

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
IN THE MATTER OF: PROTEST)
)
BUILDING TECHNOLOGY)
ASSOCIATES)
)
V.)
)
CLEMSON UNIVERSITY)
)
THERMAL MOISTURE PROTECTION)
INDEFINITE DELIVERY CONTRACT)
STATE PROJECT NO. H12-D185-JM)
_____)

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

DECISION

CASE No. 2013-009

**POSTING DATE:
FEBRUARY 21, 2013**

This matter is before the Chief Procurement Officer for Construction (“CPOC”) pursuant to request from Building Technology Associates, Inc., (BTA), under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review on the Thermal Moisture Protecting Indefinite Delivery Contract bid for Clemson University. BTA protests Clemson’s posting of a Notice of Intent to Negotiate a contract with REI Engineers (REI). Pursuant to S.C. Code Ann. §11-35-4210(4), the CPOC conducted an administrative review. As a part of this review, the CPOC held a hearing on February 20, 2013. At the hearing, David R. Dowler, Regional Director for BTA, represented BTA and Gerald Vander Mey, Clemson’s Director for Planning & Design, represented Clemson. Present at the hearing as a witness for Clemson was Tanya DeOliveria. This decision is based on the evidence and applicable law and precedents.

NATURE OF THE PROTEST

BTA’s protest is attached hereto as Exhibit A and is incorporated herein by reference.

FACTS

1. On August 30, 2012, Clemson solicited statements of qualifications for professional engineering services related to thermal moisture protection. [Ex. B]

2. By the time for receiving statements of qualifications, Clemson received nine statements including one from BTA.
3. After reviewing, the statements of qualifications, Clemson's selection committee short listed four firms for interview. BTA was not one of these four firms. [Ex. C]
4. On November 6, 2012, Clemson posted a Notice of Selection REI for Contract Negotiation and Clemson mailed this notice to all offerors the same days. [Ex. D]
5. BTA alleges that it received the Notice on November 28, 2012, the same day it filed its protest.

DISCUSSION

While this protest presents issues of Notice and timeliness of protest, the CPOC need not address those issues. If the CPOC assumes for purposes of this decision that BTA's protest was timely, the CPOC must still deny BTA's protest.

"A protest ... must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided." SC Code Ann § 11-35-4210(2)(b). While the specificity of a protest is not to be judged on highly technical or formal standards, the protest must "alert the parties to the general nature of the grounds for protest." *Protest of Sterile Services Corporation*, Panel Case No. 1983-17. The grounds of protest must set forth a claim for which relief can be granted, that is the grounds must allege a breach of a duty imposed by the South Carolina Consolidated Procurement Code. Moreover, the protestant has the burden of proving the grounds of protest upon a preponderance of the evidence.

BTA's protest is not well drafted. The grounds of protest, if any, are not clear and there is no request for relief. ¹ On this ground alone, BTA's protest could be dismissed. However, the

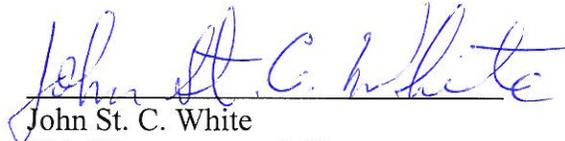
¹ While BTA's protest fails to request any relief, one may assume BTA wants the award to REI to be vacated and the contract awarded to BTA or at least a chance for an interview to be considered for award. However, BTA does not qualify for such relief. Clemson specifically solicited professional engineering services. Before a company can legally offer to provide such services in this state, they must possess a certificate of authorization to do so, issued by the Department of Labor, Licensing, and Regulation. S.C. Code Ann. § 40-22-250. Unlike the four firms shortlisted for interviews, BTA does not possess such a certificate. Since BTA does not possess a certificate of authorization, BTA a non-responsible offeror whom Clemson could not consider. S.C. Code § 11-35-1810 and Reg. 19-445.2125(A)(4).

protest was not prepared by an attorney and the CPOC will interpret such a protest broadly to state a grounds of protest if at all possible. Even so, it is not clear that BTA's protest alleges any violation of the Procurement Code by Clemson and its selection committee. To the extent BTA's protest fails to allege a violation of the Procurement Code, BTA has failed to state a claim on which relief can be granted.

If one were to assume BTA's protest alleges a violation of the Procurement Code, BTA's protest would still fail because BTA failed to carry its burden of proving such violation upon a preponderance of the evidence. Instead, BTA simply presented testimony on its own abilities and a bald assertion that it is more capable than REI. It offered no evidence regarding REI's responsibility or Clemson's determination of REI's responsibility.

