

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In Re: Protest of TLS Group/Omer
North America Inc.

CASE NO.: 2015-159

Protest of Intent to Award to Heavy Duty
Lift & Equipment, Inc. for Vehicle Lifts
for Richland County for the South
Carolina Department of Transportation,
Solicitation No. # 5400009760

POSTING DATE: June 30, 2015

MAILING DATE: June 30, 2015

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation is for Vehicle Lifts for Richland County for the South Carolina Department of Transportation. (DOT) TLS Group/Omer North America Inc. (Omer) protests the award of a contract to Heavy Duty Lift & Equipment, Inc. [Attachment 1] The Chief Procurement Officer¹ issues this ruling without a hearing.

Findings of Fact

Invitation For Bids Issued:	06/01/2015
Amendment #1 Issued	06/01/2015
Amendment #2 Issued	06/19/2015
Intent to Award Issued:	06/26/2015
Protest Received:	06/29/2015
Intent to Award Suspended	06/30/2015

Discussion

Section 11-35-4210(1)(b) authorizes any actual bidder, offeror, contractor, or subcontractor to protest an intended award of a contract as follows:

(b) 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 ... (Emphasis added)

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

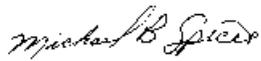
In its letter of protest, Omer clearly indicates that it did not submit a bid.

The addendum clearly stated that scissor lifts would NOT be acceptable. As a result of this we did not submit a bid for this project even though we had sent a representative to the site meeting. (Emphasis added)

Determination

Omer is not an actual bidder and consequently lacks standing to protest the intended award to Heavy Duty Lift & Equipment, Inc. This protest is denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised October 2014)

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 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**

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.

Attachment 1

From: [David Bowman](#)
To: [Protest-MMO](#)
Cc: [Harold Yeo](#); [Carlo Gfall](#)
Subject: Bid Solicitation 5400009760
Date: Monday, June 29, 2015 11:44:48 AM
Attachments: [PastedGraphic-3.png](#)

PROTEST OF BID AWARD

To whom it may concern:

We have been apprised that the aforementioned bid has been awarded to Steril Koni and / or their local distributor. We also are led to believe that they have "substituted" a vertical rise scissor lift in place of the parallelogram lift that you had specified. This is contrary to the detailed instructions in your bid documents and the addendum sent to the interested bidders dealing with the questions that had been submitted from the site meeting.

OMER Lift invented the HD Parallelogram lifting system over 25 years ago. For over 14 years Steril Koni has been purchasing this lift from OMER and selling it through their dealers throughout North America. They have just recently supplied Vega parallelogram lifts for both the New York City and Toronto Transits. Since Steril Koni did not purchase a parallelogram lift from OMER for the purpose of supplying this bid contract they must be substituting their vertical SKY lift **which is classified by the Automotive Lift Industry as a "SCISSOR" lift.**

The addendum clearly stated that scissor lifts would NOT be acceptable. As a result of this we did not submit a bid for this project even though we had sent a representative to the site meeting. We also understand that your "engineer" has ruled that the Steril Koni SKY lift qualifies as a parallelogram. In every conceivable dictionary available the term parallelogram refers to the following:

Definition of

Parallelogram

[more ...](#)

Parallelogram



A 4-sided flat shape with straight sides where **opposite sides are parallel.**

Also:

- opposite sides are equal in length, and
- opposite angles are equal (angles "a"

are the same, and angles "b" are the same)

Steril Koni Sky Lift

This is NOT a parallelogram by any stretch of the imagination and I challenge your engineer to prove otherwise.



Under the circumstances we have no other choice than to protest this decision. The process you have established to evaluate bid submissions appears be flawed. Quite frankly, your entire procurement process is in clear violation of the WTO (World Trade Organization) Protocols for Government Purchasing to which the United States is a participant.

First you write a bid solicitation which is rife with NON PERFORMANCE related specifications that come directly from technical material supplied by Rotary Lift. When bidders submit requests to be classified as an "Approved Equal" these are rejected categorically. You state in your addendum that NO SCISSOR LIFTS WILL BE ACCEPTABLE. We took you at your word and did not submit a bid.

It is not clear why you entered into this entire process because there is nothing fair or above board with what you are doing. It is clear that one supplier has bamboozled the brain trust at the SC DOT and committed the classic "Bait and Switch". I am personally stunned that an "engineer" would challenge the definition of the term parallelogram. This is high school geometry.

Does anyone at the DOT SC understand that they are buying a lighter weight (structural steel) product that is normally 15% to 20% less than a parallelogram? You are NOT getting a deal here.

If there has been an error and the situation is being reviewed we certainly understand and will await a decision. If you elect to stand fast on what is a complete debacle and charade we will take this matter to higher authorities.

Please advise the writer as to what steps are being taken to resolve this matter.

David Bowman
Vp of Sales
TLS Group/Omer North America Inc
2300 Speers Rd
Oakville L6L2X8
647-973-OMER
davidbowman@gmail.com

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