

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	
)	
)	ORDER
IN RE:)	MOTION TO QUASH AND/OR FOR
)	PROTECTIVE ORDER
Appeal by Palmetto Traffic Group, LLC;)	Case No. 2014-3
Appeal by Short Counts, LLC)	Case No. 2014-4
)	
RFP No. 5400006878)	
Traffic Data Collection Services for the)	
South Carolina Department of Transportation))	

These cases are before the South Carolina Procurement Review Panel (the Panel) for further administrative review pursuant to sections 11-35-4210(6) and 11-35-4410(1) of the Consolidated Procurement Code. Pursuant to the authority granted by section 11-35-4410(4)(a)(ii), the Panel's attorney executed a subpoena at the request of Palmetto Traffic Group, LLC (Palmetto), and Short Counts, LLC, which directed Quality Counts to produce certain documents relating to the issues pending before the Panel. Quality Counts objected to portions of the subpoena and requested that it be quashed or that a protective order be issued. With the consent of the parties, the Panel Chairman conducted a telephonic hearing on Quality Counts' motion on July 15, 2014, and issued a ruling on behalf of the Panel.¹ During the conference call, Palmetto and Short Counts were represented by E. Wade Mullins, III, Esquire. John E. Schmidt, III, Esquire, represented Quality Counts. Amanda T. Taylor, Esquire, represented the South Carolina Department of Transportation (SCDOT), and W. Dixon Robertson, III, Esquire, represented the Chief Procurement Officer for Supplies and Services (the CPO).

¹ The parties were informed regarding the substance of the Chairman's decision via e-mail on the afternoon of July 15, 2014. This order serves to formalize that decision.

Findings of Fact

The following facts are relevant to the motion to quash. On July 7, 2014, the Panel's attorney executed a document subpoena to Quality Counts at the request of Palmetto and Short Counts, and Quality Counts' counsel was served with the subpoena on July 8, 2014. That subpoena is attached and is incorporated herein by reference. [Panel Exhibit 1]. Exhibit A to the subpoena listed and sought the production of twenty-three (23) categories of documents by 3:00 p.m. on July 14, 2014. On July 10, 2014, Quality Counts interposed a written objection to portions of the subpoena and requested the Panel to quash the subpoena and/or enter a protective order. Quality Counts' objection and motion are attached and incorporated herein by reference. [Panel Exhibit 2].

Conclusions of Law

In its objection and motion to quash, Quality Counts first asserts that Palmetto and Short Counts' request of documents related to pricing and cost estimates "seeks material which is confidential, trade secret and is protected by privileges and by law." Quality Counts directs this objection to Items 1, 3, 4, 7, 9, 10, 12, 15, 17, 18, 19, 20, 21, and 22 in Exhibit A of the subpoena. In particular, Quality Counts argues that it relies on "a proprietary, highly confidential and trade secret bid spreadsheet to calculate its bids in all of its bids." Although this spreadsheet would be responsive to the subpoena, Quality Counts asserts that revealing it "to any outside party would irreparably damage Quality Counts, in that the trade secret methodology for pricing its bids would no longer be private, but would be public, available to competitors to use to give them advantage over Quality Counts." Quality Counts seeks protection against

producing its proprietary spreadsheet and urges the Panel to apply the balancing test established by *Lafitte v. Bridgestone Corp.*, 381 S.C. 460, 674 S.E.2d 154 (2009).²

Palmetto and Short Counts dispute that the spreadsheet is a trade secret and contend that, even if it is, they are entitled to inspect it, or at least the underlying cost data, because the information is relevant and necessary to proving the issue of unbalanced bidding before the Panel.³ Palmetto and Short Counts also argue that a protective order would sufficiently address Quality Counts' objections. The Panel disagrees and finds that the spreadsheet is a trade secret or confidential information entitled to protection because its disclosure could enable other vendors to accurately predict Quality Counts' pricing in future solicitations. *Lafitte*, 381 S.C. at 475, 674 S.E.2d at 162; Rule 26(c)(7), South Carolina Rules of Civil Procedure; *see also In re: Protest of Masterclean, Inc.*, Panel Case No. 1996-10 (January 13, 1997) (wherein the Panel held that a non-party under subpoena did not have to produce proprietary documents which were part of its internal process for determining bid prices). Thus, Quality Counts has established the first element of the balancing test.

