

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Altec Industries, Inc.

Department of Transportation
IFB # 5400006769

Cab and Chassis
37Ft & 50Ft Aerial Buckets
(Bucket Trucks)

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2013-136

POSTING DATE: December 20, 2013

MAILING DATE: December 20, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by Altec Industries, Inc. (Altec) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the Department of Transportation (DOT) attempts to procure cab and chassis units with 37 foot and 50 foot aerial buckets (bucket trucks). After evaluating the bids received, on October 25, 2013, DOT posted its intent to award the 37 foot bucket trucks to Altec and the 50 foot bucket trucks to MAP Enterprises, Inc. (MAP) On October 30, 2013, Altec protested DOT's award of the 50 foot bucket trucks to MAP alleging:

1. 4.1.6. The inner boom will be capable of extending out a minimum of **118** inches. Versalift only extends **103** inches. All of Versalift literature shows this. We could not find where an exception was taken by MAP concerning this.
2. 4.1.7. The inner boom will maintain a minimum of **21 in.** of insulation gap when the boom is fully retracted and a minimum of 52 in. when fully extended. Versalift minimum appears to be **12 in.** All of Versalift literature shows this. We could not find where an exception was taken by MAP concerning this.
3. 4.2.7. Bucket shall be able to rotate out at least **180** degrees. Versalift platform rotation is only **100** degrees per documentation found. <http://www.versalifteast.com/Bucket-Truck-Versalift-VST36-40-47-52-SI.htm>
4. Under "Warranty" in specifications SCDOT call for an engine warranty of 100,000 miles – sixty (60) months. This is not considered standard and we wanted to ensure that the quote included these requirements.

In order to resolve the matter, the CPO conducted a hearing December 10, 2013. Appearing before the CPOI were: Brandon Nelson for Altec; Allen Pittard for MAP; and Amanda Taylor for DOT.

NATURE OF PROTEST

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

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On October 2, 2013, DOT published the IFB. [Ex. 1]
2. On October 18, 2013, DOT issued Amendment #1. [Ex. 2]
3. On October 23, 2013, DOT opened the bids received.
4. On October 25, 2013, DOT posted its Intent to Award. [Ex. 5]
5. On October 30, 2013, Altec emailed its protest to the CPO.
6. On November 4, 2013, DOT suspended its Intent to Award. [Ex. 6]

WITHDRAWAL OF PROTEST GROUNDS

During the hearing, Altec withdrew its protest that MAP's bid was nonresponsive to the following specifications:

- 4.1.7. The inner boom will maintain a minimum of **21 in.** of insulation gap when the boom is fully retracted and a minimum of 52 in. when fully extended.
- 4.2.7. Bucket shall be able to rotate out at least **180** degrees.

The remaining grounds of protest are:

- 4.1.6 The inner boom will be capable of extending out a minimum of **118** inches.
- Under "Warranty" in specifications SCDOT call for an engine warranty of 100,000 miles – sixty (60) months.

DISCUSSION

MAP submitted its bid for the 50 foot bucket truck without any stated exceptions to the requirements of the specifications. Following evaluation of the bids received, DOT determined MAP the low bidder for the 50 foot bucket truck and posted its intent to award to MAP.

Altec challenges DOT's award.

CONCLUSIONS OF LAW

Regarding award of an invitation for bids, the Consolidated Procurement Code reads, "notice of an award or an intended award of a contract [must be given] to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids." [11-35-1520(10) Award] The supporting regulations add, "Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." [S.C. Code Ann. Reg. 19-445.2070A, Rejection of Individual Bids]. Further, "Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids." 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)]

For the 50 foot bucket truck, the IFB required bidders to offer a cab and chassis unit with a 50 foot aerial bucket meeting the following specifications relevant to the remaining grounds under protest:

- 4.1.6 The inner boom will be capable of extending out a minimum of **118** inches.
- Under "Warranty" in specifications SCDOT call for an engine warranty of 100,000 miles – sixty (60) months.

Regarding specification 4.1.6 that addresses the inner boom, Altec alleged MAP's bid was nonresponsive in that the inner boom of the Versalift model bid by MAP only extends **103** inches.

