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Protest Decision

Matter of: PS Energy Group, Inc.

Case No.: 2017-105

Posting Date: August 26, 2016

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400011330

Description: Statewide – Fuel Card Management System

DIGEST

So much of protest challenging awarded vendor's offer as non-responsive granted, where offer expressly and specifically took exception to material requirements of the solicitation; portion of protest challenging procurement officer's determination that protestant's offer was non-responsive denied, where at least one basis for determination appeared on face of offer.

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	05/06/2016
Amendment One Issued	06/03/2016
Intent to Award Issued	07/08/2016
Protest Received	07/18/2016
Award Suspended	07/18/2016
Protest Amendment Received	07/22/2016

ITMO issued this Request for Proposals on May 6, 2016, to establish a state term contract to provide the State of South Carolina fueling at both retail and agency owned (backyard) sites for E10, E85, non-ethanol unleaded, ULSD, B5 and B20 blended biodiesel. The State reproduced the original solicitation with changes, modifications, and answers to vendor questions in Amendment 1. PS Energy Group, Inc. (PSE) protests an Intent to Award issued to Mansfield Oil Company. PSE's protest letter is included by reference. [Attachment 1]

Mansfield redacted significant portions of its proposal, in some cases its entire response to a specification. Mansfield released portions of its redactions, excepting parts of Section IV, after a request by the CPO for reconsideration. Section IV of the solicitation requested offerors submit additional information for evaluation that included

1. Price mark-ups and pricing plan for fuels to be procured pursuant to this contract that are not tied to an OPIS index as requested in Attachment #1.

Mansfield refused to release of this information noting:

The redacted information includes pricing information that is confidential and competitive until such time as a contract is reached. Prior to that point, this information could result in a competitor obtaining information that it might use against Mansfield. This is additional information in the technical proposal as an additional offering from the Pricing Proposal.

The solicitation clearly states that information requested in Section IV will be used for evaluation. Mansfield included information in this Section that supplemented its response to requirements found elsewhere in the solicitation. For example, Section 2.6 of the solicitation

established the State's fuel requirements during emergency situations to which Mansfield provided a six paragraph response that did not include a paragraph in Section IV directly related to emergency fuel pricing. Sections 4.1, 5.2 and 6.5 of the solicitation set forth the State's requirements for maintenance and repair to which Mansfield provided responses that did not include a paragraph in Section IV setting forth Mansfield's policy for equipment purchasing. Mansfield also included its policies for non-Level 3 transactions, pricing of alternative fuels, purchase of non-fuel items, and retail purchases made in another state that supplemented information presented elsewhere in its proposal. Given the benefit of the doubt that this information was properly redacted in the first place, Mansfield requested this information be withheld until such time as a contract is reached. The Procurement Review Panel in *Protest of Amdahl Corporation and International Business Machines*, Panel Case No. 1986-6, found that:

When ITMO issues a Notice of Intent to Award there has been a meeting of the minds and the terms of the contract have been determined. Only signature on a document remains to make the contract enforceable against the state. Offer and acceptance have been completed and only payment and performance remain. No material terms of the contract can be varied after the notice of intent to award.

Mansfield was determined to be the highest ranked offeror and an Intent to Award was issued to it. The contract has been formed and the condition to release requested by Mansfield has been met. This information is no longer redacted and the CPO will rely on information from Section IV in making his determination.

ANALYSIS

PSE's first issue of protest is that Mansfield was not an offeror, and therefore is ineligible for award:

Mansfield Oil Company was given the award, per the entry on the Notice of Intent to Award.... "Mansfield Oil Company," however, did not submit a proposal. Instead, "Mansfield Oil of Gainesville, Inc." submitted a proposal, albeit an incomplete one. See "Name of Offeror," Mansfield Technical Proposal, attached as Exhibit 2, page 1. A company that did not submit an offer cannot contract with the State. In its cover letter, the proposer stated that the proposer was "Mansfield Oil Company of Gainesville" and that "Mansfield Oil Company

of Gainesville, Inc., the provider of the services and proposal, shall be referred to as Mansfield Oil Company or Mansfield.”

Mansfield included a signed solicitation cover sheet and a signed transmittal letter with its proposal that states in pertinent part:

For the purposes of this proposal, the State of South Carolina, Materials Management Office and State Fleet Management will be referred to as MMO, State Fleet Management or SFM. Mansfield Oil Company of Gainesville, Inc., the provider of the services and proposal, shall be referred to as Mansfield Oil Company or Mansfield.

The signed solicitation cover sheet lists Mansfield Oil of Gainesville, Inc. as the name of the offeror and a state vendor number of 7000088442. A review of the records in the South Carolina Enterprise Information System (SCEIS) reveals that this state vendor number is associated with Mansfield Oil Company. The SCEIS records also indicate that while Mansfield Oil Company of Gainesville, Inc., with offices in Cincinnati, OH; Mansfield Oil Company of Gainesville, Inc., with offices in Gainesville, GA; Mansfield Oil Company with offices in Cincinnati, OH; Mansfield Oil Co., with offices in Cincinnati, OH; each has a unique state vendor number; all have the same Taxpayer Identification Number (TIN).² State vendor number 7000088442 is associated with Mansfield Oil Company if Cincinnati, Ohio. Mansfield Oil Company of Gainesville, Inc. clearly intended to be bound by this contract regardless of the name that appears on the intent to award. This issue of protest is denied.

PSE next protests that a “Review of the proposal submitted by Mansfield Oil of Gainesville, Inc. – or Mansfield Oil *Company* of Gainesville - shows that Mansfield, the awarded vendor, did not sign the proposal or any amendments as required.” The record shows a signed solicitation cover sheet and a signed letter of transmittal. (Attachment 2) The signed coversheet lists the Name of Offeror as Mansfield Oil of Gainesville, Inc. of Gainesville, Georgia. Page two of the signed coversheet lists the home office as Mansfield Oil Company of Gainesville, Georgia, the Order Address as Mansfield Oil Company of Gainesville, Georgia, and the Payment Address as

² It is not unusual for a company to have multiple state vendor numbers, each identifying a unique address.

Mansfield Oil Company of Cincinnati, Ohio, while the Intent to Award lists Mansfield Oil Company of Cincinnati, Ohio. As explained above, Mansfield uses multiple variations of the company name, but all have the same TIN number. The signature on Mansfield's proposal is acceptable and this issue of protest is denied.

PSE's next issue of protest is that:

Mansfield was a non-responsive offeror in that it did not provide, in response to the RFP's various requests for information about the offeror or proposer, its own credentials or financials for evaluation, but instead offered those of a separate company that is not an offeror or proposer. The evaluation of a non-party's credentials and financials is arbitrary and capricious.

This issue of protest, like the first two, has at its core Mansfield's use of different names when identifying itself. As explained above, Mansfield uses multiple variations of the company name, but all have the same TIN number. This issue of protest is denied.

PSE protests that Mansfield took exception to and rejected mandatory and essential requirements of the RFP that were not determined to be minor informalities or irregularities. With regard to Section 2.6 of the solicitation, PSE alleges that:

PSE is informed and believes that the Mansfield response in its entirety fails to meet this requirement, imposes a per gallon increase as is specifically prohibited, and imposes impermissible freight charges, as is specifically prohibited. Further, as to emergency fuel, PSE is informed and believes that Mansfield will add a per gallon charge to, including freight plus a monetary cost per gallon markup to cover credit charges when Mansfield supplies fuel from other regions or delivered to South Carolina participants as a result of fuel supply shortages not caused by either State or Mansfield. Such charges clearly affect price, are specifically prohibited, and render Mansfield non-responsive.

Section 2.6 of the solicitation required:

During emergency situations as identified in the sole discretion of the State, provide for State owned fuel tanks, as specified, to be filled to the maximum operating capacity within thirty-six (36) hours of receiving request. Only those tanks which can receive a minimum load of two thousand (2,000) gallons will be subject to this requirement. Upon request from the State, provide for the supply of

mobile fueling tanks for emergency response. In the event the Offeror is requested by special emergency order to make less than load (LTL) deliveries which increase transportation costs to agency owned facilities, the extra freight charge must be invoiced directly to the agency owning the facility. A per gallon increase for this service is not acceptable. All invoices thus submitted must include documentation substantiating inventory prior to delivery by tank/product and truck capacity. Wherein LTL deliveries are not justified by vacant tank capacities, the State shall not responsible for additional transportation costs.

[Solicitation, Page 16] Mansfield responded as follows:

Mansfield Oil Company operates nationally for emergency services, being a primary provider to utilities, governments, and emergency response entities. During past hurricane events, pipeline disruptions, wildfires and other related supply issues, Mansfield Oil Company proved itself as a dependable supplier on all occasions, ensuring that the State of South Carolina facilities were a top priority. Fuel delivered from Nashville, Atlanta, Baltimore and other regions have been utilized in the past to supplement the shortage of supply in the region so as to maintain operations. Mansfield prepares State facilities well in advance of an event by having practically all of the managed sites topped off before the event occurs, working closely with DOT and SFM to maintain sufficient operational volumes during the event.

As a fuel and fuel management supplier to Federal, State, and Local Governments as well as thousands of commercial and retail clients throughout all U.S states, Mansfield maintains a current and thorough emergency response plan including redundant operations centers and data backup. When emergency situations occur, Mansfield Oil is there to provide for its contractual customers to maintain operations, fully implementing national supply availability of bulk fuel and transport supply as well as mobile refuelers.

