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## Protest Decision

**Matter of:** Aerosweep Pty Ltd

**Case No.:** 2021-147

**Posting Date:** June 14, 2021

**Contracting Entity:** South Carolina Aeronautics Commission

**Solicitation No.:** 5400021231

**Description:** Foreign Object Debris (FOD) Mat Sweepers

### DIGEST

Untimely protest of specifications by a bidder lacking standing is dismissed. The protest letter of Aerosweep Pty Ltd (APL) 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.

### BACKGROUND

Solicitation Issued:	04/08/2021
Amendment 1 Issued	04/23/2021

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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.

Bid Opening	05/12/2021
Intent to Award Posted	06/02/2021
Protest Received	06/09/2021

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids (IFB) on April 8, 2021, on behalf of the South Carolina Aeronautics Commission to acquire foreign object debris (FOD) mat sweepers. Amendment 1 was issued on April 23, 2021. Bids were opened on June 2, 2021. APL filed a protest on June 9, 2021 alleging defective specifications.

## ANALYSIS

### APL protests:

We respect your decision however, we are lodging a protest to the award on this basis as it ignores the significant potential airside safety implications.

To simply define a FOD removal tool designed to increase airside safety as a 'Foreign Object Debris (FOD) Mat Sweeper', does not take into any account the various design technologies that are incorporated into their design. The absence or presence of these technologies may have *serious safety implications* for the uninformed or ill-advised....

It is our opinion that the general description of FOD Mat Sweepers within your solicitation 5400021231 has the *potential to create a major safety issue* at your airports, by placing undue focus on the lowest-cost bid and using purchase price as the sole basis for comparison.

Section 11-35-4210(1)(a) requires prospective bidders protest issues related to a solicitation or amendment to the solicitation within 15 days of the posting of the relevant document:

A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation shall protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date of issuance of the Invitation For Bids Request for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

Section 11-35-4210(1)(b) provides that a matter that could have been raised as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added)

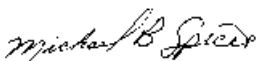
The specifications for the FOD sweepers were published as an attachment to the solicitation on April 8, 2021 and were not modified in the amendment to the solicitation. The last day to protest issues emanating from the solicitation was April 23, 2021. These issues cannot be raised as a protest of the intent to award and are dismissed.

In addition, only two bids were received in response to this solicitation: The FOD Control Corporation and Sherwin Industries, Inc. Section 11-35-4210(1)(b) grants the right to protest the award of a contract to actual bidders, offerors, contractors, or subcontractors. APL is not an actual bidder and consequently lacks standing to bring this protest before the Chief Procurement Officer.

## DECISION

For the reasons stated above, the protest by Aerosweep Pty Ltd is dismissed.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

Attachment 1



08 June 2021

Chief Procurement Officer  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201  
UNITED STATES OF AMERICA

Delivered via email to: protest-mmo@mmo.state.sc.us

**Re: Public Safety Concerns For Low-Cost Bid Award Solicitation: 5400021231**

Dear Sir/Madam

We understand that you have recently advised an intent to Award for Solicitation: 5400021231, and this award was based on the lowest cost bid.

We respect your decision however, we are lodging a protest to the award on this basis as it ignores the significant potential airside safety implications.

To simply define a FOD removal tool designed to increase airside safety as a 'Foreign Object Debris (FOD) Mat Sweeper', does not take into any account the various design technologies that are incorporated into their design. The absence or presence of these technologies may have serious safety implications for the uninformed or ill-advised.

Aero-Tech, an affiliated company of Aerosweep, invented the friction mat sweeper in 1994 and it was the ability of our product to successfully sweep, pick up and retain (FOD) that saw this category of sweeper first included in the FAA's AC 150/5210-23. At that time, the **FOD\*BOSS** was the only brand of friction mat sweeper available to airport and airline operators. In other words, it was our product upon which the standards were based.

In recent years, imitation brands have entered the market using the FAA's recommendation of the friction sweeper. Of particular importance, these brands have designed their product to look deceptively the same as the **FOD\*BOSS** in a bid to pass themselves off as offering the same benefits and outcomes that airports and airlines have learnt to expect from their experiences with our product. Importantly, these alternative brands do not include critical safety design features designed to prevent the leak and/or spill of FOD back onto the tarmac.

It is our opinion that the general description of FOD Mat Sweepers within your solicitation 5400021231 has the potential to create a major safety issue at your airports, by placing undue focus on the lowest-cost bid and using purchase price as the sole basis for comparison.

Aerosweep Pty Ltd 24 Ceylon Street Nunawading Victoria Australia 3131  
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[www.fodboss.com](http://www.fodboss.com) E: [info@aerosweep.com](mailto:info@aerosweep.com)  
ABN: 30 113 326 168

Alternative FOD sweeping mat brands are not equivalent to the **FOD\*BOSS** in terms of performance or effectiveness. Indeed, one can even argue that the use of these alternative brands without FOD retention capabilities, may **represent a safety issue in their own right**, as operators can often be unaware of how FOD fails to remain captured within the system and can be subsequently dumped onto the surface recently swept/cleared of FOD.

Aerosweep is happy to share with you the numerous examples (reports and video) we have been supplied with by the USAF and other aviation organisations, where the awarded brand has failed during FOD sweeping tasks and allowed the FOD to remain as a significant operational safety risk for aircraft and personnel working within the airside areas of an airport.

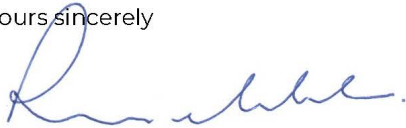
If it helps you to understand our concerns for the safety of our aviation colleagues, we can share a video link demonstrating our concerns. Alternatively, we can arrange for a side-by-side demonstration at a time and place of your choosing. We know this was expressly stated in your solicitation as something that was not desired. However, we feel that to not compare the sweeping outcomes of these two sweepers in a "real-world" test is to believe that safety has no value.

Aerosweep feels it is important to bring to your attention these differences and that potentially dangerous outcomes are not readily apparent when all brands are considered equal and without understanding their performance differences.

Finally, we also note you calculated a preference for US-manufacture into your prices for comparative purposes (as per the solicitation documents issued). We would like to point out that under the terms of Australia's Free Trade Agreement signed in partnership with the US Government, our product is to be afforded the same advantages as US manufactured product. We hope this has been the case in this instance.

We would be very happy to be involved in any further discussion on the points we raise. Please let us know if you have any questions, and we look forward to receiving your reply.

Yours sincerely



**RUSSELL NICHOLSON**  
Head of Sales & Marketing

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised May 2020)*

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2020 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.**