

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

In the Matter of Protest of:

Carolina Rim & Wheel Company

State Department of Education  
IFB No. 5400004084  
Brake Drums

**BEFORE THE CHIEF PROCUREMENT OFFICER**

DECISION

CASE NO.: 2012-121

POSTING DATE: July 31, 2012

MAILING DATE: July 31, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Carolina Rim & Wheel Company (Carolina). With this invitation for bids (IFB), the State Department of Education (SDE) attempts to procure 1,000 brake drums for its school bus fleet. In the letter, Carolina protested SDE's intent to award to Columbia Truck Center (Columbia) alleging that it did not receive any notification of the solicitation.

As the issue of law in this is clear, this decision is prepared based upon an administrative review of the procurement file without the 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 March 14, 2012, SDE released the IFB. (Ex. 1)
2. On March 15, 2012, SDE published the IFB in South Carolina Business Opportunities (SCBO). (Ex. 2, p. 4, Equipment)
3. On March 27, 2012, SDE released Amendment # 1. (Ex. 3)
4. On April 11, 2012, SDE opened the four bids received.
5. On April 17, 2012, SDE posted its intent to award to Columbia Truck Center for \$299,880. (Ex. 4) The same day, SDE posted a "Corrected" intent to award to Columbia for the same contract amount. (Ex. 5)

6. On May 24, 2012, Carolina delivered its protest to the CPO.

## DISCUSSION

In its protest letter, Carolina wrote, “The solicitation was published in SCBO on March 17th<sup>1</sup> and also listed through SKIES.” Carolina’s reference is to the South Carolina Enterprise Information System, or SCEIS. Carolina wrote further:

Carolina Rim & Wheel was never aware and did not receive any notification that this solicitation was out and no bid was submitted. In discussions with John Stevens and Carol Kelly we learned that there is a design flaw in the SKIES vendor registration programs. Carolina Rim & Wheel originally completed the vendor registration in April of 2009 and in February 2011 we again accessed the SKIES system to add an additional category code. We have since found out that when this change was updated all the previous codes were deleted. There was no instructions [*sic*] that you had to reenter commodity codes and in fact the previous codes were listed with a green check mark next to each one which to me indicated that they were still active as far as our registration went.

It was because these codes were deactivated we did not receive notification of the pending solicitation. I am not sure that this error in the SKIES system is justification to protest the award of contract #4400005144 but I feel strongly the error may have effected [*sic*] the outcome of this award.

SCEIS is a statewide enterprise reporting program (ERP) software system that automates state agency procurement, budgeting, accounting, expenditure, and human resources processes. In order to bid to the state, a bidder must register in SCEIS. During registration, a bidder must identify the classifications of goods or services it wishes to sell to the state. When procurement officers use SCEIS to generate a solicitation, they may enter the classification codes for the goods or services in the invitation for bids. If the classification code in the IFB matches one the bidder selected during registration, SCEIS generates an email message notifying the vendor of an opportunity to bid.

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<sup>1</sup> Actually, the solicitation was advertised in the March 15, 2012 edition of South Carolina Business Opportunities.

Each bidder is responsible for entering and maintaining his own bidding profile along with the classifications of products and services he sells. At any time, a bidder may update his profile. If the bidder completes the update correctly, SCEIS adds any new selections to the classifications the bidder has identified previously. However, if the bidder does not complete the update correctly, SCEIS replaces the original classifications in the bidder's profile with the updated classification codes. In that event, the bidder's previous selections are discarded.

### CONCLUSIONS OF LAW

Carolina did not submit a bid, yet Carolina protests the award posted by SDE. The threshold issues for determination are standing and timelines. The Procurement Review Panel (Panel) has addressed these issues many times during its thirty year history. Most relevant to this case, the Panel wrote the following in a very similar case:

The Panel has discussed the issue of standing in several previous cases, most notably, *In Re: Protest of Laurens County Service Council for Senior Citizens*, Case No. 1990-18. The Panel found that only an "actual bidder" to the IFB has standing to protest the award or intended award of the IFB. S.C. Code Section 11-35-4210(1) provides, in part, "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 ..." [emphasis added]. Winyah did not submit a bid in response to the IFB, so is not an "actual bidder." S.C. Code Section 11-35-4210(1) also provides, in part, "any *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 ..." [emphasis added]. Neither can Winyah be a prospective bidder once bids are opened, as no opportunity to submit a bid exists.

