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## Protest Decision

**Matter of:** Gator Moto Utility Vehicles and More, LLC dba Moto Electric Vehicles  
**File No.:** 2023-118  
**Posting Date:** March 13, 2023  
**Contracting Entity:** Coastal Carolina University  
**Solicitation No.:** CCU-9300524  
**Description:** Eco Shuttle, Battery Powered, Model SV-14, 14-Person Capacity Shuttle

### DIGEST

Protest of Award to other than low bidder is granted. The Gator Moto Utility Vehicles & More (GMU) letter of protest is attached and included by reference. (Attachments 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

Request for Quotations Issued	02/03/2023
Quotations Received	02/20/2023
Award Posted	02/20/2023
Protest Received	02/20/2023

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

Coastal Carolina University (CCU) published this written Request for Quotation (RFQ) on February 3, 2023, for two Eco Shuttle, battery-powered, Model SV-14, 14-person capacity shuttles. Two quotes were received on February 20, 2023. The first quote was from Specialty Vehicles (SVI) for two Eco Shuttle vehicles at a cost of \$62,300.00. The second quote was from Gator Moto Utility Vehicles and More, LLC (GMU), for two Electro Transit Buddy vehicles at a cost of \$61,889.42. CCU declared the quote from GMU non-responsive because it offered vehicles other than the Model SV-14 Eco Shuttle. CCU posted a Statement of Award to SVI on February 20, 2023. On the same day, GVU protested the award alleging that its vehicles met all the published specifications and was the lowest-priced quote. CCU provided the following response:

The RFQ in question was for the purpose of obtaining a source to provide two (2) Eco Shuttles, Model SV-14 with the following specifications of such items defined in the RFQ as follows: ...

This notice was provided on page 1 of the RFQ:

NOTICE: This solicitation is being conducted under the small purchase procedures for "commercially available off-the-shelf products" (COTS) within the authority of Section 11-35-1550 of the South Carolina Code of Laws.

Under Section 11-35-1550, a written solicitation for written quotes may be made for a purchase of commercially available off-the-shelf products not in excess of one hundred thousand dollars. Per Section 11-35-1410 of the South Carolina Code of Laws, "commercially available off-the-shelf product" is a "commercial product... that is sold in substantial quantities in the commercial marketplace; and is offered to the State, without modification, in the same form in which it is sold in the commercial marketplace." The specified Eco Shuttle was determined to meet the definition of a COTS product.

The quote submitted by Gatormoto Utility Vehicles & More, LLC was for an Electro Transit Buddy 15P, and not the Eco Shuttle, model SV-14 specified in the RFQ. Per Section 19-445.2070 of the South Carolina Code of Regulations, any bid which fails to conform to the material requirements of the solicitation may be rejected as nonresponsive. Gatormoto Utility Vehicles & More, LLC's quote was therefore determined to be nonresponsive.

Based on the information provided above, and the fact that Gatormoto's quote was nonresponsive, the University would request that their protest be dismissed. Please advise if any additional information is needed.

## **DISCUSSION**

The passage of the Code in 1981 established a statewide policy to procure standard commercial products whenever practicable. This policy is expressed in Regulation 19-445.2140(D) which provides:

It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

The Code was recently revised to encourage wider adoption of this policy by defining commercial products and commercially available off-the-shelf products (COTS) in Section 11-35-1410 paragraphs (1) and (2), simplifying the purchase of COTS not exceeding \$100,000 by adding Section 11-35-1550(2)(b) to the small purchase procedures, exempting a number of statutory provisions that vendors have complained are overly burdensome (Section 11-35-2040), and voiding certain terms and conditions (Section 11-35-2050). The Regulations were also updated to encourage agencies to conduct market research to determine the availability of commercial products (19-445.2017) and provide rules and guidance for the purchase of COTS (19-445.2041).

