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Protest Decision

Matter of: VetPride Services, Inc.

Case No.: 2018-125

Posting Date: May 7, 2018

Contracting Entity: South Carolina Department of Transportation

Solicitation No.: 5400013881

Description: Rest Area and Truck Parking Janitorial

DIGEST

Protest alleging apparent successful bidder's detailed pricing did not include all staffing requirements of the solicitation and was therefore non-responsive and non-responsible, is denied. VetPride Services' (VS) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). In furtherance of that review, the CPO convened a meeting on March 1, 2018, of all interested parties, including the Department of Transportation (DOT), VetPride Services,

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

Inc., and MRT Support Services, a Joint Venture.² This decision is based on materials in the procurement file, information gathered from the meeting, and applicable law and precedents.

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	08/25/2017
Amendment One	08/31/2017
Amendment Two	09/25/2017
Amendment Three	09/27/2017
Amendment Four	10/09/2017
Intent to Award Issued	11/09/2017
Initial Protest Received	11/20/2017
Amended Protest Received	11/27/2017

The South Carolina Department of Transportation (DOT) issued this Invitation for Bids (IFB) for rest area and truck parking janitorial services. It posted an intent to award to MRT Support Services, a joint venture composed of Hartley Enterprises, Inc. and Ashley Marie Group, Inc. VS timely protested the intent to award, raising three grounds of protest.

Originally, the IFB included two line items, one for rest areas and the other for truck parking. Each line item required bidders to enter their annual price, and extended that price for the potential five-year term of the contract. [Bidding Schedule, Solicitation at 49] It provided that a single contract would be awarded on a fixed-price basis for both line items. The low bid would be determined by adding the extended prices for the two line items. [Solicitation at 36] The resulting contract would include nineteen rest areas and seven truck park areas. DOT also included an Appendix J, titled “Bid Schedule.” [Solicitation at 66-7] Despite its intent to award to one contractor for all the work and the stated basis of award, DOT required bidders to enter their prices for each rest area and each truck park area on Appendix J.

Amendment Two answered questions from offerors and modified the Bidding Schedule. The initial term of the contract was changed from one year to three, with two possible one-year extensions. The revised Bidding Schedule permitted bidders to enter different prices for the

² An earlier scheduled meeting had to be canceled because of illness.

initial and both renewal terms. [Amendment Two at 17-18] Amendment Four added a line item to the Bidding Schedule for the contractor's "emergency hourly rate ... for additional workers." [Amendment Four at 2] Although the award criteria was not changed, it appears that DOT added the extended prices for all seven line items to determine the low bid.³

The solicitation identified each site to be serviced and the minimum staffing level for each site:

Staffing Requirements

The staffing requirements for the contract are as follows:

- One (1) full-time Project Manager
- Three (3) full-time Regional Managers
- Nine (9) full-time Lead Custodians/Site Supervisors for locations as indicated below:
 - Anderson (2 Sites)
 - Newberry (2 Sites), Laurens (1 Site)
 - Chester (2 Sites)
 - Kershaw (2 Sites)
 - Sumter (2 Sites)
 - Calhoun (2 Sites)
 - Orangeburg (2 Sites), Santee (1 Site)
 - Charleston (1 Site)
 - Colleton (2 Sites)
- Custodial staffing requirements:
 - Anderson (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Newberry (2 Sites), Laurens (1 Site): 12 full-time custodians and 12 part-time custodians
 - Chester (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Kershaw (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Sumter (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Calhoun (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Orangeburg (2 Sites), Santee (1 Site): 12 full-time custodians and 12 part-time custodians
 - Charleston (1 Site): 4 full-time custodians and 4 part-time custodians
 - Colleton (2 Sites): 8 full-time custodians and 8 part-time custodians

[Solicitation, Page 21]

The contractor was required to provide two custodians for each site between the hours of 7:00 AM and 11:00 PM:

Custodian Hours

The Contractor must provide an overall workforce comprised of a minimum of 50% full-time personnel (minimum 29-hour week) to satisfy the contract

³ Amendments One and Three make no modifications pertinent to the CPO's decision.

requirements at all times between 7:00 AM and 11:00 PM. A minimum of 2 custodians shall be present during the times specified at each site. If the custodians are not onsite between these hours the Contractor will be in non-compliance.

[Solicitation, Page 19] This requirement was further clarified in Amendment Two:

The Contractor must abide by the Staffing Requirements, Total Minimum Staffing Summary and must have a minimum of 2 custodians present between 7am and 11pm at each site. There are two shifts per day (7AM – 3PM & 3PM – 11PM). The contractor must provide a minimum of two custodians on EACH shift. The Lead Custodian/Site Supervisor, Regional Manager, or Project Manager cannot be used to meet this requirement.

[Amendment Two, Question 88]

The solicitation set minimum number of Contractor employees by labor category and minimum wages:

Total Minimum Staffing Summary (excluding staffing requirements for servicing truck parking areas)

Labor Category	Full-Time Equivalents	Part-Time Equivalents
PROJECT MANAGER	1	
REGIONAL MANAGERS	3	
LEAD CUSTODIANS/SITE SUPERVISORS	9	
CUSTODIANS	76	76

Note: Staffing for servicing the Truck Parking Areas is not included in the above staffing summary and is discussed later in this document.

Minimum Wage Rate Requirement

This contract includes the minimum mandatory wages for the following labor categories:

Custodial Employees: \$10.00 per hour

Lead Custodians/Site Supervisors: \$14.00 per hour (Overseeing two sites)/\$16.00 (Overseeing three sites)

Regional Managers: \$24.00 per hour

Project Manager: \$28.00 per hour

[Solicitation, Page 22] The solicitation required the contractor to provide protections for its personnel:

Personnel Policy

The Contractor shall be responsible for protecting the personnel furnishing services under this contract. To carry out this responsibility, the Contractor shall provide the following for these personnel:

- Workers Compensation
- Professional Liability Insurance
- Income tax withholding
- Social Security payments
- Benefits packages

[Solicitation, Page 21]

The solicitation made it clear that the personnel provided by the contractor were to be employees of the contractor:

Personnel are employees of the Contractor or Sub-Contractor. The Contractor or Subcontractor shall exercise complete control over the rest area personnel, will be liable for their conduct and pay all wages and benefits and all applicable federal, state and local taxes, unemployment, and any other similar taxes.

[Solicitation, Page 20]

The solicitation also made the contractor responsible for minor maintenance and repairs up to \$3,000 per event:

All repairs per repair event less than \$3,000.00 shall be the responsibility of the Contractor and are non-refundable by SCDOT.

[Solicitation, Page 27]

The bidding schedule required bidders to submit 5 year pricing for Lot A – Rest Area Services and 5 year pricing for Lot B – Truck Park Area Services with the following note:

Enter your annual cost above for Lot A as calculated in Addendum J.