Most recently, the Panel upheld its prior decisions concerning standing in Case No. 1994-5, *In re: Protest of Smith & Jones Distributing Co. Inc.* As the Panel has previously determined, after bid opening, a vendor that has not submitted a bid, has no standing to protest a solicitation or award. Therefore, Winyah is not a "prospective bidder" or "actual bidder." The Panel finds that Winyah does not have standing to protest under S. C. Code Ann. Section 11-35-4210.

S. C. Code Ann. Section 11-35-4210(1) further states that a protest must be submitted "within fifteen days of the date of issuance of the Invitation For Bids." The IFB was issued on August 19, 1994, and Winyah's protest is dated September 15, 1994, beyond the fifteen day limitation. So, even if Winyah had standing as a

prospective bidder, it's [*sic*] protest of the solicitation is untimely filed under S. C. Code Ann. Section 11-35-4210(1).

*Appeal by Winyah Dispensary*, Panel Case No. 1994-18.

Carolina alleges the state did not advise it of the solicitation. Carolina notes, "This is an item that my company has been supplying for over 10 years under a previous contract that had expired two years ago." The Code requires state agencies to advertise their solicitations in SCBO. (11-35-1520(3)) As Carolina acknowledges, SDE advertised this solicitation in SCBO. Therefore, SDE met the requirements of law for notifying bidders of bidding opportunities. No further notice is required by the Code. The Panel addressed this issue in the same decision, writing:

Also pertinent to this case is the Panel's decision in Case No. 1990-17, *In Re: Protest of Quantum Resources*, in which the Panel identified the issue as "whether State Procurement had the duty to send it [Quantum], an incumbent bidder, a copy of the IFB for the new contract." The Panel found that "nothing in the statute or regulations governing this procurement required State Procurement to send a copy of the IFB to Quantum Resources."

*Winyah Dispensary, supra.*

### DETERMINATION

For the aforementioned reasons, the protest is denied.

The events surrounding this protest are unfortunate. A veteran bidding, thinking it had met all requirements for bidder registration, in fact, disabled the system it relied upon for notice of contracting opportunities. State authorities need to revisit the SCEIS bidder registration system in order to ensure that the instructions to bidders are clearly stated. However, bidders are cautioned not to rely solely upon the SCEIS system to notify them of bidding opportunities. The notification system is merely a value added service provided by SCEIS. It is not now, nor has it ever been recognized by the Code as a requirement for state agencies to notify bidders of bidding opportunities via SCEIS.

*R. Voight Shealy*

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R. Voight Shealy  
Chief Procurement Officer  
For Supplies and Services

*7/31/2012*

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Date

Columbia, S.C.

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised July 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: <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 83.1 of the 2012 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, 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).

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1105 Pendleton Street, Suite 202, 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.**

## Skinner, Gail

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**From:** Shealy, Voight  
**Sent:** Tuesday, July 31, 2012 10:31 AM  
**To:** Skinner, Gail  
**Subject:** FW: SKIES Vendor Registration Error  
**Attachments:** RE: Vendor Registration/Update

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**From:** Thomas M. Stewart [<mailto:tstewart@carolinarim.com>]  
**Sent:** Thursday, May 24, 2012 4:23 PM  
**To:** Shealy, Voight  
**Subject:** SKIES Vendor Registration Error

Mr. Shealy,

Recently a procurement opportunity was offered by the SC Dept. of Education (Bid# 5400004084) for a specific brake drum used on schools buses. This is an item that my company has been supplying for over 10 years under a previous contract that had expired 2 years ago. The solicitation was published in SCBO on March 17<sup>th</sup> and also listed through SKIES.

Carolina Rim & Wheel was never aware and did not receive any notification that this solicitation was out and no bid was submitted. In discussions with John Stevens and Carol Kelly we learned that there is a design flaw in the SKIES vendor registration programs. Carolina Rim & Wheel originally completed the vendor registration in April of 2009 and in February 2011 we again accessed the SKIES system to add an additional category code. We have since found out that when this change was updated all the previous codes were deleted. There was no instructions that you had to reenter commodity codes and in fact the previous codes were listed with a green check mark next to each one which to me indicated that they were still active as far as our registration went.

It was because these codes were deactivated we did not receive notification of the pending solicitation. I am not sure that this error in the SKIES system is justification to protest the award of contract #4400005144 but I feel strongly the error may have effected the outcome of this award.

I have attached a copy of an e-mail received from Carol Kelly which details our registration history in SKIES and look to your advice as to whether this error is justification for an official protest of this award.