As CCU indicated, the solicitation alerted offerors that its procurement was published to acquire COTS products under these simplified procedures:

**NOTICE: This solicitation is being conducted under the small purchase procedures for “commercially available off-the-shelf products” (COTS) within the authority of Section 11-35-1550 of the South Carolina Code of Laws.**

[Request for Quotation, Page 1] (emphasis in original)

Regulation 19-445.2141(B)(1) requires the agency conduct market research in preparation for a COTS procurement:

Agencies shall conduct market research to determine whether commercial products or COTS are available that could meet agency requirements and should endeavor to acquire commercial products or COTS when they are available to meet agency needs (see R.19-445.2140D (Preference for commercially available products)).

Acquisition planning, market research, and exchanges with industry are governed by Regulation 19-445.2017. Regulation 19-445.2017(3) requires agencies to certify the performance of market research prior to proceeding with a procurement unless the procurement is for COTS procured under the small purchase procedures:

Except for procurements conducted pursuant to Section 11-35-1550, no solicitation for offers shall proceed until the using agency has certified in writing that it has complied with this regulation. If the using agency lacks authority to conduct the procurement, the using agency shall provide the responsible procurement officer the opportunity to fully participate in all aspects of any pre-solicitation activities conducted by the using agency.

Regulation 19-445.2017(C)(2) establishes the objectives of acquisition planning and market research:

...to determine if sources capable of satisfying the agency's requirements exist; determine if commercially available items exist that meet the agency's requirements; and determine the practices of firms engaged in producing, distributing, and supporting the supplies, services or information technology to be acquired, such as type of contract, type and relationship of businesses involved in such contracts (e.g., subcontractors, suppliers, distributors, integrators) and, common industry contract terms or specifications, including without limitation, terms for contract duration, payment, warranties, maintenance and packaging, marking, and any other contract terms relevant to the proposed acquisition.

The information gathered through market research allows the agency to tailor the specifications, purchase description, terms, and conditions to the product and market conditions. While Section 11-35-2730 requires that "all specifications shall be drafted so as to assure cost effective procurement of the State's actual need and shall not be unduly restrictive," Regulation 19-445.2141(D) provides the agency specific guidance for drafting specifications or purchase description for COTS:

The agency's purchase description must contain sufficient detail for potential offerors of commercial products or COTS to know which products may be suitable. Generally, an agency's specification for COTS should describe the type of product to be acquired and explain how the agency intends to use the product in terms of function to be performed, performance requirement or physical characteristics. Describing the agency's needs in these terms allows offerors to propose products that will best meet the State's needs.

As evidenced by the Scope of Work that included a specifications sheet listing Eco Shuttle as the Make, SV-14 as the Model, and twenty-six required features, CCU determined that the ECO Shuttle model SV-14, manufactured by SVI, was a commercial product available off-the-shelf.

The Scope of Work did not include the name of the manufacturer or the name of any other products that might be suitable. This created a brand name specification as defined in Regulation 19-445-2140(A)(1):

“Brand Name Specification” means a specification limited to one or more items by manufacturers' names or catalogue number.

The Procurement Review Panel had the following observation regarding brand name specifications:

Regulation 19-445.2140 allows brand name specifications but explains:

The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose.

Specifications shall be drafted with the objective of clearly describing the State's requirements. All specifications shall be written in a nonrestrictive manner as to describe the requirements to be met.

To summarize, a specification can be restrictive so long as it is not "unduly" so - in other words, it must be written in such a manner as to balance the reasonable, objective needs of the State against the goal of obtaining maximum practicable competition.

*See In Re: Protest of Cambex Corporation, Appeal by Cambex Corporation, Panel Case No. 1992-7*

Since a “brand name” specification limits competition to the make and model of the products specified, the State requires an agency to make a written determination that:

The agency understands that a “Brand Name” specification is the least preferred type to be used in state procurements. It limits responses to include only the make and model products specified. Potentially equivalent products are not considered for award. The agency offers the following justifications:

1. The agency cannot identify the salient characteristics of the products to be procured because it lacks sufficient time or expertise.
2. The agency needs to standardize its inventory for maintenance or compatibility reasons.