Mansfield Oil prepares for emergency supply well in advance of catastrophic events by topping off tanks and contracting fuel supply to ensure consistent supply during the event. As Mansfield is connected with practically all State DOT, DOC and other participant's tanks, inventories are monitored closely. Additionally, Mansfield's LTL department, with nationwide agreements with LTL and mobile refuelers can provide for staging emergency fueling to be made available if required or requested. Any emergency fueling operations that are required and requested that fall out of normal operations of State facilities are billed to the Agency direct as the cost of emergency services above and beyond normal operations, as required by this solicitation. Freight charges that exceed typical freight will be charged as a cost over and beyond normal operations if they are pulled from other regions as a result of short supply due to causes unrelated to

Mansfield or the State. This does not apply to topping off tanks in preparation for Hurricanes or events that can be planned for in advance.

[Mansfield proposal, Page 8] (Emphasis added)

In Section IV Mansfield redacted the following:

Emergency Fuel: Fuel supplied from other regions or delivered to South Carolina participants as a result of fuel supply shortages not caused by either State or Mansfield will be priced at cost including freight plus a \$.02 cpg markup to cover credit charges.

[Mansfield proposal, Page 24]

The solicitation stipulates that if the State declares an emergency situation and the offeror is requested to make less than load (LTL) deliveries which increase transportation costs to agency owned facilities, the extra freight charge must be invoiced directly to the agency owning the facility. The solicitation also states that a per gallon increase for this service is not acceptable. Mansfield's inclusion of a \$.02 cpg charge is a change to a material requirement of the solicitation and renders Mansfield's proposal nonresponsive. This issue of protest is granted.

PSE's next issue of protest alleges that Mansfield unfairly limited its obligation to maintain fueling equipment as follows:

Mansfield, on information and belief, has taken exception to conditions expressed in the RFP in regard to Section 5.2 thereof, and Section 6.5 ... PSE is informed and believes that Mansfield requested that the State modify this provision for Mansfield alone, specifying that the State would upgrade to new equipment at the State's expense. Such conditions are impermissible, affect the cost of performance, and render the proposal non-responsive.

The solicitation requires:

5.2. Offeror will provide maintenance and repair of State owned FCTs necessitated by fair wear and tear, natural elements (e.g. wind, rain, fire, flood, lightning, etc.), acts of God, etc. to ensure continuous operation.

[Amendment 1, Page 17]

6.5. Proposed card design must be approved by the State.

NOTE: Should the short time frame from contract signing to contract start date create a problem in supplying cards as defined above, the contractor may issue interim cards not carrying the graphics listed pending availability of final cards. Such issue shall be at the Offeror's sole expense.

Successful Performance:

Offeror will provide service and maintenance to existing tank monitoring equipment, FCTs and pump pulsers at all agency owned sites. Equipment will be maintained around the clock twenty-four (24) hours with a toll free number and 8 hour response time. All new hardware and software should be compatible with existing FCTs....

[Amendment 1, Page 18]

In response to section 5.2 Mansfield provides the following response:

Mansfield Oil agrees to provide the necessary maintenance and repair of State owned Fuel Control Terminals necessitated by fair wear and tear, natural elements, acts of God, etc. As the existing FCT equipment, in some cases, will exceed expected lifetime use, and parts to fix it become unavailable in the marketplace, Mansfield will request upgrading to new equipment at the State's expense unless otherwise negotiated. The FCT's in place now have another 3-5 years of expected use, but should be considered for budgetary reasons for replacement towards the end of the term of this solicitation. Mansfield will provide these services to the State as part of our Fuel Systems and Services offering.

[Mansfield's proposal, Page 11]

Mansfield's response to Section 6.5:

Interim cards are not necessary in the event that Mansfield Oil is selected as the vendor for this solicitation. Please see recommendations in Section 4.1

[Mansfield's proposal, Page 12]

Mansfield's response to Section 4.1 is as follows:

This service is currently provided to the State of South Carolina State Fleet Management program and will continue should Mansfield be selected as the

vendor for this program. The current cards in place now as identified below are valid until 09/18. These cards can be utilized until their expiration or changed over to the new suggested card color to identify the new program. Should Mansfield be selected as the vendor, we will await state instructions on preferred method. A card color preference is requested and method of replacement preference.

Mansfield Oil will provide timely maintenance on required FCT's. This service is currently managed by Mansfield Oil through a subcontractor in South Carolina. Mansfield technicians are FuelMaster Manufacturer Certified, and highly proficient in repair, maintenance and service of FuelMaster Equipment. Additionally, Mansfield Oil technicians have been operating, managing and servicing Gasboy equipment for the past 16 years and can operate on a dual platform. Mansfield technicians are Gasboy and Veeder Root certified. This service will be provided should Mansfield be selected with the same level of service and efficiency as provided now. Pump pulsers as required will be maintained as well.

[Mansfield's proposal, Page 10]

Maintenance and repair does not extend to equipment that has reached end-of-life. Mansfield's response—agreeing to maintain and repair existing equipment while advising the State that some of the equipment may reach end-of-life near the end of this contract—is perfectly acceptable.

This issue of protest is denied.

PSE next alleges that Mansfield fails to meet the mandatory and essential requirements regarding fuel tax exemption found in Section 8.1. That Section requires:

The Offeror shall provide to the end user agency tax management service, by reducing the invoiced amounts by the deduction of federal excise taxes on all fuel dispensed either through government owned or commercial facilities and by the deduction of state road use taxes and fees on identified exempt equipment where fuel is dispensed to the equipment through retail/commercial or agency owned facilities, and where that deduction is in compliance with SC Department of Revenue policy. For all transactions not specified as tax exempt the Offeror should provide receipts to agencies upon request to apply for an exemption after the purchase.

[Amendment 1, Page 19]

Mansfield's response:

This service is now being provided in the existing contract and will continue in a new contract. All exempted taxes will be removed from transactions as required. The only exception to this rule is when Level 3 data is not achieved at a commercial facility. In this case, the cost is passed through without tax stripping. Within the existing program, Level 3 is achieved per the contractual requirements of 95% or higher.

[Mansfield's proposal, Page 14]

In Section IV, Mansfield provided the following:

Non Level 3: Transactions not meeting Level 3 or sufficient data to meet tax exemption requirements are passed through at cost.

[Mansfield proposal, Page 24]

The solicitation requires the offeror provide Level 3 data from 95% of the state and commercial terminals. Mansfield has tied its ability to remove taxes from only those transactions conducted at Level 3 capable terminals. However, the solicitation required removal of taxes from the invoices for all fuel dispensed either through government owned or commercial facilities. Mansfield has conditioned its response making it nonresponsive. This issue of protest is granted.

PSE's next issue of protest alleges Mansfield's failure to meet material requirements related to invoicing and reports in Section 10 of the solicitation as follows:

PSE is informed and believes that the Mansfield response in its entirety fails to meet these requirements. PSE is informed and believes that Mansfield requested that the State modify this provision for Mansfield alone, specifying that the State would accept electronic reports and invoices only in many cases when in fact the RFP requires all such reports and invoices to be sent via US Post ("postmarked") and hard copy. Also, on information and belief, Mansfield's offer does not agree to the prompt payment provisions of the RFP and the timeframes for invoicing and payment. Such conditions are impermissible and render the proposal nonresponsive. They also result in an unlevel playing field for the competitive acquisition which is specifically prohibited by law.

Section 10.3 requires invoicing detail reports as follows:

10.3. Invoicing detail reports (printed invoices) and the corresponding electronic data must be produced and postmarked no later than ten (10) business days after the end of the preceding month. Electronic invoices used to obtain an early payment discount must reflect the same discount on paper invoices sent to agencies.

Mansfield's response:

Electronic invoices are provided to all agencies via email and on line reference and a small percentage may require Postal Service delivery in addition. As prompt payments are dependent on payment by invoice date and not received date of paper invoice via Postal Service, the electronic invoice date of invoice applies for prompt payment discounts. Postal Service delivery is unpredictable and may delay receipt by 5-6 days, defeating the purpose of faster pay. Mansfield makes electronic delivery of invoices available to all agencies as well as providing logins to review invoices that have been billed. Prompt pay discounts have been identified in the Cover and Signature portion of this response.

[Mansfield's proposal, Page 17]

The solicitation requires both printed invoices and corresponding data be produced and postmarked no later than 10 days after the end of the preceding month. While this requirement might seem archaic in these modern times, it is an unmodified requirement with an impact on the cost of delivering these services. Mansfield proposal to provide electronic invoices to all agencies and postal delivery to a small percentage does not meet the solicitation requirement. This issue of protest is granted.

PSE protests that Mansfield has taken specific exception to a requirement regarding the removal of contaminated fuel found in Section 16 of the solicitation. Section 16 requires:

Any contaminated loads delivered must be pumped out and replaced at the Offeror's expense **within twenty-four (24) hours after notification**. Contamination is defined as any element, which enters pure refined gasoline, diesel or biodiesel fuel either naturally or by purposeful action, which is not a product of refined crude oil with the exception of winter additives, detergents, and identifying dyes. The State will only pay for non-contaminated fuel. Any dispute over the cause of a contaminated fuel will be resolved between Offeror and the State after the fuel has been replaced. The Offeror shall also be responsible for all cleanup required to all affected property, storage facilities, and equipment as a

result of noncompliance with specifications. Furthermore, the Offeror shall be fully responsible for any and all costs incurred by the State for any equipment sustaining damage, which is attributed to a contaminated fuel(s) which the Offeror has delivered.

