

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

In the Matter of Protest of:

Good Home Foods

Department of Corrections  
IFB No. 5400003611  
Non Fat Dry Milk Powder  
(High Heat) 50 Lb Bags

**BEFORE THE CHIEF PROCUREMENT OFFICER**

DECISION

CASE NO.: 2011-143

POSTING DATE: May 2, 2012

MAILING DATE: May 2, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Good Home Foods (Good Home).<sup>1</sup> With this invitation for bids (IFB), the Department of Corrections (SCDC) attempts to procure Non Fat Dry Milk Powder (High Heat) 50 Lb Bags. SCDC posted an intent to award to GE Government Supply, LLC for \$412,313.50.

In the letter, Sun States protested SCDC's award alleging, "I submitted a bid on the powdered milk (#5400003611) on behalf of Good Home Foods. We bid \$78.00 per bag and the bid was awarded for \$78.885 per bag. This is our first time participating, so was there something incorrect on our bid were it was disqualified?"

As the issues to be decided are clear, this decision is prepared based on an administrative review of the procurement documents and emails exchanged between the parties without benefit of a hearing.

**NATURE OF PROTEST**

The letter of protest is attached and incorporated herein by reference.

**FINDINGS OF FACT**

The following dates are relevant to the protest:

1. On October 13, 2011, SCDC issued the IFB. (Ex. 1)

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<sup>1</sup> The protest was actually filed by Phil Crosby of Sun States Marketing, Inc.

2. On October 17, 2011, SCDC issued Amendment # 1. (Ex. 2)
3. On October 17, 2011, SCDC also issued Amendment # 2. (Ex. 3)
4. On October 26, 2011, SCDC issued Amendment # 3. (Ex. 4)
5. On November 17, 2011, SCDC posted an intent to award to GE Government Supply, LLC for \$412,313.50. (Ex. 5)
6. On November 28, 2011, the CPO received Good Home's protest.

### **CONCLUSIONS OF LAW**

SCDC rejected the bid as late. In an email message she sent after Good Home contacted MMO, Ruthie Bishop, SCDC Procurement Director, stated:

Solicitation 5400003611 opened on November 10, 2011 at 10:00AM. SCDC received 1 bid from GE Government Supply and one late bid. According to the outside of the envelope it is from someone by the name of Crosby but I cannot provide you with anymore *[sic]* information because the bid was late and it was not opened since it was not in SCDC possession at 10:00AM on November 10, 2011.

The Consolidated Procurement Code (Code) requires the State to award a contract "to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids." (11-35-1520(10)) The Code defines a responsive bidder as "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." (11-35-1410(7)) The supporting regulations require that "[a]ll bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in subsection B below, unopened." (SC Reg. 19-445.2045.A.) Regarding bid openings, the regulations read:

The procurement officer of the governmental body or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. In the presence of one or more state witnesses, he shall then personally and publicly open all bids received prior to that time.

(SC Reg. 19-445.2050.A.) The regulations require that "[a]ny bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." (19-445.2070.A.)

SCDC's IFB required bidders to submit their bids before 10:00AM, November 1, 2011. The IFB read:

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)]<sup>2</sup>

Amendment # 3 extended the bid opening to 10:00AM, November 10, 2011. It also provided the omitted delivery address, stating

The following address was added for mailing sealed offer:

PHYSICAL ADDRESS:

SC Department of Corrections  
Attn: Purchasing Branch  
4420 Broad River Road  
Columbia SC 29210

MAILING ADDRESS:

SC Department of Corrections  
Attn: Purchasing Branch  
4420 Broad River Road  
Columbia SC 29210

According to the protestant, Mr. Phil Crosby:

The Post Office here Expressed Mailed [*sic*] the bid to a Post Office in Columbia and then they held it until the next day? If it arrived early on the 9th, it should have been available for pick up that day.

According to Ms. Bishop:

SCDC received your bid on November 14, 2011 @ 7:28AM. The post office signed for your bid on November 9, 2011 @ 7:45AM; however, the US Post Office did not put the package in SCDC's PO Box until sometime after SCDC picked up the mail on November 10<sup>th</sup>.

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<sup>2</sup> Curiously, the original IFB did not identify a delivery address for bidders.

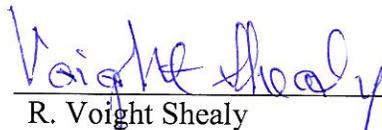
Purchasing researched the tracking when the bid was received on November 14, 2011 to be sure that it was not in SCDC possession at 10:00AM on November 10, 2011. According to SCDC mail room they did not get it out of SCDC PO Box until the morning of November 14, 2011. There was no mail pick up on November 11, 2011 because it was a state holiday.

To our knowledge it was still in the possession of the US Post Office. According to SCDC mail room they picked it up at the US Post Office on November 14, 2011 when they picked up the rest of the mail.

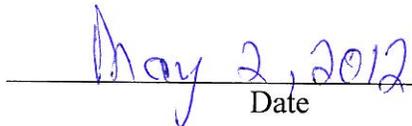
Delivery of a bid to the designated address is the responsibility of the bidder. In this case, at its own risk, Good Home relied upon the Postal Service to deliver its bid to the correct delivery location before the bid opening. It did not. Further, apparently with Good Home's knowledge, the Postal Service delivered Good Home's bid to a post office box, which was not identified by the IFB as an acceptable delivery location. Since the bid was not delivered to the designated location by the bid opening deadline, SCDC had no choice under law but to reject the bid.

#### **DETERMINATION**

For the aforementioned reasons, the protest is denied.



\_\_\_\_\_  
R. Voight Shealy  
Chief Procurement Officer  
For Supplies and Services



\_\_\_\_\_  
Date

Columbia, S.C.

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised March 2012)*

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: [www.procurementlaw.sc.gov](http://www.procurementlaw.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 83.1 of the 2011 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2011 S.C. Act No. 73, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, an incorporated business must retain 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).

**Skinner, Gail**

**From:** Protest-MMO [Protest-MMO@mmo.sc.gov]  
**Sent:** Monday, November 28, 2011 1:59 PM  
**To:** \_MMO - Procurement; Shealy, Voight; Skinner, Gail  
**Subject:** FW: Dry Milk Bid

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**From:** Phil Crosby[SMTP:SUNSTATESINC@AOL.COM]  
**Sent:** Monday, November 28, 2011 1:58:27 PM  
**To:** Protest-MMO  
**Subject:** Dry Milk Bid  
**Auto forwarded by a Rule**

I submitted a bid on the powdered milk (#5400003611) on behalf of Good Home Foods. We bid \$78.00 per bag and the bid was awarded for \$78.885 per bag. This is our first time participating,so was there something incorrect on our bid were it was disqualified?  
Thanks

Phil Crosby  
Sun States Marketing, Inc.  
Tel. 704-846-1676  
Fax. 704-845-2330  
Cell 704-562-4296