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## Protest Decision

**Matter of:** Getac Video Solutions, Inc.

**Case No.:** 2019-213

**Posting Date:** August 5, 2019

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400014480

**Description:** Law Enforcement Equipment – Body Cameras, In Car Video and SaaS Video Storage Software and Data

### DIGEST

Protest alleging awarded offeror was not responsible is denied. Protest of improper evaluation is granted in part and denied in part. Getac Video Solutions' (GVS) letter of protest is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer (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.

## BACKGROUND

Solicitation Issued	03/18/2019
Amendment 1 Issued	04/04/2019
Intent to Award Posted	05/31/2019
Protest Received	06/10/2019
Amended Protest Received	06/17/2019

The State Fiscal Accountability Authority (SFAA) issued this Request for Proposals to establish a Statewide Term Contract to provide for body cameras, in-car video camera systems, SaaS: Video Storage, Software, and Data. The RFP consisted of two lots with award made to as many as two highest-ranked offerors in each lot. Eight responses were received, and an Intent to Award was posted to Utility Associates, Inc. (Utility) on May 31, 2019. GVS filed its protest on June 10, 2019 and amended its protest on June 17, 2019.<sup>1</sup>

## ANALYSIS

GVS initially alleges that the solicitation required proposals be submitted by manufacturers only and that:

Unlike in Getac's proposal, *Utility never confirmed that it was a manufacturer*, as expressly required under the special standards of responsibility in the Solicitation. (RFP at 30.) Indeed, the cameras featured in Utility's response were consumer - grade Motorola Moto cell phones merely running Utility's application,

The solicitation included a special standard of responsibility:

**Offeror must be the equipment manufacturer or the equipment manufacturer may designate authorized distributors if applicable.**

[Solicitation, Page 27]

GVS included a redacted copy of Utility's proposal with its amended protest. In its proposal Utility states:

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<sup>1</sup> Based on Getac's failure to provide pricing information for Lot 2, the Procurement Officer found Getac non-responsive for that lot. Getac's protest does not challenge the Procurement Officer's determination of non-responsiveness.

Utility Associates, Inc. is a vertically integrated US manufacturer and supplier of software solutions, digital in-car cameras, body worn cameras, mobile routers, mobile digital multimedia evidence management systems, and situational awareness software solutions for the law enforcement community, transportation agencies, and utilities.

Utility hardware and software is designed, developed, manufactured, packaged, and shipped at our two offices, state-of the-art locations in Decatur, Georgia and in Covington, Georgia, within Metropolitan Atlanta. Utility has more than 70 employees, based in the US in all time zones dedicated to our RocketIoT™ in-car and BodyWorn™ video solutions. Utility has no plans to use subcontractors for this State of South Carolina project.

Many vendors outsource engineering, software development and support, and/or manufacturing offshore. By contrast, Utility's control of the design, development, manufacturing and customer support experience through our in-house team of professionals allows us to provide a secure, reliable solution, and eliminate an 8,000 miles supply chain, while rapidly innovating and responding to our customer's needs.

[Redacted Proposal, Page 47]

In the IT industry, manufacturers of consumer goods assemble, fabricate, or process component parts into an end product. They do not manufacture every resistor, capacitor, transistor or piece of plastic in their end products.<sup>2</sup> Utility claims that it is the manufacturer of the end product being offered to the State. GVS has provided no information to the contrary. This issue of protest is denied.

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<sup>2</sup> The only definition of "manufactured" in the Procurement Code is found in the resident-vendor preference statute, § 11-35-1524, which defines it as "to make or process raw materials into an end product." That definition, however, is limited to that section and is inappropriate in the IT industry, where vendors rarely process raw materials into an end product. The CPO finds that, in the IT industry, a manufacturer typically assembles components into a finished product. This is consistent with the U.S. Defense Acquisition Regulation Supplement, which defines "original equipment manufacturer" as "a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name." DFARS § 202.1. Further, the 2012 North American Industry Classification System for the U.S. Census Bureau states that "The assembling of component parts of manufactured products is considered manufacturing[.]" See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=31&search=2012%20NAICS%20Search> (last viewed August 2, 2019)

GVS next protests the evaluation process, alleging that “(1) the Procuring Agency failed to correctly award points based upon subcategories, (2) the evaluation is not auditable, and (3) the evaluations were inconsistent.” Each of these grounds is addressed below.