[Amendment 1, Page 22] (Emphasis added)

Mansfield's response:

Mansfield will take necessary action to remove contaminated product out of tanks as quickly as reasonably possible as indicated in the Fuel Specifications of this RFP. As suspected contamination must first be tested to confirm contamination, then a suitable dumping facility be determined to take the fuel depending on the level and type of contamination. **A 24 hour turnaround may not be possible.** Mansfield will commit to testing, correcting and or removing product as quickly and safely as reasonably possible. The retail card provided within this proposal will allow for users to fuel at nearby retail stations during the contamination issue and Mansfield, upon determining cause, either before or after removal and replacement, will reimburse SFM or Agency for any additional costs associated with refueling at nearby retail facilities due to Mansfield delivering contaminated products to a SFM facility as well as other cost requirements as listed above.

[Mansfield's proposal, Page 19] (Emphasis added)

Mansfield did not agree to a material requirement of the solicitation and is nonresponsive. This issue of protest is granted.

PSE's next issue of protest alleges that Mansfield has taken specific exception to the State's requirement to invoice non-OPIS fuels as a pass through without markup minus any applicable taxes as required by Section 18.1 of the solicitation:

Mansfield's response to this section was not provided to PSE; however, on information and belief, Mansfield took specific exception and imposed conditions on performance that rendered Mansfield's response non-responsive, in that Mansfield did not provide for tax exemption on all such fuel purchased, but only where Level 3 data occurs and only when certain transaction data volume is received (*see, e.g.*, Exhibit 2, Mansfield's response to § 8.1, set forth herein, as well as any relevant information in the response to 18.1 which has been withheld to date); further, on information and belief, Mansfield proposed a markup, which was specifically prohibited, in the amount of some cents per gallon over cost.

Such conditions are impermissible, clearly affect cost, and render the proposal non-responsive. They also result in an unlevel playing field for the competitive acquisition which is specifically prohibited by law.

Section 18.1 of the solicitation requires:

18.1. Provide for fuel purchases of units of non-OPIS based fuel product including but not limited to propane, E85, hydrogen, CNG, kerosene, biodiesel, and marine and aviation fuels. These fuels must be invoiced as a pass through cost without markup minus any applicable taxes. All other fuel purchases shall comply with the pricing formula outlined in Attachment #1 without exception.

[Amendment 1, Page23]

Mansfield's response included an improperly redacted sentence as follows:

Through the selected retail network, Mansfield provides for alternative fuel providers at retail stations where the card is accepted. The codes for these products are clearly indicated on the transaction reports when coded correctly at the retail site. [REDACTED]

If sufficient transaction data is received, federal taxes are exempted. If Level 3 data is not received, the product passes through as a non-fuel item at cost as further explained within this proposal.

[Mansfield's proposal, Page 20]

Mansfield redacted the following relevant sentence from its response to this requirement:

Tax exemption occurs on each gallon where Level 3 data occurs and alternative pricing methodology is provided at \$.02 cents per gallon markup over cost.

[Mansfield's proposal, Page 20] (emphasis added)

The solicitation clearly states that these fuels must be invoiced as a pass through cost without markup minus any applicable taxes. Again, Mansfield limited the exemption of taxes to facilities that provide Level 3 transaction data. Mansfield's response is not responsive to the solicitation requirement. This issue of protest is granted.

PSE's next issue of protest is that Mansfield has taken specific exception to and imposed conditions on performance of the State's mandatory and essential requirements of Section 20.1 of the RFP.

It is well-established that the State of South Carolina does not permit the State to act as guarantor or provide indemnities. Mansfield's clause specifically rejects the State's requirement, and then only offers partial performance on condition that the State cannot and must not be allowed to accept. Other offerors did not take such exceptions or impose such conditions, but instead agreed to the material, essential and truly critical terms. As such, Mansfield should have been disqualified as nonresponsive.

Section 20.1 states:

Since unleaded and diesel fuel inventories located in UST's and AST's at agency owned sites are owned by the current contractor, it will be the responsibility of the successful Offeror to negotiate with the current Contractor and the State, the transfer of ownership in a manner that will cause very limited interruption of fuel service at any agency owned facility. Prior to removal/installation of fuel management software at each agency owned facility listed in Attachment # 4, a termination inventory shall be conducted by the current Contractor and verified by the agency owning fuel site. The price for each type of fuel shall be the current bulk fuel price provided in contract# 4400001125. Compensation for the inventory on hand should be made to current Contractor from the successful Offeror within thirty (30) calendar days after inventory verification.

[Amendment 1, Page 23]

Mansfield's response:

Mansfield Oil currently owns the fuel consigned at each location and in the event that Mansfield Oil is selected as the successful contractor, a change in fuel ownership would not be required. A true up will occur prior to conversion to a new vendor. A credit review of the successful offeror will be required to be approved to extend 30 day terms for inventory transfer, unless guaranteed by the State of South Carolina.

[Mansfield's proposal, Page21] (Emphasis added)

While Mansfield's concern is understandable, requiring the State to guarantee the credit of another bidder is an indemnification to which the State cannot agree and the solicitation does not provide for award of the contract based on a credit check acceptable to Mansfield. Mansfield has attempted to impose conditions on the State that are outside the scope of the solicitation rendering its proposal nonresponsive. This issue of protest is granted.

PSE protests that Mansfield took exception and imposed conditions in Section IV.1 to certain solicitation requirements:

RFP, § VI.1. Mansfield's response was not provided to PSE; however, on information and belief, Mansfield took specific exception and imposed conditions on performance that rendered Mansfield's response non-responsive, in that Mansfield did not provide for tax exemption on all such fuel purchased, but only where Level 3 data occurs and only when certain transaction data volume is received (*see* Exhibit 2, Mansfield's response to § 8.1, set forth herein); further, on information and belief, Mansfield proposed a markup, which was specifically prohibited, in the amount of some cents per gallon over cost. Such conditions are impermissible and render the proposal non-responsive. They also result in an unlevel playing field for the competitive acquisition which is specifically prohibited by law.

The CPO has acknowledged that certain information from Mansfield's response to Section IV was improperly redacted and has taken that information into consideration in reviewing this protest. PSE also contends that Mansfield's proposal was nonresponsive for failing to submit pricing information:

PSE attended proposal opening. At the opening, the State individual opening the proposals remarked specifically that she could not find Mansfield's pricing.³ After Mansfield was issued a Notice of Intent to Award, PSE, through counsel, issued a public records request that covered the entirety of Mansfield's technical and business/pricing proposal, among other things. As of this date, it does not appear that Mansfield's original pricing as submitted has been supplied.⁴

³ Procurement Services personnel are advised of the following excerpt from Regulation 19-445-2095(C):
... The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier.... Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel.

⁴ State personnel are advised that pricing information provided on a form published in the solicitation is not privileged or confidential information and shall not be withheld.

Therefore, it appears that Mansfield did not submit pricing with its initial proposal. Therefore, Mansfield's proposal was not qualified for discussions or clarifications, Mansfield was not a responsive offeror, and was ineligible for award. The award to Mansfield must be cancelled.

Mansfield's pricing is in the file and attached hereto as Attachment 3.

PSE protests that Mansfield conditioned its offer to protect itself against changes in anticipated volumes in violation of Section 2.1 of the solicitation.

Section 2.1 of the RFP provided as follows:

The State operates approximately 16,000 on road vehicles. Annually via this contract approximately fifteen (15) million gallons of fuel is purchased from retail/commercial locations and approximately five (5) million is purchased from agency owned/backyard sites. **The State does not guarantee any minimum volume of product or service.**

RFP § 2.1, Emphasis in original.

Mansfield's response:

Costs associated with operating this program (supply, services, maintenance, interest, inventory) are based on the estimated throughput in volume as estimated. A volume shortage of greater than 20% for on site fueling for any given 12 month period without an equivalent cost reduction in services provided will require adjustments to adders or to reduce services provided to an equivalent level. A sustained increase in volume at 20% or higher, indicating a lower cost of operation due to higher volume may be put into place as well for an opposite effect.

[Mansfield response, Page 7]

This is a term contract whose initial term is three years as set forth in the solicitation:

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 3 years from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

[Solicitation, Page 43]

**PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY
(JAN 2006)**

Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase. [07-7B165-1]

Mansfield attempts to modify the terms of the contract and is nonresponsive to a material requirement of the solicitation. This issue of protest is granted.

PSE protests that the State's Determination of Non-Responsive Bid recites that PSE was disqualified for reasons that applied exactly equally to Mansfield's bid, and yet Mansfield was not disqualified. Such unequal treatment of vendors is prohibited and mandates that the solicitation process be cancelled and resolicited.

The Memorandum for Record, Determination of Non-Responsive Bid dated July 7, 2016 (Exhibit 3)(never supplied by MMO to PSE, and provided to counsel for PSE on July 15, 2016 only after submission of a public records request) states that PSE was disqualified as nonresponsive because:

- As described **Section III. Scope of Work** 1. General 1.1.4. Provide access to at least 1,750 retail fuel outlets that operate in all 46 South Carolina counties of which a minimum of 2 retail outlets per each county offering fueling 24 hours, 7 days a week.

P.S. Energy states on page 22, 7th bullet of their offer:

"We have included a list of 9,870 retail fueling sites in South Carolina which accept Shell Fleet Navigator Card. These stations are found in all 46 South Carolina counties, and there are at least 2 retail outlets in each county offering fueling 24 hours, 7 days a week, other than Edgefield County."
Including the language "other than Edgefield County" is stating an exception to the State's requirement of coverage in all 46 South Carolina counties.

- The state's minimum retail site requirement in South Carolina is 1,750 sites.

