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## Protest Decision

**Matter of:** Kustom Signals, Inc.

**Case No.:** 2016-135

**Posting Date:** March 17, 2016

**Contracting Entity:** South Carolina State Fiscal Accountability Authority

**Solicitation No.:** 5400010245

**Description:** Statewide Radar Detection Equipment

### DIGEST

Protest of procurement officer's rejection of bid as non-responsive is denied, where protester proposed different delivery schedule and bid two different prices for individual line items.

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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<sup>1</sup> The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

## **DISCUSSION**

Kustom Signals, Inc. (Kustom), protests the determination that its response to an Invitation For Bids for a state term contract for radar detection equipment was non-responsive to several materials requirement of the solicitation. Kustom's letter of protest is incorporated by reference.

[Attachment 1]

## **BACKGROUND**

Solicitation Issued	January 6, 2016
Intent to Award Issued	February 24, 2016
Protest Received	March 2, 2016

The South Carolina State Fiscal Accountability Authority (SFAA) issued this Invitation For Bids to establish a statewide contract for the provision of high quality radar speed detection equipment and accessories that can be mounted in police enforcement vehicles and on police motorcycles for the South Carolina Department of Public Safety (SCDPS) and for local law enforcement units in South Carolina. SCDPS utilized information obtained from the International Association of Chiefs of Police (IACP), through Cooperative Agreement # DTNH22-05-H-05889 with the National Highway Traffic Safety Administration (NHTSA), which has tested and certified that the radar speed-measuring devices models specified in this solicitation meet all the requirements of the Speed-Measuring Device Performance Specifications: (DOT HS 809 812, June 2004) published by NHTSA to establish a qualified products list. The solicitation included eleven lots with each lot specifying equipment by manufacturer and model number from one of eleven different manufacturers. Lot 8 included equipment manufactured by Kustom Signals. This is the only lot for which Kustom submitted a bid and no other bidder submitted a bid for lot 8. Awards were made for five lots.

## **DISCUSSION**

Kustom's bid for Lot 8 was determined to be non-responsive in two respects. The solicitation required delivery with 30 days of contractor's receipt of a purchase order:

**DELIVERY DATE -- 30 DAYS ARO (JAN 2006)**

Unless otherwise specified herein, all items shall be delivered no later than thirty days after contractor's receipt of the purchase order. If the using governmental unit requests delivery sooner than the time specified, contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order. [03-3025-1

[Solicitation, Page 16]

Kustom included the following statement in its bid:

*Note that Kustom Signals' delivery time will be within 30 days after receipt of an order for quantities of 90 units or less. For orders requesting quantities of more than 90 units, delivery will be within 45-60 days after receipt of order.*

[Kustom's Bid, Page 37]

Kustom's letter of protest offers the following explanation and suggested resolution:

Kustom Signals' response was intended, in an abundance of caution, to provide a clarification to ensure that if a large order was received from the State or an agency located within the State, we would not jeopardize our contractual obligations based on a worst case scenario. As you must realize, no manufacturer can deliver an infinite number of products within 30 days....

Now that Kustom Signals understands the State's concern with extended delivery terms, we have made the internal decision to increase our inventory levels and commit to a staffing plan that will ensure we will meet the request for delivery within 30 days ARO, regardless of the size of the order. This will result in Kustom Signals meeting the State's required maximum 30 day delivery performance whenever required.

This solicitation was issued as an Invitation For Bids under Section 11-35-1520 of the South Carolina Consolidated Procurement Code. Section 11-35-1520(6) requires that:

Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code.

Section 11-35-1520(7) states in pertinent part that:

After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted.

Regulation 19-445-2070(A) states that:

Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

Regulation 19-445.2070(C) states that:

Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.

By altering the mandatory delivery schedule, Kustom’s bid is non-responsive to a material requirement of the solicitation and cannot be corrected.

The solicitation also required that the bid price include all equipment and accessories necessary to mount the devices to all types of vehicles including motorcycles.