*“The Procuring Agency failed to correctly award points based on subcategories”*

The technical evaluation criterion was published in the solicitation as:

**1. Technical Proposal:**

The degree, completeness, and suitability of the Offeror’s proposed technical solutions to meet or exceed the requirements of this RFP:

- Body Worn Camera (10 Points) & In – Car Video System (10 Points) = (20 Total Possible Points)
- Video Management System & Storage (20 Points)
- Data Security & Service Level Agreements (20 Points)
- Implementation Support, and Termination Services (20 Points)

In evaluating the technical proposals, the evaluators assigned a lump sum score up to 80 points with no indication of the score for each subcategory. There is nothing in the evaluator’s comments that would indicate that the subcategory weightings were considered in the allocation of the awarded points. Section 11-35-1530(7) requires:

Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously.

There is nothing in the procurement file to indicate that the evaluators adhered to the published subcategory weightings in developing the bulk points awarded. Given that (1) the solicitation published subcategories that were to be scored and (2) the score sheets failed to include scoring for those subcategories, it is impossible to tell whether each evaluator’s scores had a rational basis. The award of bulk scores, without subcategory scoring that indicate compliance with § 11-35-1530(7), leaves open the question of an arbitrary or capricious award or evaluator bias. This issue of protest is granted.

*“The evaluation is not auditable”*

GVS argues:

Because only lump sum technical scores were given by evaluators, along with a very limited commentary composed of one-to-two sentences at most, an

independent auditor would have no basis to determine whether the scores given were warranted.

The CPO finds that this grounds fail to state a claim. The lack of an auditable evaluation is not a violation of the Procurement Code. In fact, the Panel has “express[ed] doubt that a complaint that the procurement file is not sufficient to satisfy an external audit would be the basis for overturning an award.” *Appeal by Intralot*, Panel Case 2017-8. This issue of protest is denied.

*“The evaluations were inconsistent”*

GVS argues that “the comments themselves display an inconsistency in evaluation.”:

The Panel has held, however, that it will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased. *Appeal by Transportation Management Services, Inc.*, Panel Case 2000-3. Further, the evaluation of proposals is inherently subjective, which can lead to score variations and other inconsistencies. *See Appeal by United Way*, Panel Case 2017-2(II). The evaluation process need not be perfect so long as it is fair. *Appeal by Transportation Management Services, Inc.*, cited above.

In this case, a showing of inconsistency alone is not enough. The “inconsistent” statements from the evaluators merely demonstrates the subjective nature of evaluations. Nothing in the procurement file indicates that the alleged inconsistencies pointed to an improper evaluation. This issue of protest is denied.

## **DECISION**

For the reasons stated above, Getac Video Solutions, Inc.’s protest that Utility is not responsible is denied. Its protest that the protest was flawed is granted in part and denied in part. The awards to Utility Associates, Inc. and Axon Enterprise, Inc. are cancelled. The procurement is remanded to the State Fiscal Accountability Authority for rescoring in accordance with the evaluation criteria published in the solicitation, including an indication that scoring adheres to the subcategory weightings.