Turning to the next element of the balancing test, the Panel agrees that the spreadsheet is relevant to the issue of unbalanced bidding, which involves a comparison of bid prices to cost. However, the Panel finds that there are other methods of proof available to Palmetto and Short Counts, such as testimony from witnesses of Quality Counts and evidence from non-parties.⁴

² The *Lafitte* test involves a three part balancing inquiry: (1) the party opposing discovery must show that the information is a trade secret and that disclosure would be harmful; (2) if trade secret status is established, the party seeking discovery must show that the information is relevant and necessary to bring the matter to trial; and (3) the court must weigh the potential harm of disclosure against the need for the information in reaching a decision. 381 S.C. at 475, 674 S.E.2d at 161.

³ Palmetto and Short Counts point to the Panel decision in *Appeal by Advanced Imaging Systems, Inc.*, Panel Case No. 2013-7 (October 30, 2013), which established a three-part test for proving unbalanced bidding. The first two elements of the test require a comparison of bid prices to "cost." *Id.* at 8 – 9.

⁴ Indeed, the Panel notes that its analysis in *Appeal by Advanced Imaging Systems* did not rely on actual cost data from Advanced Imaging, but instead reviewed the prices of all of the bids submitted.

Thus, the Panel concludes that Palmetto and Short Counts have failed to show that they will be impaired in presenting their case on the merits to the Panel. Therefore, the Panel hereby quashes its subpoena to the extent that it calls for production of Quality Counts' spreadsheet.⁵

Quality Counts also asserted that many of the Items listed in the document subpoena seek privileged information, including attorney-client e-mail communications. Counsel for Palmetto and Short Counts assured the Chairman during the July 15th conference call that he did not intend to seek production of attorney-client communications and would consent to those e-mails being withheld by Quality Counts. Therefore, the Panel modifies its subpoena to exclude attorney-client e-mails. If Quality Counts asserts that the attorney-client privilege also applies to other documents which would otherwise be responsive to the subpoena, then Quality Counts may withhold such documents so long as it complies with the provisions of Rule 45(d)(2)(A) of the South Carolina Rules of Civil Procedure. All non-privileged documents which are responsive to the subpoena must be produced by Quality Counts to Palmetto Traffic Group and Short Counts' counsel by the close of business on Wednesday, July 16, 2014.

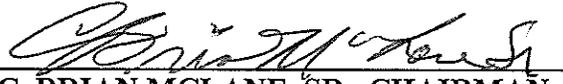
Finally, Quality Counts also argued that many of the Items listed in the document subpoena were overly broad, duplicative, and unrestricted as to time. The Panel disagrees, finding them to be reasonably limited in time and scope to the solicitation at issue before the Panel. Therefore, Quality Counts is directed to produce all responsive documents for which it did not claim protection for reasons of confidentiality to Palmetto Traffic Group and Short Counts' counsel by the close of business on Wednesday, July 16, 2014.

[SIGNATURE PAGE TO FOLLOW]

⁵ Having determined that Palmetto and Short Counts failed to establish the second element of the *Lafitte* balancing test, the Panel need not address the third element.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: 
C. BRIAN MCLANE, SR., CHAIRMAN

This 24th day of July, 2014.

Columbia, South Carolina

SUBPOENA

STATE OF SOUTH CAROLINA
 ISSUED BY THE SOUTH CAROLINA PROCUREMENT REVIEW PANEL
 IN THE COUNTY OF RICHLAND

In Re: Appeals by Palmetto Traffic Group, LLC, and Short Counts, LLC	Case Nos. 2014-3 and 2014-4
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To: Name: Quality Counts, LLC
 Address: 920 Blairhill Road, Suite 106
 Charlotte, NC 28277

 YOU ARE COMMANDED to appear before the above-named tribunal to testify in the above case at the place and time specified below:

PLACE:	DATE AND TIME:
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 X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

DOCUMENTS OR OBJECTS TO BE PRODUCED: See Exhibit A	
PLACE: Bruner, Powell, Wall & Mullins, LLC 1735 St. Julian Place, Suite 200 Columbia, SC 29204	DATE AND TIME: July 14, 2014 3:00 p.m.

This subpoena is issued upon application of the: Protestants	Attorney's Name and Address: E. Wade Mullins, III Bruner, Powell, Wall & Mullins, LLC Columbia, SC 29204
Issued by: SC Procurement Review Panel C. Brian McLane, Sr., Chairman (By Attorney for the Panel) Christie M. Emanuel	Date Issued: July 7, 2014

This subpoena is issued pursuant to S.C. Code Ann. Section 11-35-4410 (4).