[Solicitation, Page 49] The cost of the Lead custodian/ site supervisor is to be distributed across the nine sites as shown below:

Lead Custodian/Site Supervisor

The lead custodian will be the Regional Manager's main point of contact at each individual RA. The Regional Manager can delegate any emergency repairs requested by SCDOT to the Lead Custodian to accomplish. Also, this individual will be responsible for basic daily supervision and reporting any issues to the Regional Manager. Supervision shall be a total of 40 hours minimum to be divided equally among all shifts and sites.

[Solicitation, Page 23] The lead custodian, regional managers or project managers cannot be used to meet the requirement for two custodians:

88. **50% Full-Time and Part-Time Equivalents** – During the Pre-Proposal Conference, SCDOT staff discussed possibly allowing Contractors to use any mix of Full-Time and Part-Time Equivalents to meet the staffing needs of the contract. Please confirm the contractor does not have to abide by either "Total Minimum Staffing Summary" or the "Staffing Requirements" and only has to provide "at all times between 7:00 AM and 11:00 PM. A minimum of 2 custodians shall be present during the times specified at each site." Please confirm only the 2 custodians between 7am and 11pm is required, regardless of Part-Time or Full-Time Equivalents.

The Contractor must abide by the Staffing Requirements, Total Minimum Staffing Summary and must have a minimum of 2 custodians present between 7am and 11pm at each site. There are two shifts per day (7AM – 3PM & 3PM – 11PM). The contractor must provide a minimum of two custodians on EACH shift. The Lead Custodian/Site Supervisor, Regional Manager, or Project Manager cannot be used to meet this requirement.

[Amendment Two, Question 88 (emphasis in original)]

ANALYSIS

VS' first issue of protest is that MRT failed to properly acknowledge all addendums to the IFB and therefore submitted a non-responsive Bid. VS argues that while the solicitation cover page was signed by MRT and both its partners, as required by the solicitation, the amendments were only signed by MRT and thus MRT's bid should be rejected. However, page two of the

solicitation, which was signed by all parties, acknowledged all four amendments. This ground of protest is denied.⁴

VS' second issue of protest has two parts. VS first argues that the price bid by MRT cannot include the wages, social security, Medicare, worker's compensation, and health insurance contributions, dumpster service, pest control service, maintenance and repair costs, vehicles, and bonds required by the solicitation and should have been determined non responsive.

Responsiveness must be determined from the four corners of the bid at the time of submission. MRT submitted a bid indicating that it intends to meet the terms of the solicitation. There is nothing in MRT's bid to indicate otherwise. On its face, MRT's bid is responsive and this issue of protest is denied.

The second part of this issue of protest is that MRT's bid reflects material non-compliance with essential requirements of the IFB with regards to staffing. VS argues:

As required by the Bid Schedule, MRT calculated its annual costs using Addendum J which required MRT to calculate its annual cost per RA and TPA. The totals for the individual RAs and TPAs were used to calculate the total annual cost in the Bid Schedule. MRT's Addendum J submitted with its Bid Package reflects direct evidence of material non-compliance with the staffing requirements of the IFB and renders the Bid nonresponsive. MRT's Addendum J identified its annual cost for operating the Charleston Rest Area to be \$129,355.35. However, this cost amount does not come close to satisfying the minimum staffing and/or minimum wage requirements for the Charleston County RA.

Charleston Rest Area is to be staffed by two custodians from 7:00 AM until 11:00 PM or 16 hours per day. Full time and part time custodians are paid \$10.00 per hour. Two custodians for 16 hours at \$10.00 per hour is \$320 dollars in salary per day. If the Rest Area is open 365 days the annual salaries for custodians is \$116,800.00. MRT is also required to provide one lead-custodian at \$14.00 per hour for 2080 hours per year or \$29,120.00 per year. The lead custodian does not count against the two required custodians. The total salaries for the custodians and lead

⁴ MRT's bid complied with all material changes to the solicitation made through the amendments. Even if there had been some defect in signing the amendments, the failure of all parties to individually acknowledge all four amendments could have properly been waived as a minor informality under Section 11-35-1520(13).

custodian is \$145,920.00. This does not include the contribution for supplies, maintenance, repairs, regional managers, project manager, vehicles, etc. MRT bid \$129,355.35 per year to maintain the Charleston Rest Area. VS included in its protest similar analyses for two rest areas in Kershaw County. Because MRT's price entries in Appendix J for these three rest areas was below the cost of providing the services, VS argues that MRT's bid should have been rejected as unreasonably low.

Ricky Price spoke for MRT at the March 1 meeting. He pointed out that the Bidding Schedule, not Appendix J, is the basis for award. He affirmed MRT's bid price and recognized MRT's obligation to perform in accordance with the contract terms. He also noted that the contract requires a performance bond, renewable annually, to secure the contractor's compliance with the contract terms. Neither he nor DOT's procurement manager indicated any claim of mistake or other basis for withdrawing or modifying the bid. Emmett Kirwan was the procurement officer. He did not know why DOT required Appendix J, other than it had historically been used. He acknowledged that DOT made no attempt to validate or evaluate the individual rest area and truck park prices on the Appendix, instead looking only at the total prices on the Bidding Schedule.

VS also purported to show that the minimum annual cost of performance, meeting all staffing, wage, and benefit requirements, was at least \$50,000 higher than MRT's bid price. In reaching its conclusion, VS made a number of assumptions about MRT's actual costs. Mr. Scott challenged some of those assumptions at the March 1 meeting. VS did not know MRT's actual cost of performance; nor could it know the estimating methodology MRT used to establish its bid price. The CPO finds that this analysis depends on too many assumptions, and speculations about MRT's costing to be reliable.

None of this information, though, changes MRT's commitment and obligation to perform at its bid price according to the terms of the solicitation, including the staffing requirements. MRT has agreed to perform the staffing and wage requirements in accordance with the contract and the price bid. This is a matter of contract administration, and there is no basis for rejecting MRT's bid based on a belief that it may violate the contract. An unusually low bid, even a bid below

cost, is not a valid basis for protest. *See, e.g., Appeal by U.S. Ink & Toner, Inc.*, Panel Case No. 2017-10; *Appeal by Catamaran, LLC*, Panel Case No. 2015-2. This issue of protest is denied.

VS' third issue of protest is that MRT is not a responsible bidder. The solicitation established a special standard of responsibility:

(a) This section establishes special standards of responsibility. **UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER.**

Must have a minimum of 5 (five) years prior experience handling a contract of like size and complexity with a minimum of \$10,000,000.00 of total historical billable charges associated with and involving janitorial services, building systems maintenance, and minor repairs.

