State Fiscal Accountability Authority
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

Protest Decision

Matter of:	Calder Brothers Corporation
File No.:	2026-140
Posting Date:	August 7, 2026
Contracting Entity:	South Carolina Department of Transportation
Solicitation No.:	5400029348
Description:	Asphalt Distributor – Truck Mounted

DIGEST

Protest by Calder Brothers Corporation (Calder) granted where specifications have a latent ambiguity affecting award. The Protest of Calder is attached as Exhibit A.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer (CPO) conducted an administrative review of protests filed by Calder. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

On March 17, 2026, the South Carolina Department of Transportation (DOT) issued a solicitation for bids to provide truck mounted asphalt distributors and truck cab-chassis. (Exhibit B) The bid schedule in the solicitation asked for unit price bids for four line items:

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
1	3	each		
Item Description: Truck Mounted Core Rig				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
2	3	each		
Item Description: Cab Chassis				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
3	3	each		
Item Description: Optional camera system and associated installation hardware				
Tendering Text: Quantities are estimates only.				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
4	3	each		
Item Description: Asphalt distributor equipment only				
Tendering Text: Option to use existing SCDOT owned Cab/Chassis. Quantities are estimates only.				

[highlighting added] On April 7, DOT issued Amendment 1 to the solicitation. (Exhibit C) This amendment modified the item description for the first line item in the Bidding Schedule:

BIDDING SCHEDULE (NOV 2007)

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
1	3	each		
Item Description: ~~Truck Mounted Core Rig~~ Distributor Platform				

By the deadline for receipt of bids, DOT received three bids, one from Calder, one from Blanchard Machinery Company (Blanchard), and one from Ascendum Machinery, Inc. (Ascendum). (Exhibit D) After evaluating bids, DOT determined Blanchard to be the lowest responsive and responsible bidder. DOT found Calder's bid to be nonresponsive for adding the following remarks to its bid on line item 2 Cab Chasis:

Bidder's remarks concerning item

Due to engine emissions changes starting January 1, 2027, Freightlinerchassis pricing is ONLY valid through December 2026. Chassis deliverydays is subject to change based on Freightliner backlog at time ofreleased order.

(Exhibit E)

On May 14, DOT posted a notice of its intent to award a contract to Blanchard.[1] (Exhibit F) On May 15, Calder protested. On May 29, DOT responded. (Exhibit G)

DISCUSSION

Calder protests that Blanchard's pricing structure indicates an "apparent pricing inconsistency" that is materially inconsistent with the bids submitted by Calder and Ascendum. Although the protest fails to identify the cause of the inconsistency, the protest essentially argues that the solicitation contained a latent ambiguity regarding the pricing. "As a general rule, an agency must provide offerors with a sufficiently detailed solicitation that enables them to compete intelligently and on a relatively equal basis." *DocMagic, Inc.*, B-415702.2 (Comp. Gen. 2018). Thus, solicitations must be free from any ambiguities that prejudice bidders. While a challenge to a patent (i.e., obvious) ambiguity is generally waived unless protested at the solicitation stage, a challenge to a latent ambiguity may be protested at the award stage.

Unlike patent ambiguities, which are clear from face of document, a latent ambiguity arises from a collateral matter when the document's terms are applied or executed. Black's Law Dictionary 80 (7th ed. 1999). "A latent ambiguity is hidden or concealed, not apparent on the face of the document, could not be discovered by 'reasonable and customary care[,] and is not so patent and glaring as to impose an affirmative duty on plaintiff to seek clarification.'" *Eagle Hill Consulting*, LLC v. U.S., 171 Fed. Cl. 115, 136 (2024). "Under the rule of *contra proferentem*, a latent ambiguity is resolved against the Government as drafter of the solicitation." *Guzar Mirbachakot Transp. v. U.S.*, 104 Fed. Cl. 53 (2012). "While it is not necessary for the finding of an ambiguity that the interpretation of the protesting party be the most reasonable one, the party

[1] The line item numbers DOT uses in the notice of intent to award do no match those in the solicitation. However, the description in the notice of intent to award makes a straightforward exercise to match the line item numbers to the numbers used in the solicitation. For example, in the notice of intent to award the Distributor Platform is line item 4 while in the amended solicitation it is line item 1. In its protest, Calder uses the line-item numbers in DOT's notice of intent to award.

is, nevertheless, required to show that its interpretation of the requirement in issue is reasonable." *Vitro Serv. Corp.*, B-233040 (Comp. Gen. 1989). If the protestor's interpretation and the government's interpretation are both reasonable, the protestor will generally prevail. *CGS-SPP Sec. Joint Vent. v. U.S.*, 158 Fed. Cl. 120 (2022).