**REQUIRED ACCESSORIES**

Radar devices must come with factory calibration certificate, all antenna cables, hardware, and any other necessary accessories(including separation kit) to mount the devices in or on a police vehicle as applicable (all type vehicles including motorcycles). **Pricing for these items must be included in the price submitted in your offer.**

[Solicitation, Page 17]

The bidding schedule included line items 20 and 21 for Kustom Signals Raptor RP-1 and RP-1a antennas respectively, and required a single price for each line item without regard for the type of vehicle on which the equipment would be mounted. Kustom submitted two prices for each line item, one for vehicles and one for motorcycles:

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
20	20	each	\$1,395.00 (vehicle mounted) \$1,870.00 (motorcycle mounted)	\$27,900.00 (vehicle mounted) \$37,400.00 (motorcycle mounted)
<b>Product Cat.:</b> 68077 - Radar Instruments Traffic Enforcement Type				
<b>Item Description:</b> Kustom Signals Raptor RP-1 K Band Dual Antennas				
<b>Tendering Text:</b> Lot 8-Down the Road Radar Speed Measuring Device				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
21	20	each	\$1,898.00 (vehicle mounted) \$2,373.00 (motorcycle mounted)	\$37,960.00 (vehicle mounted) \$47,460.00 (motorcycle mounted)
<b>Product Cat.:</b> 68077 - Radar Instruments Traffic Enforcement Type				
<b>Item Description:</b> Kustom Signals Raptor RP-1 Ka Band Dual Antennas				
<b>Tendering Text:</b> Lot 8-Down the Road Radar Speed Measuring Device				

In its letter of protest, Kustom offers the following explanation and resolution:

Kustom Signals' response considered the possible variety of radar configurations and vehicles for mounting and sought to save the State money by differentiating South Carolina's cost with regard to these different possible configurations. More specifically, radars mounted on motorcycles are exposed to the outdoor environment and as such need to be waterproof. Waterproofing a radar costs more in a number of different ways and we did not see why South Carolina should pay more if the radar was not to be used on a motorcycle....

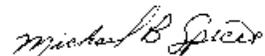
Now, understanding that the State will only accept a single price for each Line Number on the Bidding Schedule/Price-Business Proposal, Kustom Signals proposes to withdraw its motorcycle prices and *offer* the automobile-mounted price for all purchase configurations in Lot #8 Line Numbers 20 and 21 regardless if it is for an automobile or motorcycle.

As stated earlier, Section 11-35-1520(6) requires that Bids must be accepted unconditionally without alteration or correction as to allow otherwise would be unfair to other bidders.

## **DECISION**

For the reasons stated above, the protest is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1



9652 Loiret Blvd  
Lenexa, KS 66219-2406  
www.KustomSignals.com

TEL: 800.458.7866  
913.492.1400  
FAX: 913.492.1703

March 2, 2016

State Fiscal Accountability Authority  
Procurement Services Division  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

**SUBJECT: Protest Regarding Solicitation 5400010245 for Statewide Radar Detection Equipment**

Dear Chief Procurement Officer,

As a representative of Kustom Signals Inc., I am respectfully contacting you to protest South Carolina's Intent to Award Solicitation 5400010245.

This protest is based on Kustom Signals providing a response to Solicitation 5400010245, which we believed was compliant with the State's requirements yet Kustom Signals has not received notice of an award (Intent for Award letters were released on 2/24/16).

Kustom Signals and South Carolina have been working together for many years, and together currently have multiple contracts in place. The demand for Kustom Signals products in the State has been strong over this time, creating a large installed base and in-depth knowledge of these products among officer operators, service technicians and trainers. We feel it is in South Carolina's best interest to include Kustom Signals in the award of Solicitation 5400010245 in order for the State to continue taking advantage of this strong and enduring legacy of knowledge, experience and performance.

Over the past 10 years South Carolina has purchased over 3,200 Kustom Signals radar units with at least 2,500 units being a single configuration that, on its own, saved the State approximately \$500/unit versus the next closest alternative, a net savings to the state of well over \$1.25M.

Because we value our relationship with the State of South Carolina, Kustom Signals honored the State's request for contract extensions two times in the past after the five year contract term expired and we retained the price on the State's favored radar even though we incurred and absorbed significant rising costs both from external material suppliers and internal resources.

We hope that, in consideration of Kustom Signals' long standing partnership with South Carolina, the explanation presented below will be accepted and we will be selected as a supplier with respect to Solicitation 5400010245 and be able to continue providing products seamlessly to the State.

The South Carolina procurement team has identified two areas of concern with regard to Kustom Signals' bid:

- Section entitled **Delivery Date -- 30 Days ARO (JAN 2006)** stated "Unless otherwise specified herein, all items shall be delivered no later than thirty days after contractor's receipt of the purchase order. If the using governmental unit requests delivery sooner than the time specified, contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order. [03-3025-1]".

