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Protest Decision

Matter of: Cromer Food Services, Inc.
File No.: 2026-110
Posting Date: December 15, 2025
Contracting Entity: Spartanburg Community College
Solicitation No.: 5400028162
Description: Vending Services

DIGEST

The Chief Procurement Officer (CPO) grants the protest of Cromer Food Services, Inc. Cromer's protest is attached as Exhibit A.

AUTHORITY

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

BACKGROUND

On July 21, 2025, Spartanburg Community College (SCC) issued Solicitation number 5400028162 requesting bids to provide vending services for SCC's campus and facilities. DPS subsequently issued one Amendment which answered vendor questions.

By the deadline for receipt of bids, SCC received three bids, including one from Cromer Food Services and one from AVI Foods Systems (AVI). After reviewing and evaluating bids¹, the evaluation panel

¹ This solicitation was issued as a Best Value Bid with the evaluation criteria – Commission (60%), Technical Response (30%), and Qualifications (10%)

determined AVI's bid to be the most advantageous to the State. On September 3, 2025, SCC posted a notice of the State's intent to award a contract to AVI. On September 15, 2025, after timely filing a notice of intent to protest, Cromer filed its protest with the CPO.

DISCUSSION

Cromer's protest challenges the responsiveness of AVI's bid. Specifically, the solicitation states:

III. SCOPE OF WORK/SPECIFICATIONS

Brands & Prices:

All items sold must be nationally known brand products. Machines and food/drink inventories currently being used by the college may be inspected during site visits. Pricing should be fair and reasonable and should mirror the CPI market pricing. Report product price changes at least 10 days prior to the change. [solicitation p. 15]

The amendment to the solicitation contains the following question and answer:

2-Can you provide the vending prices currently in place?

SCC Response: This is not public information. We can share that pricing is based on the vending market trends.

Cromer alleges that AVI's bid is potentially non-responsive by providing pricing which is greater than the old pricing plus the annual CPI.² The CPO has no information concerning "vending market trends" to determine if the product pricing provided by AVI exceeds the old pricing plus the annual CPI.

However, AVI included the following statement in their bid under Financial Notes:

1. AVI has prepared its cost projections and financial offerings based on current operating conditions, including by way of example, facility population and working conditions; labor, food and supply costs; Federal, State and Local sales, use and excise taxes; and license and permit fees, as well as on any other current account specific information provided by Spartanburg Community College. If, upon program implementation, actual financial data or operational conditions are materially different from those in effect during the proposal process, AVI reserves the right to revise the proposed pricing and financial model accordingly, and requested changes by AVI shall not be unreasonably withheld to reflect such change(s).

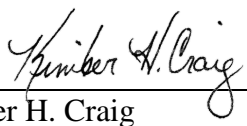
² Cromer requested a copy of AVI's bid under FOIA. AVI did submit product pricing with its bid although this was not requested by SCC. The product pricing information was redacted by AVI.

By including this language, AVI has conditioned its bid. Regulation 19-445.2070 (D) (1) (a) states that a bid should be rejected if the bidder “attempts to protect himself against future changes in conditions, such as increased costs, if total cost to the State cannot be determined.” This is the case here, and AVI’s bid should have been rejected as non-responsive.

Cromer then alleges that SCC failed to consider its proposed expansion of three highest traffic locations to include market coolers instead of vending machines. SCC convened an evaluation panel of three members to score the evaluation criteria included in the solicitation. The members evaluated Cromer’s technical response which included the inclusion of market coolers. It is the responsibility of the evaluators to determine the benefit to the College of the market coolers and not the vendor. Only the State can determine what is most advantageous to the State. *Appeal by Travelsigns*, Panel Case No. 1995-8. The CPO will not substitute its judgement for the judgement of the evaluators provided the evaluation is not arbitrary, capricious, erroneous, or contrary to law. *Appeal by Replica, Inc.*, Panel Case No. 2023-2

DECISION

Because AVI’s bid was non-responsive, the CPO grants Cromer’s protest, vacates the award to AVI, and remands this matter back to SCC to proceed in accordance with the Procurement Code.



Kimber H. Craig
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2025)

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 2025 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 SubscribeITs, 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.



CROMER FOOD SERVICES, INC.

P.O. Box 1447 • Anderson, South Carolina 29622
1-800-922-3174 • www.cfsvending.com

September 15, 2025

Kimber Craig
Chief Procurement Officer
Materials Management Office
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Columbia, SC 29201

Sent Via E-Mail: "Craig, Kimber" <kcraig@mmo.sc.gov>,
"Grier, Manton" <mgrier@ogc.sc.gov>
Tami Steed <steedt@sccsc.edu>
"White, John" <jswhite@mmo.sc.gov>
Protest-MMO <protest-mmo@mmo.sc.gov>

Spartanburg Community College Protest

Cromer Food Services would like to protest the award for vending services at Spartanburg Community College that was announced on September 3. This was solicitation number **5400028162**. The following represent our reasons for protest.

1-In the solicitation it was stated that pricing must follow annual CPI. This means that the new pricing cannot exceed the old pricing plus the annual CPI. We requested the bid pricing that AVI included in their bid but it was blacked out so we could not see it. We requested this information a second time with no response. The pricing of the products greatly determine usage. Price elasticity is a proven rule of economics. If a new vendor can offer a price schedule that is much higher than the incumbent units will greatly decrease. Cromer Food Services did not propose any pricing as we understood that pricing would be based on the annual CPI. In past state solicitations, pricing is either set already or requested in the bid. This solicitation was different than in the past so we followed how it was written.

2-Cromer Food Services proposed to expand the 3 highest traffic locations to include market coolers instead of vending machines. This type of expansion historically increases sales by a minimum of 25% annually. This was not considered in the decision process.

Based on this information we feel that this solicitation should be re-issued with clearer guidance. Set pricing would prevent any confusion and offer an even playing field to all potential bidders. We appreciate your consideration in evaluating our protest.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Cromer", with a stylized flourish at the end.

Brent Cromer

Cromer Food Services