

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

In the Matter of Protest of:

Palmetto Traffic Group, LLC

South Carolina Department of  
Transportation  
RFP #5400006878  
Traffic Data Collection Services

**BEFORE THE CHIEF PROCUREMENT OFFICER**

DECISION

CASE NO. 2014-107

POSTING DATE: May 29, 2014

MAILING DATE: May 29, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by Palmetto Traffic Group, LLC (PTG) under authority of South Carolina Code Section 11-35-4210. With this Request for Proposals (RFP), the South Carolina Department of Transportation (SCDOT) attempts to procure traffic data collection services. After evaluating the proposals received, on February 21, 2014, SCDOT posted an Intent to Award Lot A to Quality Counts, LLC and Lot B to Short Counts, LLC. Both PTG and Short Counts protested the award to Quality Counts.

**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 November 7, 2013, SCDOT published the RFP. [Ex. 1]
2. According to the document, on the same day, SCODT issued Amendment #1. [Ex. 2]
3. On December 10, 2013, SCDOT opened the proposals including that of Short Counts [Ex. 5] and Quality Counts [Ex. 6].
4. On February 21, 2014, following evaluation of the proposals, SCDOT posted Intents to Award Lot A to Quality Counts, LLC and Lot B to Short Counts, LLC. The award of Lot A is under protest.
5. On February 25, 2014, PTG protested the Intent to Award Lot A to Quality Counts.

6. On February 28, 2014, Short Counts also protested the Intent to Award Lot A to Quality Counts.
7. On April 1, 2014, the CPO scheduled a hearing to hear the Short Counts protest.
8. On May 15, 2014, the CPO convened a hearing to hear only so much of the protests of PTG and Short Counts as alleged Quality Counts' pricing was materially unbalanced.

## **DISCUSSION**

SCDOT solicited proposals to procure Traffic Data Collection Services. In soliciting this requirement, SCDOT identified the scope of work as:

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.

[Emphasis SCDOT's] (Ex. 1, Part I. Scope of Work, Acquire Services, p. 4)

Short Counts submitted a proposal with a title page with its logo and the following text:

***Short Counts, LLC***

735 Maryland St.  
Columbia, SC 29201  
Phone: 803-414-8437  
Email: [mshort@shortcounts.com](mailto:mshort@shortcounts.com)

**In partnership with:**

***Roger D. Dyar, P.E., P.A.***

503 Gunnison Dr.  
Simpsonville, SC 29681

**&**

***Palmetto Traffic Group, LLC***

102 Pressley Dr.  
Clemson, SC 29631

The cover page of the proposal identifies the Offeror as "Short Counts, LLC." Mark Short, Short Counts' owner, signed a cover letter which reads in part:

Enclosed is Short Counts', in partnership with Roger D. Dyar, P.E., P.A. and Palmetto Traffic Group, LLC, response to the SC Department of Transportation request for Traffic Data Collection Services solicitation number 5400006878.

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Short Counts and our subcontracting partners agree to be bound by all the provisions of this proposal. Questions related to any technical aspects of the proposal can be directed to me. Your consideration is greatly appreciated.

The proposal's narrative refers to Short Counts as the "prime contractor." Section III of the offer is titled "Subcontractor Qualifications." It contains background information and experience for Roger D. Dyar, P.E., P.A., and for Palmetto Traffic Group, LLC. [Exhibit 5]

Brad White is PTG's owner. He testified at the hearing that he and Mr. Short jointly prepared the proposal. He also testified that PTG would be a subcontractor to Short Counts if Short Counts were awarded the contract.

#### **CONCLUSIONS OF LAW**

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

- (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....

S.C. Code Ann. § 11-35-4210(1). A contractor is "any person having a contract with a governmental body," S.C. Code Ann. § 11-35-310(10). A subcontractor is "any person having a

contract to perform work or render service to a prime contractor as part of the prime contractor's agreement with a governmental body." S.C. Code Ann. § 11-35-310(30). PTG is not a subcontractor, because Short Counts does not have a contract for the work in the proposal. It is not an actual bidder or offeror, because the cover page of the proposal specifically identifies Short Counts as the bidder. It is not a prospective bidder or offeror, as Mr. White testified PTG would be a subcontractor to Short Counts.

The Procurement Review Panel addressed a similar circumstance in *Protest of Cathcart & Assocs., Inc.*, Panel Case No. 1990-13:

The weight of the evidence suggests that SMI was to be a subcontractor providing support services to assist Cathcart in fulfilling its obligations if it received award of the contract. For that reason, the Panel finds that SMI lacks standing to intervene in this proceeding under § 11-35- 4210(1), which provides that only an offeror or prospective offeror can file a protest.

See also *Protest of Architectural Servs. Procurement for Replacement of Cent. Corr. Inst. Project*, Panel Case No. 1989-5 (concluding that a potential consultant to a successful offeror did not have standing to intervene). Like SMI, PTG was to be a subcontractor providing services to Short Counts if the latter received the contract. Like SMI, PTG lacks standing to protest the solicitation or the award because it is not an actual or prospective bidder or offeror.

#### **DETERMINATION**

For the foregoing reasons, the protest of PTG is dismissed.



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 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.

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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 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**

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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: \_\_\_\_\_

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:** Protest-MMO  
**Sent:** Tuesday, February 25, 2014 11:57 PM  
**To:** \_MMO - Procurement; Shealy, Voight; Skinner, Gail  
**Subject:** FW: Protest for Solicitation 5400006878 Lot A Traffic Data Collection Services

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**From:** Thomas B White  
**Sent:** Tuesday, February 25, 2014 11:56:25 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Protest-MMO  
**Subject:** Protest for Solicitation 5400006878 Lot A Traffic Data Collection Services

Mr. Covey,

We would like to protest this Intent of Award for Lot A Solicitation number **5400006878**. We would like to go before the review panel as we have several questions and concerns to be asked.

- A few particular issues with how the RFP was worded and structured
- The numbers that Quality Counts, LLC submitted do not add up
- Short Counts, LLC had cheaper prices for a per ADT count in many categories
- How Short Counts, LLC scored compared to Quality Counts, LLC

Also, Short Counts, LLC has a few concerns that they would like to share with the review panel as well.

Thanks,



*Transportation Planning and Data Collection*

Palmetto Traffic Group, LLC  
Thomas B. White  
102 Pressley Dr.  
Clemson, SC 29631