Carolina Rim & Wheel Company, currently holds other contracts with the Dept. of Education and has been and continues to be a proud vendor to the State of South Carolina.

I look forward to your response.

Thomas M. Stewart  
President



704-334-7276 x105

## Skinner, Gail

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**From:** Kelly, Carol  
**Sent:** Thursday, May 17, 2012 1:00 PM  
**To:** Thomas M. Stewart  
**Cc:** Stevens, John  
**Subject:** RE: Vendor Registration/Update

Mr. Stewart,

I think I have copied everything correct from the Registrant History. Please let me know if you have any questions.

Thanks, Carol Kelly

State of South Carolina – Vendor Registration (803) 737-1959

04/10/2009 – Vendor Registration – Business

Vendor Number: 7000130542

Contact: Thomas Stewart

Email: [tstewart@carolinarim.com](mailto:tstewart@carolinarim.com)

Address: 1308 Upper Asbury, Charlotte, NC 28206 (PO Box 790495, Charlotte, NC 28206

NIGP Code: 055-00 - automotive accessories for automobiles, buses, trailers, trucks, etc.

NIGP Code: 060-00 - automotive and trailer equipment and parts

NIGP Code: 060-06 - axles, trailers and trucks, tandem and single

NIGP Code: 065-00 - automotive and trailer bodies, body accessories, and parts

NIGP Code: 967-19 - automotive equipment and supply manufacturing services

NIGP Code 110-00 - belts and belting: automotive and industrial

02/17/2011 - Vendor Registration – Business

Vendor Number: 7000130542

Contact: Todd Register

Email: [tregister@carolinarim.com](mailto:tregister@carolinarim.com)

Address: PO Box 790495, Charlotte, NC 28206

NIGP Code: 765-33 - filters: air, fuel, hydraulic, oil, etc. (for heavy duty equipment)

Vendor Number: 7000130542 - Vendor Registration – Business 11:32:44.0

Vendor Number: 7000130542

Contact: Todd Register

Email: [tregister@carolinarim.com](mailto:tregister@carolinarim.com)

Address: 1308 Upper Asbury, Charlotte, NC 28206 (PO Box 790495, Charlotte, NC 28206

NIGP Code: 055-00 - automotive accessories for automobiles, buses, trailers, trucks, etc.

NIGP Code: 060-00 - automotive and trailer equipment and parts

NIGP Code: 065-00 - automotive and trailer bodies, body accessories, and parts

NIGP Code: 075-43 - lathes, armature and brake drum

NIGP Code: 765-33 - filters: air, fuel, hydraulic, oil, etc. (for heavy duty equipment)

02/17/2011 - Vendor Registration – Business

Vendor Number: 7000130542

Contact: Todd Register

Email: [tregister@carolinarim.com](mailto:tregister@carolinarim.com)

Address: PO Box 790495, Charlotte, NC 28206

NIGP Code: 765-33 - filters: air, fuel, hydraulic, oil, etc. (for heavy duty equipment)

Vendor Number: 7000130542 - Vendor Registration – Business 14:18:26.0

Vendor Number: 7000130542

Contact: Todd Register

Email: [tregister@carolinarim.com](mailto:tregister@carolinarim.com)

Address: 1308 Upper Asbury, Charlotte, NC 28206 (PO Box 790495, Charlotte, NC 28206

NIGP Code: 055-00 - automotive accessories for automobiles, buses, trailers, trucks, etc.

NIGP Code: 060-00 - automotive and trailer equipment and parts

NIGP Code: 065-00 - automotive and trailer bodies, body accessories, and parts

NIGP Code: 075-43 - lathes, armature and brake drum

NIGP Code: 110-00 - belts and belting: automotive and industrial

NIGP Code: 765-33 - filters: air, fuel, hydraulic, oil, etc. (for heavy duty equipment

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**From:** Thomas M. Stewart [<mailto:tstewart@carolinarim.com>]

**Sent:** Friday, May 11, 2012 2:54 PM

**To:** Kelly, Carol

**Subject:** RE: Vendor Registration/Update

User ID# VN.CRandW

At the suggestion of Mr. Stevens can you please provide us with any action related to our registration beginning from the initial registration the update that took effect 2/17/11 and any changes since that date including changes that were made today 5/11/12. Please provide this information as soon as possible.

Thank you for your help

Thomas M. Stewart

President



**CAROLINA RIM AND WHEEL**

704-334-7276 x105

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If this email is spam, report it to [www.OnlyMyEmail.com](http://www.OnlyMyEmail.com)