(b) Provide a detailed, narrative statement with adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation. If you intend for us to consider the qualifications of your key personnel, predecessor business(es), or subcontractor(s), explain the relationship between you and such person or entity. [R. 19-445.2125(F)]

VS argues:

The proposed awardee cannot satisfy the special standards of responsibility with regards to the mandatory minimum qualifications. Upon information and belief, MRT was formed as a result of the joint venturers inability to satisfy the qualifications. Simply put, MRT does not possess the minimum qualifications necessary to satisfy a responsibility determination. The means and methods in which the responsibility determination was conducted and award determination made were in violation of the Procurement Code.

While the Code and Regulations require that the responsibility of a bidder be determined for every contract awarded⁵, they also provide for the consideration of factors other than the history of the bidder itself as set forth in the solicitation:

⁵ Section 11-35-1810 requires that the:

Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.

We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection.

[Solicitation, Page 36]

While MRT, as the joint venture, may not meet the special standard, the experience of the joint venturers, their key employees, or any subcontractor(s) can be considered in making the determination of responsibility with regard to the joint venture. Together the joint venturers meet the special standard of responsibility. This issue of protest is denied.

VS' next issue of protest:

The IFB clearly provided that the basis for the award determination would be evaluated on the bidders submissions for Line Items 1 and 2. The procurement file and the Notice of Intent reflects that the basis for award was a consideration of all of the Line Items contained in the Bid Schedule. This was in direct contravention to the instructions and notice to bidders set forth in the IFB and tainted the entire process. For this reason, the notice of award should be cancelled.

The original bid schedule only included two line items: Line 1 and Line 2 which reflected the five-year total potential cost of servicing the rest areas and truck parking areas.

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	5.000	Years		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial/Custodial Services for Rest Area Facilities				
Tendering Text: Enter your annual cost above for Lot A as calculated in Addendum J.				

19-445.2125(D). Duty Concerning Responsibility.

Before awarding a contract or issuing a notification of intent to award, whichever is earlier, the procurement officer must be satisfied that the prospective contractor is responsible. The determination is not limited to circumstances existing at the time of opening.

The procurement officer's issuance of an Intent to Award serves as notice of his determination that the bidder is responsible. *E.g., Appeal of Logisticare Solutions, LLC*, Panel Case No. 2011-1.

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0002	5.000	Years		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial Custodial Services for Truck Parking Areas				
Tendering Text: Enter your annual cost above for Lot B as calculated on Addendum J.				

The award was to be based on the total of both line items:

CALCULATING THE LOW BID

The Extended Price from Lines 1 and 2 will be added together to calculate the low bid.

[Solicitation, Page 37]

Amendment Two revised the bid schedule to reflect one line item for the initial 3-year term and two line items reflecting one-year options to renew the contract for both the servicing of the rest areas and truck parking areas.

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	5.000 <u>3</u>	Years		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial/Custodial Services for Rest Area Facilities				
Tendering Text: Enter your annual cost above for Lot A as calculated in Addendum J. This is for the initial three year term.				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0002	5.000 <u>3</u>	Years		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial Custodial Services for Truck Parking Areas				
Tendering Text: Enter your annual cost above for Lot B as calculated on Addendum J. This is for the initial three year term.				

<u>Line Number</u>	<u>Quantity</u>	<u>Unit of Measure</u>	<u>Unit Price</u>	<u>Extended Price</u>
<u>0004</u>	<u>1</u>	<u>Years</u>		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial/Custodial Services for Rest Area Facilities				
Tendering Text: Enter your annual cost above for Lot A as calculated in Addendum J. This is for Year 4 of the contract.				

<u>Line Number</u>	<u>Quantity</u>	<u>Unit of Measure</u>	<u>Unit Price</u>	<u>Extended Price</u>
<u>0005</u>	<u>1</u>	<u>Years</u>		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial Custodial Services for Truck Parking Areas				
Tendering Text: Enter your annual cost above for Lot B as calculated on Addendum J. This is for Year 4 of the contract.				

<u>Line Number</u>	<u>Quantity</u>	<u>Unit of Measure</u>	<u>Unit Price</u>	<u>Extended Price</u>
<u>0006</u>	<u>1</u>	<u>Years</u>		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial/Custodial Services for Rest Area Facilities				
Tendering Text: Enter your annual cost above for Lot A as calculated in Addendum J. This is for Year 5 of the contract.				

<u>Line Number</u>	<u>Quantity</u>	<u>Unit of Measure</u>	<u>Unit Price</u>	<u>Extended Price</u>
<u>0007</u>	<u>1</u>	<u>Years</u>		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial Custodial Services for Truck Parking Areas				
Tendering Text: Enter your annual cost above for Lot B as calculated on Addendum J. This is for Year 5 of the contract.				

Amendment four added a seventh line item for emergency labor:

<u>Line Number</u>	<u>Quantity</u>	<u>Unit of Measure</u>	<u>Unit Price</u>	<u>Extended Price</u>
<u>0008</u>	<u>40</u>	<u>Hours</u>		
Product Catg.: 91039 - Janitorial/Custodial Services				
Item Description: Janitorial Custodial Services for Truck Parking Areas				

<u>Tendering Text:</u> Enter your emergency hourly rate above for additional workers. The hours above are for evaluation purposes ONLY. The number of hours is not guaranteed and may be more or less depending on events during the contract.

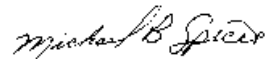
DOT overlooked to amend Section VI, Award Criteria, to reflect the additional line items.

However, the error makes no difference in the relative standing of VetPride and MRT. MRT's total extended price for line items one and two was \$12,633,000. VetPride's total was \$13,972,412. Either tabulation results in MRT as the low bidder. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of VetPride Services, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

BRUNER, POWELL, WALL & MULLINS, LLC

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** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: wmullins@brunerpowell.com

November 20, 2017

VIA EMAIL protest-mmo@mmo.sc.gov
AND HAND DELIVERY

Chief Procurement Officer
State of South Carolina
State Fiscal Accountability Authority
Materials Management Office
Division of Purchasing
1201 Main Street, Suite 600
Columbia, South Carolina 29201

**Re: Protest of Award of Contract for Solicitation No. 5400013881
S.C. Department of Transportation – Rest Area and Truck
Parking Janitorial
Our File No.: 7-2608.100**

Dear Chief Procurement Officer:

This firm has been retained to represent VetPride Services, Inc. ("VetPride") in connection with the above referenced solicitation. On behalf of VetPride, we hereby protest the intent to award the Contract for the S.C. Department of Transportation – Rest Area and Truck Parking Janitorial to MRT Support Services, A Joint Venture ("MRT") and request a hearing and/or administrative review. VetPride was a Bidder in the above referenced procurement and, pursuant to S.C. Code Ann. § 11-35-4210(1), VetPride has standing to pursue a protest. The protest is based upon the following factual and legal basis:

On August 25, 2017, the SC Department of Transportation ("SCDOT") issued specifications for Solicitation No. 5400013881. The solicitation sought bids for the janitorial services, building systems maintenance and repairs for both interior and exterior of Rest Area (RA) and Truck Parking Area (TPA) Complexes. The RFP indicated that assessments for grades 9 and 10 will be included if funds are available. The assessment program will include the subjects of English/language arts ("ELA") and mathematics; and all items for these content areas must be aligned with South Carolina's standards.

