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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: Gas and Supply Carolinas, LLC
File No.: 2024-104
Posting Date: August 31, 2023
Contracting Entity: Midlands Technical College
Solicitation No.: 5400025806
Description: Power Wave 300C Advanced Lincoln Educational Materials

DIGEST

The Chief Procurement Officer grants protest of an intent to award a sole source contract where the governmental body posting the intent to award acknowledges that what it seeks to acquire is available from more than one source. Gas and Supply Carolinas, LLC's (GSC) protest is attached as Exhibit A.

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

The facts pertinent to this decision are:

- On August 17, 2023, Midland's Technical College (the College) posted a notice of intent to award a sole source contract to ARC3 Gases for:

1. Power Wave 300C Advanced Lincoln Educational One-Pak
 2. 2.15' Magnum Pro Curve 300 Lincoln MIG Guns Ready-Pak.
- On August 18, 2023, GSC submitted its protest noting that it could supply the materials the College intended to obtain from ARC3 Gases.
 - On August 18, 2023, the College sent an email to the CPO acknowledging that the items it sought to obtain from ARC3 Gases were available from more than one source and stating the College intended to cancel the intent to award a sole source contract to ARC3 Gases.
 - On August 22, 2023, the College published a solicitation in South Carolina Business Opportunities for the same items it sought to obtain from ARC3 Gases as a sole source.

DECISION

Based on the Colleges acknowledgment that ARC3 Gases is not the only source for the products it sought to acquire, the CPO grants GSC's protest and vacates the College's intent to award a sole source contract to ARC3 Gases.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2023)

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 2023 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**

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.

Exhibit A

From: [Protest-MMO](#)
To: [MMO - Procurement](#); [Shealy, Voight](#); [Skinner, Gail](#)
Subject: FW: [External] RFX# 5400025806
Date: Friday, August 18, 2023 11:01:44 AM
Attachments: [Midlands Tech Lincoln Quote 081823.pdf](#)

From: Rhett Scott <rhett.scott@gasandsupply.com>
Sent: Friday, August 18, 2023 11:01:19 AM (UTC-05:00) Eastern Time (US & Canada)
To: Protest-MMO <protest-mmo@mmo.state.sc.us>
Subject: [External] RFX# 5400025806

I am with Gas and Supply in Cayce SC and we are an authorized Lincoln Electric distributor in SC.

We have an existing account with Midlands Tech.

I would like to submit the following pricing:

16 LIN K4934-1 Powerwave 300C Advanced Lincoln Edu One-Pak
\$11625.97ea
10 LIN K2951-2-6-45 15' Magnum Pro Curve 300 MIG Guns Ready-Pak
\$363.01ea

I have attached a formal quote to this email.

It looks like the "Estimated cost to the college" of \$186,503 may be based off of previous older pricing. That pricing does not seem to be based on current Lincoln Electric educational discount pricing.

Let me know if you have any questions or concerns.

Thanks,

Rhett Scott
Senior Account Manager
Gas and Supply
Cayce SC
803-944-5012



How are we doing? [Click here to take our survey.](#)

South Carolina Business Opportunities

Published by Division of Procurement Services - Delbert H. Singleton, Jr., Division Director

Ad Category: Sole Source and Emergency

Notice Start Date: August 17, 2023

Notice End Date: August 24, 2023

Vendor Name: ARC3 Gases

Contract Amount: \$186,503

Agency Procurement Manager: Rina Drescher

Agency Procurement Manager Email: drescherr@midlandstech.edu

Agency Procurement Manager Telephone#: 803-822-3209

The Agency hereby provides notice that it intends to enter into a sole source contract per S.C. Code Ann. §11-35-1560 with Vendor for the following supplies, services, information technology, or construction:

1. Power Wave 300C Advanced Lincoln Educational One-Pak
2. 15' Magnum Pro Curve 300 Lincoln MIG Guns Ready-Pak

Agency's justification for a sole source procurement may be viewed or immediately obtained at: Agency Procurement Manager (Listed Above)

PROTESTS:

Any actual or prospective bidder, offeror, contractor, or subcontractor aggrieved in connection with the intended award or award of this sole source contract, shall notify the appropriate chief Procurement officer in writing of its intent to protest within five (5) business days of the date this notice is posted. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this sole source 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 set forth below within fifteen days of the date this notice is posted; except 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.

