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## Protest Decision

**Matter of:** Interboro Packaging Corporation

**Case No.:** 2018-145

**Posting Date:** April 9, 2018

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400014222

**Description:** Low Density Can Liners State Term Contract

### DIGEST

Protest that award was not made to the lowest priced bidder is denied. Interboro Packaging Corporation's (IPC) letter of protest is included by reference. [Attachment 1]

### AUTHORITY

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

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

## BACKGROUND

Event	Date
Solicitation Issued	12/14/2017
Amendment One Issued	01/09/2018
Intent to Award Issued	02/20/2018
Protest Received	02/20/2018

## ANALYSIS

The State Fiscal Accountability Authority issued this Invitation for Bids on December 14, 2017 to establish a state term contract for Low Density Can Liners. Intents to Award to were posted on February 20, 2018. IPC protested the award on February 26, 2018.

Interboro submitted the bid for Low Density Can Liners and we got an email stating that we were the lowest bidder. in (sic) addition you sent an email requesting some documents be sent to you, which we sent. now (sic) we get an email that you have awarded the bid to a different bidder, not Interboro, and as you stated in an earlier email, Interboro was the lowest bidder. So, Interboro is hereby protesting the award of Bid #5400014222 Low Density Can Liners to any firm other than Interboro, as Interboro was the undisputed lowest bidder for the goods in question. It is the obligation of the Purchasing Department to fulfill their responsibilities and award to the lowest responsible and responsive bidder.

The solicitation required a letter from the manufacturer verifying compliance with the published specifications in order to determine both responsiveness and responsibility:

### 2. Manufacturers' Letters of Compliance with Specifications.

Verification of specification compliance, and Offeror's ability to provide products meeting specifications, are fundamental elements of the evaluation of offers and will be used to determine both responsiveness and responsibility. All offers must be accompanied by a letter of compliance from the manufacturer. No bid will be considered offering products not covered by a letter of compliance from the manufacturer.

Amendment One, Page 23 (highlighting in original) (underline added)

Bids were opened on January 25, 2018. IPC bid products manufactured by Aluf IBS but failed to include the Manufacturer's Letter of Compliance with its bid. The procurement officer emailed IPC on February 2, 2018, with instructions that all required information be received no

later than 5 pm on February 5, 2018. The letter requested, among other things, the manufacturers' letters of compliance. On the afternoon of February 5, 2018, IPC submitted some of the required information but not the manufacturers' letters of compliance. In their response, IPC requested that the deadline be extended until February 6, 2018. On February 7, 2018, two days after the deadline, IPC submitted a letter of compliance from one manufacturer. This manufacturer, Capital Plastics Int'l, Inc, based in Texas, was never referenced in IPC's original bid. Instead, on all 76 line items of IPC's bid, IPC had stated that "Aluf IBS," based in New York, was the manufacturer of the can liners on offer.

The procurement officer determined that IPC's bid was nonresponsive because the vendor failed to provide the required manufacturer(s)'s letter(s) of compliance prior to the deadline set for clarifications and because the letter of compliance it eventually submitted was not authored by the manufacturer of the can liners IPC originally offered in its bid.

The solicitation clearly put bidders on notice that no bid would be considered offering products not covered by a letter of compliance from the manufacturer; that such a letter was necessary to determine responsiveness; and that the letter was required to verify that the products conformed to the specification's requirements. The manufacturer's certification of compliance with the specifications was required at the time bids were submitted. IPC failed to include the manufacturer's certification with its bid. In fact, IPC should have been properly declared non responsive at the time bids were opened and not allowed to clarify its bid. *See* 19-445.2080.

Nevertheless, IPC was granted three additional days to provide the information required at bid opening. After taking an additional two days (five days total), IPC still failed to submit the correct manufacturer's certification. IPC was appropriately declared non responsive. IPC's allegation that the State failed its legal duty to ensure a fair and competitive bidding process is not supported by the facts.

Protest Decision, page 4  
Case No. 2018-145  
April 9, 2018

**DECISION**

For the reasons stated above, the protest of Interboro Packaging Corporation is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**From:** [Butler, William](#)  
**To:** [Spicer, Michael](#)  
**Cc:** [Speakmon, Michael](#); [Register, David](#); [Craig, Kimber](#); [Potts, Donna](#)  
**Subject:** FW: Bid #5400014222 Low Density Can Liners - South Carolina State Government  
**Date:** Thursday, February 22, 2018 8:49:43 AM

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**Will Butler | Procurement Manager**  
Division of Procurement Services | SC State Fiscal Accountability Authority  
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-9854 | [wbutler@mso.sc.gov](mailto:wbutler@mso.sc.gov)

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**From:** Chanie Holtzer [mailto:[Chanie@interboropackaging.com](mailto:Chanie@interboropackaging.com)]  
**Sent:** Tuesday, February 20, 2018 3:54 PM  
**To:** Butler, William  
**Cc:** 'Interboro Packaging Corporation'  
**Subject:** Bid #5400014222 Low Density Can Liners - South Carolina State Government

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Hi Will,

Interboro submitted the bid for Low Density Can Liners and we got an email stating that we were the lowest bidder. In addition you sent an email requesting some documents be sent to you, which we sent. Now we get an email that you have awarded the bid to a different bidder, not Interboro, and as you stated in an earlier email, Interboro was the lowest bidder. So, Interboro is hereby protesting the award of Bid #5400014222 Low Density Can Liners to any firm other than Interboro, as Interboro was the undisputed lowest bidder for the goods in question. It is the obligation of the Purchasing Department to fulfill their responsibilities and award to the lowest responsible and responsive bidder.

The various state and federal statutes require substantial compliance with the procedures and regulations leading to the award of a bid for public projects, because any deviation from these standards would prejudice the bid competitors, and undermine the entire bid-and-award system.

It is the South Carolina State Government's legal duty, to ensure a fair and competitive bidding process, that a common standard is firmly established. Without a common standard, the integrity of the competitive bidding process is violated and the purpose of competitive bidding is frustrated. If bidders are misled by anything the South Carolina State Government may have done, or the notice concerning the bid may have required, the bidding was not on a common basis, and therefore invalid because it lacked fair competition. "No scheme or device promotive of favoritism or unfairness or which imposes limitations, not applicable to all bidders alike, will be tolerated."

In addition, Interboro would like to request the bid tabulation for this bid. The awarded price for each item and the vendor which was awarded each item.

Please get back to us with your final decision. And please send us the documents requested above.

*Interboro Packaging  
Corporation*

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**Chanie Holtzer**  
114 Bracken

Road  
Montgomery, New York 12549-2600  
(845) 782-6800 Ext. 111  
Fax (845) 781-2450  
E-mail: [Chanie@interboropackagin.com](mailto:Chanie@interboropackagin.com)

**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.

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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 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**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

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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.**