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EXECUTIVE DIRECTOR

## Protest Decision

**Matter of:** Club Car, LLC

**File No.:** 2023-108

**Posting Date:** September 23, 2022

**Contracting Entity:** Division of Procurement Services on behalf of Coastal Carolina University

**Solicitation No.:** 5400023792

**Description:** 4 Year Lease of Golf Cars and Maintenance Carts

### DIGEST

Protest of solicitation of solicitation on grounds that modification of specifications failed to meet the intent of a vendor question to allow different options denied where protestant failed to demonstrate that the modified solicitation was unduly restrictive.

### AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer (CPO) conducted an administrative review of a protest filed by Club Car, LLC. Club Car's protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

### BACKGROUND & DISCUSSION

On July 27, 2022, the South Carolina Division of Procurement Services (Division) solicited bids on behalf of Coastal Carolina University (Coastal) to provide golf carts and maintenance carts under a lease arrangement. [Exhibit B] By the deadline for receipt of questions from potential bidders, the Division received four questions. On August 19, 2022, the Division published Amendment 1 to the Solicitation, wherein the Division answered the questions and made changes to the solicitation. Relevant to this protest were the following questions and answers:

1. Is it acceptable to quote the Lithium battery golf car?

**State's Response: Yes. Wording in the solicitation has been changed as noted below.**

2. Lithium battery car is 56 volts at full charge. The specs requested 48 volts. Will this be acceptable.

**State's Response: Yes. Wording in the solicitation has been deleted as noted below.**

3. Is it possible to quote a 60-month lease, instead of 48 months since the lithium battery pack has a 5-year warranty? You could keep the car longer with a lower payment.

**State's Response: Yes. Wording in the solicitation has been changed as noted below.**

The Division modified the solicitation to strike the requirement for deep cycle batteries with battery filling system and replace it with a requirement for lithium batteries. The Division also modified the lease duration from 48 months to 60 months. Club Car objects to failure of the modification to allow for the option of either deep cycle batteries or lithium batteries and the option of a 48-month or 60-month lease.

With respect to the change in the battery specification, Club Car states “[t]he question asked was not looking to remove the original specification, but to allow another option.” Club Car goes on to “respectfully ask that it be an option to quote Lithium and/or 6 (8) volt deep cycle battery golf car.”

With respect to the change in the lease term, Club Car argues that due to higher rounds of golf due to covid, carts are wearing out quicker than the batteries. Club Car believes that bidders should have an option to bid either a 48-month or 60-month lease. Club Car “respectfully ask[s] that the lease term be open[ed] to quote 4 and/or 5 year lease, for either car allowed to be quoted.”

To the extent Club Car relies on the intent of the vendor that asked questions, Club Car's reliance is misplaced. Though vendors sometimes try to control the interpretation of a solicitation by the questions they ask, questions and answers are not an opportunity for vendors to define the State's needs or requirements. It is the State, not vendors, that determines the State's needs. As a result of vendor questions, Coastal looked at the advantages of lithium batteries over deep cycle batteries and determined that carts powered by lithium batteries were more advantageous. Indeed, Club Car's own website states that “lithium Ion [*sic*] golf carts save time, increase car reliability, and conserve energy to improve the overall performance of operations.” [Exhibit B] Finally, Coastal decided that the longer-term lease was advantageous not only with respect to a potential benefit in lease cost but also considering their experience operating a golf course and the maintenance needs of the carts they rent.

In deciding to amend the specifications, Coastal not only considered its needs, but also the availability of golf carts powered by lithium-ion batteries from multiple vendors. Coastal determined that the three main manufacturers of golf carts – Yamaha, E-Z-Go, and Club Car – offer lithium batteries.

Club Car fails to allege the specifications were unduly restrictive or ambiguous. Further, it fails to allege any violation of the Procurement Code, and the CPO does not find any.

**DECISION**

Based on the foregoing, the CPOC denies Club Car's protest.



