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Written Determination

Matter of: Cancellation of Award to Hammerhead Utilities

Case No.: 2017-002

Posting Date: February 14, 2017

Contracting Entity: University of South Carolina

Solicitation No.: Project #H27-Z185

Description: West Energy Sewer Line

This matter is before the Chief Procurement Officer for Information Technology¹ (CPO) pursuant to a request from the University of South Carolina (USC) [Ex. 1] under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), and Regulation 19-445.2085(C) to cancel an award to Hammerhead Utilities for the West Energy Sewer Line project, prior to performance due to an administrative error during the procurement process discovered after award but prior to performance.

BASIS FOR THE REQUEST

USC issued this project on or about September 1, 2016 for a contractor to replace 6” sanitary sewer lines at the southeast quadrant of Blossom Street and South Main Street. The original bid closing date and time was September 29, 2016. A pre proposal conference was held on

¹ The Materials Management Officer delegated the administrative review of this request to the Chief Procurement Officer for Information Technology.

September 15, 2016 and USC issued Addendum No. 1 on September 21, 2016, changing the bid opening date and time to October 5, 2016, at 2:30 PM. (Ex 2) However due to an administrative error, bids were opened on September 29, 2016, instead of October 5, 2016, and an Intent to Award was issued to Hammerhead Utilities on October 3, 2016. (Ex 3)

USC requests cancellation of the award prior to performance in accordance with Regulation 19-445.2085(C):

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:

(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.

DETERMINATION

For the reasons stated above, the award to Hammerhead Utilities is cancelled under Regulation 19-445.2085(C).



Michael B. Spicer
Chief Procurement Officer for Information
Technology

Exhibit 1



October 12, 2016

University of South Carolina
Facilities Center
743 Greene Street
Columbia SC 29208

Mr. White,

West Energy Sanitary Sewer, project H27- Z185 was advertised in SCBO for a Prebid conference on September 15, 2016 and bid closing on September 29, 2016. When Addendum One was posted it stated the bid closing date was October 5, 2016 in error and not caught until after the posting of the Notice of Intent to Award on October 3, 2016.

October 5th was a day off because of hazardous weather from Hurricane Matthew. We have since been contacted by a contractor asking when we are going to reschedule due to the university being closed on October 5, 2016. Due to this oversight by the Procurement team, the University is requesting that you will allow us to cancel the Notice of Intent to Award to Hammerhead Utilities to be rebid at a later time.

If you should have any questions, please let me know.

Attached is the documentation related to this procurement.

Regards,

A handwritten signature in cursive script that reads 'Clarissa G. Clark'.

Clarissa G. Clark, CPPO, CPPB
Procurement Manager

Approved By: _____
Date: _____

Exhibit 2



ADDENDUM NO. 1

Date: September 21, 2016
Distribution: Bidders via <http://purchasing.sc.edu>
Project: West Energy Sanitary Sewer
Project Number: H27-Z185

This document comprises Addendum No. 1, and forms a part of the Contract Documents and modifies the original bidding documents as noted herein. Acknowledgement of the receipt of this Addendum in the space indicated on the Proposal Form is required. Failure to do so may subject Bidder to disqualification.

Bid Opening:

Bid Date and Time: October 5, 2016 at 2:30pm
University of South Carolina
743 Greene Street
Columbia, SC 29208

Bidders are responsible for having their bid at the designated room for receiving bids no later than the time set for the bid opening. Once the bid has been declared closed, all late bids, including bids improperly delivered, shall be rejected as being non-responsive.

The bids sent by Courier should be addressed to (Mailing is not recommended):
University of South Carolina
743 Greene Street
Columbia, SC 29208
Attn: Hatice Hikmet

Contract Issues:

- a 5% bid bond is required
- successful bidder will be required to provide a payment and performance bond
- all bid documents are available at <http://purchasing.sc.edu>. It is important that all bidders check the website periodically for any new postings.
- specified contract length is 30 days and liquidated damages are posted as \$200 per day.

-insurance requirements are listed in OSE Form 00811 Standard Supplementary Conditions of the project manually. The requirements will not be waived or modified.

-There is no specified DBE goal. The University encourages the involvement of small and minority businesses in all of their projects.

Questions

No questions were received by the specified deadline.

Pipeline Video

A video of the existing pipeline performed in May of 2015 is available for viewing only at the following link.

<http://facilities.sc.edu/docstore/>

This video does not relieve the contractor of submitting a pre-construction video as required in the constructed documents.

Attachment: Pre-Bid Meeting Attendance Sheets

Exhibit 3

2016 Edition

**SE-370
NOTICE OF INTENT TO AWARD**

AGENCY: University of South Carolina
PROJECT NAME: West Energy Sanitary Sewer
PROJECT NUMBER: H27-Z185

POSTING DATE: 10/3/2016

TO ALL BIDDERS:

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below. The successful bid will be accepted and the contract formed by execution of the contract documents. All bid bonds remain in effect for the bid acceptance period as provided in Section 4 of the Bid Form, except as otherwise provided in the Instructions to Bidders.

NAME OF BIDDER: Hammerhead Utilities

DATE BIDS WERE OPENED: 09-29-16

BID INFORMATION:

BASE BID AMOUNT:			\$ <u>136,200.00</u>
ALTERNATES:	#1	ACCEPTED <input type="checkbox"/>	\$ _____
	#2	ACCEPTED <input type="checkbox"/>	\$ _____
	#3	ACCEPTED <input type="checkbox"/>	\$ _____
TOTAL AWARD (BASE BID AND ACCEPTED ALTERNATE(S)):			\$ <u>136,200.00</u>

REMARKS (explain any negotiations that resulted in a change in any Bid amounts): _____

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work prior to (1) delivering to the Agency both certificates of insurance and Performance and Payment Bonds meeting the requirements of the solicitation; and (2) receipt of the Agency's written Notice to Proceed. The State assumes no liability for any expenses incurred by the Contractor prior to issuance of a Notice to Proceed, other than the Contractor's non-reimbursable costs incurred in providing such bonds.

RIGHT TO PROTEST (SC Law Section 11-35-4210)

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may protest within ten (10) days of the date the Notice of Intent to Award is posted. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: protest-osc@mmo.sc.gov, (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

	_____
<i>(Agency Procurement Officer Signature)</i>	<u>Hatice Hikmet</u> <i>(Print or Type Name)</i>

INSTRUCTIONS TO THE AGENCY:

1. Post a copy of this form at the location specified by the Instructions to Bidders and announced at the Bid Opening.
2. Send a copy of this form and the final Bid Tabulation to all responsive Bidders and OSE.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determinations Appeal Notice (Revised November 2016)

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>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 111.1 of the 2016 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 473, 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.