The solicitation required very specific staffing requirements for the Contract to include the minimum number of staff and minimum wage requirements. The solicitation also established special standards of responsibility which included a minimum of five (5) years prior experience handling a contract of like size and complexity with a minimum of \$10,000,000 of total historical billable charges associated with and involving janitorial services, building systems maintenance and minor repairs. In addition to the information requested to be submitted in Section III Scope of Work and Section V Qualifications, Bidders were required to submit a Bid Schedule detailing the pricing for Years 1-3 of the Contract as well as for the option years 4 and 5. Pursuant to the solicitation and the Code, award was to be made to the lowest responsive responsible Bidder.

SCDOT issued four (4) amendments to the solicitation with Amendment 4 setting the deadline for bid submission at October 26, 2017. There was a total of 8 bids submitted. MRT submitted a low bid of \$21,056,090.00 and VetPride was the second low bidder at \$23,288,101.21. On November 9, 2017, SCDOT issued a Notice of Intent to Award, reflecting the proposed award to MRT.

VetPride filed a request with SCDOT pursuant to the South Carolina Freedom of Information Act to review documents relevant to the SCDOT's evaluation and determination to issue the Notice of Intent to Award to MRT. SCDOT provided a prompt response to the request. VetPride has not completed its review of the documents responsive to this request prior to its deadline for filing a protest of the proposed award pursuant to the Procurement Code. However, VetPride has identified what it believes to be material nonconformities with the requirements of the IFB and the Code in MRT's Bid. As such, VetPride hereby protests the award by SCDOT of the Contract as set forth in the Notice of Intent to Award to MRT.

VetPride contends the proposed award to MRT is improper and contrary to the Procurement Code.

First, VetPride contends that MRT failed to properly acknowledge all addendums to the IFB and therefore submitted a non-responsive Bid.

Second, VetPride contends that MRT presented a Bid that was non-responsive in that it materially deviated from the requirements of the IFB. MRT's non-responsive bid was evident from the Bid itself. Therefore, MRT's Bid should have been rejected.

Third, VetPride contends that the MRT is a non-responsive bidder. To the extent any meaningful evaluation was undertaken to evaluate whether MRT was a responsible bidder, such a determination was arbitrary and capricious and performed in violation of the Code. The IFB contained special standards of responsibility. The proposed awardee cannot satisfy the requirements of the IFB. The means and methods in which the

Chief Procurement Officer
November 20, 2017
Page 3

responsibility determination was conducted and award determination made were in violation of the Procurement Code. The award to MRT is, therefore, improper.

For the foregoing reasons, the notice of award to MRT should be cancelled. VetPride contends that MRT's bid should have been rejected as non-responsive and MRT properly determined as a non-responsible bidder.

VetPride will rely on these arguments and such additional information as may become available through the course of our Freedom of Information Act request and further investigation. We are requesting an administrative review and hearing of this protest and look forward to addressing the issues with you in person and presenting our proof.

Sincerely,



E. Wade Mullins, III

EWM/rdd
cc: Wes Pierce

BRUNER, POWELL, WALL & MULLINS, LLC

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November 27, 2017

VIA EMAIL protest-mmo@mmo.sc.gov
AND HAND DELIVERY

Chief Procurement Officer
State of South Carolina
State Fiscal Accountability Authority
Materials Management Office
Division of Purchasing
1201 Main Street, Suite 600
Columbia, South Carolina 29201

NOV 27 2:13 PM
RECEIVED BID CONTROL

RE: AMENDED Protest of Award of Contract for Solicitation No. 5400013881
S.C. Department of Transportation – Rest Area and Truck Parking Janitorial
Our File No.: 7-2608.100

Dear Chief Procurement Officer:

This firm has been retained to represent VetPride Services, Inc. ("VetPride") in connection with the above referenced solicitation. On behalf of VetPride, we hereby submit this AMENDED protest of the intent to award the Contract for the S.C. Department of Transportation – Rest Area and Truck Parking Janitorial to MRT Support Services, A Joint Venture ("MRT") and request a hearing and/or administrative review. VetPride was a Bidder in the above referenced procurement and, pursuant to S.C. Code Ann. § 11-35-4210(1), VetPride has standing to pursue a protest. The protest is based upon the following factual and legal basis:

On August 25, 2017, the SC Department of Transportation ("SCDOT") issued specifications for Solicitation No. 5400013881. The solicitation sought bids for the janitorial services, building systems maintenance and repairs for both interior and exterior of Rest Area ("RA") and Truck Parking Area ("TPA") Complexes. The solicitation required very specific staffing requirements for the Contract to include the minimum number of staff and minimum wage requirements. The solicitation also established special standards of responsibility which included a minimum of five (5) years prior experience handling a contract of like size and complexity with a minimum of \$10,000,000 of total historical billable charges associated with and involving janitorial services, building systems maintenance and minor repairs. In addition to the information requested to be submitted in Section III Scope of Work and Section V Qualifications, Bidders were required to submit a Bid Schedule detailing the pricing for Years 1-3 of the Contract as well as for the option years 4 and 5. Pursuant to the solicitation and the Code, award was to be made to the lowest responsive responsible Bidder.

SCDOT issued four (4) amendments to the solicitation with Amendment 4 setting the deadline for bid submission at October 26, 2017. There was a total of 8 bids submitted. MRT submitted a low bid of \$21,056,090.00 and VetPride was the second low bidder at \$23,288,101.21. On November 9, 2017, SCDOT issued a Notice of Intent to Award, reflecting the proposed award to MRT.

VetPride filed a request with SCDOT pursuant to the South Carolina Freedom of Information Act to review documents relevant to the SCDOT's evaluation and determination to issue the Notice of Intent to Award to MRT. The documents provided in response to the FOI request included MRT's bid package that has been unlawfully and extensively redacted beyond what is permitted by law. However, based on the documents that have been provided, VetPride has identified material nonconformities with the requirements of the IFB and the Code in MRT's Bid. As such, VetPride hereby protests the award by SCDOT of the Contract as set forth in the Notice of Intent to Award to MRT.

VetPride contends the proposed award to MRT is improper and contrary to the Procurement Code.