Protest Decision, page 6  
Case No. 2019-213  
August 5, 2019

For the Information Technology Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

Mike Spicer  
Chief Procurement Officer  
SFAA, Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29303

June 17, 2019

Dear Mr. Spicer,

Getac Video Solutions, Inc. (“Getac”), brings the following Amended Protest under S.C. Code § 11-35-4210 and requests a review by the chief procurement officer. Because the procuring agency failed to follow the procurement standards set forth in the South Carolina Code of Laws and the solicitation itself, the award under Solicitation No. 5400014480 has been made to an offeror that not only was less competitive than Getac, but also ineligible for award. Getac thus possesses sufficient grounds for protest. This document amends the Protest originally filed by Getac on June 10, 2019, as permitted by S.C. Code § 11-35-4210(2)(b), within 15 days of publication of the notice of Intent to Award.<sup>1</sup>

### **CONTRACTING AGENCY AND PROTESTOR**

PROTESTOR INFORMATION  
Getac Video Solutions, Inc.  
3600 American Blvd W, Ste 460  
Bloomington, MN 55431

SOLICITOR INFORMATION  
Randy Barr, Sr.  
Procurement Officer  
SFAA, Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201

### **INTRODUCTION**

Solicitation No. 5400014480 (the “Solicitation”) was a request for proposals (“RFP”) published by the State Fiscal Accountability Authority Division of Procurement Services (“Procuring Agency”) on April 4, 2019 to procure two lots of law enforcement equipment, including body cameras, in-car video, and video storage software and data. The Procuring Agency could award the corresponding contract to up to two offerors for each lot. Getac timely responded to the solicitation on April 18, 2019 and submitted a complete and technically acceptable proposal to supply the goods and services sought under both Lots. On May 31, 2019, the Procuring Agency published Intents to Award the corresponding contracts for both Lots to Axon Enterprise, Inc. (“Axon”) and Utility Associates, Inc. (“Utility”).

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<sup>1</sup> Notice of the Intents to Award was published May 31, 2019. The fifteenth day following publication was Saturday, June 15, 2019. Pursuant to S.C. Code § 11-35-310(13), the time to amend the initially filed protest thus ran to the next business day, Monday, June 17, 2019.

Nevertheless, Utility should have been disqualified as an offeror, given the company's inability to meet the basic manufacturing requirements under Section V of the Solicitation. Additionally, the Procuring Agency failed to adhere to the evaluation standards of the Solicitation's Technical Proposal requirement in scoring and ranking offerors, as well as the auditability requirements of the South Carolina Code. Finally, the Procuring Agency also evaluated offerors inconsistently, giving Getac lower scores for equal or better portions of its proposal.

For these reasons, Getac possesses sufficient grounds under SC Code § 11-35-4210 to protest the State's award of the contracts for both Lots under Solicitation No. 5400014480 to Axon Enterprise, Inc. and Utility Associates, Inc.

### **FACTUAL BACKGROUND**

#### **Solicitation for Law Enforcement Equipment**

On April 4, 2019, the State of South Carolina issued Solicitation No. 5400014480. The Solicitation sought to procure "Law enforcement equipment – body cameras, in car video and SaaS: video storage software and data." Offers were to be submitted by April 19, 2019 for a Statewide term contract. This was a competitive sealed bidding process which sought up to two awardees for each of two Lots: the first consisted of body and in-car video cameras as well as SaaS for video storage, software, and data; the second consisted of the same items less the in-car video cameras. (RFP at 15.) Proposals were ultimately evaluated from four companies: Getac, Axon, Utility, and Coban Technologies, Inc. ("Coban"). Getac submitted a proposal for both Lots. (*See generally* Getac Proposal.)

The Solicitation listed several basic requirements for offered products, among them: a minimum 8 hours of recording time, a maximum of 6 hours of charge time for a depleted battery, high definition and low light capabilities, as well as triggered recording options. (*Id.* at 15.) The Solicitation also sought responses that addressed implementation, support, and security for the technology provided. (*Id.* at 25-26.) To be qualified, offerors were required to be the equipment manufacturers of the camera devices sought (*Id.* at 30.) Offerors were instructed not to submit proposals if they were not manufacturers. (*Id.* at 30.)

#### **Getac Video Solutions, Inc.'s Proposal**

Getac timely submitted its proposal on April 18, 2019, which not only offered an advanced and integrated video system for law enforcement, but also full customer support, including planning, training, and end-user support. (*See generally*, Getac Proposal.) As manufacturer, its proposal satisfied all requirements of the Solicitation and in many cases exceeded those requirements.