Kustom Signals' initial response to this section of the invitation included: "*Note that Kustom Signals' delivery time will be within 30 days after receipt of an order for quantities of 90 units or less. For orders requesting quantities of more than 90 units, delivery will be within 45-60 days after receipt of order.*" Kustom Signals' response was intended, in an abundance of caution, to provide a clarification to ensure that if a large order was received from the State or an agency located within the State, we would not jeopardize our contractual obligations based on a worst case scenario. As you must realize, no manufacturer can deliver an infinite number of products within 30 days. In fact, over the most recent ten years, orders received from South Carolina averaged less than 18 days to ship ARO. This includes the largest single orders in each year, of these there were three orders of 100 units or greater all of which shipped in the range of 14 to 16 days ARO. Now that Kustom Signals understands the State's concern with extended delivery terms, we have made the internal decision to increase our inventory levels and commit to a staffing plan that will ensure we will meet the request for delivery within 30 days ARO, regardless of the size of the order. This will result in Kustom Signals meeting the State's required maximum 30 day delivery performance whenever required.

*Your Trusted Partner in Law Enforcement*



9652 Loiret Blvd TEL: 800.458.7866  
 Lenexa, KS 66219-2406 913.492.1400  
 www.KustomSignals.com FAX: 913.492.1703

- Section entitled **Required Accessories** stated that "Radar devices must come with factory calibration certificate, all antenna cables, hardware, and any other necessary accessories (including separation kit) to mount the devices in or on a police vehicle as applicable (all type vehicles including motorcycles). Pricing for these items must be included in the price submitted in your offer."

Kustom Signals' response considered the possible variety of radar configurations and vehicles for mounting and sought to save the State money by differentiating South Carolina's cost with regard to these different possible configurations. More specifically, radars mounted on motorcycles are exposed to the outdoor environment and as such need to be waterproof. Waterproofing a radar costs more in a number of different ways and we did not see why South Carolina should pay more if the radar was not to be used on a motorcycle. Thus Kustom Signals offered two configurations and two prices for its Raptor radar units (Lot #8, Line Numbers 20 and 21) in the same block on the document to ensure the State and agencies located throughout the State had competitive pricing for both an automobile-mounted radar and a motorcycle-mounted radar. Now, understanding that the State will only accept a single price for each Line Number on the Bidding Schedule/Price-Business Proposal, Kustom Signals proposes to withdraw its motorcycle prices and offer the automobile-mounted price for all purchase configurations in Lot #8 Line Numbers 20 and 21 regardless if it is for an automobile or motorcycle.

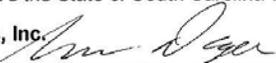
**Bidding Schedule/Price - Business Proposal (changes from original submission only)**

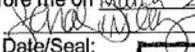
Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
20	20	each	\$1,395.00	\$27,900.00
<b>Product Catg.:</b> 68077 - Radar Instruments Traffic Enforcement Type				
<b>Item Description:</b> Kustom Signals Raptor RP-1 K Band Dual Antennas				
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Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
21	20	each	\$1,898.00	\$37,960.00
<b>Product Catg.:</b> 68077 - Radar Instruments Traffic Enforcement Type				
<b>Item Description:</b> Kustom Signals Raptor RP-1 Ka Band Dual Antennas				
<b>Tendering Text:</b> Lot 8-Down the Road Radar Speed Measuring Device				

Question	Mandatory / Optional	Multiple Responses Accepted?	Response
ENTER THE TOTAL FOR THIS LOT	Mandatory	No	\$166,660.00
ENTER THE PERCENT DISCOUNT FOR ACCESSORIES	Mandatory	No	20% discount from List Price for radar accessories/parts

Based on the details provided above, we believe Kustom Signals' protest is justified and with the State's acceptance of Kustom Signals' explanation and proposed modifications to its commitments, Kustom Signals' offer will fully align with the State's requirements. We thank you for your kind consideration in this matter and we look forward to continuing to serve the State of South Carolina with the best solution to its speed enforcement needs.

Kustom Signals, Inc  
 Signature:   
 Print Name/Title: Ivan Daza, VP Sales & Marketing

State of Kansas, County of Johnson  
 Signed before me on March 2, 2016 (date)  
 Signature:   
 Expiration Date/Seal:

Your Trusted Partner in Law Enforcement



**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised September 2015)*

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 111.1 of the 2015 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 209, 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: \_\_\_\_\_

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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.**