Here, Line Item 1 of the bid schedule asks bidders to bid on a "Distributor Platform." (Ex. C). The solicitation does not define the term "Distributor Platform" and it is not otherwise referenced outside the bid schedule. According to Merriam-Webster's online dictionary, a "platform" has several meanings. *See* https://www.merriam-webster.com/dictionary/platform (last visited July 30, 2026). While it can be defined as "a structure incorporating or providing a platform," such as a "viewing platform," it can also be defined as "a vehicle used … to carry a usually specified kind of equipment" or "a basic pattern (such as the chassis) upon which an automobile or class of automobiles is constructed."

Calder interpreted the line item for "Distributor Platform" as requesting "complete unit pricing." It structured its bid in a way that the line items for the chassis and equipment roughly equaled the amount it bid for the complete unit. Ascendum likewise interpreted the bid schedule this way, bidding an amount for the "Distributor Platform" that equaled the sum of the amounts it bid for the chassis and equipment. *See Vitro Serv*., *supra* ("Finally, the fact that two of the four offering firms were rejected for the same reason tends to reenforce the notion that there existed a latent ambiguity in the specifications."). The CPO finds that Calder's interpretation was reasonable.

DOT, however, suggests that "Distributor Platform" was not for the complete unit, but rather simply a platform: "the Distributor Platform that is to be combined with the Cab Chassis." While the CPO also finds this interpretation reasonable, it merely demonstrates the ambiguity of the term "Distributor Platform." There are two reasonable interpretations that create an ambiguous line item on the bid schedule. Given that Calder need not prove that its interpretation is the "most reasonable" of the two and given that latent ambiguities are resolved against the government which drafted the solicitation, the CPO grants Calder's protest.[2]

---

[2] The foregoing does not mean that DOT can award a contract to Calder. As noted in the Background section of this decision, DOT found Calder's bid nonresponsive. Calder's protest fails to address its nonresponsiveness other than to assert that "[a]bsent the pricing anomaly … Calder Brothers Corporation would have been the apparent low

DECISION

For the foregoing reasons, the CPO grants the protest of Calder and remands this matter to DOT to proceed in accordance with the Procurement Code.

John St. C. White
Chief Procurement Officer

Columbia, South Carolina

---

bidder for the complete unit category." It is possible Calder is unaware that DOT found its bid nonresponsive. The CPO is not aware that Calder requested the procurement file per Section 11-35-710(F) to which a response would have provided this information. Nor does the CPO have any record that DOT otherwise notified Calder that it was nonresponsive. Moreover, such notification is not required by the Procurement Code.

The Procurement Code provides that award will be made "to the lowest responsive and responsible bidders [sic] whose bid meets the requirements set forth in the invitation for bids." S.C. Code Ann. § 11-35-1520(10). A "responsive bidder" is "a person who has submitted a bid ... which conforms in all material aspects to the invitation for bids." S.C. Code Ann. § 11-35-1410(9). Likewise, the solicitation states:

> Award will not be made on a nonresponsive offer. An offer is nonresponsive … if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation's material requirements.

Calder qualified its bid pricing on line item 2 stating:

> Due to engine emissions changes starting January 1, 2027, Freightlinerchassis [sic] pricing is ONLY valid through December 2026. Chassis deliverydays [sic] is subject to change based on Freightliner backlog at time ofreleased [sic] order.

(Exhibit E) Pricing is always material, and by placing a condition on its pricing, Calder's bid was nonresponsive.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2025)

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

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 Globals, 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.