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GOVERNOR

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STATE TREASURER

BRIAN J. GAINES
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

BRUCE W. BANNISTER
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

Award Cancellation

Matter of: Forney LLC

File No.: 2026-138B

Posting Date: July 16, 2026

Contracting Entity: South Carolina Department of Transportation

Solicitation No.: 5400029516

Description: Universal Testing Machine

DIGEST

The Chief Procurement Officer¹ (CPO) cancels the award to Forney LLC (Forney) on the above solicitation due to the South Carolina Department of Transportation's (the Department) loss of funding with the expiration of the fiscal year. The Department's request to cancel the award is attached as Exhibit A.

AUTHORITY

The CPO conducted an administrative review pursuant to S.C. Code Ann. § 11-35-1520(7) and Regulation 19-445.2085. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND & DISCUSSION

On March 6, 2026, the Department issued a solicitation for bids to provide "Automatically Controlled Universal Testing Machine." [Exhibit B] By the deadline for receipt of bids, the Department received three bids including one from Forney. The Department determined Forney's bid to be the lowest responsive bid and on April 23

¹ Per Section 11-35-840, the CPO for Supplies and Services delegated this matter to the CPO for Construction and Information Technology.

posted a notice of Intent to Award a contract to Forney. [Exhibit C] On May 4, QuakeLogic, Inc., an actual bidder, protested. On May 6, the Department submitted a written exception to QuakeLogic's protest.

On June 10, the Department requested that the CPO cancel the intended award of a contract to Forney. This request states:

[State] funding for this equipment will not carry forward into the next fiscal year, and delivery of the equipment at this time is not possible due to an outstanding protest from May 6, 2026. The lead time on this equipment is more than seven (7) days. Even if a decision were reached in SCDOT's favor and sent out today, the earliest the agency could place an order would be June 23, provided no appeal was filed with the procurement review panel.

The Department's request took into consideration the stay on proceeding further with the award per Section 11-35-4210. Per this section, a party aggrieved by the CPO's protest decision may appeal within ten days and the stay remains in place during that time. If the tenth day falls on a weekend the last day to appeal is the next business day. In this case if the CPO issued his decision on the day of the Department's request, the last day to appeal would be June 22. As it is, Fiscal Year 2025-2026 ended on June 30, and the Department's funding for this procurement is no longer available.

Section 11-35-1520(7) authorizes the cancellation of awards or contracts after award but before performance in accordance with regulations promulgated by the Board. Regulation 19-445.2085(C) states:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies, services, information technology, or construction being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the purchasing agency discovered prior to performance, or
- (8) **For other reasons, cancellation is clearly in the best interest of the State.**

[emphasis supplied]

While the authority to cancel awards and solicitations should be exercised cautiously and sparingly, these provisions authorize the CPO to cancel an award of a contract before performance begins, when a compelling reason exists and one or more of the grounds listed in the Regulation are present. The loss of funding due to the ending of the fiscal year is a compelling reason. The State cannot spend funds that it does not have or is not authorized to spend; therefore, it is in the best interest of the State to cancel the award.

DECISION

For the foregoing reason, the CPO cancels the award of a contract to Forney and remands this matter back to the Department to proceed in accordance with the Procurement Code.

A handwritten signature in blue ink, reading "John St. C. White", is positioned above a horizontal line.

John St. C. White

Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determinations Appeal Notice (Revised July 2025)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:

(b) requests for review of other *written determinations*, decisions, *policies*, and *procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) *See generally Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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 2025 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 366, 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.