In its evaluation of the bids prior to award, according to John White, DOT Supply and Equipment Manager, DOT determined MAP's bid responsive based on the absence of any exceptions to the specifications. Following receipt of the protest, however, Mr. White and his staff revisited MAP's bid for compliance with the protested specifications and concluded MAP's bid was actually nonresponsive to specification 4.1.6. DOT asks the CPO to grant the protest on that ground.

Mr. White explained the inner boom, which the bucket is attached to, is a telescopic extension of the upper boom. Per Mr. White, the extension length of 118 inches of the inner boom was an essential specification in that it allows DOT staff to repair a signal light in one lane and a signal light in the adjacent lane without moving the truck thereby minimizing interruption of traffic flow. This requirement not only saves time by allowing DOT personnel to repair two signal heads in one stop, it allows DOT to repair two signal heads without blocking traffic in both lanes. The extension length of 118 inches was based upon the average distance between the two signal heads (8 feet or 96 inches). Allowing for truck side walls of two feet (24 inches), DOT anticipated the inner boom needed to extend 120 inches (96 inches + 24 inches).

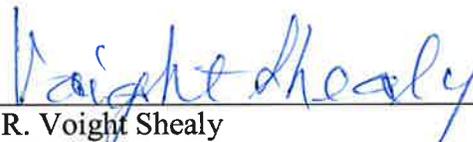
During questioning, Mr. Pittard of MAP acknowledged the inner boom of the Versalift model bid by MAP only extends 103 inches; 15 inches less than the minimum extension length specified.¹

¹ Mr. Pittard stated MAP could have bid another model that would meet the specifications, but chose not to bid that model because it costs more.

Mr. White explained the 15 inch deficiency would not allow repairs to both signal heads with one stop, but would require DOT to repair the first signal head and then move the truck to repair the second signal head, thereby interrupting traffic flow in both lanes. He characterized the specification of 118” for inner boom extension length as a “material requirement” of the solicitation.

DETERMINATION

All parties, Altec, DOT, and MAP agree the 50 foot bucket truck bid by MAP did not conform to the specification requiring the inner boom to extend a minimum of 118 inches. Therefore, the protest is granted.² The Intent to Award to MAP is rescinded and the procurement is remained to DOT to proceed in accordance with the Consolidated Procurement Code.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

² With the protest granted, the CPO states no conclusion regarding MAP'S warranty.

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.

October 30, 2013

Voight Shealy
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: SCDOT Solicitation: 5400006769

Dear Mr. Shealy,

ALTEC Industries protests the Intent to Award of Solicitation 5400006769 to MAP Enterprises. The reasons for our protests and remedies we request are as follows:

Item 1:

4.1.6. The inner boom will be capable of extending out a minimum of **118** inches.

Versalift only extends **103** inches. All of Versalift literature shows this. We could not find where an exception was taken by MAP concerning this.

Item 2:

4.1.7. The inner boom will maintain a minimum of **21 in.** of insulation gap when the boom is fully retracted and a minimum of **52 in.** when fully extended.

Versalift minimum appears to be **12 in.** All of Versalift literature shows this. We could not find where an exception was taken by MAP concerning this.

Item 3:

4.2.7. Bucket shall be able to rotate out at least **180** degrees.

Versalift platform rotation is only **100** degrees per documentation found. <http://www.versalifteast.com/Bucket-Truck-Versalift-VST36-40-47-52-SI.htm>

Item 4:

Under "Warranty" in specifications SCDOT call for an engine warranty of 100,000 miles – sixty (60) months. This is not considered standard and we wanted to ensure that the quote included these requirements.

In summary, ALTEC Industries asks the CPO to determine the following information regarding the unit bid by MAP Industries:

Item 1: The unit does not appear to meet specifications requested for item 4.1.6.

Item 2: The unit does not appear to meet specifications requested for item 4.1.7

Item 3: The unit does not appear to meet specifications requested for item 4.2.7.

Item 4: Confirm MAP is supplying extended chassis warranty as requested in "warranty" of specifications.

For these reasons, we ask that the bid submitted by MAP be considered as not meeting specifications and the bid be awarded to the next lowest responsible bidder.

Sincerely,

Brandon Nelson
Altec Industries
864-414-5835