THE SOUTH CAROLINA PROCUREMENT REVIEW PANEL

Duties in Responding to a Subpoena

A person responding to a subpoena to produce documents will produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim will be made expressly and will be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena will take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The SC Procurement Review Panel will enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

A person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the SC Procurement Review Panel. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time before the SC Procurement Review Panel for an order to compel the production. Such an order to compel production will protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely motion, the SC Procurement Review Panel shall quash or modify the subpoena if it:

(1) fails to allow reasonable time for compliance; or

(2) requires a person who is not a party or an officer, director, or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed, or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

(3) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(4) subjects a person to undue burden.

If a subpoena:

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(3) requires a person who is not a party or an officer, director, or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person;

the SC Procurement Review Panel may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the SC Procurement Review Panel may order appearance or production only upon specified conditions.

EXHIBIT A

1. Quality Count's original bid or pricing estimate and estimating file including backup calculations, or any cost studies or cost projections in your possession relating to the procurement of RFP #5400006878.
2. All correspondence, emails, reports, written analysis or other documents relating in any way to Quality Count's estimated monthly job costs for RFP #5400006878.
3. All correspondence, emails, reports, written analysis or other documents relating in any way to Quality Count's specific pricing for each of the line items set forth in the Bid or Pricing Schedule for RFP #5400006878.
4. All correspondence, emails, reports, written analysis or other documents relating in any way to Quality Count's home office actual and estimated overhead charges allocated for RFP # 5400006878.
5. All correspondence, including internal memos between the Quality Count's employees, and all documents and memos in your possession relating to the correspondence between Quality Counts and the owner, and any sub contractors regarding the procurement of RFP # 5400006878.
6. All records related to estimated work to be performed by your employees, representatives, or agents on RFP #5400006878.
7. All correspondence, emails, reports, written analysis or other documents relating in any way to Quality Count's manpower projections for the Project.
8. All documents which reflect the responsibilities of the various groups, individuals, or corporations involved in the procurement of RFP #5400006878.

9. All documents generated by Quality Counts which in any way relate to the procurement of RFP #5400006878.
10. All documents generated by any other person or entity which in any way relate to the procurement of RFP #5400006878.
11. All documents reflecting any communications regarding the procurement of RFP #5400006878.
12. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing cost estimates for the procurement of RFP #5400006878.
13. Any and all files, documents, communications, memos, correspondence, emails, or anything else related bid take offs for the procurement of RFP #5400006878.
14. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to the bid documents for the procurement of RFP #5400006878.
15. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing labor estimates for the procurement of RFP #5400006878.
16. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing payroll estimates for the procurement of RFP #5400006878.
17. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing expense estimates for the procurement of RFP #5400006878.
18. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing pricing estimates for the procurement of RFP #5400006878.
19. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing equipment estimates for the procurement of RFP #5400006878.
20. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing travel expense estimates for the procurement of RFP #5400006878.

21. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing overhead estimates for the procurement of RFP #5400006878.
22. Copies of any files or other documents used to prepare bid documents for the procurement of RFP # 5400006878.
23. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to the specific equipment that Quality Counts intends to use in its performance of the work contemplated in RFP #5400006878.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN RE: Protest of Palmetto Traffic Group,
LLC, and Short Counts, LLC;

Appeal by Short Counts, LLC and
Appeal by Palmetto Traffic Group, LLC

SC Department of Transportation
Solicitation No. 5400006878
Traffic Data Collection Services

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

CASE NOS. 2014-3 and 2014-4

QUALITY COUNTS' AMENDED OBJECTION
AND MOTION TO QUASH AND/OR FOR

PROTECTIVE ORDER
RECEIVED

STATE OF SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

DATE July 10, 2014

Quality Counts, LLC (Quality Counts), by and through his undersigned counsel, hereby assert to the South Carolina Procurement Review Panel (Panel) its objections to the subpoena issued for documents and its request to Quash or for a Protective Order against the production of certain of the requested information for the reasons herein, all of which are well-established in law.

ARGUMENT

Short Counts, LLC (Short Counts) and/or Palmetto Traffic Group, LLC (PTG) have requested, via subpoena, that certain records be produced by Quality Counts. While Quality Counts is willing to bring certain requested information without objection, other of the requested information is sought in contravention of well-established rights of Quality Counts, and so it objects.

As an initial matter, this subpoena is overly broad, unduly burdensome and not reasonably limited to relevant material. The subpoena also seeks documents unlimited in time, or author in any way. As a result, the subpoena demands documents that are actually attorney client communications of the undersigned with his client, as well as work product of the undersigned.

The requests are simply and excessively broad, and therefore Quality Counts objections should be sustained. *See* SCRC 26 ("The frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.)