DECISION

For the foregoing reason, protest denied.



John St. C. White
Chief Procurement Officer
For Construction


Date

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised January 2013)

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>

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 83.1 of the 2012 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
1105 Pendleton Street, Suite 202, 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

Singh, Anastasia

From: Protest-OSE <Protest-OSE@mmo.sc.gov>
Sent: Wednesday, November 28, 2012 5:44 PM
To: White, John; Singh, Anastasia
Subject: FW: Thermal Moisture Protection IDC selection / Project Number H12-D185-JM
Attachments: InformationPacket.pdf

From: Donnelly, Brian[SMTP:BDONNELLY@BTAWW.COM]
Sent: Wednesday, November 28, 2012 5:43:58 PM
To: Protest-OSE
Subject: Thermal Moisture Protection IDC selection / Project Number H12-D185-JM
Auto forwarded by a Rule

I am filing a protest to Ms. Tanya DeOliveira's selection of REI Engineers as the finalists in the Clemson University/Board of Trustees Thermal Moisture Protections Project listed above.

I would be curious to understand how REI was chosen since they are extremely small and inexperienced in Total Roof Management and clearly have NO systems, very little Thermal Moisture Protection Experience and reporting tools to provide Clemson University with the proper Roofing/Thermal Moisture Consulting Tools.

BTA has 50+ years of experience solely on roofing and handles billions of square feet of roofing. You can add all of these together and not be close to BTA's experience, background, capabilities and supporting budgeting and planning systems/tools. We have performed work in South Carolina for the federal government and other school systems and we are currently handling over 25 Universities Roofing Programs and growing that number every month.

Brian Donnelly

BRIAN T. DONNELLY
President

OFFICE 248 397 7110
MOBILE 248 631 7240
bdonnelly@btaww.com

TOTAL ROOF MANAGEMENT

21950 GREENFIELD ROAD, OAK PARK, MI 48237
WWW.BTAWORLDWIDE.COM

ROOF BTA

posed contract must be addressed to the Agency Coordinator listed later in this ad.

Anticipated Construction Cost Range:
\$3,000,000 - \$3,500,000

Description of Professional Services Anticipated for Project: Mechanical, plumbing & electrical
Information to Be Submitted in Addition to Standard Federal Form 330: None

Note: Interested parties should submit the name & contact information, including E-mail address, of a primary contact as part of their submittal. All written communication with a party submitting information will be done via E-mail.

Resume Deadline: 9/18/12 – 2:00pm

Number of Copies: Three

Agency/Owner: Medical University of South Carolina

Name & Title of Agency Coordinator:
Philip S. Mauney, PE, Director of Engineering

Agency Address: 97 Jonathan Lucas St., MSC 190, Charleston, SC 29425-1900

Agency Phone: (843) 792-2490

Agency Fax: (843) 792-0251

Agency Coordinator E-mail:
mauney@musc.edu – Agency will not accept submittals via E-mail.

Project Name: INDEFINITE DELIVERY CONTRACT FOR THERMAL MOISTURE PROTECTION CONSULTING

Project Number: H12-D185-JM

Project Location: Clemson University

Applicable SCBO Notes: 1, 4, & 5

Location at Which Public Notice of Meetings Will Be Posted: Gentry Hall, 191 Old Greenville Hwy., Clemson, SC 29634

Description of Project: Indefinite delivery contract for consulting services related to thermal & moisture issues on various facilities & assets of Clemson University. Typical work will include condition analysis, design, testing & management of roofing, waterproofing & building envelope systems. See <http://www.clemson.edu/facilities/campus-planning/ae-selections/H12-D185-JM.html> for additional information. The professional may be subject to a performance appraisal at the close of the project. Any questions concerning the terms & conditions of the proposed contract must be addressed to the Agency Coordinator listed later in this ad.

Description of Professional Services Anticipated for Project: Provide professional engineering services necessary for a full scope of potential projects, including feasibility stud-

ies, failure analysis, engineering design, documentation through construction documents, specification preparation, & construction administration as required

Information to Be Submitted in Addition to Standard Federal Form 330: Provide additional information as necessary to fully inform the selection committee of the abilities & characteristics of the team.