For example, Getac's BC-02 body-worn camera is a self-contained unit that recorded audio and video and could be mounted using a variety of clips. (*Id.* at 5.) It featured up to a 12-hour battery life at 480p resolution, exceeding the 8-hour minimum requirement. (*Id.*) The camera could also be charged in half the amount of time required by the Solicitation. (*Id.*) It also exceeded the minimum high definition requirement by allowing users to record at 1080p resolution (still managing an 8-hour battery life) with low light capability. (*Id.* at 5-6.) The body camera could also store twice the amount of data required by the Solicitation with 64 GB available. (*Id.* at 6)

Getac's ZeroDark™ HD camera met and exceeded all in-car video requirements as well. The camera had a 143-degree field of view, exceeding the 120 degrees required by the Solicitation. (*Id.*) It was also capable of four times the in-car data storage requirement. (*Id.*)

As for data security, Getac's Criminal Justice Information Services ("CJIS") compliance was validated by a *third party*, as opposed to the self-certification touted by most vendors. (*Id.* at 17-18.) Getac offered multiple other assurances for data security, including limiting its centralized data storage and knowledge, as well as data encryption both at rest and in transit. (*Id.* at 8, 17.)

Finally, Getac offered 24/7 support and routine check-up for its systems. (*Id.* at 14.) Getac's customer service was comprehensive and provided support through every step of the process, from planning to implementation. (*Id.* at 13-14.)

#### **Utility Associates, Inc.'s Proposal**

Many similarities existed between Getac and Utility's proposals. Utility, for example, met the same battery life of 12 hours in its body-worn cameras. (Utility Proposal at 62.) The only claimed advantage of its product is the ability to recharge in under one hour, and "turbo charge" the camera for 15 minutes to obtain 6 hours of battery life, which negatively effects battery life and this requirement was not desired in the first place (*Id.*) While its body-worn camera also had a maximum resolution of 1080p, Utility did not specify the cameras' low light capacities and likely does not meet this low light requirement (*Id.* at 63.) Additionally, while Utility stated its body-worn cameras could hold up to "30 hours" of video, it failed to specify how much data the cameras could actually store or what quality of video the 30 hours would be. (*Id.* at 64.) While Utility did specify it was CJIS compliant it provided no further detail on such compliance. Indeed, the tenor of Utility's proposal suggests only its cloud service provider is CJIS compliant – *not* Utility itself – which is a critical distinction. (*Id.* at 67-69.)

Unlike in Getac's proposal, *Utility never confirmed that it was a manufacturer*, as expressly required under the special standards of responsibility in the Solicitation. (RFP at 30.) Indeed, the cameras featured in Utility's response were consumer -grade Motorola Moto cell phones merely running Utility's application, as shown in the image below:



(*Id.* at 25.) Utility did not provide any specification or photograph of its body-worn camera extended battery pack or its in-car camera hardware at all, nor did it identify the manufacturers thereof. (*See generally, id.*) Indeed, Utility’s website does not even appear to provide any significant details or pictures of their in-car camera. Consistent with its role as a software vendor, as opposed to a hardware manufacturer or distributor, Utility primarily highlighted its recording software alone and provided no specifications, guarantees, or capability to manufacture its offered hardware. (*Id.* at 49.)

#### **The Procuring Agency’s Evaluations and Award**

The evaluation factors for the proposals were broken into two categories: the business proposal (20 points) and the technical proposal (80 points). The technical proposal was further broken down into five subcategories for individual and specific consideration: Body Worn Camera (10 points), In-Car Video System (10 points), video management system & storage (20 points), data security & service level agreements (20 points), and implementation support, and terminations services (20 points). Only 70 points were awardable for the technical proposal under Lot 2, given that no “In-Car Video System” was being procured under that Lot.

