00 pm) unless alternate arrangements are agreed upon by the contractor and customer. Offerors must quote a per mile rate for transportation of the vehicle in addition to standard shop pricing and are not permitted to increase this rate during the term of the contract unless approved in writing by the Materials Management Office by Change Order (see Section IV). If contractor offers a "loaner" vehicle for use by a customer while the purchased vehicle is being serviced, it must be of the identical or most closely comparable model that the contractor has in stock. Contractor must provide a list of service/maintenance facilities and their locations in South Carolina which are trained and qualified in servicing your company's LSVs. Facilities must have been in business more than 6 months prior to the date of issuance of this solicitation.

[Ex. 2, Part VII. Terms and Conditions – B. Special, 8. Mobile Maintenance Services, p. 32
(overstrike in original)]

CONCLUSIONS OF LAW

After evaluating the bids, Stacy Adams, MMO Procurement Manager, determined Gator Moto as the lowest responsive and responsible bidder for Item #3 and 5. JHGS protests her determination.

Regarding competitive sealed bidding, the Consolidated Procurement Code (Code) requires "award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids," absent a compelling reason to reject bids.[§ 11-35-1520(10)] The Code defines a responsive bidder as "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)] The Code defines a responsive 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)]

As stated above, JHGS raised four discrete grounds for challenging MMO's award "to Gator Moto". Each protest ground is treated separately below.

Protest Ground (1) "Gator Moto Utility Vehicles & More does not have dealers...they are an internet seller of vehicles they buy from China...It is impossible that they have 'trained and qualified dealers' in South Carolina."

The IFB required bidders to identify "service centers." It did not require bidders to have "dealers." Regarding service/maintenance facilities, the IFB required bidders to submit, "[a] list of service/maintenance facilities and their locations in South Carolina which are trained and qualified in servicing your company's LSVs. Facilities must have been in business more than 6 months prior to the date of issuance of this solicitation." [Ex. 2, Part IV. Information for Offerors to Submit, p. 21, Item 2]

In its bid, Gator Moto agreed to the terms and conditions of the solicitation, submitting the lowest price for Items #3 and 5 and stating no exceptions to the requirements of the IFB. Regarding its maintenance facilities, Gator Moto submitted a list of three service centers located in South Carolina: Wateree Trailer & Supply in Lugoff, Palmetto Kustom Kartz in Gaston, and Rental & Equipment Center in Walterboro. Gator Moto wrote further, "Please understand that any warranty repair questions are to be directed to Moto Electric Vehicles. Our team will then contact the closest service center in your area to provide any servicing needs. All parts will be bought or supplied by our offices and sent to the service centers." [Ex. 4, last page] Gator Moto advised the state that those service centers "have been called ahead and made aware of this procurement." [Ex. 4, last page] The IFB required "service centers to have been in business more than 6 months." It did not require a continuing relationship between the service center and the vendor for six months; nor did Gator Moto claim such a relationship. Regarding warranty service, Gator Moto referred all warranty requests to its home office.

Amendment #1 to the IFB required mobile service; stated the terms for that service; and required fixed pricing information for vehicle transportation. Gator Moto stated no exception to the requirement for mobile maintenance service and offered hourly shop rates for all three service centers and pick up rates per mile for two of them.

During the hearing, Gator Moto acknowledged being “an internet seller of vehicles they buy from China” as JH Global alleged, but stated that Gator Moto also sells directly to retail customers. Further, Gator Moto asserted that JHGS sourced its vehicles from “the same factory in China.” JHGS acknowledged it did.

Prior to award, Ms. Adams investigated experience of Gator Moto’s service providers herself. She called each of the service providers listed by Gator Moto. According to Ms. Adams’ “Memorandum for Record,” Wateree Trailer and Supply told her that “They work on EZ-Go and used to sell EZ-Go carts. The Low Speed Electric Vehicles are very similar and are not a problem to work on.” Palmetto Kustom Kartz responded, “When the vehicles are out of their warranty period, Moto Electric has sent customers to them for repairs. They have worked on their vehicles and have not had a problem.” Walterboro Rental & Equipment Center advised, “They received a call from Moto Electric asking if they could work on their low speed electric vehicles. They have not worked on one to date.” She concluded, “At least one of the providers were not only confident in their ability to service Moto Electric vehicles, but also had experience in doing the same. This met the requirements of the IFB.” [Ex. 7] While the list of service providers and the evidence of their experience with Gator Moto’s vehicles seems sparse¹, the

¹ After receiving the protest, she inquired with Gator Moto as well. According to Ms. Adams, they provided two additional service centers: C&R Golf Carts of Easley and Island Bikes & Outfitters of Edisto Island. One, C&R Golf Carts advised Ms. Adams that they also had experience working on Moto Electric’s vehicle. [Ex. 7]

CPO notes that the IFB did not require a minimum number of service facilities. Therefore, the CPO agrees with Ms. Adams' determination that Gator Moto's bid was responsive.

Protest Ground (2) "Gator Moto does not stock spare parts and they do not have servicing dealers to carry out after sales service support"

In an email dated June 7, 2013, responding to the protest Gator Moto replied, "Moto Electric stocks thousands of parts at its Florida location." JHGS did not dispute Gator Moto's claim that it stocks parts in Florida, but argued its service centers should stock parts as well. Gator Moto responded that it can and will supply the needed parts to its service centers as required. The CPO finds that the IFB did not actually require service centers to stock parts.

