

HENRY MCMASTER, CHAIR
GOVERNOR
CURTIS M. LOFTIS, JR.
STATE TREASURER
BRIAN J. GAINES
COMPTROLLER GENERAL



HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE
BRUCE W. BANNISTER
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES
DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018
JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Protest Decision

Matter of: RL Kunz, Inc.
File No.: 2024-119
Posting Date: January 8, 2024
Contracting Entity: Department of Transportation
Solicitation No.: 5400026130
Description: Replacement Filters for Carbon Printing Unit

DIGEST

The Chief Procurement Officer dismisses for lack of standing where total potential value of the contract is less than \$50,000. RL Kunz, Inc's (Kunz) protest is attached as Exhibit A.

AUTHORITY

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

BACKGROUND

Invitation for Bids Issued	10/26/2023
Amendment 1 Issued	11/03/2023
Statement of Award Posted	11/21/2023
Intent to Protest Received	12/04/2023

¹ The Materials Management Officer delegated the administrative review of this protest to the Director of Statewide Sourcing.

The facts pertinent to this decision are:

- On October 26, 2023, the Department of Transportation (Department) advertised for bids to purchase replacement filters for an existing carbon printing unit used in the Department's Sign Shop.
- By the deadline for receipt of bids, the Department received two bids; however, the bid from Kunz remained in saved status rather than being submitted in the online bidding system (SCEIS). [Exhibit B]
- Airenergy, Inc. (Air), submitted the low bid.
- On November 21, 2023, the Department posted a notice of award of a contract to Air. [Exhibit C] The total potential value of the contract is \$49,710.
- On December 04, 2023, Kunz protested.

DISCUSSION

The South Carolina Code of Laws Section 11-35-4210(1)(b) grants actual bidders a right to protest award of contracts.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code.

However, Section 11-35-4210(1)(d) limits this right stating:

The rights and remedies granted by subsection (1) and Section 11 35 4410(1)(b) **are not available** for contracts with an actual or potential value of up to fifty thousand dollars.

[emphasis supplied]

Protest Decision, page 3
Case No. 2024-119
January 8, 2024

Kunz's protest is to the award of a contract with a total potential value of \$49,710. Per Section 11-35-4210(1)(d), this award is not protestable, and the CPO lacks jurisdiction to consider a protest of this award.²

DECISION

For the reasons stated above, the protest of Kunz is dismissed.



Stacy Adams
Director of Statewide Sourcing

Columbia, South Carolina

² Even if the award were protestable, Kunz's protest would fail on the basis of not meeting the requirements of SC Code Ann. §11-35-4210(1)(b). Having failed to submit a bid by the deadline for receipt of bids means Kunz is not an actual bidder or offeror. As noted above and as seen on Exhibit B, Kunz's bid remained in saved status rather than being submitted.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2023)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2023 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**

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.

Exhibit A
Case No 2024-119

RL KUNZ, INC
www.rlkunz.com

P O Box 5875
Greenville, SC 29606

864-271-2590
FAX 864-233-7083



November 30, 2023

Ms. Laura Bagwell
SCDOT Procurement Office
P.O. Box 191
Columbia, SC 29202-0191

Re: Notice of Protest of Solicitation 5400026130 and Protest of Solicitation 5400026130

Dear Ms. Bagwell,

This is our formal notice of protest of the subject solicitation and the reasons for the protest of the award of the solicitation.

The products specified in the solicitation are not being provided by the successful bidder. They did not request a quotation from Purafil, Inc or its agents, and any product that the successful bidder intend to substitute will not meet the specifications. There are no equals to the Purafil PK-18 SPB and Purafil PK-18 SP products. These are items #4 and #5 on the solicitation and the contract 4400033505. These items are used in conjunction with items #1, #2, #3 and #6 in the solicitation.

The Purafil filters are used in an air handling system designed and manufactured by R.L. Kunz, Inc. These filters are used for health and safety purposes to protect the workers in the SC DOT sign shop in Columbia. Any product that does not meet the Purafil specifications will likely provide a much less efficient system, and the service life of the filters will be much shorter than the Purafil brand filters. This could end up costing the SC DOT additional funds by needing to replace the off spec product far more frequently than the designed and specified Purafil products. Purafil product have been used in this system since its installation with great success and without any complaints of foul odors from the hazardous off gassing during the sign painting process. System efficiency is critical for this application and non Purafil products will not provide the required system efficiency.

The remedy for this protest would be the award of the purchase contract for Solicitation 5400026130 to R.L. Kunz, Inc.

Thank you for your consideration of this protest. Please feel free to contact me if you have any questions, or if we may be of further service to you.

Regards,

David Smallridge
R.L. Kunz, Inc.

Exhibit B

Protest Decision

Case No 2024-119

Responses and Awards - SAP NetWeaver Portal - Work - Microsoft Edge
https://sapsrm.sc.gov/irj/portal?NavigationTarget=navurl%3A%2F%2Fcf44b83c3e8602ce027048c3284b022a&PrevNavTarget=navurl%3A%2F%2F9772149a854ca6f5462f26d9281ab55&NavMode=3&CurrentWindowId=WIDxDefaultExternal1701710894316

Responses and Awards

Print Preview | Close | Create Follow-on RFX | Export | Questions and Answers (0) | Synopsis | Open side panel

Remaining Time 0 Days 00:00:00 | Smart Number CARBON AIR FILTERS | Type Invitation For Bid | Status Published | Number of Suppliers 4 | RFX Number [5400026130](#)

Response Activity | Response Comparison | Surrogate Bidding

Details | Response On Behalf | Return Response | Contract Mass Update | Expand Rows

Response Number	Response Status	Company Name	Bidder Name	Intent	Response Version	Last Changed on	Response on Behalf
5500089182	Submitted	BRUCE AIR FILTER COMPANY		◇		11/20/2023	
		SCEIS RFX		◇			
5500089071	Saved	RL KUNZ INC		●		11/14/2023	
5500089053	Accepted	AIREENERGY INC		●		11/22/2023	

Exhibit C

STATE OF SOUTH CAROLINA
SCDOT PROCUREMENT OFFICE
955 PARK STREET ROOM 101
COLUMBIA SC 29201-3959

Statement of Award

Posting Date: November 21, 2023

Solicitation: 5400026130
Description: CARBON AIR FILTERS
Agency: SC Department of Transportation

The State awards the contract(s) noted below. This document is the final Statement of Award, effective **November 22, 2023**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

Contract Number: 4400033505
Awarded To: AIRENERGY INC (7000344858)
281 SEARS DRIVE
MAYSVILLE GA 30558

Total Potential Value: \$ 49,710.00
Maximum Contract Period: November 22, 2023 through May 21, 2024

Item	Description	Unit Price	Total
00001	Pre-Filter 24x24x2 Pleated Filter	\$ 7.40	\$ 111.00
00002	Stage 1 Purakol Activated Carbon	\$ 184.70	\$ 11,082.00
00003	Stage 2 Purakol Activated Carbon	\$ 184.70	\$ 11,082.00
00004	Stage 3 Purafil SP Blend	\$ 224.70	\$ 13,482.00
00005	Stage 4 Purafil SP	\$ 230.70	\$ 13,842.00
00006	After-Filter 24x24x2 Pleated Filter	\$ 7.40	\$ 111.00

Procurement Officer
LAURA BAGWELL