P.S Energy's attached fuel site locations spreadsheet supplied with their offer shows 2,103 retail sites listed. On the list, there are approximately 606 retail sites that are duplicates and 2 sites that are listed in White County. There is not a White County in the State of South Carolina. After deducting the duplicate sites and 2 sites from White County, P.S. Energy's total count of retail sites in South Carolina is 1,498. The RFP clearly states that South Carolina requires a minimum total of 1,750 retail sites. (emphasis in original)

Section 1.1.4 of the solicitation requires the successful offeror to:

Provide access to at least 1,750 retail fuel outlets that operate in all 46 South Carolina counties of which a minimum of 2 retail outlets per each county offering fueling 24 hours, 7 days a week.

PSE's response:

We have included a list of 9,870 retail fueling sites in South Carolina which accept Shell Fleet Navigator Card. These stations are found in all 46 South Carolina counties, and there are at least 2 retail outlets in each county offering fueling 24 hours, 7 days a week, other than Edgefield County.

The State determined PSE was non-responsive to this requirement for two reasons: First, that after removal of duplications and inappropriate entries, PSE's spreadsheet only shows 1,498 retail sites. PSE correctly argues that the State used the spreadsheet showing the sites open twenty-four hours a day, seven days a week in determining it only listed 1498 retail sites instead of the spreadsheet showing 9870 retail sites.

The second reason PSE was determined nonresponsive was its statement that "there are at least 2 retail outlets in each county offering fueling 24 hours, 7 days a week, other than Edgefield County." PSE argues that:

... because both PSE and Mansfield proposed to use the same "Wex Card" which has access to the same sets of retail fuel outlets. Thus, without even reading the proper spreadsheet tab in PSE's offer, the State should have readily seen and known that since both PSE and Mansfield proposed to use the Wex Card, with all of its attendant retail outlets, they were both either equally responsive, or equally non-responsive.

PSE prepared its proposal and indicated that there was only one retail outlet providing fueling 24 hours, 7 days a week in Edgefield county. The spreadsheet provided by Mansfield lists 11 retail sites that provide fueling 24 hours, 7 days a week. PSE erred in preparing its proposal and it is not the State's responsibility to correct errors in the bidder's proposal. PSE was correctly determined nonresponsive to this requirement. This issue of protest is denied.

PSE also protests that the determination that its proposal was non-responsive was arbitrary, capricious, and violated the purposes and principles of the Consolidated Procurement Code as follows:

For the same reasons as stated above, as well as by reason of the circumstances of PSE's disqualification, it is clear that PSE was improperly excluded from competition and disqualified as non-responsive. The determination that PSE was non-responsive was arbitrary, capricious, and violated the purposes and principles of the Consolidated Procurement Code.

First, the State should have actually *read* the relevant parts of the PSE proposal, not the "wrong tab" of the spreadsheet. Such failure to read the relevant part of the proposal to determine it lacking, and misreading the actual content of the proposal as submitted are arbitrary, capricious and clearly erroneous as a matter of law.

Second, when the State needlessly asked for the clarification of these items (such request being needless because actually reading the already extant contents answered all of the questions posed showing the proposal was responsive), it was obligated to, but did not, make the request in a way that was commercially reasonable, fair and equitable, and on concert with the requirements of the Consolidated Procurement Code, which mandates the promotion of competition.

Here, the Procurement Officer wrote an e-mail *after close of business* on Friday of the July 4th weekend to PSE asking for clarification on these issues to be delivered by 5 pm the very next business day, which was the day after the holiday, a date well known to be vacation time for many persons in many businesses and professions. Exhibit 4, Emails to and from PSE. This email did not comply with the requirements of law regarding requests for clarification or discussions. Also, it was written to a single PSE employee rather than to several PSE employees, contrary to prior conduct of the Procurement Officer. See Exhibit 5, June 30 Email to Several PSE employees. This deadline on the email gave, essentially, a few hours for the PSE employee to respond - if the employee who was sent the

email was back from the July 4 holiday at all. In fact, he was not. He took July 5 as a day off, just as many Americans do. See Exhibit 4.

On the afternoon of July 5, 2016, at 12:18PM, the Procurement Officer *sent another e-mail(to the same person who was on vacation July 5), requesting still more information with a deadline of only a few hours.* See Exhibit 4. This request did not comply with governing law.

When the PSE employee returned from his one day vacation day after the Fourth of July Holiday weekend, he saw the emails, *immediately responded* at 9:06am on July 6th stating he would provide the information. See Exhibit 4. The Procurement Officer did not reply to that email at all, and did not inform PSE that it was “too late” to respond. Instead, the Procurement Officer accepted PSE’s clarification response that was submitted on July 6th at 5:13pm. And while, as of that day and time, *the evaluation and scoring meeting had not been conducted*, and there would have been no harm whatsoever in accepting the response PSE actually provided, the Procurement Officer – without *first* making a written determination - excluded PSE’s proposal from evaluation and scoring that was done the next day, July 7, 2016. Again, this was after the State already had received PSE’s clarifications confirming PSE’s full responsiveness and pointing out, among other things, that the State was looking at the wrong spreadsheet tab. See Exhibit 4. The scoring panel met on July 7, 2016 at 9:30 am (see Exhibits 6, 7 and 8) – the day after PSE provided its clarifications, which were, as it turns out, needless due to the State’s failure to read the correct tab of the spreadsheet PSE had provided. See Panel Scoring Minutes, Exhibit 6. The Determination and Finding to Award to Mansfield was not made until July 8, 2016. Exhibit 9.

The first contact between PSE and the State regarding clarifications actually occurred on June 27th. Those communications were directed to the PSE representative identified on the proposal as the person who prepared the proposal. This person responded to the 27th email. The clarifications sought on July 1st were repeated in the email sent at 12:18 PM on July 5th. There was no indication that PSE was closed for business on July 5th and there is no indication that the procurement officer received an out of office reply to either the July 1st or July 5th emails.

Arbitrary is defined as random, chance, subjective, uninformed, or illogical. Capricious is defined as impulsive, unpredictable, changeable, whimsical, variable, unreliable, fickle, or erratic. The actions of the procurement officer were not arbitrary or capricious. This issue of protest is denied.

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Case No. 2017-105
August 26, 2016

DECISION

For the reasons stated above, the protest of PS Energy Group, Inc. is granted.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



John E. Schmidt, III
803.348.2984
John.Schmidt@TheSCLawfirm.com

Melissa J. Copeland
803.309.4686
Missy.Copeland@TheSCLawfirm.com

July 22, 2016

Via Email to protest-mmo@mmo.sc.gov and protest-mmo@mmo.state.sc.us

Mr. Michael B. Spicer
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: **AMENDED** Protest of Notice of Intent to Award to Mansfield Oil Company,
Cincinnati Ohio
Solicitation: 5400011330
Protest of Determination of Non-responsiveness of PS Energy Group, Inc.
Description: Fuel Card Management System

Dear Mr. Spicer:

This firm represents PS Energy Group, Inc. ("PSE") in connection with the above matter and submits this *amended* protest of the Notice of Intent to Award a contract to Mansfield Oil Company, ("Mansfield"), first posted July 8, 2016, as well as the Determination of Non-responsiveness of PS Energy Group, Inc. dated July 7, 2016 and first supplied to PSE through counsel on July 15, 2016. The grounds of this protest are set forth below.

In accordance with applicable law, this protest letter is intended to provide notice of the issues to be decided. Accordingly, it does not purport to set forth all facts and evidence in support of the protest issues. PSE adopts and incorporates all Exhibits and materials already submitted and all materials PSE has been, to date, precluded from viewing under its open records requests, and asks that all such materials be made a part of the Record for review. PSE asks again that the CPO permit it to examine the actual full responses of Mansfield relevant to all sections of the proposal protested herein, and herewith makes such request formally under all relevant records laws. PSE reserves the right to offer facts, evidence and argument in support of the protest at any time as may be permitted by law. PSE requests due notice and a hearing at which it will present facts, evidence and argument on these issues and any others as may be properly raised under law. If for any reason a hearing will not be held, PSE requests that the CPO advise of any deadlines for the submission of evidence and argument in support of this protest.

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BACKGROUND

This protest concerns the procurement of the State of South Carolina to solicit proposals for a Fuel Card Management System. PSE was improperly and unfairly disqualified as non-responsive because the State in one instance read the “wrong tab” of the spreadsheet PSE submitted, thus overlooking the relevant part of PSE’s proposal, and in another, disqualified PSE in regard to matters which were actually identical in every way to the response of the awarded vendor, Mansfield. Before final ranking of proposals and before the evaluation and scoring even commenced, PSE addressed all of the issues raised by the State; yet, the State refused to consider the responses. The State’s wrongful disqualification of PSE is a great loss to the State, because PSE’s offer was more than a million dollars more favorable to the State than that of the incumbent. While motivation is impossible to prove at this point, one evaluator actually improperly noted in writing repeatedly the disadvantages if a new vendor were selected. Such a consideration is entirely improper in the context of public contracting. Also, as shown below, Mansfield’s response is rife with nonresponsive refusals to accept the most fundamental, essential and material requirements of the RFP and imposes repeated and unlawful conditions on the State in violation of law

As is typical in an RFP, the solicitation at issue, Request for Proposal 5400011330, Amendment 1¹(“RFP”) referenced above provided:

Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. *Offers which impose conditions that modify material requirements of the Solicitation may be rejected.* If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. *Offerors will not be given an opportunity to correct any material nonconformity.*

RFP at 10 (emphasis added).

ISSUES OF PROTEST

The issues of protest as identified to date are set forth below:

1. Mansfield was not an offeror, and therefore is ineligible for award.

Mansfield Oil Company was given the award, per the entry on the Notice of Intent to Award., That Award statement says:

¹ The initial RFP was substituted entirely and republished by Amendment 1.