The Procuring Agency’s evaluators, however, did not individually grade each category within the technical proposal as required by the Solicitation. On the evaluation criteria forms, the technical response listed “The degree, completeness, and suitability of the Offeror’s proposed technical solution to meet or exceed the solicitation requirements.” (*See generally* Evaluator Score Sheet Package.) The maximum amount of points to be awarded was 80 for Lot 1 technical proposals, but no additional lines were given to represent the breakdown of the specific grading criteria. (*Id.*) In an email to Getac, the procurement officer for the Solicitation confirmed that evaluators did not assign points for each subcategory of the technical proposal, but gave a total score only. (Email from R. Barr to E. Mobley, June 12, 2019 at 1, attached hereto as **Exhibit 1**.) The business proposal stated, “The total of all costs of ownership to the State including annual

maintenance and license fees for the potential five (5) year contract period.” (See generally Evaluator Score Sheet Package.) There were 20 points possible. (Id.)

Space for commentary on both the technical and business aspects of the proposal was provided on the back of the Evaluators’ Score Sheets. (Id.) Six evaluators then scored the four offerors, although the sixth failed to evaluate Axon for an unknown reason. (Id.) The five evaluators that scored all four offerors gave Axon the highest technical score average and Utility received the second highest technical average. (Id.) The comments attempted to give explanations for the scores, but were inconsistent and not auditable across offerors.

- Evaluator 1 commented on both Axon and Utility’s CJIS certification, but did not provide any similar commentary for Getac in regard to its own CJIS certification. Evaluator 1 also noted that Axon and Utility exceeded “many” of the requirements set by the RFP, while Getac exceeded “some” of the requirements, but did not explain how.

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.  
- Exceeds many requirements, meets requirements. CJIS response for data.  
Evaluator 1; Axon

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.  
- Exceeds many requirements, meets requirements. CJIS response for data.  
Evaluator 1; Utility

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.  
- Exceeds some requirements, meets requirements. BWC and in-car devices.  
Evaluator 1; Getac

- Evaluator 2 offered comments for Axon, Utility, and Coban but failed to provide any commentary for Getac. Evaluator 2 also noted skepticism for Utility’s purported fast charging capabilities and the cost of its uniform modifications, implying hidden costs that were not factored into the proposal.

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.

Evaluator 2; Getac

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.

Exceeds requirements. I wonder if the claim to charge 6 hours can be done in 15 minutes. There may be an associated cost with modifying uniforms

Evaluator 2; Utility

- Evaluator 3 commented that both Utility and Getac met the Solicitation requirements but added an additional comment of concern regarding Getac's data capabilities. The evaluator did not explain why or how Getac's data capabilities were concerning, especially given that they exceed specification requirements, and are more specifically detailed than Utility's.

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.

Utility meets the solicitation requirement.

Evaluator 3; Utility

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.

Getac met the solicitation requirements. Concerns exist as it applies to breach of facility, hardware or data and what ~~type~~ information will be shared.

Evaluator 3; Getac

- Finally, Evaluator 4 commented that both Utility and Getac exceeded multiple specifications of the RFP. Evaluator 4 also questioned Getac's data capabilities but noted its CJIS compliance. Evaluator 4 also commented on both Getac and Utility's option for multiple configurations within its proposal.

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.

UTILITY MEETS AND IN MOST CASES EXCEEDS THE SPECIFICATIONS OF THE RFP. THEIR SOLUTION OFFERS CONSIDERABLE USER CONFIGURATIONS. CELLULAR CONNECTIVITY OFFERS GREAT MOBILITY AND CONNECTIVITY UP TIME.

Evaluator 4: Utility

**Technical Proposal:** The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the solicitation requirements.

GETAC MEETS AND EXCEEDS MULTIPLE HARDWARE SPECIFICATIONS AND INCLUDES CJIS COMPLIANCE AS A COMPANY AS WELL AS THEIR CLOUD VENDOR. MULTIPLE CONFIGURED EVENT OPTIONS AS INTEGRATED SOLUTION. QUESTION REGARDING DATA AT REST.

