

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In Re: Protest of Lifting Solutions, LLC

CASE NO. 2015-160

Protest of for Vehicle Lifts for Richland
County
SC Department of Transportation
Solicitation No. 5400009760

POSTING DATE: July 28, 2015

MAILING DATE: July 28, 2015

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 Lifts for Richland County. Lifting Solutions, LLC (Lifting Solutions) timely protests the intended award of a contract to Heavy Duty Lift & Equipment (Heavy Duty). [Attachment 1] The Chief Procurement Officer¹ issues this decision without a hearing.

Findings of Fact

Request for Proposals Published:	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

Discussion

This IFB was issued by the DOT:

for the delivery, installation, warranty & service for two (2) surface mounted parallelogram platform vehicle lifts designed for lifting vehicles weighing up to 30,000 pounds (LBS) and one (1) surface mounted parallelogram platform vehicle lift designed for lifting vehicles weighing up to 50,000 pounds (LBS).

[Solicitation, Page 19] The solicitation required that “[t]he lift equipment and installation comply with all applicable local, State and Federal regulations and meet the latest OSHA, UL, NEC, ALI and ANSI standards.” *Id.* The design of the two 30,000 pound lifts was changed in Amendment #2 and these lifts are not included in this protest.

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

ALI is the Automotive Lift Institute which is: “Currently credentialed by ANSI, and recognized by the International Accreditation Forum as an Accredited Standards Developer and a Product Certification Organization, ALI sponsors several nationally recognized automotive lift safety standards and offers a Third-Party Certification Program for automotive lift products and automotive lift inspection services provided by inspectors, Certified by ALI.” [<http://www.autolift.org/car-lift-industry-regulations-about-ali>, last viewed 7/9/2015]

The solicitation indicated that award would be made to a single Offeror for all three lifts. [Solicitation, Page 29] Three bidders responded to the invitation for bids and an Intent to Award was posted to Heavy Duty Lift & Equipment. Lifting Solutions protests that the 50,000 pound lift bid by Heavy Duty was not responsive to the solicitation requirements in a number of respects.

The solicitation required a parallelogram design for the 50,000 pound lift:

The South Carolina Department of Transportation (SCDOT) is soliciting for the delivery, installation, warranty & service for two (2) surface mounted parallelogram platform vehicle lifts designed for lifting vehicles weighing up to 30,000 pounds (LBS) and one (1) surface mounted parallelogram platform vehicle lift designed for lifting vehicles weighing up to 50,000 pounds (LBS).

[Solicitation, Page 19]

This requirement was reinforced in Amendment #2:

Q19 - Will Vertical (Scissor) or 4 post lifts be excepted or is it a Parallelogram style only?

A19 – No Scissor posts to be accepted. Parallelogram style only.

Lifting Solutions protests that 50,000 pound lift bid by Heavy Duty is a scissors design instead of the required parallelogram design required by the solicitation.

The ALI defines a parallelogram lift as:

Another form of surface-mounted lift is the parallelogram lift. Most parallelogram lifts (except low-rise) are drive-on lifts; this type lifts the vehicle with two runways. The parallelogram lifting mechanism moves the vehicle a short distance fore or aft when lifting or lowering, depending upon the way the lift is mounted.

[<http://www.autolift.org/auto-lift-institute-vehicle-lift-certification-program/auto-lift-types/#details>, last viewed July 10, 2015]

The ALI defines a Scissor style lift as:

The scissors lift may be equipped as a drive-on style or as one that engages with lifting points under the vehicle. There are surface-mounted and in-ground versions available. The scissors lift has a lifting mechanism similar to a parallelogram lift, however, it raises

and lowers a vehicle in a straight vertical path, rather than fore or aft of its original position.

[<http://www.autolift.org/auto-lift-institute-vehicle-lift-certification-program/auto-lift-types/#details>]

Heavy Duty bid a Steril Koni USA, SKY 200-26 (62,000lbs capacity). The Steril SKY 200 lifts are certified by ALI as scissors lifts. [<http://www.autolift.org/ali-directory-of-certified-lifts/browse-certified-lifts/>, last viewed July 10, 2015]

The Steril Koni Brochure submitted with Heavy Duty's bid describes its product as follows:

The Steril-Koni SKYLIFT provides a "clear floor" concept for the user and rises completely vertically when lifting. There is no base frame and no overhang, therefore SKYLIFT takes up less space than a parallelogram lift.

