

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

In Re: Protest of Horace G Ilderton LLC

CASE NO.: 2016-104

Protest of Award to Palmetto Bus Sales, LLC for a State Term Contract for ADA Compliant Buses & Mini-Vans (Lowered Floor/Conversion), Solicitation No. # 5400009112

POSTING DATE: August 13, 2015

MAILING DATE: August 13, 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 Invitation For Bids was issued to establish a state term contract for ADA Compliant Buses & Mini-Vans (Lowered Floor/Conversion). Horace G Ilderton LLC (Ilderton) protests the award of a contract to Palmetto Bus Sales, LLC. (Palmetto) [Attachment 1] The Chief Procurement Officer<sup>1</sup> issues this ruling without a hearing.

**Findings of Fact**

Invitation For Bids Issued:	02/25/2015
Amendment One Issued	03/30/2015
Amendment Two Issued	04/23/2015
Amendment Three Issued	05/07/2015
Amendment Four Issued	05/18/2015
Intent to Award Posted:	07/07/2015
Protest Received	08/11/2015

**Discussion**

The South Carolina Consolidated Procurement Code grants any actual bidder the right to protest the award or intended award of a contract with the stipulation that the protest must be received by the Chief Procurement Officer within 10 days of the posting of the award or intent to award.

Section 11-35-4210(1)(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

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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.

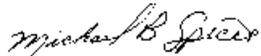
(2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract. (emphasis added)

The Intent to Award to Palmetto was posted on July 7, 2015. [Attachment 2] Ilderton's protest was received by the Chief Procurement Officer on August 11, 2015, thirty five (35) days after the posting of the Intent to Award.

### **Determination**

The protest of Horace G Ilderton LLC was not received by the CPO within the time limit established by the Code and is untimely filed consequently the CPO lacks jurisdiction to review this protest. The 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 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

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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.**

Attachment 1

**From:** [Aycock, Robert](#)  
**To:** [White, John](#); [Craig, Kimber](#); [Spicer, Michael](#); [Robertson, Dixon](#)  
**Subject:** Protest Notice to the award of Contract # 4400010889  
**Date:** Tuesday, August 11, 2015 10:16:55 AM

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This is a first. We received a protest notice over our Customer Comment System. I will acknowledge receipt.

Jimmy

Ticket Number	W01292	Comment Date	2015/08/11
Comment Type	Award	Status	New
Directed To	Materials Management Officer		
Business Name	Horace G Ilderton LLC		
User Name	Odell McBride		
Street	701 S Main St		
City, State ZIP	High Point, NC 27260		
Phone	3368412020		
Email	omcbride@ilderton.com		

Comment Text

We( Horace G Ilderton LLC)is formally entering a protest to the award of Contract # 4400010889 to vendor #7000039459 (Palmetto Bus Sales LLC). Our contention is they did not bid according to specifications and the Intent To Award Contract should be suspended or canceled and other bids should be considered. Thanks in advance for addressing our concerns. Odell McBride Commercial Account Manager

STATE OF SOUTH CAROLINA  
MATERIALS MANAGEMENT OFFICE  
CAPITAL CENTER  
1201 MAIN STREET, SUITE 600  
COLUMBIA SC 29201

**Intent to Award**

Posting Date: July 07, 2015

**Solicitation: 5400009112**

**Description: SW ADA Compliant Buses, Mini-Vans & Purpose Built Vehicles**

**Agency: Statewide Term Contract**

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00:00, July 18, 2015**. 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]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to [protest-mmo@mmo.sc.gov](mailto:protest-mmo@mmo.sc.gov) ,

(b) by facsimile at 803-737-0639, or

(c) by post or delivery to: 1201 Main Street, Suite 600, Columbia, SC 29201.

