

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE  
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

MICHAEL B. SPICER  
INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

## Protest Decision

**Matter of:** The Ware Group dba Johnstone Supply

**Case No.:** 2019-125

**Posting Date:** March 14, 2019

**Contracting Entity:** Coastal Carolina University

**Solicitation No.:** CCU-9300250

**Description:** Provide heat pumps and air handlers - DH

### DIGEST

Protest of improper preference application is denied. The Ware Group dba Johnstone Supply's 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.

---

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

## **BACKGROUND**

- November 26, 2018: IFB #CCU9300250 issued for the purpose of obtaining a source to provide heat pumps and air handlers.
- December 18, 2018: Bid opening, with the following bids recorded:  
East Coast Metal Distributors \$103,018.62  
Johnstone Supply \$105,331.80  
Technology International Inc. \$140,458.02
- December 20, 2018: Intent To Award notice issued to:  
East Coast Metal Distributors  
1313 S. Briggs Ave.  
Durham, NC 27703
- December 20, 2018: Received Protest from Johnstone Supply.
- December 21, 2018: Johnstone amended its protest.

The Coastal Carolina University issued this Invitation for Bids to establish a source for Goodman Manufacturing heat pumps and air handlers or equal. Bids were received from Johnstone, East Coast Metal Distributors, LLC, and Technology International, Inc. An Intent to Award was posted to East Coast on December 20, 2018. Johnstone protested on December 20, 2018 and amended its protest on December 21, 2018.

## **ANALYSIS**

Johnstone protests:

I wish to protest the award of the bid # CCU-9300250. I noticed that the vendor that won the intent to award is in NC. Does an SC vendor still get an advantage for bidding in SC? Can you please provide the documentation that shows that this was taken into account.

On December 21, 2018, Johnstone added:

I'm not sure that it would make a difference but the HKSX05SX are manufactured in Mexico. Coast falsified their bid by stating that it is a USA made product.

The solicitation included six line items with award made to the Offeror bidding the lowest grand total for all six items. Both Johnstone and East Coast applied for and received the benefit of the 7% resident vendor preference. Johnstone questions East Coast's qualification for this preference.

One way for a vendor to qualify for the resident vendor preference is to maintain an office in South Carolina having at least fifty thousand dollars of inventory of items similar to those being acquired through the solicitation. Section 11-35-1524(C)(1):

When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by seven percent if the bidder maintains an office in this State and either (i) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract; ...

An "office" is defined by Section 11-35-1524(1)(6) as:

"Office" means a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty-five hours a week each.

East Coast is registered with the South Carolina Secretary of State, has multiple physical retail locations throughout South Carolina, provided their tax identification number, and a South Carolina retail license number. East Coast qualifies for the resident vendor preference.

Johnstone next alleges that East Coast applied for and received the benefit of the "United States end product" preference (2%) for a product on line item six that Johnstone claims is actually manufactured in Mexico. East Coast did request and received the benefit of the "United States end product" preference (2%) for line item six as did the third bidder, Technology International, Inc. East Coast's initial bid price for line item six was \$46.29, or \$3,610.62 for the requested quantity of 78 units. The 2% preference decreased East Coast's bid by \$72.21.

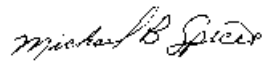
As indicated above, East Coast's \$103,018.62 was the initial low bid with Johnstone's \$105,331.80 the second lowest initial bid. After application of all the requested preferences, East Coast's evaluated bid total was \$93,746.64 and Johnstone's evaluated bid total was \$95,909.76. Goodman Manufacturing's web site proudly proclaims that its products are designed, engineered

and assembled in the U.S.A.<sup>2</sup> Even assuming Goodman's claim is in error and East Coast's claim for the US made preference should be disqualified, the increase in East Coast's evaluated total would not change the award. Accordingly, for purposes of Section 11-35-4210, this error—if it is in fact a mistake—is harmless.

## **DECISION**

For the reasons stated above, the protest of The Ware Group dba Johnstone Supply is denied.

For the Materials Management Office



---

Michael B. Spicer  
Chief Procurement Officer

---

<sup>2</sup> <https://www.goodmanmfg.com/about/why-goodman> (last viewed March 14, 2019).

# Attachment 1

**From:** [Brad Marcoe](#)  
**To:** [Protest-MMO](#)  
**Subject:** ccu-9300250 Protest  
**Date:** Thursday, December 20, 2018 11:14:59 AM  
**Attachments:** [image062343.png](#)  
[image116866.png](#)  
[image243819.png](#)  
[image960205.png](#)  
[image378530.png](#)  
[image032421.png](#)  
[image824964.png](#)

---

Dear Sir or Madam,

I wish to protest the award of the bid # CCU-9300250. I noticed that the vendor that won the intent to award is in NC. Does an SC vendor still get an advantage for bidding in SC? Can you please provide the documentation that shows that this was taken into account.

Thank you,

Brad Marcoe  
843-708-5605




The Ware Group



**Brad Marcoe**

Regional Government Account Manager

 (843) 708-5605

 (843) 708-5605

2572 Oscar Johnson Dr., North Charleston, SC, 29405

Johnstone Supply The Ware Group LLC accepts no liability for the content of this email, or for the consequences of any actions taken on the basis of the information provided, unless that information is subsequently confirmed in writing. Any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company.

---

This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>

---

**From:** [Dean P. Hudson](#)  
**To:** [Spicer, Michael](#)  
**Cc:** [brad.marcoe@johnstonewaregroup.com](mailto:brad.marcoe@johnstonewaregroup.com)  
**Subject:** FW: ccu-9300250 Protest  
**Date:** Friday, December 21, 2018 2:03:29 PM  
**Attachments:** [image116866.png](#)  
[image243819.png](#)  
[image960205.png](#)  
[image378530.png](#)  
[image032421.png](#)  
[image824964.png](#)  
[image001.png](#)  
[image003.png](#)

---

**From:** Brad Marcoe <[Brad.Marcoe@johnstonewaregroup.com](mailto:Brad.Marcoe@johnstonewaregroup.com)>  
**Sent:** Friday, December 21, 2018 1:51 PM  
**To:** Dean P. Hudson <[dhudson@coastal.edu](mailto:dhudson@coastal.edu)>  
**Subject:** Re: ccu-9300250 Protest

Dean,

I'm not sure that it would make a difference but the HKSX05SX are manufactured in Mexico. East Coast falsified their bid by stating that it is a USA made product.

Brad Marcoe





The Ware Group



**Brad Marcoe**

Regional Government Account Manager

 (843) 708-5605

 (843) 708-5605

2572 Oscar Johnson Dr., North Charleston, SC, 29405

Johnstone Supply The Ware Group LLC accepts no liability for the content of this email, or for the consequences of any actions taken on the basis of the information provided, unless that information is subsequently confirmed in writing. Any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company.

On Dec 21, 2018, at 10:40 AM, Dean P. Hudson <[dhudson@coastal.edu](mailto:dhudson@coastal.edu)> wrote:

Mr. Spicer,

The attached letter and supporting documents are provided in response to the protest below.

Thank you.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2018)*

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 2018 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.**