Provide six submittals in standard printed format & one in electronic format on a CD. The CD is to contain only one file that is to be in Adobe PDF format. The file is to be identical to the printed copies. In accordance with the State of South Carolina Preferred Purchasing Policy, submittals cannot exceed 20 pages (front & back of each page may be used), including covers, which must be soft – no hard notebooks, please. The Federal Standard Form 330 is not included in this page count. See the following web site for the Institution's General Requirements for solicitation of an IDC & additional supplemental information – <http://www.clemson.edu/facilities/campus-planning/ae-selections/H12-D185-JM.html>

Any questions regarding the general requirements or terms of the proposed contract must be addressed with the Agency Coordinator listed below

Note: Interested parties should submit the name & contact information, including E-mail address, of a primary contact as part of their submittal, but written communication with a party submitting information will not be done via E-mail.

Resume Deadline: 9/21/12 – 4:00pm

Number of Copies: See above

Agency/Owner: Clemson University / Board of Trustees

Name & Title of Agency Coordinator:
Tanya DeOliveira, Planner

Agency Address: Gentry Hall, 191 Old Greenville Hwy., Clemson, SC 29634-5951

Agency Phone: (864) 844-7020

Agency Fax: (864) 656-0167

Agency Coordinator E-mail:
tdolive@clemson.edu – Agency will not accept submittals via E-mail.

UNDERGROUND STORM DRAINAGE LINE

Notice Is Hereby Given that bids will be received by Allendale County, Allendale County, SC, in the Administration Office, 526 Memorial Avenue, Allendale, SC, until 10:00am, Prevailing Time, on Tuesday, the

11th day of September for: Surveying / site civil engineering services for design of an underground storm drainage line running from Spruce Street along Highway 301 to the proposed Allendale Readiness Center/Allendale County Joint Use Facility. The proposed storm drainage line will be constructed within the SCDOT ROW & would need to follow SCDOT design requirements. The new storm drainage line will need to take into account the existing Allendale Courthouse detention pond & the proposed detention pond for the Allendale Readiness Center/Joint Use Facility.

Bids Will Be Publicly Opened & Read Aloud at 10:10am, Prevailing Time, on Tuesday, the 11th day of September 2012, in Conference Room of the Administration Office.

Contract Documents May Be Reviewed & secured at the County Courthouse Fire / Public Works Office, of the Allendale County Courthouse, 292 Barnwell Highway, Allendale, SC, or by e-mail. Please contact Rodney Stanley at rslanley@allendalecounty.com or (803) 584-5085 for further information or to request specifications.

The Allendale County Council Reserves The Right to reject any & all bids, & to waive any informalities or irregularities.

If You Have A Disability That Requires Any Special Materials, services, or assistance, please contact Carolyn White at (803) 584-7040 so that we may arrange for appropriate accommodations.

CONSTRUCTION

Invitation for Construction Bids

Please verify requirements for non-State agency advertisements by contacting the agency / owner.

Projects expected to cost less than \$50,000 are listed under the Minor Construction heading

Project Name: ROOF REPLACEMENT, C.R.F. – D.M. LAW CENTER

Project Number: H27-6094-F

Project Location: USC, Columbia

Bid Security Required: Yes

Performance Bond Required: Yes

Payment Bond Required: Yes

Description of Project: Remove existing gravel surface BUR, Roof Areas A & D. Roof & flashing membrane tested positive for asbestos. Install new roof insulation & three-ply asphalt roof with fire-rated bitumen cap sheet over lightweight concrete roof deck. Roof Area B to receive fluid-applied elastomeric deck coating. Masonry para-

SE-212

EXHIBIT C

Notification of Selection for Interview

AGENCY: Clemson University/Board of Trustees
PROJECT NAME: IDC for Thermal Moisture Protection
PROJECT NO.: H12-D185-JM

TO ALL PERSONS OR FIRMS RESPONDING TO THE INVITATION FOR PROFESSIONAL SERVICES
IN CONNECTION WITH THE ABOVE NAMED PROJECT:

The Agency Selection Committee, having reviewed the resumes submitted in response to the *Invitation for Professional Services* for the above-named Project, and having evaluated those responses and other information available to the Committee in accordance with the requirements of Section 11-35-3220 of the SC Code of Laws, has determined that the persons or firms listed below are deemed the most qualified to provide the required services. The below-listed firms are selected for interview.

Name of A/E: REI Engineers

Name of A/E: Raymond Engineering

Name of A/E: ADC Engineering Specialists

Name of A/E: Stafford Consulting Engineers

Name of A/E: _____

Name of A/E: _____

Click here and attach Exhibit A if additional firms have been selected for interviews.