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Contract

Number: 4400013510

Awarded

To: MANSFIELD OIL COMPANY (7000088442)
P.O. Box 638544
CINCINNATI OH 45263

Intent to Award, attached as Exhibit 1. "Mansfield Oil Company," however, did not submit a proposal. Instead, "Mansfield Oil of Gainesville, Inc." submitted a proposal, albeit an incomplete one. See "Name of Offeror," Mansfield Technical Proposal, attached as Exhibit 2, page 1. A company that did not submit an offer cannot contract with the State. In its cover letter, the proposer stated that the proposer was "Mansfield Oil *Company* of Gainesville" and that "Mansfield Oil Company of Gainesville, Inc., the provider of the services and proposal, shall be referred to as Mansfield Oil Company or Mansfield."

Regardless, it is clear from all of the above that Mansfield Oil Company itself was never a proposer. The actual name and formal identification of the contracting party – the party to be bound to the State – is not a triviality, but a matter of serious import. The State's required cover page, to be signed, is very clear about this, saying:

Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc

Id. The Notice of Intent to Award to Mansfield Oil Company must be rescinded.

2. Mansfield did not sign the proposal or amendments as required.

Review of the proposal submitted by Mansfield Oil of Gainesville, Inc. – or Mansfield Oil *Company* of Gainesville - shows that Mansfield, the awarded vendor, did not sign the proposal or any amendments as required. The space provided by the State for "Authorized Signature" on the Mansfield proposal remains blank. The State's requirement is clear, and states on that form: "You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of forty-five (45) calendar days after the Opening" and "Person must be authorized to submit binding offer to contract on behalf of Offeror."

The RFP also states:

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SIGNING YOUR OFFER (JAN 2004)

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

RFP at p. 11.

AMENDMENTS TO SOLICITATION (JAN 2004)

...(b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. ...

RFP at p. 5.

Mansfield's offer, signed by the representative of a separate corporate entity, did not comply with these requirements, and the many other important legal certifications that are carried along with signature. As such, Mansfield's proposal should have been rejected and deemed ineligible

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for award.

3. **Mansfield was a non-responsive offeror in that it did not provide, in response to the RFP's various requests for information about the offeror or proposer, its own credentials or financials for evaluation, but instead offered those of a separate company that is not an offeror or proposer. The evaluation of a non-party's credentials and financials is arbitrary and capricious.**

Here, Mansfield's offer is *at best* ambiguous as to who is intended as the offeror. Under this circumstance, it is not clear that Mansfield was responsive in any way. It is not clear that Mansfield offered the proper credentials or financials for the entity proposing a contract, and it is not clear that the State evaluated the information of the actual offeror.

The evaluation of credentials and financials of an entity that will not be on the contract is per se arbitrary and capricious.

4. **No Mansfield entity was a responsive offeror. The Proposal submitted took exception to and rejected mandatory and essential requirements of the RFP that were not determined to be minor informalities or irregularities.**

The RFP stated specifically the requirements of the State and expressed clearly the mandatory and essential requirements all offerors were required to meet without exception. Here, the proposal which the State seeks to accept of a Mansfield entity took specific exception to such mandatory and essential requirements, and attempted to impose conditions on the State in violation of law, and thus the offeror was not a responsive offeror, and the proposal was not a responsive proposal. Accordingly, Mansfield's proposal was required to be rejected. The mandatory and essential requirements of the RFP that Mansfield took exception to and imposed conditions on the State with respect to include, but are not limited to, the following:

- a) **Mansfield, on information and belief, took exception to and attempted to levy on the State added impermissible charges for performance in regard to Section 2.6 of the RFP.**

During emergency situations as identified in the sole discretion of the State, provide for State owned fuel tanks, as specified, to be filled to the maximum operating capacity within thirty-six (36) hours of receiving request. Only those tanks which can receive a minimum load of two thousand (2,000) gallons will be subject to this requirement. Upon request from the State, provide for the supply of mobile fueling tanks for emergency response. In the event the Offeror is requested by special emergency order to make

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less than load (LTL) deliveries which increase transportation costs to agency owned facilities, the extra freight charge must be invoiced directly to the agency owning the facility. A per gallon increase for this service is not acceptable. All invoices thus submitted must include documentation substantiating inventory prior to delivery by tank/product and truck capacity. Wherein LTL deliveries are not justified by vacant tank capacities, the State shall not responsible for additional transportation costs.

RFP, § 2.6

The State has not provided the full responses of Mansfield² to the RFP however, PSE is informed and believes that the Mansfield response in its entirety fails to meet this requirement, imposes a per gallon increase as is specifically prohibited, and imposes impermissible freight charges, as is specifically prohibited. Further, as to emergency fuel, PSE is informed and believes that Mansfield will add a per gallon charge to, including freight plus a monetary cost per gallon markup to cover credit charges when Mansfield supplies fuel from other regions or delivered to South Carolina participants as a result of fuel supply shortages not caused by either State or Mansfield. Such charges clearly affect price, are specifically prohibited, and render Mansfield non-responsive. PSE asks that the CPO release to PSE the provisions of the Mansfield proposal that address these matters, or at least that such materials be released for counsel's eyes only.

- b) Mansfield, on information and belief, has taken exception to conditions expressed in the RFP in regard to Section 5.2 thereof, and Section 6.5, which state as follows:

Offeror will provide maintenance and repair of State owned FCTs necessitated by fair wear and tear, natural elements (e.g. wind, rain, fire, flood, lightning, etc.), acts of God, etc. to ensure continuous operation.

RFP, § 5.2.

Offeror will provide service and maintenance to existing tank monitoring equipment, FCTs and pump pulsers at all agency owned sites. Equipment will be maintained around the clock

² Mansfield's Proposal that was provided to PSE was redacted in various places. To the extent the redactions are of pricing or financial information, that information must be provided regardless of such markings. *See* Amendment 1, p. 11 (" Offeror ... agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure.")

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twenty-four (24) hours with a toll free number and 8 hour response time. All new hardware and software should be compatible with existing FCTs. Offeror will provide cards that will work at both retail/commercial sites and agency owned sites, with the ability to capture level 3 data.

RFP, § 6.5

The State has not provided the full responses of Mansfield to the RFP that pertain to these issues; however, PSE is informed and believes that the Mansfield response in its entirety fails to meet these requirements. PSE is informed and believes that Mansfield requested that the State modify this provision for Mansfield alone, specifying that the State would upgrade to new equipment at the State's expense. Such conditions are impermissible, affect the cost of performance, and render the proposal non-responsive. They also result in an unlevel playing field for the competitive acquisition which is specifically prohibited by law. PSE asks that the CPO release to PSE the provisions of the Mansfield proposal that address these matters, or at least that such materials be released for counsel's eyes only.

- c) Mansfield fails to meet the mandatory and essential performance requirements of RFP Section 8.1, which requires:

The Offeror shall provide to the end user agency tax management service, by reducing the invoiced amounts by the deduction of federal excise taxes on all fuel dispensed either through government owned or commercial facilities and by the deduction of state road use taxes and fees on identified exempt equipment where fuel is dispensed to the equipment through retail/commercial or agency owned facilities, and where that deduction is in compliance with SC Department of Revenue policy. For all transactions not specified as tax exempt the Offeror should provide receipts to agencies upon request to apply for an exemption after the purchase.

RFP, § 8.1.

Mansfield's non-compliant response specifically rejects this material and essential requirement:

This service is now being provided in the existing contract and will continue in a new contract. All exempted taxes will be removed from transactions as required. ***The only exception to this rule is***

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when Level 3 data is not achieved at a commercial facility. In this case, the cost is passed through without tax stripping. Within the existing program, Level 3 is achieved per the contractual requirements of 95% or higher.

Exhibit 2, Mansfield Technical Proposal, p. 14 (emphasis added). This improper qualification taken by Mansfield results in the State either being charged taxes on non-tax transactions, or in the State having to perform the extensive labor associated with managing these improperly taxed transactions through other agencies. Other offerors took no such exceptions and asserted no such material limitations to this essential performance requirement, which clearly affects price. As a consequence, Mansfield's proposal should have been rejected as non-responsive.

d) On information and belief, Mansfield has taken exception to and imposed conditions on performance of the State's mandatory and essential requirements of Section 10 of the RFP, which provides:

10.1 Based on transaction data accumulated and reported as above, provide to each end user, in conjunction with the reports specified above, a monthly invoice for fuel used. All invoices must include all of the information listed in Section 9.2. Payment for goods and services received by the State shall be processed in accordance with Section 11-35-45 of the South Carolina Consolidated Procurement Code (can be accessed at: <http://www.scstatehouse.gov/code/t11c035.php>). After an agency has certified its satisfaction with the received goods or services, invoiced amounts will be due and payable not less than thirty (30) work days from receipt of invoice. Vendor must invoice transactions within ninety (90) days of transaction date. The State shall not be responsible for payment of any transaction invoiced after ninety (90) days from the original transaction date. It will be the responsibility of the Offeror to obtain the necessary billing information from each using Agency within thirty (30) days after effective award.

10.2 While the standard terms of payment for this contract is thirty (30) days from receipt of invoice described above, the State is interested in any discounts, reimbursements or credits for payments received in less than thirty (30) days or a prompt payment discount.

NOTE: Some agencies are able to process payments net 10 days from receipt.

- 10.3 Invoicing detail reports (printed invoices) and the corresponding electronic data must be produced and postmarked no later than ten (10) business days after the end of the preceding month. Electronic invoices used to obtain an early payment discount must reflect the same discount on paper invoices sent to agencies.

RFP, § 10.