BACKGROUND AND REQUIREMENTS OF THE IFB

As noted, through this solicitation SCDOT sought a vendor to provide janitorial services, building systems maintenance and repairs for both interior and exterior of the State's RAs and TPAs. Pursuant to the solicitation, there are 19 RAs and 7 TPAs located throughout the State. SCDOT issued a prior solicitation in 2016 for these services, using a reverse auction method of procurement. The vendor awarded the contract submitted a bid that was unreasonable and unrealistically low given the scope of services. As a result, the vendor who was awarded the contract defaulted on the contract after only several weeks of performance. On January 27, 2017, VetPride was awarded the contract under an emergency procurement and has been providing the janitorial and maintenance and repair services for the SCDOT Rest Areas and Truck Parking Areas since the award under the emergency procurement.

In an effort to avoid the problems associated with a defaulting vendor who bid an unrealistically low price, SCDOT issued a revised solicitation with a much more comprehensive Scope of Work/Specifications, which also included very specific staffing and wage requirements. Section III Scope of Work/Specifications of the IFB (p. 21-22) provides as follows:

Staffing Requirements

The staffing requirements for the contract are as follows:

- One (1) full-time Project Manager
- Three (3) full-time Regional Managers
- Nine (9) full-time Lead Custodians/Site Supervisors for locations as indicated below:
 - Anderson (2 Sites)
 - Newberry (2 Sites), Laurens (1 Site)

- Chester (2 Sites)
- Kershaw (2 Sites)
- Sumter (2 Sites)
- Calhoun (2 Sites)
- Orangeburg (2 Sites), Santee (1 Site)
- Charleston (1 Site)
- Colleton (2 Sites)
- Custodial staffing requirements:
 - Anderson (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Newberry (2 Sites), Laurens (1 Site): 12 full-time custodians and 12 part-time custodians
 - Chester (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Kershaw (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Sumter (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Calhoun (2 Sites): 8 full-time custodians and 8 part-time custodians
 - Orangeburg (2 Sites), Santee (1 Site): 12 full-time custodians and 12 part-time custodians
 - Charleston (1 Site): 4 full-time custodians and 4 part-time custodians
 - Colleton (2 Sites): 8 full-time custodians and 8 part-time custodians

Total Minimum Staffing Summary (excluding staffing requirements for servicing truck parking areas)

Labor Category	Full-Time Equivalents	Part-Time Equivalents
PROJECT MANAGER	1	
REGIONAL MANAGERS	3	
LEAD CUSTODIANS/SITE SUPERVISORS	9	
CUSTODIANS	76	76

Note: Staffing for servicing the Truck Parking Areas is not included in the above staffing summary and is discussed later in this document.

Minimum Wage Rate Requirement

This contract includes the minimum mandatory wages for the following labor categories:

Custodial Employees: \$10.00 per hour

Lead Custodians/Site Supervisors: \$14.00 per hour (Overseeing two sites)/\$16.00 (Overseeing three sites)

Regional Managers: \$24.00 per hour

Project Manager: \$28.00 per hour

The IFB provided very clear staffing requirements for each RA and the minimum wage rate for the staff. During the solicitation process, SCDOT issued Amendment 2 which further defined the requirements for staffing under the Contract in response to questions raised by prospective vendors:

86. Part-Time Equivalents (PTE) – Please define Part-Time Equivalents, as used under the table labeled “Total Minimum Staffing Summary.”

Total minimum staffing summary for part-time equivalents for 76 custodians. Part-Time Equivalents are defined as employees that work less than 30 hours per week.

The total minimum annual labor hours for PTEs is 63,232 per year.

87. Full-Time Equivalents (FTE) – Please confirm an FTE is defined as a minimum of 29 hours.

To clarify, under the Affordable Care Act rules, generally an employee is considered full-time if he or she is reasonably expected to work on average at least 30 hours per week, or 130 hours per month.

FTE is defined as a minimum of 30 hours for custodians.

The total minimum number of annual labor hours for FTEs is:

oProject Manager: 2080 hours per year

oRegional Managers: 6,240 hours per year

oLead Custodians/Site Supervisors: 18,720 hours per year

oCustodians: 158,080 hours per year

88. 50% Full-Time and Part-Time Equivalents – During the Pre-Proposal Conference, SCDOT staff discussed possibly allowing Contractors to use any mix of Full-Time and Part-Time Equivalents to meet the staffing needs of the contract. Please confirm the contractor does not have to abide by either “Total Minimum Staffing Summary” or the “Staffing Requirements” and only has to provide “at all times between 7:00 AM and 11:00 PM. A minimum of 2 custodians shall be present during the times specified at each site.” Please confirm only the 2 custodians between 7am and 11pm is required, regardless of Part-Time or Full-Time Equivalents.

The Contractor must abide by the Staffing Requirements, Total Minimum Staffing Summary and must have a minimum of 2 custodians present between 7am and 11pm at each site. There are two shifts per day (7AM – 3PM & 3PM – 11PM). The contractor must provide a minimum of two custodians on EACH shift. The Lead Custodian/Site Supervisor, Regional Manager, or Project Manager cannot be used to meet this requirement.

IFB, Amendment 2, p.15.

The IFB also set forth that in order to protect the personnel furnishing services under the Contract, the Contractor was required to provide the following for its staff: (1) Workers Compensation; (2) Professional Liability Insurance; (3) Income Tax Withholdings; (4) Social Security Payments; and (5) Benefits packages. **See IFB, p. 21.**

The Contractor's responsibility included the operation, cleaning and maintenance of Rest Area service buildings, public restrooms and storage areas. The solicitation provided minimum expectations for satisfying this responsibility to be used in the establishment of cleaning and maintenance schedules and the provision of supplies. **See IFB, p. 23-33.** The IFB also requires the Contractor to be responsible for all repairs with a cost of less than \$3,000 with such repairs to be included in the bid and non-refundable to the Contractor. **IFB, p. 27.**

Amendment 2 provided certain historical costs for supplies on the Contract and performing the repair obligations in response to questions posed by prospective bidders:

31. To avoid risk to the customer and provide clarity and fair competition to all companies submitting proposals, request SCDOT provide the average monthly costs for supplies on this contract?

SCDOT had to provide supplies for one month. The cost was approximately \$23,000 for December 2016.

32. To avoid risk to the customer and provide clarity and fair competition to all companies submitting proposals, request SCDOT please provide the historical repair costs?

Repair costs under \$3,000 are in the neighborhood of \$1,000 to 1,500 per month per location but can vary due to vandalism, age of the repair items, etc.

IFB, Amendment 2, p.7.

As such, the IFB contained very specific requirements the bidders were required to meet in order to be eligible for award and the minimum costs necessary in order to meet those requirements.