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John St. C. White, PE  
Chief Procurement Officer for Construction

Columbia, South Carolina

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised July 2022)*

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 2022 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**

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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.**

# Exhibit A

**From:** [Protest-MMO](#)  
**To:** [MMO - Procurement](#); [Shealy, Voight](#); [Skinner, Gail](#)  
**Subject:** FW: [External] Protest of Solicitation# 5400023792  
**Date:** Friday, August 19, 2022 11:57:34 AM

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**From:** Forbis, Rick <Rick.Forbis@clubcar.com>  
**Sent:** Friday, August 19, 2022 11:57:23 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Protest-MMO <protest-mmo@mmo.state.sc.us>  
**Cc:** Perry, Nakendra <nperry@mmo.sc.gov>; Forbis, Rick <Rick.Forbis@clubcar.com>  
**Subject:** [External] Protest of Solicitation# 5400023792

This email is to inform the Chief Procurement Officer, Materials Management Office, that we are initiating an official protest of the current solicitation (Solicitation# 5400023792 dated 7/27/2022) for 4 year lease of Golf Cars and Maintenance Carts.

The items protested are as follows:

1. Amendment 1 dated 8/19/22- Page 1, Question 1. During the pre-bid meeting it was asked by a vendor "Is it acceptable to quote the Lithium battery golf car?" The State's response is "Yes. Wording in the solicitation has been changed as noted below." The change 'noted below' was **EACH CAR MUST HAVE STANDARD LITHIUM BATTERIES**. It is our opinion the only acceptable answers to this question would be "Yes, you may quote a golf car with lithium batteries or a car with 6 (8) volt deep cycle batteries." Or, "No, we are only accepting quotes on a car with 6 (8) volt deep cycle batteries." The question asked was not looking to remove the original specification, but to allow another option. **We respectfully ask that it be an option to quote Lithium and/or 6 (8) volt deep cycle battery golf car.**
2. Amendment 1, dated 8/19/22- Page 1, Question 3. During the pre-bid meeting it was asked by a vendor "Is it possible to quote a 60 month lease, instead of 48 months since the lithium battery pack has a 5-year warranty? You could keep the car longer with a lower payment.? The State's response is "Yes. Wording in the solicitation has been changed as noted below." The change 'noted below' was **5 YEAR LEASE OF GOLF CARTS**. It is our opinion this should be an option, not a specification. In today's golf industry during Covid, we are seeing much higher rounds at our golf courses. In essence this means at about 3 years into a lease, the golf car will have over 4 years usage on it. Meaning regardless of the battery warranty, the rest of the golf car will be worn out much quicker. In our industry, more and more golf courses are choosing shorter lease terms rather than longer due to the excessive wear on the golf car due to increased play from Covid. Going that long on a lease will only cause issues down the road for the golf course staff and their patrons. **We respectfully ask that the lease term be open to quote 4 and/or 5 year lease, for either car allowed to be quoted.**

If you have any questions, please don't hesitate to reach out. I look forward to hearing from back, thank you.

Regards,

***Rick Forbis***

Territory Manager

Coastal Carolinas

Club Car

Cell: 843-231-5086







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Club Car Tempo Lithium Ion: Proven Performance

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When it's time to power up, the fast charging times and ability to hold a charge across multiple rounds keep Lithium Ion-powered cars on the course and out of the barn.

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## SPECIFICATIONS

# TEMPO LITHIUM ION GOLF CAR

Power



Steering & Suspension



Brakes



Body & Tires



Dimensions and Weights



Limited Warranty



# WHAT OUR CUSTOMERS ARE SAYING

I want to thank you for all of your work to help us transition into the current century with our fleet and the **technology attached**. Now that we have had it for six months, I can tell you this has been **one of our best additions**.

-Scott Heyn, PGA  
General Manager/COO, The Farms Golf Club

The partnership between us and Club Car, and our mutual goal of providing our members and their guests an **unparalleled golfing experience**, is key to our mutual success. We are grateful for Club Car’s commitment to excellence.

-Chip King  
Director of Golf, Grandfather Golf & Country Club

# MORE INFORMATION

Learn more about the new Club Car Tempo Li-Ion.

DOWNLOADS

# REACH OUT

Contact us with questions or to get Tempo Li-Ion today.

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NORTH AMERICA: 1-800-CLUB CAR  
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1-706-955-0081

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