Protest Ground (3) "Gator Moto states that they have a three year warranty . . . That is simply not true."

The IFB language quoted above required a "bumper to bumper" warranty lasting at least one year. Gator Moto provided a copy of its "New Vehicle – 3 Year Limited Warranty – National" and argued its compliance with the requirements of the IFB. The form warranty provides that Gator Moto "warrants to original purchaser that any defects in materials or workmanship...that occur within the time periods listed below ('the warranty period')...will be corrected by the company at its expense...." The warranty period is twelve months, except for certain identified component parts. Each of those parts carries a manufacturer's warranty longer than one year. JHGS offered no evidence that Gator Moto's warranty was not responsive to the IFB.

Protest Ground (4) "We are familiar with dozens of remorseful end users who have failed to receive after sales support from Gator Moto."

JHGS alleged that Gator Moto had sold a low speed vehicle to the University of North Carolina and failed to provide warranty service to the university.

Gator Moto responded that was "Not our deal," but rather a sale by a related but independent business. JHGS offered no persuasive evidence that Gator Moto was the company

which made the sale to UNC, nor any first-hand evidence of a refusal to provide warranty service.

DETERMINATION

The Procurement Review Panel has maintained for years that the protestant bears the burden of proving its allegations reaffirming its position recently writing “Heritage bears the burden of proving its claims by the preponderance of the evidence. *In re: Protest by Blue Bird Corp.*, Panel Case No. 1994-15 (December 16, 1994).” [*In Re: Appeal by Heritage Community Services*, Panel Case No. 2013-01 (March 27, 2013)]

In her evaluation of the bid of Gator Moto, Ms. Adams reviewed the response, followed up with the service centers listed by Gator Moto, and ran a Dunn & Bradstreet report of Gator Moto Utility Vehicles and More. She concluded that Gator Moto’s bid was the lowest responsive and responsible. JHGS has not proven otherwise. Therefore, the protest is dismissed.

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

July 18, 2013

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.



JH GLOBAL SERVICES, INC.

378 Neely Ferry Rd SIMPSONVILLE, SOUTH CAROLINA 29680 USA Tel:(864) 297 8833 Fax:(864) 297 7010



May 31, 2013

Mr. Voight Shealy
Chief Procurement Officer
State of South Carolina

Subject: Low Speed Vehicle Solicitation 5400005684 - Protest

Dear Mr. Shealy,

We are submitting a formal protest in advance of the release of the State of South Carolina Low Speed Vehicle Solicitation #5400005684 on the basis that Gator Moto Utility Vehicles & More does not meet the solicitation requirements as outlined in the solicitation document for their pending award of two of the seven proposed awarded vehicles.

Basis of Protest

Page 21 of Solicitation 5400005684 point number 2 states:

A list of service/maintenance facilities and their locations in South Carolina which are trained and qualified in servicing your company's LSV's. Facilities must have been in business more than 6 months prior to the date of issuance of this solicitation.

Note, Gator Moto Utility Vehicles & More does not have dealers...they are an internet seller of vehicles they buy from China. We do not believe they have ever sold a vehicle in South Carolina. There do not have any dealers who have serviced their vehicles in South Carolina. It is impossible that they have "trained and qualified dealers" in South Carolina. We believe they picked three random dealers and simply asked them if they would work on any vehicles sold into South Carolina. By offering a servicing company their standard shop rate, these providers agreed to work on vehicles should issues occur. Net, these dealers have never seen or worked on a Gator Moto vehicle and have certainly not been trained or qualified to work on one. This is in direct violation of the mandate in the solicitation.

Other Considerations

- Gator Moto does not stock spare parts and they do not have servicing dealers to carry out after sales service support. University of North Carolina, Charlotte is a great example. Gator Moto sold UNCC buses back in 2007. UNCC could not get parts or warranty service from Gator Moto. Since 2008, we have supplied parts and service for



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378 Neely Ferry Rd SIMPSONVILLE, SOUTH CAROLINA 29680 USA Tel:(864) 297 8833 Fax:(864) 297 7010

their buses. They just ordered three new buses from our servicing dealer, Carolina Industrial Equipment. Please feel free to contact Starr Wimberly (UNCC Transportation Manager – 704-687-0279; starr_wimberly@uncc.edu) to get details from a victim of Gator Moto's inability to provide after sale service support.

- Gator Moto states that they have a three year warranty. This is simply not true. They send buyers of their vehicles directly to the manufacturers of the parts that need warranty service. This means, in the best case scenario, the manufacturer of a motor, controller or other key component may warrant a part once they have inspected the old defective part. However, the part is sent to the end user for installation.
- Buyer beware! We are familiar with dozens of remorseful end users who have failed to receive after sales support from Gator Moto. We hope their misrepresentation of service vs. the stated requirements will keep them off the state contract so that these type of after sales service and warranty issues are not experienced by your clients.

As you are aware, we helped originate the Low Speed Vehicle State Contract back in 2011. We have over 60+ vehicles in service throughout the state and we go above and beyond (in conjunction with our trained and certified dealer partner, Carolina Industrial Equipment) the norm to ensure your clients are supported in a timely and satisfactory manner.

Feel free to call or e-mail with any questions or additional information you may need.

Thanks for your consideration.

Best Regards,

Joe Wallington
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