Additionally, and critically, the subpoena covers material that is the most sensitive and confidential, trade secret data that Quality Counts possesses - its lifeblood, namely, its methodology for pricing its bids. Quality Counts uses a proprietary, highly confidential and trade secret spreadsheet to compose its bid pricing. That spreadsheet and any image thereof, if revealed to any outside party, would irreparably damage Quality Counts, in that the trade secret methodology for pricing its bids would no longer be private, but would be public, available to competitors to use to give them advantage over Quality Counts.

This is exactly the kind of information that the law has long recognized protection from parties - even in litigation - from producing. It is protected by statute under South Carolina's FOIA laws.

Our Supreme Court in *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 674 S.E. 2d 154 (2009) quoted with approval the statement of the Supreme Court of Indiana about Trade Secrets:

Trade secrets are unique creatures of the law, not property in the ordinary sense, but historically receiving protection as such. Unlike other assets, the value of a trade secret hinges on its secrecy. As more people or organizations learn the secret, the value quickly

diminishes. For this reason, owners or inventors go to great lengths to protect their trade secrets from dissemination.

The value of trade secret protection to a healthy economy has been widely accepted for some time. Over the last two hundred years, the law has developed mechanisms for accomplishing this end.

Bridgestone Am. Holding, Inc. v. Mayberry, 878 N.E.2d 189, 192 (Ind. 2007).

The South Carolina Rules of Civil Procedure also provide for the protection of trade secret information when such information is sought during discovery. Specifically, Rule 26(c), SCRCPP, allows for protective orders under certain circumstances as follows:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following: ... (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

The test for protection is a three part balancing inquiry:

1. The party opposing discovery must show that the information sought is a trade secret and that disclosure would be harmful.
2. If trade secret status is established, the burden shifts to the party seeking discovery to show that the information is *relevant and necessary* to bring the matter to trial.
3. If both parties satisfy their burden, the court must *weigh the potential harm of disclosure against the need for the information* in reaching a decision.

Laffitte, supra.

To obtain such Trade Secret information, a party seeking it has the burden to establish a "substantial need" for the information, and that its disclosure is both "relevant and necessary."

See also Mayberry, supra, 878 N.E.2d at 193; *Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*, 107 F.R.D. 288, 292-93 (D.Del.1985).

Applying this test, here, the fact that documents which determine and define what price a company will bid in all of its past and future competitive bids is confidential and Trade Secret is hardly debatable. However, if the Panel requires an Affidavit Quality Counts can and will supply one. Here also, the claimants have not met their burden to show both relevance and necessity. Specifically, they have not shown that there is no other way to prove their case. Finally, even if they could show that, the harm of providing for use in a public forum materials that determine and define what price a company will bid in all of its past and future competitive bids is self evident. Quality Counts would forever lose any strategic and competitive edge it may have gained through its hard earned efforts. Thus, the harm of disclosure far outweighs any benefit of disclosure.

However, the harm from disclosure does not stop with the harm to Quality Counts. Here, if under South Carolina's Procurement processes, a South Carolina vendor or bidder is required to disclose this kind of trade secret information - the way it decides its bid price - South Carolina will be in serious jeopardy of not getting any more bids from reputable businesses who need to protect their confidential and trade secret materials. This is contrary to the goals of the Consolidated Procurement Code of promoting competition.

South Carolina law has recognized that a party seeking the information cannot merely assert unfairness, but must demonstrate with specificity exactly how the lack of the information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat; and implicit in this requirement is the notion that suitable substitutes must be completely lacking. *See Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 674 S.E.

2d 154 (2009). Where reasonable alternative means are available to prove a party's claim, the request must also be denied. *Id.* In *Laffitte*, the Supreme Court accepted an emergency form of jurisdiction to order that Bridgestone did not have to turn over trade secret data because there were other possible, and reasonable means for the claimant to establish the facts of its case.

Here, as we show, the information is trade secret and confidential material of the highest order - information on how the company will determine the price it will "bid" in a competitive market in all competitive bids past and future; and this information is not shared outside the highest levels of the company and is protected by proper confidentiality agreements. Further, given the test of the issue in this case on unbalanced bidding, it is entirely possible and reasonable for the protestant to prove its case using other less intrusive means such as the testimony of witnesses for the company, as well as evidence from non-parties.

SPECIFIC OBJECTIONS

Specifically, the following requests in the subpoena are objectionable for the reasons below. The subpoena request is set forth with its corresponding number, and the Objection and Response of Quality Counts follows each one.