A protest must be in writing, filed with the appropriate chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the appropriate chief procurement officer within the time provided above. Days are calculated as provided in S.C. Code Ann. § 11-35-310(13).

Any Notice Of Intent To Protest And Protest Must Be Addressed To: Materials Management Officer

South Carolina Business Opportunities • SCBO Team • 1201 Main Street, Suite 600 • Columbia, SC 29201
803-737-0600 • scbo@mmo.sc.gov • <https://scbo.sc.gov> • <https://procurement.sc.gov>



Exhibit C

From: [Latitia V. Trezevant](#)
To: [White, John](#); [Rina Drescher](#)
Cc: [Spicer, Michael](#); [Craig, Kimber](#)
Subject: RE: [External] RFX# 5400025806
Date: Friday, August 18, 2023 5:51:19 PM
Attachments: [image001.png](#)
[image003.png](#)
[Re FW RFX# 5400025806 - GAS AND SUPPLY - PROTEST TO THE INTENT TO SOLE SOURCE.msg](#)

Good afternoon, John!

Thanks for your email notification of the protest of the College's Intent to Sole Source (Rfx #5400025806).

After conducting marketing research, the Procurement Officer determined there were several possible offerors. Therefore, the Procurement Officer, initially, issued an IFB (<https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400025681>) for the proposed purchase. The IFB was posted on August 8, 2023 and offers were due on August 16, 2023. Vendors were notified via email of the advertisement. The College did not receive any offers from vendors for the proposed purchases on IFB #5400025681. Therefore, the Procurement Officer issued an Intent to Sole Source. Upon advertisement of the Intent to Sole Source, the Procurement Officer received two vendors' responses. One requesting an opportunity to submit a quote and the other, Mr. Rhett Scott, notified us of his protest of the Intent to Sole Source.

Mr. Rhett Scott was notified on today of the College's intent to cancel the Intent to Sole Source on Monday, August 21, 2023. He was also notified of the College's intent to re-solicit the services as an IFB on next week. Mr. Rhett Scott's response, to the College, is attached to this email. Both representatives have updated their companies' information in SCEIS and the College, now, has both representatives listed as the primary contacts for their companies.

In closing, please let me know if you have any questions and/or concerns.

Have a wonderful evening,

Latitia V. Trezevant



Latitia V. Trezevant, Procurement Director
Within the Division of Auxiliary, Support Services & Internal Audit
Midlands Technical College
trezevantl@midlandstech.edu
P: 803.822.3597
F: 803.822.3078
www.midlandstech.edu

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Office Hours:

Mondays – Thursdays – 8 a.m. to 5 p.m.

Fridays - 8 a.m. to 1:30 p.m.

**“If you make listening and observation your occupation,
you will gain much more than you can by talk.**

Robert Baden-Powell”

From: White, John <jswhite@mmo.sc.gov>

Sent: Friday, August 18, 2023 4:41 PM

To: Rina Drescher <drescherr@midlandstech.edu>

Cc: Latitia V. Trezevant <trezevantl@midlandstech.edu>; Spicer, Michael <mspicer@mmo.sc.gov>;
Craig, Kimber <kcraig@mmo.sc.gov>

Subject: FW: [External] RFX# 5400025806

[ATTENTION: This email was sent from an external source. Open attachments and links with caution.]

Please see the below intent to protest Midland’s Technical College’s intent to award a sole source contract to ARC3 Gases for 1) Power Wave 300C Advanced Lincoln Educational One-Pak and 2) 15’ Magnum Pro Curve 300 Lincoln MIG Guns Ready-Pak and proceed in accordance with the requirements of SC Code Section 11-35-4210.

John



John St. C. White | Materials Management Officer and State Engineer

Division of Procurement Services | SC State Fiscal Accountability Authority

1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-0768 |

From: Rhett Scott <rhett.scott@gasandsupply.com>

Sent: Friday, August 18, 2023 11:01 AM

To: Protest-MMO <protest-mmo@mmo.state.sc.us>

Subject: [External] RFX# 5400025806

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