In a further effort to avoid a repeat of the failed prior solicitation that involved a defaulting contractor, SCDOT included special standards of responsibility. Specifically, the IFB required bidders to have a minimum of five (5) years prior experience handling a contract of like size and complexity with a minimum of \$10,000,000.00 of total historical billable charges associated with and involving janitorial services, building systems maintenance and minor repairs. **See IFB, Section V. Qualifications, p. 36**

The initial solicitation provided for a five (5) year term contract. Section VIII of the IFB set forth the Bidding Schedule to be used as the basis for award. **See IFB, p. 49.** The Bidding Schedule required the bidders to provide a unit price for performing the required services for the Rest Area Facilities per year and the extended price for all five years. (Line Item 1). The Bidding Schedule also required the bidder to provide a unit price for the required services for the Truck Parking Areas per year and the extended price for all five years. (Line Item 2). The Bidding

Schedule also required that the annual cost for Line Items 1 and 2 be calculated using Addendum J which required the bidders to identify the annual cost per RA and TPA.

Amendment 2 revised the solicitation to provide for an initial term of three (3) years with two (2) one-year options. **See Amendment 2, p. 3-4.** Amendment 2 also provided a revised Bidding Schedule. The revised Bidding Schedule provided Line Items 1 and 2 as set forth in the initial Bidding Schedule with the exception that the unit price and extended price was to be based on the initial three (3) year term. The solicitation maintained the requirement that the annual price for Line Items 1 and 2 were to be calculated using Addendum J which identified the annual price per Rest Area Facility and Truck Parking Facility. The revised Bidding Scheduling included additional Line Items 4 through 7 where the bidders were required to providing pricing for the option years 4 and 5. However, the award criteria set forth in the IFB was never modified by amendment. As such, the IFB provided that the low bid would be calculated from the Extended Price from Line Items 1 and 2. **See IFB, Section VI Award Criteria, p. 37.** Furthermore, Amendment 4 added Line Item 8 to the Bid Schedule that requested emergency hourly rates for additional workers that was to be provided for "evaluation purposes only."

Despite the clear directive set forth in the IFB concerning the determination of the low bid, SCDOT calculated all of the line items set forth in the Bid Schedule as revised in determining MRT was the low bidder at \$21,056,090.00.

GROUND S OF PROTEST

1. MRT failed to properly acknowledge all addendums to the IFB and therefore submitted a non-responsive Bid.

According to the bid package submitted by MRT, MRT is a joint venture formed for the express purpose of bidding on the subject solicitation. The joint venture is comprised of two North Carolina corporations – Hartley Enterprises, Inc. and Ashley Marie Group, Inc. The IFB expressly provides that joint ventures are permitted to submit bids. However, the IFB sets forth specific submission requirements for joint venturer submitting a bid. Specifically, the IFB requires the bid to be submitted in the name of the joint venture and signed by every participant in the joint venture. From the face of the bid, upon information and belief, MRT attempted to comply with the requirements of the IFB in the submission of its original bid in that the bid was submitted in the name of MRT, the joint venture and also appears to contain the signatures of the two claimed members of the joint venture, thus signifying the individual joint venture members agreement to be bound by the bid. However, Amendments 1-4, which were submitted with the bid were only submitted and signed by the joint venture. The individual members of the joint venture did not execute the Amendments in the same manner as the original bid. As such, the Amendments were not properly acknowledged and the individual joint venturers failed to properly acknowledge their intent to be bound by the terms of the Amendments. Furthermore, MRT cannot meet any of the conditions of S.C. Code Ann. § 11-35-1520(d) that provide for the waiver of the failure to properly acknowledge an amendment as a minor informality. As such, SCDOT erred in failing to reject MRT's bid as nonresponsive.

2. **MRT presented a Bid that was unreasonably low. Moreover, the MRT Bid Package reflects a rejection of the essential requirements of the IFB with regards to staffing such that it rendered the Bid non-responsive. MRT's non-responsive bid was evident from the Bid itself. Therefore, MRT's Bid should have been rejected.**

A. It is impossible for MRT to meet the requirements of the Contract based on the unreasonably low pricing set forth in its Bid.

The scope of work on this Contract is comprised primarily of labor along with certain prescribed materials and equipment. These types of custodial and maintenance contracts traditionally carry very tight margins. The gap between MRT's bid and VetPride's bid as the second low is significant. Indeed, the bid submitted by MRT was unreasonably and unrealistically low and should have been rejected. Based on the pricing submitted by MRT, it is impossible for MRT to comply with the requirements of the IFB. When taking into account the minimum requirements for labor and staffing along with the minimum maintenance, repair and other minimally required ancillary costs, MRT's unreasonably low bid could only be presumed nonresponsive. The following minimally required costs necessary to comply with the requirements of the IFB are as follows:

Contract Labor Hour Requirements Cost Analysis
Compliance with the Affordable Care Act (ACA)

As stated, the IFB requires the Contractor to provide a benefits package to its employees. The IFB further clarified that the Contractor was required to comply with the Affordable Care Act ("ACA"). **See Amendment 2, p. 9.** Since 2014, under the ACA, all new individual and small group health insurance policies (including those sold in the ACA's health insurance exchanges and off-exchange) must cover essential health benefits for all enrollees. The ACA defines ten essential health benefits:

- Hospitalization
- Ambulatory services (visits to doctors and other healthcare professionals and outpatient hospital care)
- Emergency services
- Maternity and newborn care
- Mental health and substance abuse treatment
- Prescription drugs
- Lab tests
- Chronic disease management, "well" services and preventive services recommended by the U.S. Preventive Services Task Force
- Pediatric services for children, including dental and vision care rehabilitative and "habilitative" services

According to a 2017 survey performed by the Society for Human Resource Management (SHRM), the median monthly employer contribution to an employee only health plan is \$600 per month. That is \$7200 per year. VetPride currently has over 500 employees. As such, it qualifies for a "large-group" health insurance plan which provides it with a much lower cost plan than available to employers such as MRT that do not qualify for the large-group plan. VetPride's monthly health insurance cost per employee is \$335.33 per month with the employee paying only \$164.67 per month towards an employee-only health insurance plan. That means that VetPride pays \$4,024 per year for each full-time employee for health insurance or \$1.93 per hour. This is a significantly conservative labor burden for labor rate calculations which has been used in calculating the hourly cost of health insurance for a full-time employee required under the IFB.

Burdened Labor Rate Calculations

In order to fully calculate the minimum labor cost as a requirement of this Contract, it is necessary to determine a burdened labor rate (BLR), taking into account the taxes and additional costs in addition to health insurance. The BLR calculations below do not take into account any overhead and profit.