1. **Quality Count's original bid or pricing estimate and estimating file including backup calculations, or any cost studies or cost projections in your possession relating to the procurement of RFP #5400006878.**

RESPONSE: Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law. Quality Counts uses a proprietary, highly confidential and trade secret bid spreadsheet to calculate its bids in all of its bids. Like all contractors, this material is held in the highest confidence and is not, and cannot

be shared publicly or with persons who could share it with competitors, as to do so would put Quality Counts and an extreme and permanent disadvantage in the marketplace. All other competitors would have access to Quality Counts bid approach, but Quality Counts would not have equal access to their competitor's data. Other than this document, there are no documents responsive.

3. All correspondence, emails, reports, written analysis or other documents relating in any way to Quality Count's specific pricing for each of the line items set forth in the Bid or Pricing Schedule for RFP #5400006878.

RESPONSE: See Number 1.

4. All correspondence, emails, reports, written analysis or other documents relating in any way to Quality Count's home office actual and estimated overhead charges allocated for RFP # 5400006878.

RESPONSE: See Number 1. Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law.

5. All correspondence, including internal memos between the Quality Count's employees, and all documents and memos in your possession relating to the correspondence between Quality Counts and the owner, and any sub contractors regarding the procurement of RFP #5400006878,

RESPONSE: Quality Counts objects that this request is vague as to time. Regarding the RFP and proposal process period at issue, other than the published RFP, and the lawful communications between the State and the proposers, there were none. See those documents in the state's bid file, and the proposal of Quality Counts as submitted.

7. All correspondence, emails, reports, written analysis or other documents relating in any way to Quality Count's manpower projections for the Project.

RESPONSE: See Number 1. Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law.

9. All documents generated by Quality Counts which in any way relate to the procurement of RFP#5400006878,

RESPONSE: Quality Counts objects to this subpoena request because it is vague, unclear as to time, overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law, including attorney client communications. Subject to these objections, Quality Counts can supply its Proposal.

10. All documents generated by any other person or entity which in any way relate to the procurement of RFP #5400006878.

RESPONSE: Quality Counts objects to this subpoena request because it covers documents by Quality Counts lawyer, as well as any other person or business. It is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law.

11 . All documents reflecting any communications regarding the procurement of RFP #5400006878.

RESPONSE: Quality Counts objects to this subpoena request because it is so broad that it even covers documents by Quality Counts' own lawyer, as well as any other person or business. Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law.

12. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing cost estimates for the procurement of RFP 115400006878.

RESPONSE: See Number 1. Except as objected to in Number 1, Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law.

14. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to the bid documents for the procurement of RFP #5400006878.

RESPONSE: Quality Counts objects to this subpoena request because it is so broad that it even covers documents by Quality Counts' own lawyer, as well as any other person or business. It is vague and unrestricted to time, person or subject. Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law.

15. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing labor estimates for the procurement of RFP #5400006878.

RESPONSE: See Number 1. Except as objected to in Number 1, Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law.

17. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing expense estimates for the procurement of RFP #5400006878.

RESPONSE: See Number 1. Except as objected to in Number 1, Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law.

18. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing pricing estimates for the procurement of RFP #5400006878.

RESPONSE: See Number 1. Except as objected to in number 1, these will be provided.

19. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing equipment estimates for the procurement of RFP #5400006878.

RESPONSE: See Number 1. Except as objected to in number 1, these will be provided.

20. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing travel expense estimates for the procurement of RFP #5400006878;

RESPONSE: See Number 1. Except as objected to in number 1, these will be provided.

21. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to preparing overhead estimates for the procurement of RFP 45400006878.

RESPONSE: See Number 1. Except as objected to in number 1, these will be provided.

22. Copies of any files or other documents used to prepare bid documents for the procurement of RFP # 5400006878.

RESPONSE: See Number 1. Except as objected to in Number 1, the documents are the RFP and other communications from the State to all bidders.

23. Any and all files, documents, communications, memos, correspondence, emails, or anything else related to the specific equipment that Quality Counts intends to use in its performance of the work contemplated in RFP #5400006878,

RESPONSE: Quality Counts objects to this subpoena request because it is overly broad, unduly burdensome, not reasonably restricted to relevant evidence, seeks material which is confidential, trade secret and is protected by privileges and by law. Subject to this RESPONSE, the Proposal provides the information on the equipment proposed.

CONCLUSION

The Panel should sustain the objections of Quality Counts to the subpoena issued for documents and Quash or grant a Protective Order against the production of the information objected to as identified above.

[signature block moved to next page]

Schmidt & Copeland LLC

/s John E. Schmidt, III

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ATTORNEYS FOR QUALITY COUNTS, LLC

July 10, 2014