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GRANT GILLESPIE  
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

MICHAEL B. SPICER  
INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

## Protest Decision

**Matter of:** Short Counts, LLC

**Case No.:** 2021-129

**Posting Date:** February 4, 2021

**Contracting Entity:** South Carolina Department of Transportation

**Solicitation No.:** 5400020335

**Description:** Turning Movement Counts

### DIGEST

Protest raising various issues with the solicitation and award is denied. . The protest letter of Short Counts, LLC is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file and applicable law and precedents.

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

## **BACKGROUND**

Solicitation Issued:	09/22/2020
Amendment 1 Issued	10/06/2020
Intent to Award Posted	01/21/2021
Intent to Protest Received	01/25/2021
Protest Received	02/02/2021

The South Carolina Department of Transportation (DOT) issued this Request for Proposals (RFP) on September 22, 2020, seeking qualified contractors to provide traffic count collection services. Amendment 1 was issued on October 6, 2020. Ten responses were received through the South Carolina Enterprise Information System (SCEIS). After evaluation by a panel of five people, an Intent to Award was posted to Marr Traffic, Inc. (MT) on January 25, 2021. Short Counts filed an Intent to Protest on January 25, 2021, followed by its formal protest on February 2, 2021.

## **ANALYSIS**

The first issue raised by Short Counts is in reference to a previous contract it had with DOT that expired on October 8, 2020:

On March, 17<sup>th</sup> 2020 all traffic counts were suspended until further notice due to the Covid 19 global pandemic. There was approximately six months left on Short Counts contract (Solicitation 5400008104). Due to this unprecedented nationwide shut down Short Counts was unable to fulfill it on call contract. It is my belief that Short Counts contract should be reinstated and extended for the term of six months once the SCDOT believes traffic patterns are regular enough to compose traffic data collection. If not the new firm that is chosen to perform this data collection would be starting off with backlogged work that would have been earmarked and performed by Short Counts.

Short Count's concern is not directly related to the current solicitation and alleges no violation of the Code or Regulations. To the extent that this issue is a protest of the current solicitation, it is dismissed.

The second issue raised by Short Counts states:

It is Short Counts stance that its submission for Solicitation 5400020335 was submitted in its entirety on the SCEIS website. Along with Short Counts submission for pricing, formal documentation including Experience and

Methodology was submitted. If the procurement office did not receive this information it was not known to Short Counts until after the intent to award was given. In the best interest of the state, Short Counts believes it would have been the most beneficial choice given price and past experience with the SCDOT.

DOT provides the following insight:

As to his second concern, that their submission was submitted in its entirety, is not accurate. The technical proposal for Short Counts was not uploaded. As illustrated in the screen shots below, the solicitation response was created by Short Counts and no technical proposal was attached. While the second shot below shows the second file as Technical Response, it is merely the signed cover page and the solicitation document itself. There is no response as such contained in this file. Both files shown in the shot below have been sent to you.

<https://sapsrm.sc.gov/rfp/portal?NavigationTarget=navurl%3A%2F%2F03b7845c8c0d54f8c9016fdad9cf77b8&PrevNavTarget=navurl%3A%2F%2Fcf44b83c3e8602ce027048c3284b022a8&NavMode=3&CurrentWindowId=WiDxDefaultExternal1611593233364>

The screenshot shows the 'Display RFX Response' interface. At the top, there are navigation buttons: Edit, Print Preview, Check, Close, and Export. Below this, the RFX details are displayed: RFX Response Number 5500072022, RFX Name TURNING MOVEMENT COUNTS, Status Submitted, Supplier Name SHORT COUNTS LLC, Target Value 869,850.00 USD, and RFX Number 5400020335. The interface has several tabs: Rfx Information, Items, Notes and Attachments, Approval, and Tracking. Under 'Rfx Information', there are sub-tabs: General Data, Notes and Attachments, Questions, Messages, and Payment. The 'Basic Data' section is expanded, showing 'Bidder Contact Information' (Supplier Name: SHORT COUNTS LLC, Contact Person Name: JAMES SHORT, E-Mail: MSHORT@SHORTCOUNTS.COM, Phone: (803) 414-8437) and 'RFX Response Information' (Last Changed On: 10/21/2020 10:18:57 EST, Last Changed By: JAMES SHORT, Creation Date: 10/12/2020 14:38:36 EST, Created By: JAMES SHORT). The 'Event Parameters' section includes fields for Process Type (QUOT), Validity Period, Currency (United States Dollar), Detailed Price Information (Simple Price), Follow-On Document (Contract), and Target Value of RFX in Original/Selected Currency (485,000.00 USD) and Target Value of RFX Response (0.00 USD). The 'Organization' section shows Responsible Purchasing Organization (0 50000001 SCEIS Purchasing Organization) and Responsible Purchasing Group (0 50038230 DOT - Emmett Kirwan TAC).