The BLR is calculated by adding together the following labor cost components:

- Direct compensation or salary
- Federal Unemployment Tax Act (FUTA) Taxes
- State Unemployment Tax Act (SUTA) Taxes
- Employer-paid Federal Insurance Contributions Act (FICA) Taxes (Social Security and Medicare)
- Employer contributions to an Affordable Care Act (ACA) compliant health insurance plan

Factors Used in Developing BLRs

- New employer SUTA rate of 1.39% with a limit of \$14,000
- Standard FUTA rate of 6% with a limit of \$7,000
- Social Security Rate of 6.2% on the first \$118,500 earned
- Medicare Rate of 1.45%
- Employer contribution to health insurance of \$1.93 per hour for full-time employees
- Worker's compensation rate of 4% of direct hourly rate

These are all costs that would be necessarily incurred by MRT in meeting the requirements of the IFB. Based on these cost factors, below are the calculated BLRs for the various positions required for this contract:

Table 1

Full-Time Custodian BLR Calculations	
Direct Pay per Hour	\$10.00
FUTA	\$0.20
SUTA	\$0.09
Social Security (6.2%)	\$0.62
Medicare (1.45%)	\$0.15
Health Insurance	\$1.93
Worker's Compensation (4%)	\$0.40
BLR	\$13.39

Table 2

Part-Time Custodian BLR Calculations	
Direct Pay per Hour	\$10.00
FUTA	\$0.20
SUTA	\$0.09
Social Security (6.2%)	\$0.62
Medicare (1.45%)	\$0.15
Health Insurance	\$0.00
Worker's Compensation (4%)	\$0.40
BLR	\$11.46

Table 3

Lead Custodian/Site Supervisor (Two Sites) BLR Calculations	
Direct Pay per Hour	\$14.00
FUTA	\$0.20
SUTA	\$0.09
Social Security (6.2%)	\$0.87
Medicare (1.45%)	\$0.20
Health Insurance	\$1.93
Worker's Compensation (4%)	\$0.56
BLR	\$17.85

Table 4

Lead Custodian/Site Supervisor (Three Sites) BLR Calculations	
Direct Pay per Hour	\$16.00
FUTA	\$0.20
SUTA	\$0.09
Social Security (6.2%)	\$0.99
Medicare (1.45%)	\$0.23
Health Insurance	\$1.93
Worker's Compensation (4%)	\$0.64
BLR	\$20.08

Table 5

Project Manager BLR Calculations	
Direct Pay per Hour	\$28.00
FUTA	\$0.20
SUTA	\$0.09
Social Security (6.2%)	\$1.74
Medicare (1.45%)	\$0.41
Health Insurance	\$1.93
Worker's Compensation	\$1.12
BLR	\$33.48

Table 6

Regional Manager BLR Calculations	
Direct Pay per Hour	\$24.00
FUTA	\$0.20
SUTA	\$0.09
Social Security (6.2%)	\$1.49
Medicare (1.45%)	\$0.35
Health Insurance	\$1.93
Worker's Compensation (4%)	\$0.96
BLR	\$29.02

Table 7

Burdened Labor Rate Summary	
Labor Category	BLR
Project Manager	\$33.48
Regional Manager	\$29.02
Lead Custodian/Site Supervisor (Three Sites)	\$20.08
Lead Custodian/Site Supervisor (Two Sites)	\$17.85
Full-Time Custodian	\$13.39
Part-Time Custodian	\$11.46

Minimum Contract Labor Costs as Defined by the IFB

In the IFB, the SCDOT clearly defined the minimum staffing requirements for performing the scope of work, providing very specific requirement for staffing each RA and TPA. **See IFB, p. 21-22, 30.** In order to avoid any claimed confusion or misunderstanding and in response to questions raised by proposed venders, SCDOT provided the minimum labor hours for each labor category. **See Amendment 2, Question 86-88, p. 15.** Based on the calculated BLR and minimum labor hours defined by the IFB, the table below shows the actual cost of meeting the minimum labor requirements for this Contract.¹

Table 8

Labor Category	Total Annual Labor Hours	BLR	Total Annual Labor Cost
Project Manager	2080	\$33.48	\$69,642.56
Regional Managers	6240	\$29.02	\$181,059.84
Lead Custodian/Site Supervisor (Three-Site Rate)	4160	\$17.85	\$74,260.16
Lead Custodian/Site Supervisor (Two-Site Rate)	14560	\$20.08	\$292,423.04
Full-Time Custodians	158080	\$13.39	\$2,115,900.80
Part-Time Custodians	63232	\$11.46	\$724,322.56
Truck Parking Area Custodians	6240	\$13.39	\$83,522.40
			\$3,541,131.36

As refelected above, the minimum labor cost necessary to meet the staffing requirements under the Contract is **\$3,541,131.36** annually.

Supplies, Maintenance, Dumpster Service, and Pest Control

The \$3,541,131.36 is the bare minimum labor cost with no overhead and profit. The IFB also provides additional information regarding costs required for performing the scope of work. Amendment 2 indicated to the bidders that the SCDOT paid approximately \$23,000 for supplies for the month of December 2016. **See Amendment 2, p. 7.** Using the information provided by SCDOT reflects an annual supply cost of \$276,000. Furthermore, the SCDOT indicated that the monthly repair and maintenance costs were in the range of \$1,000-\$1,500 per month per site. **See Amendment 2, p. 7.** Using the low end \$1,000 per month cost amount reflects an annual cost of \$228,000 for repairs and maintenance. MRT indicated in its Bid they would be using Republic Dumpster to provide dumpster services and Terminix to provide pest control services. VetPride Services currently utilizes the same companies to provide the same services. The figures shown in Table 9 represent VetPride's actual cost for dumpster services and pest control services.. The figures shown in Table 9 do not include any markup for overhead and profit.

¹ These labor totals do not include any overtime hours or costs. It is unrealistic to assume that no employees will have any missed days of work. As the current vendor, VetPride has historical numbers on overtime costs necessary to perform the requirements of the Contract. These costs are in excess of \$30,000 per year.

Table 9

Cost Line Item	Annual Cost
Supplies (All Site & Truck Parking Areas)	\$276,000.00
Repairs and Maintenance (All Sites)	\$228,000.00
Dumpster Service (All Sites & Truck Parking Areas)	\$89,968.32
Pest Control (All Sites)	\$11,400.00
	\$605,368.32

Cost of Vehicles

The IFB requires that the Contractor provide a minimum of three (3) pick-up trucks (2012 or newer) and four (4) additional vehicles (2012 or newer). **See IFB, p. 23.** An extremely conservative cost for each vehicle would be \$15,000 for a total of \$105,000. Amortizing those costs over the term of the contract reflects an annual cost of **\$21,000** per year.

Cost of Performance and Payment Bonds

The solicitation required the following bonding:

- Payment Bond (50% of annual contract amount)
- Performance Bond (100% of annual contract amount)

Even at the lowest rate potentially charged by a surety, the Performance and Payment Bonds for MRT would have premium costs of **\$94,747.50 annually**.

As reflected in Table 10 below, taking into account the requirements and source information contained in the IFB, the minimum costs required for this Contract is **\$4,262,247.18**.