The SKY 200 bid by Heavy Duty is not responsive to the solicitation requirement.

The IFB also contained quite a number of detailed physical or design specifications.² Lifting Solutions alleges that the SKY 200 lift bid by Heavy Duty does not meet several of those requirements.

The solicitation required that the platforms be a minimum of 32 inches wide. [Solicitation, Page 20] The solicitation indicated that these structural dimensions were minimums and, in this case, provided for a +/- 1.0 inch tolerance for dimensions from 10 inches to five (5) feet.

All material thickness and structural dimensions are minimums. Dimensional tolerances, unless noted, are as follows: +/- 0.25 inch for dimensions less than ten (10) inches; +/- 1.0 inch for dimensions from ten (10) inches to five (5) feet inclusive, +/- 3.0 inches for dimensions greater than five (5) feet.

[Solicitation, Page 19]

According to the SKY 200 installation, operations, and maintenance instruction manual that was submitted with Heavy Duty's bid, the Sky 200 platforms are 29 1/2" wide. [Hydraulic Vertical Lift SKY 200/250 Installation, operations, and maintenance instruction manual, Page 35] The width of the Sky 200 platform does not fall within the allowable tolerance and is not responsive to this solicitation requirement.

The solicitation required that the spacing between the platforms be 45 inches. [Solicitation, Page 20] The allowable tolerance of 1 inch means that an acceptable width would be between 44 to 46 inches.

According to the SKY 200 installation, operations, and maintenance instruction manual that was submitted with Heavy Duty's bid, the Sky 200 platforms are 43" apart. [Hydraulic Vertical Lift SKY

² Agencies are cautioned to limit the use of design specifications to those actually necessary to meet the needs of the State. Regulation 19-445.2140(C) Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State.

200/250 Installation, operations, and maintenance instruction manual, Page 35] The SKY 200 does not meet this requirement of the solicitation.

The solicitation required that the overall width of the lift shall be 109 inches. [Solicitation, Page 20] For dimensions greater than five (5) feet, the acceptable variance is +/- 3 inches which would allow for an overall width of between 106 and 112 inches.

The overall width of the Sky 200 lift is 102". [Hydraulic Vertical Lift SKY 200/250 Installation, operations, and maintenance instruction manual, Page 35] The SKY 200 is not responsive to this solicitation requirement.

Lifting Solutions also protests that the solicitation required:

B. Support leg joints shall be provided with hardened bushings at the cylinder to leg connection and the leg to platform connection, where stresses are at a maximum, for extended lift life and easy repair.

Lifting Solutions explains that the Sky Lift does not use bushings at the leg to platform. It has a slide block at one of the connections. At the leg to foot connections it uses a steel on steel slide/rotating connection.

Lifting Solutions also protests that the solicitation required:

B Safety locks shall automatically disengage when the lift "Lower" control is operated, and automatically re-engage when the lift "Lower" control is released. The safety locks shall be automatically engaged as the lift ascends, to ensure positive lock engagement when raising the lift in the event of a hydraulic failure

Lifting Solutions explains that the Sky Lift is like the mobile column for SK .. two buttons must be pressed to lower / disengage the locks.

Lifting Solutions also protests that the solicitation required:

C Continuous safety tape switches shall be mounted to the lower surface of both platforms. Tape switches shall run the full length, and be located on the inside and outside of both platforms. The lift will stop when any of these tape switches are displaced either horizontally or vertically.

Lifting Solutions explains that the Sky Lift does not have safety tape switches

This solicitation was an Invitation for Bids. The Code and Regulations require that award be made to the responsive and responsible bidder submitting the lowest priced bid.

Section 11-35-1520(10) of the Code states that:

Unless there is a compelling reason to reject bids as prescribed by regulation of the board, 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 must be given by posting the notice at a location specified in the invitation for bids.

Budget and Control Board Regulation 19-445.2090(A) requires that:

The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.

Section 11-35-1410(7) defines a responsive bidder as:

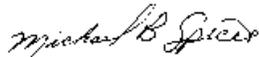
(7) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

A rudimentary examination of Heavy Duty's bid indicates that was not responsive to even the most basic design specification and failed to meet several other material requirements.