The screenshot shows the 'Display RFX Response' interface, specifically the 'Items' and 'Attachments' sections. The 'Items' section is expanded, showing a table with columns: Assigned To, Category, and Text Provider. There are two items listed: 'Bid Invitation/Function Text' and 'Bid Invitation/Function Text'. The 'Attachments' section is also expanded, showing a table with columns: Assigned To, Category, Description, File Name, Version, Processor, Visible Internally only, Checked Out, Type, Size (KB), Changed by, and Changed on. There are two attachments listed: 'Short Counts Process Pricing Schedule.xlsx' and 'SCDOT TMC Solicitation.pdf'.

Nine other offerors were able to submit their proposals for consideration. Short Counts was able to submit a signed cover page and pricing. Short Counts provides no evidence of a problem with

the SCEIS system.<sup>2</sup> Short Counts alleges no violation of the Code and Regulations This issue of protest is dismissed.

Short Counts' third issue of protest states:

Grading of the RFP. Although the evaluation of the RFP was stated in order of most to least importance (Methodology, Experience, Cost) the percentage of importance was not stated in the RFP. Furthermore upon inspection of the grading sheets some of the comment sections were left blank with no information to legitimize the reasoning for said grade. This brings cause to the structure in which the RFP's were graded and scored.

Section 11-35-4210(1)(b) provides in part:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added)

The evaluation criteria were published in the original solicitation on September 22, 2020. The time for raising issues related to the solicitation has long past and this issue cannot be raised as a protest of the award. Short Counts observation that some evaluation comment sections were left blank fails to state a claim for which relief can be granted. This issue of protest is dismissed.

The fourth issue raise by Short Counts provides:

Concerns about this solicitation were brought up before the deadline for submissions by Short Counts. These concerns were not addressed or responded to.

This issue lacks specificity in alleging concerns about the solicitation which could have been timely raised as a protest of the solicitation but cannot be raised as a protest of the award. This issue of protest is dismissed

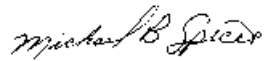
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<sup>2</sup> Under federal law, even if an agency lost a bid, "the occasional loss of a bid or quotation—even if through the negligence of the agency—generally does not entitle the bidder or vendor to relief." *American Material Handling, Inc.*, B-281556 (Comp. Gen. 1999)

**DECISION**

For the reasons stated above, the protest by Short Counts, LLC is dismissed.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## FORMAL PROTEST FOR SOLICITATION #5400020335

After examining the Award for the SCDOT Solicitation #5400020335, I have many concerns that I feel warrant immediate attention. These are as follows:

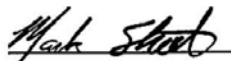
- On March, 17<sup>th</sup> 2020 all traffic counts were suspended until further notice due to the Covid 19 global pandemic. There was approximately six months left on Short Counts contract (Solicitation 5400008104). Due to this unprecedented nationwide shut down Short Counts was unable to fulfill it on call contract. It is my belief that Short Counts contract should be reinstated and extended for the term of six months once the SCDOT believes traffic patterns are regular enough to compose traffic data collection. If not the new firm that is chosen to perform this data collection would be starting off with backlogged work that would have been earmarked and performed by Short Counts.
- It is Short Counts stance that its submission for Solicitation 5400020335 was submitted in its entirety on the SCEIS website. Along with Short Counts submission for pricing, formal documentation including Experience and Methodology was submitted. If the procurement office did not receive this information it was not known to Short Counts until after the intent to award was given. In the best interest of the state, Short Counts believes it would have been the most beneficial choice given price and past experience with the SCDOT.
- Grading of the RFP. Although the evaluation of the RFP was stated in order of most to least importance (Methodology, Experience, Cost) the percentage of importance was not stated in the RFP. Furthermore upon inspection of the grading sheets some of the comment sections were left blank with no information to legitimize the reasoning for said grade. This brings cause to the structure in which the RFP's were graded and scored.
- Concerns about this solicitation were brought up before the deadline for submissions by Short Counts. These concerns were not addressed or responded to.

Based on the above-cited (as well as many other reasons), I would ask that award of this contract be suspended/withdrawn until all issues have been addressed.

I would request a formal meeting with all pertinent staff to discuss these matters in an effort for resolution.

Please review this FORMAL PROTEST of Solicitation #5400020335 and contact me with any questions/comments and to discuss setting up a meeting date/time.

Respectively Submitted,



## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2019)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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  
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

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\_\_\_\_\_  
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: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**