The State has not provided the full responses of Mansfield to the RFP that pertain to these issues; however, PSE is informed and believes that the Mansfield response in its entirety fails to meet these requirements. PSE is informed and believes that Mansfield requested that the State modify this provision for Mansfield alone, specifying that the State would accept electronic reports and invoices only in many cases when in fact the RFP requires all such reports and invoices to be sent via US Post ("postmarked") and hard copy. Also, on information and belief, Mansfield's offer does not agree to the prompt payment provisions of the RFP and the timeframes for invoicing and payment. Such conditions are impermissible and render the proposal non-responsive. They also result in an unlevel playing field for the competitive acquisition which is specifically prohibited by law. PSE asks that the CPO release to PSE the provisions of the Mansfield proposal that address these matters, or at least that such materials be released for counsel's eyes only.

- e) Mansfield has taken specific exception to and imposed conditions on performance of the State's mandatory and essential requirements of Section 16 of the RFP, which provides:

- 16.1 ***Any contaminated loads delivered must be pumped out and replaced at the Offeror's expense within twenty-four (24) hours after notification.*** Contamination is defined as any element, which enters pure refined gasoline, diesel or biodiesel fuel either naturally or by purposeful action, which is not a product of refined crude oil with the exception of winter additives, detergents, and identifying dyes. The State will only pay for non-contaminated fuel. ***Any dispute over the cause of a contaminated fuel will be resolved between Offeror and the State after the fuel has been replaced.*** The Offeror shall also be responsible for all cleanup required to all affected property, storage facilities, and equipment as a result of noncompliance with specifications. Furthermore, the Offeror shall be fully

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responsible for any and all costs incurred by the State for any equipment sustaining damage, which is attributed to a contaminated fuel(s) which the Offeror has delivered.

The Offeror shall not be responsible for any contaminated loads under any circumstances if said product is delivered into the tank by any vehicle not hired by Offeror. This exception includes vehicles owned by the State, regardless of where the product dropped originated.

Successful Performance: Offeror will be responsible for any contaminated loads delivered to agency owned sites reported *within twenty-four (24) hours* of delivery. Upon notification, Offeror will remove and replace bad product at no cost to the State. Offeror will be responsible for any equipment malfunctions as a result of bad product.

RFP, § 16 (emphasis added).

Mansfield's non-compliant response states:

Mansfield will take necessary action to remove contaminated product out of tanks as quickly as reasonably possible as indicated in the Fuel Specifications of this RFP. As suspected contamination must first be tested to confirm contamination, then a suitable dumping facility be determined to take the fuel depending on the level and type of contamination. A 24 hour turnaround may not be possible.

Mansfield will commit to testing, correcting and or removing product as quickly and safely as reasonably possible. The retail card provided within this proposal will allow for users to fuel at nearby retail stations during the contamination issue and Mansfield, upon determining cause, either before or after removal and replacement, will reimburse SFM or Agency for any additional costs associated with refueling at nearby retail facilities due to Mansfield delivering contaminated products to a SFM facility as well as other cost requirements as listed above.

Exhibit 2, Mansfield Technical Proposal, p. 19-20. (emphasis added). Mansfield has specifically rejected the State's intended method of handling the very serious issue of fuel contamination

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reports. Other offerors did not take such exceptions. Mansfield affords itself the “right” to test and confirm before removal, whereas the State’s written requirement precludes that “right.” Moreover, Mansfield refuses to commit to the 24 hour removal period. Again, other offerors did not take such exceptions, but instead agreed to the material, essential and truly critical terms. As such, Mansfield should have been disqualified as non-responsive.

- f) Mansfield has taken specific exception to and imposed conditions on performance of the State’s mandatory and essential requirements of Section 18.1 of the RFP, which provides:

Provide for fuel purchases of units of non-OPIS based fuel product including but not limited to propane, E85, hydrogen, CNG, kerosene, biodiesel, and marine and aviation fuels. These fuels must be invoiced as a pass through cost without markup minus any applicable taxes. All other fuel purchases shall comply with the pricing formula outlined in Attachment #1 without exception.

RFP, p. 18.1. Mansfield’s response to this section was not provided to PSE; however, on information and belief, Mansfield took specific exception and imposed conditions on performance that rendered Mansfield’s response non-responsive, in that Mansfield did not provide for tax exemption on all such fuel purchased, but only where Level 3 data occurs and only when certain transaction data volume is received (*see, e.g.*, Exhibit 2, Mansfield’s response to § 8.1, set forth herein, as well as any relevant information in the response to 18.1 which has been withheld to date); further, on information and belief, Mansfield proposed a markup, which was specifically prohibited, in the amount of some cents per gallon over cost. Such conditions are impermissible, clearly affect cost, and render the proposal non-responsive. They also result in an unlevel playing field for the competitive acquisition which is specifically prohibited by law. PSE asks that the CPO release to PSE the provisions of the Mansfield proposal that address these matters, or at least that such materials be released for counsel’s eyes only.

- g) Mansfield has taken specific exception to and imposed conditions on performance of the State’s mandatory and essential requirements of Section 20.1 of the RFP, which provides:

20.1 Since unleaded and diesel fuel inventories located in UST’s and AST’s at agency owned sites are owned by the current contractor, it will be the responsibility of the successful Offeror to negotiate with the current Contractor and the State, the transfer of ownership in a manner that will cause very limited interruption of fuel service at any agency owned facility. Prior to removal/installation of fuel

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management software at each agency owned facility listed in Attachment # 4, a termination inventory shall be conducted by the current Contractor and verified by the agency owning fuel site. The price for each type of fuel shall be the current bulk fuel price provided in contract# 4400001125. ***Compensation for the inventory on hand should be made to current Contractor from the successful Offeror within thirty (30) calendar days after inventory verification.***

RFP, § 20.1 (emphasis added).

Mansfield's non-compliant response stated:

Mansfield Oil currently owns the fuel consigned at each location and in the event that Mansfield Oil is selected as the successful contractor, a change in fuel ownership would not be required. A true up will occur prior to conversion to a new vendor. ***A credit review of the successful offeror will be required to be approved to extend 30 day terms for inventory transfer, unless guaranteed by the State of South Carolina.***

Exhibit 2, Mansfield Technical Proposal, p. 21 (emphasis added). It is well-established that the State of South Carolina does not permit the State to act as guarantor or provide indemnities. Mansfield's clause specifically rejects the State's requirement, and then only offers partial performance on condition that the State cannot and must not be allowed to accept. Other offerors did not take such exceptions or impose such conditions, but instead agreed to the material, essential and truly critical terms. As such, Mansfield should have been disqualified as non-responsive.

h) Mansfield has taken specific exception to and imposed conditions on performance of the State's mandatory and essential requirements of Section VI. 1. of the RFP, (Information for Offerors to Submit) which provides:

Price mark-ups and pricing plan for fuels to be procured pursuant to this contract that are not tied to an OPIS index as requested in Attachment #1

RFP, § VI.1. Mansfield's response was not provided to PSE; however, on information and belief, Mansfield took specific exception and imposed conditions on performance that rendered Mansfield's response non-responsive, in that Mansfield did not provide for tax exemption on all

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such fuel purchased, but only where Level 3 data occurs and only when certain transaction data volume is received (*see* Exhibit 2, Mansfield's response to § 8.1, set forth herein); further, on information and belief, Mansfield proposed a markup, which was specifically prohibited, in the amount of some cents per gallon over cost. Such conditions are impermissible and render the proposal non-responsive. They also result in an unlevel playing field for the competitive acquisition which is specifically prohibited by law. PSE asks that the CPO release to PSE the provisions of the Mansfield proposal that address these matters, or at least that such materials be released for counsel's eyes only.

- i) Mansfield was not responsive and ineligible for clarification or discussions because it did not submit the required pricing.

PSE attended proposal opening. At the opening, the State individual opening the proposals remarked specifically that she could not find Mansfield's pricing. After Mansfield was issued a Notice of Intent to Award, PSE, through counsel, issued a public records request that covered the entirety of Mansfield's technical and business/pricing proposal, among other things. As of this date, it does not appear that Mansfield's original pricing as submitted has been supplied. Therefore, it appears that Mansfield did not submit pricing with its initial proposal. Therefore, Mansfield's proposal was not qualified for discussions or clarifications, Mansfield was not a responsive offeror, and was ineligible for award. The award to Mansfield must be cancelled.

- j) Mansfield was not responsive to the mandatory and essential requirements of RFP Section 2.1.

Section 2.1 of the RFP provided as follows:

The State operates approximately 16,000 on road vehicles. Annually via this contract approximately fifteen (15) million gallons of fuel is purchased from retail/commercial locations and approximately five (5) million is purchased from agency owned/backyard sites. **The State does not guarantee any minimum volume of product or service.**

RFP § 2.1, Emphasis in original.

Mansfield's non-compliant response to this mandatory and essential requirement was as follows:

Costs associated with operating this program (supply, services, maintenance, interest, inventory) are based on the estimated throughput in volume as estimated. A volume shortage of greater than 20% for on site fueling for any given 12 month period without

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an equivalent cost reduction in services provided will require adjustments to adders or to reduce services provided to an equivalent level. A sustained increase in volume at 20% or higher, indicating a lower cost of operation due to higher volume may be put into place as well for an opposite effect.

See Exhibit 2, Mansfield Technical Proposal, p. 7. The RFP clearly did not guarantee any volumes. Mansfield's response clearly took exception, and imposed conditions, requirements and added costs, adjustments to adders and reserved the right to impose reductions in services if volumes were not as Mansfield expected. Such conditions, exceptions requirements and cost additions clearly affect price, quantity, quality and delivery of the services at issue, are forbidden, and render Mansfield's proposal non-responsive. As such, the intent to award to Mansfield must be cancelled.