**Contract Number:** 4400010889

**Awarded To:** PALMETTO BUS SALES LLC  
P.O. Box 2898  
WEST COLUMBIA SC 29171

**Total Potential Value:** \$ 10,564,575.00

**Maximum Contract Period:** July 18, 2015 through July 17, 2018

<b>Item</b>	<b>Description</b>	<b>Unit Price</b>	<b>Total</b>
00001	Bus, Specialty, ADA Compliant	\$ 49,632.00	\$ 2,481,600.00
00002	Purpose Built Vehicle, Specialty, ADA Compliant	\$ 41,597.00	\$ 1,039,925.00
<b><u>Available Options</u></b>			
00003	Bus Options-Chassis Upgrade	\$ 2,550.00	\$ 2,550.00
00004	Bus Options-Engine Upgrade	\$ 1,250.00	\$ 1,250.00
00005	Bus Options-Passenger Seat Fabric Upgrade	\$ 37.00	\$ 37.00
00006	Bus Options-Passenger Seat Upgrade	\$ 300.00	\$ 300.00
00007	Bus Options-Driver Seat Fabric Upgrade	\$ 50.00	\$ 50.00
00008	Bus Options-Bike Rack	\$ 2,000.00	\$ 2,000.00
00009	Bus Options-Coat Hook w/ Strap	\$ 10.00	\$ 10.00
00010	Bus Options-Rear Step Bumper	\$ 50.00	\$ 50.00
00011	Bus Options-Heated Exterior Mirrors	\$ 275.00	\$ 275.00
00012	Bus Options-Convex Interior Mirrors	\$ 15.00	\$ 15.00
00013	Bus Options-Power Exterior Mirrors	\$ 650.00	\$ 650.00
00014	Bus Options-Valve Extensions	\$ 30.00	\$ 30.00
00015	Bus Options-Battery Disconnect Switch	\$ 100.00	\$ 100.00
00016	Bus Options-1 Add'l Battery Box w/ Slide Out Tray	\$ 175.00	\$ 175.00
00017	Bus Options-Driver Circulating Fan	\$ 50.00	\$ 50.00
00018	Bus Options-Fog Lights	\$ 85.00	\$ 85.00
00019	Bus Options-Locking Fuel Door	\$ 100.00	\$ 100.00
00020	Bus Options-Mor/Ryde Suspension Upgrade	\$ 1,200.00	\$ 1,200.00
00021	Bus Options-Interior Ceiling & Wall Upgrade	\$ 850.00	\$ 850.00
00022	Bus Options-Signage	\$ 1,250.00	\$ 1,250.00
00023	Bus Options-Back-Up Camera System	\$ 795.00	\$ 795.00
00024	Bus Options-In Vehicle HD Video Recording	\$ 2,300.00	\$ 2,300.00
00025	Bus Options-PA System w/ Speaker/Base Model	\$ 345.00	\$ 345.00
00026	Bus Options-Two-Way Radio System/Base Model	\$ 500.00	\$ 500.00
00027	Bus Options-Graphics	\$ 350.00	\$ 350.00
00028	Bus Options-Fareboxes	\$ 2,100.00	\$ 2,100.00
00029	Purpose Built Vehicle Options-Chassis Upgrade	\$ 2,250.00	\$ 2,250.00
00030	Purpose Built Vehicle Options-Engine Upgrade	\$ 1,950.00	\$ 1,950.00
00031	Purpose Built Vehicle Options-Passenger Seat Fab	\$ 37.00	\$ 37.00
00032	Purpose Built Vehicle Options-Passenger Seat Upgrade	\$ 300.00	\$ 300.00
00033	Purpose Built Vehicle Options-Driver Seat Fabric	\$ 50.00	\$ 50.00
00034	Purpose Built Vehicle Options-Coat Hook w/ Strap	\$ 10.00	\$ 10.00
00035	Purpose Built Vehicle Options-Heated Exterior Mirror	\$ 275.00	\$ 275.00
00036	Purpose Built Vehicle Options-Convex Interior Mirror	\$ 15.00	\$ 15.00
00037	Purpose Built Vehicle Options-Power Exterior Mirror	\$ 650.00	\$ 650.00
00038	Purpose Built Vehicle Options-Valve Extensions	\$ 30.00	\$ 30.00
00039	Purpose Built Vehicle Options-Battery Disconnect	\$ 100.00	\$ 100.00
00040	Purpose Built Vehicle Options-1 Add'l Battery Box w/ Slide Out Tray	\$ 175.00	\$ 175.00
00041	Purpose Built Vehicle Options-Driver Circulating	\$ 50.00	\$ 50.00
00042	Purpose Built Vehicle Options-Fog Lights	\$ 85.00	\$ 85.00
00043	Purpose Built Vehicle Options-Locking Fuel Door	\$ 100.00	\$ 100.00
00044	Purpose Built Vehicle Options-Interior Ceiling & Wall Upgrade	\$ 750.00	\$ 750.00
00045	Purpose Built Vehicle Options-Back-Up Camera System	\$ 750.00	\$ 750.00
00046	Purpose Built Vehicle Options-In Vehicle HD Video Recording	\$ 2,300.00	\$ 2,300.00
00047	Purpose Built Vehicle Options-PA System w/ Speaker/Base	\$ 350.00	\$ 350.00

00048	Model Purpose Built Vehicle Options-Two-Way Radio System/Base Model	\$ 500.00	\$ 500.00
00049	Purpose Built Vehicle Options-Graphics	\$ 350.00	\$ 350.00
00050	Purpose Built Vehicle Options-Fareboxes	\$ 2,100.00	\$ 2,100.00

**Procurement Officer**  
SHEILA O. WILLIS, CPPB