

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Quality Traffic Data

Department of Transportation
RFP No. 5400006878

Traffic Data Collection Services

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2014-109

POSTING DATE: April 2, 2014

MAILING DATE: April 2, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest emailed March 3, 2014 from Quality Traffic Data (QTD). With this request for proposals (RFP), the South Carolina Department of Transportation (SCDOT) attempts to procure traffic data collection services. Following the evaluation of the proposals received, SCDOT posted its intent to award for Lot A to Quality Counts, LLC. QTD protested SCDOT's award of Lot A.

As the issue to be decided is clear, this decision is prepared based upon an administrative review of the purchasing file without benefit of a hearing.

NATURE OF PROTEST

QTD protested the award for Lot A to Quality Counts, LLC, alleging, in its entirety:

Quality Traffic Data seeks to invoke its right to protest under the South Carolina Code of Laws Section 11-35-4210. The grounds of this protest is that the State has previously awarded Lots to multiple vendors, and that it is fair and reasonable that multiple vendors should be awarded contracts on projects of this scope, as the RFP indicated it might be so awarded [06-6035-1]. Quality Traffic Data requests the award for Lot A be suspended until such time as a review and decision may be made on the point of awarding the Lot to multiple vendors by the Chief Procurement Officer.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On November 7, 2013, SCDOT published the RFP. (Ex. 1) SCDOT also issued Amendment #1, the only amendment to the RFP. (Ex. 2)
2. On December 10, 2013, SCDOT opened the proposals received. (Ex. 2)
3. On February 21, 2014, SCDOT posted the Intent to Award. (Ex. 3)
4. On Friday, February 28, 2014, at 5:52 p.m., QTD emailed its protest to “Chief Procurement Officer Daniel Covey” of SCDOT.
5. On Monday morning, March 3, 2014, Mr. Covey forwarded QTD’s protest to the CPO.

SOLICITATION REQUIREMENTS

In soliciting this requirement, SCDOT identified the scope of work as:

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]

The South Carolina Department of Transportation (SCDOT) is issuing this Request for Proposal (RFP) seeking firms or individuals to provide **Traffic Data Collection Services**, in relation to the collecting, processing, uploading, and reporting of traffic data. All the collected traffic data counts are for a calendar year at traffic data collection sites designated by the SCDOT and located in one of the forty-six (46) counties in South Carolina.

(Ex. 1, Part I. Scope of Work, Acquire Services, p. 4)

CONCLUSIONS OF LAW

QTD challenged the award of Lot A to Quality Counts, LLC alleging, “The grounds of this protest is that the State has previously awarded Lots to multiple vendors, and that it is fair and reasonable that multiple vendors should be awarded contracts on projects of this scope, as the RFP indicated it might be so awarded [06-6035-1].” QTD references the language of the RFP that reads, “Award may be made to more than one Offeror. [06-6035-1]” [Ex. 1, Part VI. Award Criteria, Award to Multiple Offerors, p. 23]

However, in its answers to vendor questions, SCDOT wrote in Amendment #1, issued November 7, 2013:

Question 4. Page 23 states Award may be made to more than one Offeror. Does the department intend to award multiple contracts per lot?

Answer: No, the Department intends to award only one contract per lot.

[Ex. 2, Vendor Questions and Answers, Question 4, p. 1] SCDOT issued no other amendments to the RFP.

The Consolidated Procurement Code provides prospective bidders the privilege to protest a solicitation and actual bidders to protest an award. It reads:

- (a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.
- (b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(11-35-4210, Right to Protest; Exclusive Remedy) (Emphasis added)

The CPO finds that SCDOT informed QTD on November 7, 2013, with sufficient information to raise its issue of protest within fifteen days, yet QTD did not file its protest until March 4, 2014, well after the protest period elapsed. Therefore, the CPO finds QTD's protest to be untimely filed.¹

The South Carolina Procurement Review Panel (Panel) has repeatedly held that the time for filing cannot be waived. *See Protest of Jones Engineering Sales, Inc.*, Panel Case No. 2001-8 (finding that the CPO did not have jurisdiction to rule on the protest issue because the time for

¹ The fact that QTD emailed its protest to Daniel Covey of SCDOT on February 28, 2014 does not alter the analysis.

filing protests of the solicitation is jurisdictional and may not be waived); *Protest of National Cosmetology Ass'n*, Panel Case No. 1996-17 (finding that “where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver”); *Protest of Vorec Corporation*, Panel Case No. 1994-9 (finding that a protest of award was untimely when it was filed one day after the deadline established by the Code prior to its amendment). The Panel has explained its rationale for why this time limit is jurisdictional and cannot be waived as follows:

[I]t is essential to the operation of government that challenges to its purchasing decisions be limited. If the time for filing protests can be waived, the State will be unable to determine with certainty when it can enter into a contract with one vendor for vital goods and services without the danger of being liable to another vendor.

Protest of Oakland Janitorial Services, Inc., Panel Case No. 1988-13.

DETERMINATION

For the foregoing reasons the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



April 2, 2014
Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

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>

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 108.1 of the 2013 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 202, 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.