5. **The State improperly disqualified PSE, as shown herein; however, if any such disqualification were proper, Mansfield's Proposal was equally defective. Both Proposals should have been rejected or accepted. Instead, the two vendors were treated unequally.**

The State's Determination of Non-Responsive Bid recites that PSE was disqualified for reasons that applied exactly equally to Mansfield's bid, and yet Mansfield was not disqualified. Such unequal treatment of vendors is prohibited and mandates that the solicitation process be cancelled and resolicited.

The Memorandum for Record, Determination of Non-Responsive Bid dated July 7, 2016 (Exhibit 3)(never supplied by MMO to PSE, and provided to counsel for PSE on July 15, 2016 only after submission of a public records request) states that PSE was disqualified as non-responsive because:

- As described **Section III. Scope of Work** 1. General 1.1.4. Provide access to at least 1,750 retail fuel outlets that operate in all 46 South Carolina counties of which a minimum of 2 retail outlets per each county offering fueling 24 hours, 7 days a week.

P.S. Energy states on page 22, 7th bullet of their offer: "We have included a list of 9,870 retail fueling sites in South Carolina which accept Shell Fleet Navigator Card. These stations are found in all 46 South Carolina counties, and there are at least 2 retail outlets in each county offering fueling 24 hours, 7 days a week, other than Edgefield County." Including the language "other

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than Edgefield County” is stating an exception to the State's requirement of coverage in all 46 South Carolina counties.

- The state's minimum retail site requirement in South Carolina is 1,750 sites.

P.S Energy's attached fuel site locations spreadsheet supplied with their offer shows 2,103 retail sites listed. On the list, there are approximately 606 retail sites that are duplicates and 2 sites that are listed in White County. There is not a White County in the State of South Carolina. After deducting the duplicate sites and 2 sites from White County, P.S.Energy's total count of retail sites in South Carolina is 1,498. The RFP clearly states that South Carolina requires a minimum total of 1,750 retail sites.

Exhibit 3, at 1.

Apart from the fact that the State failed to read the proper tab of the spreadsheet of PSE's submission to learn that the actual response of PSE was fully responsive it should have been obvious to the State that PSE and Mansfield were in exactly the same position with regard to these two requirements, because both PSE and Mansfield proposed to use the same “Wex Card” which has access to the same sets of retail fuel outlets. Thus, without even reading the proper spreadsheet tab in PSE's offer, the State should have readily seen and known that since both PSE and Mansfield proposed to use the Wex Card, with all of its attendant retail outlets, they were both either equally responsive, or equally non-responsive. The contradictory treatment of identical proposal components from two competitors – the incumbent and the challenger - potentially introduces a new concern to the conduct of this process.³

It is absolutely fundamental to the law of our State that vendors must be treated fairly and equally, and this is stated as the minimum expectation under the Code:

SECTION 11-35-20. Purpose and policies.

The underlying purposes and policies of this code are:

* * *

(f) to ensure the *fair and equitable treatment of all persons* who deal with the procurement system which will promote increased

³ At least one of the evaluators improperly commented repeatedly about the demerits of a possible win by a vendor other than the incumbent.

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public confidence in the procedures followed in public procurement;

(g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process....

SECTION 11-35-30. Obligation of good faith.

Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

Here, by treating two vendors with identical circumstances and proposal contents differently – holding one non-responsive, but not the other – the State has violated the RFP and the most fundamental rules of public purchasing. For this reason, the award must be cancelled.

6. The determination that PSE was non-responsive was arbitrary, capricious, and violated the purposes and principles of the Consolidated Procurement Code.

For the same reasons as stated above, as well as by reason of the circumstances of PSE's disqualification, it is clear that PSE was improperly excluded from competition and disqualified as non-responsive. The determination that PSE was non-responsive was arbitrary, capricious, and violated the purposes and principles of the Consolidated Procurement Code.

First, the State should have actually *read* the relevant parts of the PSE proposal, not the "wrong tab" of the spreadsheet. Such failure to read the relevant part of the proposal to determine it lacking, and misreading the actual content of the proposal as submitted are arbitrary, capricious and clearly erroneous as a matter of law.

Second, when the State needlessly asked for the clarification of these items (such request being needless because actually reading the already extant contents answered all of the questions posed showing the proposal was responsive), it was obligated to, but did not, make the request in a way that was commercially reasonable, fair and equitable, and on concert with the requirements of the Consolidated Procurement Code, which mandates the promotion of competition.

The relevant governing law includes the following:

SECTION 11-35-30 Obligation of good faith

Post Office Box 11547 Columbia, South Carolina 29211
Capitol Center, 1201 Main Street, Suite 1100 Columbia, South Carolina 29201
803-748-1342 (phone) 803-748-1210 (fax)
www.TheSCLawfirm.com

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Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the *observance of reasonable commercial standards of fair dealing*.

SECTION 11-35-20 Purpose and policies

The underlying purposes and policies of this code are:

* * *

(b) *to foster effective broad-based competition for public procurement* within the free enterprise system;

* * *

(f) *to ensure the fair and equitable treatment* of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;

SECTION 11-35-1530. Competitive sealed proposals.

* * *

(6) Discussion with Offerors. As provided in the request for proposals, and under regulations, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors whose proposals, in the procurement officer's sole judgment, need clarification must be accorded that opportunity.

(7) Selection and Ranking. Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award must be made in accordance with Section 11-35-1530(9) below.

19-445.2095 Competitive Sealed Proposals.

* * *

I. Discussions with Offerors

(1) Classifying Proposals.

For the purpose of conducting discussions under Section 11-35-1530(6) and item (2) below, proposals shall be initially classified in writing as:

- (a) acceptable (i.e., reasonably susceptible of being selected for award);
- (b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions); or
- (c) unacceptable.

(2) Conduct of Discussions.

If discussions are conducted, *the procurement officer shall exchange information with all offerors* who submit proposals classified as acceptable or potentially acceptable. The content and extent of each exchange is a matter of the procurement officer's judgment, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

- (a) Control all exchanges;
- (b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;
- (c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;
- (d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.
- (e) *Provide the offeror a reasonable opportunity to submit* any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.

(3) Limitations. *Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are*

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conducted prior to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

(4) Communications authorized by Section 11-35-1530(6) and items (1) through (3) above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

J. Rejection of Individual Proposals.

(1) Proposals need not be unconditionally accepted without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

- (a) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;
- (b) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or
- (c) the proposed price is clearly unreasonable.

(2) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Here, the Procurement Officer wrote an e-mail *after close of business* on Friday of the July 4th weekend to PSE asking for clarification on these issues to be delivered by 5 pm the very next business day, which was the day after the holiday, a date well known to be vacation time for many persons in many businesses and professions. *See Exhibit 4, Emails to and from PSE.* This email did not comply with the requirements of law regarding requests for clarification or discussions. Also, it was written to a single PSE employee rather than to several PSE employees, contrary to prior conduct of the Procurement Officer. *See Exhibit 5, June 30 Email to Several PSE employees.* This deadline on the email gave, essentially, a few hours for the PSE employee to respond - if the employee who was sent the email was back from the July 4th holiday at all. In fact, he was not. He took July 5th as a day off, just as many Americans do. *See Exhibit 4.*

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On the afternoon of July 5, 2016, at 12:18PM, the Procurement Officer sent another e-mail (to the same person who was on vacation July 5th), requesting still more information with a deadline of only a few hours. *See Exhibit 4.* This request also did not comply with governing law.

When the PSE employee returned from his one day vacation day after the Fourth of July Holiday weekend, he saw the emails, *immediately responded* at 9:06am on July 6th stating he would provide the information. *See Exhibit 4.* The Procurement Officer did not reply to that email at all, and did not inform PSE that it was “too late” to respond. Instead, the Procurement Officer accepted PSE’s clarification response that was submitted on July 6th at 5:13pm. And while, as of that day and time, *the evaluation and scoring meeting had not been conducted, no final rankings were made*, and there would have been no harm whatsoever in accepting the response PSE actually provided, the Procurement Officer – without *first* making a written determination - excluded PSE’s proposal from evaluation, scoring and final ranking that was done the next day, July 7, 2016. Again, this was after the State already had received PSE’s clarifications confirming PSE’s full responsiveness and pointing out, among other things, that the State was looking at the wrong spreadsheet tab. *See Exhibit 4.* The scoring panel met on July 7, 2016 at 9:30 am (*see Exhibits 6, 7 and 8*) – the day after PSE provided its clarifications. *See Panel Scoring Minutes, Exhibit 6.* The Determination and Finding to Award to Mansfield was not made until July 8, 2016. Exhibit 9.

As shown above, the guidepost for the Procurement Officer’s actions is set out in Code Sections set forth above. These include commercial reasonableness, fairness and most importantly, “***to foster effective broad-based competition for public procurement.***” The CPO recently recognized the proper process for discussions in *In re Data Recognition Corp.*, Case No. 2015-210, 2014 SC CPO LEXIS 68 (2014). In note 3 of that decision, the CPO recognized the importance of the ongoing opportunity to clarify as a part of the process of maximizing competition, stating: “The procurement officer may conduct additional discussions, ***prior to final ranking***, to resolve any concerns over responsiveness raised by an evaluator.” The Procurement Officer in this case did not adhere to the process stated in the law and in that recent decision. It was improper, arbitrary and capricious, clearly erroneous and in violation of these very laws for the Procurement Officer to exclude PSE’s responsive proposal from competition – even more so because PSE’s price was over a million dollars less than Mansfield’s. The Procurement Officer’s action violated the Code’s essential mandate of fostering competition by needlessly excluding a responsive competitor when that competitor’s clarification was requested under such extreme conditions (request issued after hours on a long holiday weekend demanding a response only a few business hours later) and when the response was actually received to establish responsiveness well before final ranking and even before the evaluators conducted the scoring of proposals.