AGENCY CERTIFICATION

I hereby certify that the above-named persons or firms have submitted all of the information required in the *Invitation for Professional Services*. I further certify that the Agency Selection Committee conducted this A/E selection in accordance with the requirements of the SC Consolidated Procurement Code and Regulations and the *Manual for Planning and Execution of State Permanent Improvements, Part II*, and that the above-named persons or firms have been selected for interview and priority ranking.

BY: Tanya R. DeOliveira
(Signature of Selection Committee Chair)

DATE: 10/8/2012

Print Name: Tanya DeOliveira

Title: Planner

INSTRUCTIONS TO THE AGENCY:

1. Submit a copy of the completed SE-212 to the OSE Project Manager.
2. Send a copy of the completed SE-212 to all persons or firms who responded to the Invitation.
3. Retain the original in the Agency's procurement file.

October 9, 2012

Mr. David Dowler
Building Technology Associates, Inc
21850 Greenfield Rd
Oak Park, MI 48237

Re: Thermal Moisture Protection IDC
State Project H12-D185-JM

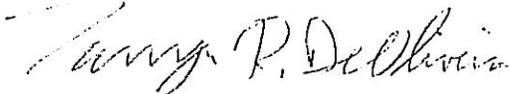
Dear Mr. Dowler,

Thank you for submitting your firm's qualification statement package for the above-referenced project. The A/E selection committee has narrowed its choices to the following four firms for further consideration:

REI Engineers
Raymond Engineering
ADC Engineering Specialists
Stafford Consulting Engineers

While your firm was not selected, we do appreciate your time and effort as well as your interest in Clemson University.

Sincerely,



Tanya DeOliveira
Planner

Enclosure: Alpha List
SE Form 212

**Notification of Selection for Contract Negotiation for Architectural-
Engineering, Land Surveying, or Interior Design Services Pertaining to
Construction or Construction Management-Agent Services**

AGENCY NAME: Clemson University/Board of Trustees
PROJECT NUMBER: H12-D185-JM
PROJECT NAME: Thermal Moisture Protection IDC

Notice is hereby given that the Agency Selection Committee has, in accordance with the requirements of SC Code Ann § 11-35-3220, the Manual for Planning and Execution of State Permanent Improvement Projects, Part II, and the solicitation documents, reviewed the qualifications of interested persons and firms and determined the below listed person(s) or firm(s) to be the most qualified person(s) or firm(s). The Agency hereby announces its intent to negotiate a professional services contract with the following person(s) or firm(s):

NAME(S) OF A/E: REI Engineers
DATE OF INTERVIEWS: 11/5/2012

RIGHT TO PROTEST:

Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of this Contract may protest to the State Engineer in accordance with Section 11-35-4210 of the SC Code of Laws at: CPO, Office of State Engineer, 1201 Main Street, Suite 600, Columbia, SC 29201, EMAIL: protest-ose@mimo.sc.gov.

BY: Tanya R. DeOliveira
(Signature of Agency Head or Designee)

DATE POSTED: 11/6/2012

Print Name: Tanya DeOliveira
Title: Planner

INSTRUCTIONS TO THE AGENCY:

1. Post a copy of the SE-219 (as announced at the A/E interviews).
2. Email a copy of the SE-219 to the OSE Project Manager.
3. Send a copy of the SE-219 to all persons or firms that responded to the Invitation for Professional Services.
4. Retain the original SE-219 in the Agency's procurement file.

November 6, 2012

Mr. David Dowler
Building Technology Associates, Inc
21850 Greenfield Rd
Oak Park, MI 48237

Re: Thermal Moisture Protection IDC
State Project H12-D185-JM

Dear Mr. Dowler,

In keeping with the State procurement guidelines, we are hereby notifying all firms that submitted for the above-referenced project as to the project status.

The following firms were short-listed and then interviewed on November 5, 2012:

REI Engineers
Raymond Engineering
ACD Engineering Specialists
Stafford Consulting Engineers

The A/E selection committee placed the firms in priority order for submittal to the State Engineer's Office, **REI Engineers** was ranked as the highest selection. Should Clemson University be unable to negotiate with either of these firms, we will move down the ranking until a contract is successfully negotiated.

Once again, thank you for your submittal and your interest in Clemson University.

Sincerely,



Tanya DeOliveira
Planner

Enclosure: SE Form 219