Table 10

Cost Line Item	Annual Cost
Labor	\$3,541,131.36
Supplies, Maintenance, Dumpster Service, & Pest Control	\$605,368.32
Vehicles	\$21,000.00
Bonding	\$94,747.50
	\$4,262,247.18

The minimum costs do not include the following cost factors:

- Company Operating Costs (Overhead Rate)
- Profit
- Cost of uniforms for 165 employees
- Vehicle operations costs (fuel and maintenance for seven (7) vehicles)
- Costs of any special tools and equipment

MRT's Bid of \$4,211,000 per year is neither realistic nor reasonable. It is below the minimum costs required to comply with the specific requirements of the IFB. These minimum costs are derived from the information contained in the IFB. It reflects that the MRT Bid cannot under any circumstances be considered responsive. SCDOT has direct evidence of the outcome of a contractor that submits an unrealistic bid. The specific requirements of the IFB were included in the revised solicitation to avoid a similar situation occurring to the detriment of SCDOT. The procurement officer was armed with sufficient information to make such a determination.

B. MRT's Bid reflects material non-compliance with essential requirements of the IFB with regards to staffing.

As required by the Bid Schedule, MRT calculated its annual costs using Addendum J which required MRT to calculate its annual cost per RA and TPA. The totals for the individual RAs and TPAs were used to calculate the total annual cost in the Bid Schedule. MRT's Addendum J submitted with its Bid Package reflects direct evidence of material non-compliance with the staffing requirements of the IFB and renders the Bid nonresponsive. MRT's Addendum J identified its annual cost for operating the Charleston Rest Area to be \$129,355.35. However, this cost amount does not come close to satisfying the minimum staffing and/or minimum wage requirements for the Charleston County RA. Even at the straight, unburdened, hourly pay rates, the direct salaries to employees taking into account the minimum wage rates and annual labor hours is \$145,600 per year. This total does not include any taxes or benefits required to be incurred by the Contractor pursuant to the IFB. Nor does it take into account any hours for the Regional Manager and Project Manager that should necessarily be allocated to each RA and TPA. It also does not take into account any overtime hours that would necessarily be incurred. As such, there can be no doubt that MRT's Bid fails to satisfy the minimum staffing and wage requirements for the subject RA.

Table 11

Charleston (I-26 East)			
Labor			
Labor Category	Annual Labor Hours	BLR	Annual Labor Cost
Regional Manager	0	\$0.00	\$0.00
Custodian (Full Time)	8320	\$10.00	\$83,200.00
Custodian (Part Time)	3328	\$10.00	\$33,280.00
Custodian (Overtime)	0	\$0.00	\$0.00
Lead Custodian/Site Supervis	2080	\$14.00	\$29,120.00
			\$145,600.00

Additional evidence of material noncompliance with the requirements of the IFB is reflected in MRT's annual cost for Kershaw County set forth in Addendum J. MRT identified the total annual cost for operating the Kershaw (I-20 East) as \$181,097.48 and its cost for Kershaw (I-20 West) as \$168,161.95 for a total of \$349,259.43 for Kershaw Count. The

minimum labor cost for operating both of these rest area sites is **\$336,100.96**, as illustrated in Table 12. This minimum number is for staffing only and does not include any cost for Regional Manager or Project Manager, a portion of which should be properly allocated to these RAs; nor does it include any overhead and profit. Moreover, this cost number for Kershaw County RAs does not include the cost of supplies or maintenance and repairs that are required costs under the IFB.

Table 12

Kershaw (I-20 West)			
Labor			
<i>Labor Category</i>	<i>Annual Labor Hours</i>	<i>BLR</i>	<i>Annual Labor Cost</i>
Regional Manager	0	\$0.00	\$0.00
Custodian (Full Time)	8320	\$13.39	\$111,363.20
Custodian (Part Time)	3328	\$11.46	\$38,122.24
Custodian (Overtime)	0	\$0.00	\$0.00
Lead Custodian/Site Supervisor	1040	\$17.85	\$18,565.04
			\$168,050.48
Kershaw (I-20 East)			
Labor			
<i>Labor Category</i>	<i>Annual Labor Hours</i>	<i>BLR</i>	<i>Annual Labor Cost</i>
Regional Manager	0	\$0.00	\$0.00
Custodian (Full Time)	8320	\$13.39	\$111,363.20
Custodian (Part Time)	3328	\$11.46	\$38,122.24
Custodian (Overtime)	0	\$0.00	\$0.00
Lead Custodian/Site Supervisor	1040	\$17.85	\$18,565.04
			\$168,050.48
Total For Both Sites			\$336,100.96

It is mathematically impossible for MRT to comply with the staffing and wage requirements at the Charleston rest area and both rest areas in Kershaw on I-20. The face of the bid reflects that MRT is either taking exception to the minimum staffing requirements or the minimum wage requirements of the IFB. For these reasons, the MRT Bid is non-responsive and should be rejected.

3. **MRT is a non-responsible bidder. To the extent any meaningful evaluation was undertaken to evaluate whether MRT was a responsible bidder, such a determination was arbitrary and capricious and performed in violation of the Code.**

The Code restricts SCDOT to awarding the Contract to the lowest responsive responsible bidder. The IFB contained special standards of responsibility. The proposed awardee cannot satisfy the special standards of responsibility with regards to the mandatory minimum qualifications. Upon information and belief, MRT was formed as a result of the joint venturers inability to satisfy the qualifications. Simply put, MRT does not possess the minimum qualifications necessary to satisfy a responsibility determination. The means and methods in which the responsibility determination was conducted and award determination made were in violation of the Procurement Code. Furthermore, the Bid submitted by MRT is unreasonably and unrealistically low and further evidences that the Contractor does not have the ability to meet all of the essential requirements of the IFB. The award to MRT is, therefore, improper.

4. The procurement officer's evaluation and award process was in violation of the IFB.

The IFB clearly provided that the basis for the award determination would be evaluated on the bidders submissions for Line Items 1 and 2.. The procurement file and the Notice of Intent reflects that the basis for award was a consideration of all of the Line Items contained in the Bid Schedule. This was in direct contravention to the instructions and notice to bidders set forth in the IFB and tainted the entire process. For this reason, the notice of award should be cancelled.

For the foregoing reasons, the notice of award to MRT should be cancelled. VetPride contends that MRT's bid should have been rejected as non-responsive and MRT properly determined as a non-responsible bidder.

VetPride will rely on these arguments and such additional information as may become available through the course of our Freedom of Information Act request and further investigation. We are requesting an administrative review and hearing of this protest and look forward to addressing the issues with you in person and presenting our proof. If the CPO intends to render a decision without a hearing, VetPride requests a copy of whatever materials are reviewed as part of the required administrative review and provide VetPride with an opportunity to submit briefs supporting the protest.

Sincerely,



E. Wade Mullins, III

/EMW

cc: Wes Pierce (Via E-Mail Only)
Josh Houston (Via E-Mail Only)

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 111.1 of the 2016 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
1205 Pendleton Street, Suite 367, 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.