Evaluator 4: Getac

Aside from these comments, combined Technical Proposal scores were given alongside Business Proposal scores and totals. (*Id.*)

On May 31, 2019 the State Fiscal Accountability Authority Division of Procurement Services posted an intent to award the corresponding contract under the Solicitation to Axon and Utility as the two highest scored offerors with the purportedly lowest associated costs. (Intent to Award Axon; Intent to Award Utility.)

## DISCUSSION

South Carolina's procurement laws are designed to secure procurements that are most advantageous to the State, foster effective broad-based competition for public procurement within the free enterprise system, and to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures in public procurement, among other goals. S.C. Code § 11-35-20(2).

An offeror who is aggrieved has the right to protest and set forth the grounds of the protest and relief requested with enough particularity to give notice of the issues to be decided. S.C. Code § 11-35-4210(2). Both the code and past panel decisions delineate expectations for solicitations and awards that, if not followed properly, creates grounds for protest. As a general rule, an agency must award a contract only to the lowest responsive and responsible bidder. Protest No. 2013-010A-B. When evaluating a bid under a competitive sealed bidding process, however, the State should also consider the relative importance of evaluation factors set forth in the solicitation. S.C. Code § 11-35-1520. The contract file must also contain the basis for which the award was made and must contain a sufficient basis for an external audit. S.C. Code § 11-35-1530.

Protests of awards must, in some way, “alert the parties to the general nature of the grounds for protest.” *Protest by Sterile Services Corporation*, Panel Case No. 1983-17. Alleging that some provision of the solicitation has been ignored or the award of the contract has violated some statute or regulation is sufficient grounds for a protest. *Appeals of Logisticare Solutions, LLC, and Medical Transportation Management, Inc.*, Panel Cases Nos. 2011-1 and 2011-2; *cf. Appeal by Coastal Rapid Public Transit Authority*, Panel Case No. 1992-16 (protestant must show the State departed from standards set forth in the Procurement Code and the RFP).

**I. Utility Was Not an Acceptable Offeror under the Solicitation.**

The Procuring Agency should have disqualified Utility as an offeror because it is not a manufacturer as required by Section V of the Solicitation. Under S.C. Code § 11–35–1530, the Procuring Agency must adhere to the standards it set out for its Solicitation when evaluating proposals and awarding contracts. Demonstrating that the Procuring Agency failed to adhere to those standards constitutes sufficiently described grounds for protest. *Protest by Sterile Services Corporation*, Panel Case No. 1983-17. By failing here to consider a basic requirement it set out for its RFP and thus allowing Utility to submit an offer, the Procuring Agency’s actions have created sufficient grounds for protest.

Section V provides:

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

**Offeror must be the equipment manufacturer or the equipment manufacturer may designate authorized distributors if applicable.**

[emphasis added]

Utility failed to meet this standard, and thus should have been disqualified, because Utility does not manufacture its own body-worn or in-car cameras. Instead, the body-worn cameras included in Utility’s response were consumer-grade Motorola Moto cell phones merely running Utility’s application, as displayed in the picture presented above. This is concerning for a variety of reasons, including inability to control end-of-life, and operational discontinuity as Motorola changes models.

Utility provided almost no information regarding its in-car cameras, for which it is almost certainly not the manufacturer. Tellingly, Utility’s response generally avoids addressing its manufacturing abilities or lack thereof. Even if the pictures used were mere prototypes of what a BodyWorn camera *would* look like, which is unlikely as this technology has already been implemented in other jurisdictions, Utility’s failure to address this issue with specificity should have automatically disqualified Utility’s offer.

## **II. The Procuring Agency Failed to Follow the Evaluation Standards Set Forth in the RFP.**

The Procuring Agency failed to follow the evaluation standards set forth in the Solicitation in three material ways: (1) the Procuring Agency failed to correctly award points based upon subcategories, (2) the evaluation is not auditable, and (3) the evaluations were inconsistent. Instead, the five categories of the technical response score are set out in one overall score explained by only one-to-two sentences of brief commentary. Combined with the lack of any useful comments related to scoring, an audit of that decision-making process would be nearly impossible. Finally, the Procuring Agency inconsistently evaluated each proposal's specific strengths and weaknesses.