Determination

For the reasons stated above, the protest of Lifting Solutions is granted. The award to Heavy Duty Lift & Equipment is cancelled and this procurement is remanded to the South Carolina Department of Transportation for processing in accordance with the South Carolina Consolidated Procurement Code and Regulations.

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 209, 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 for 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: [Lawson Gaither](#)
To: [Protest-MMQ](#)
Cc: [kirwanej@scdot.org](#)
Subject: Protest Solicitation 5400009760
Date: Monday, June 29, 2015 3:45:16 PM
Attachments: [image001.png](#)
[SKYLIFTBrochures.pdf](#)
Importance: High

SC DOT
Emmett Kirwan
Procurement Officer

Protest is for intent to awarded lift supplied by Heavy Duty Lift (Steril Koni Sky Lift) does not meet specified SCDOT written specifications.

This is a formal protest on the Bid Awarded on Solicitation #5400009760 for 2 30,000lb and 1 50,000lb vehicle lifts. Below we have provided grounds on which this protest is being made as well as the relief requested.

Below we have noted Bid package specification in black. In red are Sky Lifts specifications that do not meet bid specs.

On Page 20:

Platform Dimensions/ Construction

B. Platforms shall be 32 inches	Sky Lift 29.5
C Spacing between platforms shall be 45 inches	Sky Lift 43.5
D Overall width 109 inches	Sky Lift 102.5

LIFT UNIT

B. Support leg joints shall be provided with hardened bushings at the cylinder to leg connection and the leg to platform connection, where stresses are at a maximum, for extended lift life and easy repair.

The Sky Lift does not use bushings at the leg to platform. It has a slide block at one of the connections. At the leg to foot connections it uses a steel on steel slide/rotating connection.

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Safety Locks

B Safety locks shall automatically disengage when the lift "Lower" control is operated, and automatically re-engage when the lift "Lower" control is released. The safety locks shall be automatically engaged as the lift ascends, to ensure positive lock engagement when raising the lift in the event of a hydraulic failure The Sky Lift is like the mobile column for SK .. two buttons must be pressed to lower / disengage the locks.

C Continuous safety tape switches shall be mounted to the lower surface of both platforms. Tape switches shall run the full length, and be located on the inside and outside of both platforms. The lift will stop when any of these tape switches are displaced either horizontally or vertically.
Sky Lift does not have safety tape switches

Amendment #2

Q19 - Will Vertical (Scissor) or 4 post lifts be accepted or is it a Parallelogram style

only?

A19 – No Scissor posts to be accepted, **Parallelogram style only.**

ALI (Automotive Lifting Institute) That was referred to in this solicitation of lift being approved by categorizes this lift as a Scissor / vertical <http://www.autolift.org/auto-lift-institute-vehicle-lift-certification-program/auto-lift-types/>

I have also included Stertil Koni literature that describes in their own words that the Sky Lift is a vertical lift

The above are just some of the differences that make the Stertil Koni Sky Lift a less expensive product.

A Parallelogram style lift is a superior heavier duty product made in the USA. The Rotary Parallelogram has more steel, tape switches for added safety, higher sheer limits and a larger base with twice the anchoring size. Will they both lift trucks? Yes, but so will a 4 post or mobile lifts with runways but your specifications didn't except those type lifts or vertical as equal.

Lifting Solutions could have bid a Vertical Lift but chose to bid within the written specifications as was required.

Heavy Duty Equipment has a Parallelogram lift available to them through Omer. They didn't bid that product due to cost I'm sure.

<http://www.stertil-koni.com/en/products/parallelograms>

We believe vendors should all play on an even playing field. Heavy Duty Lift knew they were not offering SCDOT a Parallelogram. This is all of our full time jobs, we know the difference. Our supplier, Rotary Lift offered additional discounts to Lifting Solutions to earn SCDOT's business.

We would ask this solicitation not be rebid since all the pricing has been revealed.

This bid should be awarded to the lowest responsive bidder. In this case it should be Lifting Solutions, LLC.

Please advise the next step in this protest process. A face to face meeting would be welcomed

Thank you in advance for your consideration,

Lawson Gaither
Lifting Solutions LLC
Cell 919-306-9746
Fax 919-724-4129