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CONCLUSION

Based on the grounds set forth herein, PSE requests that the CPO honor the automatic stay, cancel the intent to award the contract to Mansfield, disqualify all Mansfield entities, evaluate and score PSE's proposal and award the contract to PSE. Alternatively, PSE requests that the CPO cancel the intent to award and mandate re-solicitation under the governing authority set forth in the Procurement Code and Regulations. PSE also requests a hearing in this matter. If the CPO determines that it will not hold a hearing, PSE requests that the CPO provide PSE a deadline by which PSE may provide evidence for the CPO to consider in reaching its decision.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Schmidt, III". The signature is fluid and cursive, with the first and last names being the most prominent.

John E. Schmidt, III

Attachment 2



June 16, 2016

Sheila O. Willis, CPPB
SFAA, Div. of Procurement Services, MMO
PO Box 101103
Columbia SC 29211

RE: Solicitation Number: 5400011330

Dear Ms. Willis:

Thank you for the opportunity to propose Mansfield's response to the above solicitation to provide a Statewide Fuel Management Program. The enclosed proposal and required documents will satisfy the Request For Proposal requirements as outlined in the solicitation. For the purposes of this proposal, the State of South Carolina, Materials Management Office and State Fleet Management will be referred to as MMO, State Fleet Management or SFM. Mansfield Oil Company of Gainesville, Inc., the provider of the services and proposal, shall be referred to as Mansfield Oil Company or Mansfield.

Through this response, Mansfield Oil Company proposes to continue the successful relationship that already exists with State Fleet Management, Mansfield Oil Company and WEX, continuing to grow and improve the program, offer and provide best practice methods and solutions to meet the State's unique needs. Our primary goal is to provide outstanding service to the State Fleet Management program users that they have come to expect from Mansfield Oil Company.

The enclosed proposal has been indexed with colored responses to clearly provide the offer and meet the requirements of the RFP. A table of contents has been provided for easy access to proposed information.

Mansfield Oil Company appreciates the long and successful business relationship that has been provided to us through our service offer to MMO. Mansfield's offer takes into account past operational restraints as well as a selection of options the State may implement to better serve the needs of the State's Fleet Management program participants.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josh Epperson'.

Josh Epperson
Director, Government Services

	State of South Carolina Request for Proposal Amendment 1	Solicitation: 5400011330
		Date Issued: 06/03/2016
		Procurement Officer: SHEILA O. WILLIS, CPPB
		Phone: 803-737-4417
		E-Mail Address: swillis@mmo.sc.gov
		Mailing Address: SFAA, Div. of Procurement Services, MMO PO Box 101103 Columbia SC 29211

DESCRIPTION: **Fuel Card Management System**
USING GOVERNMENTAL UNIT: **Statewide Term Contract**

The Term "Offer" Means Your "Bid" or "Proposal". Your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Paper Offer or Modification" provision.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:	
MAILING ADDRESS: SFAA, Div. of Procurement Services, MMO PO Box 101103 Columbia SC 29211	PHYSICAL ADDRESS: SFAA, Div. of Procurement Services, MMO 1201 Main Street, Suite 600 Columbia SC 29201

SUBMIT OFFER BY (Opening Date/Time): **06/21/2016 11:00:00** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **06/10/2016 17:00:00** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **One (1) Original Hardcopy marked "Original", Four (4) Electronic Media Copies marked "Copy", One (1) Redacted Copy via electronic media (marked "redacted")**, (See "Submitting Redacted Offers" provision Section IV, "Submitting Confidential Information" Section II A, & "Magnetic Media" provision Section II B)
Initial here if NO redacted copy is necessary _____

CONFERENCE TYPE: Pre Proposal	LOCATION: SFAA, Div. of Procurement Services, MMO Capitol Center Building 1201 Main Street, Suite 600 Columbia, SC 29201
DATE & TIME: 05/19/2016 10:00:00	
<small>(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)</small>	

AWARD & AMENDMENTS	Award will be posted on 07/08/2016 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov
--------------------	--

You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of forty-five (45) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

NAME OF OFFEROR Mansfield Oil of Gainesville, Inc. 1025 Airport Pkwy SW Gainesville, Georgia 30501 <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
---	--

AUTHORIZED SIGNATURE  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	DATE SIGNED June 16, 2016
---	-------------------------------------

TITLE Director, Government Services <small>(business title of person signing above)</small>	STATE VENDOR NO. 7000088442 <small>(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)</small>
--	--

PRINTED NAME Josh Epperson <small>(printed name of person signing above)</small>	STATE OF INCORPORATION Georgia <small>(If you are a corporation, identify the state of incorporation.)</small>
--	---

OFFEROR'S TYPE OF ENTITY: (Check one)	<small>(See "Signing Your Offer" provision.)</small>
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____	

Attachment 3

MANSFIELD OIL PRICING

ATTACHMENT # 1

Attachment # 1 must be completed and submitted with offeror's proposal contents. Pricing should be rounded up to a maximum of four (4) decimal places or the nearest ten thousandth (1/10,000) of a dollar. Please be sure that all blank fields of this attachment are completed in order to be considered responsive bidder.

Price:

Zone 1

MS Unleaded	=	\$0.1132_____	(cents) per gallon
MS ULSD	=	\$0.1227_____	(cents) per gallon
MS B5 Biodiesel*	=	\$0.1227**_____	(cents) per gallon
MB	=	\$0.0562_____	(cents) per gallon
MC Unleaded	=	\$0.1950_____	(cents) per gallon
MC Unleaded Mid-grade	=	\$0.2090_____	(cents) per gallon
MC Unleaded Premium	=	\$0.2015_____	(cents) per gallon
MC Diesel	=	\$0.4315_____	(cents) per gallon

Zone 2

MS Unleaded	=	\$0.1151_____	(cents) per gallon
MS ULSD	=	\$0.1168_____	(cents) per gallon
MS B5 Biodiesel*	=	\$0.1168**_____	(cents) per gallon
MB	=	\$0.0503_____	(cents) per gallon
MC Unleaded	=	\$0.2065_____	(cents) per gallon
MC Unleaded Mid-grade	=	\$0.2135_____	(cents) per gallon
MC Unleaded Premium	=	\$0.2315_____	(cents) per gallon

MC Diesel = \$0.4215_____ (cents) per gallon

Zone 3

MS Unleaded = \$0.1523_____ (cents) per gallon

MS ULSD = \$0.1543_____ (cents) per gallon

MS B5 Biodiesel* = \$0.1543**_____ (cents) per gallon

MB = \$0.0878_____ (cents) per gallon

MC Unleaded = \$0.2140_____ (cents) per gallon

MC Unleaded Mid-grade = \$0.2065_____ (cents) per gallon

MC Unleaded Premium = \$0.3489_____ (cents) per gallon

MC Diesel = \$0.5515_____ (cents) per gallon

Zone 4

MS Unleaded = \$0.1380_____ (cents) per gallon

MS ULSD = \$0.1358_____ (cents) per gallon

MS B5 Biodiesel* = \$0.1358**_____ (cents) per gallon

MB = \$0.0693_____ (cents) per gallon

MC Unleaded = \$0.2140_____ (cents) per gallon

MC Unleaded Mid-grade = \$0.2315_____ (cents) per gallon

MC Unleaded Premium = \$0.2115_____ (cents) per gallon

MC Diesel = \$0.4356_____ (cents) per gallon

*ALL BULK BIODIESEL SUPPLIED PURSUANT TO THIS CONTRACT MUST BE VIRGIN SOY PRODUCT.

Retail/Commercial Facility Availability

Total number of available fueling locations in South Carolina:	2536_____
Total number of Level 3 data facilities in South Carolina:	2536_____
Total number of available fueling locations nationwide:	135,000_____
Total number of facilities providing "other services" in South Carolina:	492_____

Other Offers and Clarifications:

- ** This symbol found by the B5 MS pricing indicates that a price that is dependent on current \$1.00 discounts provided legislation referred to as Biodiesel Blender Credit. This is renewed annually. In the event that it expires and affects biodiesel prices by a similar amount, prices will need to be amended. At this point in the marketplace Biodiesel is at or less than ULSD.
- Diesel Pricing is based on ULSD OPIS references.
- Approved additive to meet the requirements of the tank and diesel fuel maintenance for specific locations is not included in the MB or MS. The additional per gallon fee that will be added to those locations is \$.0195 per gallon.
- An incentive that is provided by Mansfield and WEX includes the discount offered by specific retailers for State transactions. That benefit is provided to SFM in the form of a periodic check back to the primary agency, SFM. This incentive is provided voluntarily and is not a commitment. It is the result of voluntary participation by the merchants. The result is approximately \$1400 per month. Please see the disclaimer below. Should Mansfield be awarded this contract, this will continue as long as it is available.

*Merchant Rebates are expressly conditioned on the following: (i) use of the WEX Card at the location; and (ii) continuation of the Merchant Rebate by the merchant. Please note that the merchant may suspend, modify or discontinue the Merchant Rebate at any time. WEX cannot guarantee that the Merchant Rebates will remain the same throughout the life of the contract. In addition, the Merchant Rebates are subject to annual review by the merchant of State's and Participating Entity's purchasing volume at the merchant's locations.

- There are locations with the SFM program that are not subject to specific fees including the Efactor and ASG. Those locations include non-state agencies participating in the program. Dorchester, Mt. Pleasant, Colleton, Santee and DHEC.
- Confidential. Trade Secret. [REDACTED]

[REDACTED]

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised September 2015)

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 111.1 of the 2015 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 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.