### **a. The Procuring Agency Failed to Award Points Properly.**

The Procuring Agency failed to award points based on subcategories of the technical response and therefore violated the requirements of the Solicitation. Five factors were to be scored in evaluating the technical response:

- Body Worn Camera (10 points),
- In-Car Video System (10 points),
- Video management system & storage (20 points),
- Data security & service level agreements (20 points),
- Implementation support, and terminations services (20 points).

While the very basic and short commentary provided by the evaluators incorporated some of these topics, there was no clear or structured point allocation for each subject, as required. The procurement officer later confirmed that the subcategories were not independently scored, and only total scores were awarded. (Exhibit 1.) This violation alone constitutes sufficient grounds for protest and reevaluation of proposals.

### **b. The Evaluations Were Not Auditable.**

Under S.C. Code § 11-35-1530, an award must state a sufficient basis on which the award was made to satisfy an external audit. Because only lump sum technical scores were given by evaluators, along with a very limited commentary composed of one-to-two sentences at most, an independent auditor would have no basis to determine whether the scores given were warranted. In addition, the RFP provided no basis for evaluators to award extra points for areas in which proposers exceeded minimum requirements. As such, evaluator commentary stating proposals exceeded requirements do not produce auditable results consistent with the scoring criteria. The Procuring Agency therefore failed to meet the standards set forth in S.C. Code § 11-35-1530. This failure also constitutes sufficient grounds to uphold a protest.

**c. The Procuring Agency Failed to Score the Proposals Consistently.**

Finally, the Procuring Agency's failed to properly evaluate the proposals because the scoring and commentary was inconsistent. Because the subcategories of the Technical Response were not scored individually, the evaluators' commentary acts as the only guide to the scoring criteria. But the comments themselves display an inconsistency in evaluation. For example, Evaluator 1 commented on both Axon and Utility's CJIS certification as a reason for a high score. But Getac not only stated it was CJIS compliant, but also included in its proposal that it had been certified by a third party, giving it equal or stronger standing in contrast to the potential self-certification provided by other vendors. Nonetheless, Evaluator 1 was silent as to Getac's CJIS certification.

Similarly, Evaluator 2 failed to provide commentary regarding *any* aspect of Getac's overall technical score, but provided commentary for *every other* respondent. When the only stated basis for the technical scoring is the commentary provided, this inconsistency represents a failure to follow the specifications of the RFP. In addition, this renders an audit of this scoring impossible.

Evaluators 3 and 4 expressed concerns regarding Getac's data security, but no basis for such concerns are apparent within Getac's proposal. Again, Getac was certified to CJIS by a third party, has centralized data storage and knowledge, and encrypts data both at rest and in transit.

This inconsistency in evaluation demonstrates that the respondents were not evaluated by the specific terms of the proposal as required, but rather a totality of the circumstances, thus failing to take the specific strengths and weaknesses of each proposal into account. The complete lack of transparency in the evaluation process only exacerbates this concern. The inconsistent and imprecise evaluation process failed to meet the requirements of the RFP, thereby providing suitable grounds for a protest of the Procuring Agency's award.

**CONCLUSION**

The Procuring Agency failed to adhere to the rules it set out in the RFP. This failure materially altered the decision-making process and altered the award of the contract. Getac therefore respectfully requests review by a chief procurement officer under S.C. Code § 11-35-4210, that its protest be sustained, the proposals be re-evaluated, and Getac be issued an award. Such relief will also fulfill South Carolina's interest in awarding contracts only to capable manufacturers such as Getac.

## 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.

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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 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**

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

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

- 
1. What is your/your company's monthly income? \_\_\_\_\_
  2. What are your/your company's monthly expenses? \_\_\_\_\_
  3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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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.**