The agency further certifies that it is not aware that the products specified qualify as sole sources. It believes that there are or may be multiple vendors that can offer a price on the makes and models specified.

*See Form MMO-139*

CCU issued this brand-name specification without making this required determination. In addition, the solicitation did not include a notice that this was a brand name specification or that the procurement was limited to a single manufacturer’s product. It is arbitrary to create a “brand name” procurement while ignoring the policy that requires a justification for such a procurement.

Further, the RFQ listed 26 specifications, and GMU’s bid met all of them. The RFQ also asked offerors to provide descriptive literature. Why list separate specifications and request product literature if CCU intended only to accept a bid for one specific model made by one manufacturer? It is arbitrary to list 26 specifications, request literature to see if the product meets those specifications, and then reject a bid that meets all of them.

One of the underlining purposes of the Code is to foster effective broad-based competition for public procurement within the free-enterprise system. The goal of the small-purchase procedures is to balance the cost and level of competition with the anticipated benefits and risks. A low-cost procurement that presents low risk does not warrant excessive competition to achieve the anticipated benefits. This procurement was issued under Section 11-35-1550(2)(b) which requires:

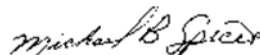
Three Written Quotes. Written request for written quotes from a minimum of three qualified sources of supply may be made and, unless adequate public notice is provided in the South Carolina Business Opportunities, documentation of at least three bona fide, responsive, and responsible quotes must be attached to the purchase requisition for a small purchase not in excess of twenty-five thousand dollars, or for a small purchase of commercially available off-the-shelf products not in excess of one hundred thousand dollars, or for a small purchase of construction not in excess of one hundred thousand dollars. The award must be made to the lowest responsive and responsible sources. The request for quotes must include a purchase description. Requests must be distributed equitably among qualified supplies unless advertised as provided above.

While CCU's advertisement of this procurement in SCBO relieved it of the requirement to solicit written quotes from a minimum of three qualified sources of supply, the fact that the only responsive quote was from the manufacturer raises concern that there may not be another source for this product and consequently no competition. In addition, if this brand-name specification limited competition to a single source, the procurement should have been processed under the sole-source provisions found in Section 11-35-1560.

## **DECISION**

This brand-name specification did not invite adequate competition and is unduly restrictive in violation of Section 11-35-2730 and Regulation 19-445.2140. The determination of non-responsiveness was also arbitrary. The award to SVI, Inc. is cancelled. Coastal Carolina University should resolicit these requirements with revised specifications. The protest of Gator Moto Utility Vehicles and More, LLC dba Moto Electric Vehicles is granted.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

# Attachment 1

**From:** [Brett Jackrel- Moto Electric Vehicles](mailto:Brett.Jackrel@MotoElectricVehicles.com)  
**To:** [Estimate@MFC](mailto:Estimate@MFC.com)  
**Subject:** [External] Solicitation Number and Title: CCJ-9300524 and Eco Shuttle, Battery Powered, Model SV-14,14-Person Capacity Shuttle,Opening Date and Time: 2/3/2023 and 11:00 AM EST  
**Date:** Monday, February 20, 2023 11:54:57 AM

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Toni,

We would like to protest this bid. Please advise why this is being awarded to SVI when we are lower in price (\$61,889.42) and we meet 100% spec and we confirmed we did. We also are more local to you guys and better at after sales support. We would like to protest this award.

Thank you  
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**Brett Jackrel**  
Sales Manager  
Moto Electric Vehicles

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 [www.MotoElectricVehicles.com](http://www.MotoElectricVehicles.com)



## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised July 2022)*

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 2022 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  
1105 Pendleton Street, Suite 209, 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.**