STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	))))))	**BEFORE THE CHIEF PROCUREMENT OFFICER FOR CONSTRUCTION**
IN THE MATTER OF: **SOUTH CAROLINA DEPARTMENT OF CORRECTIONS** **INDEFINITE DELIVERY CONTRACTS FIRE PROTECTION SERVICES STATE PROJECT N04-D046-LC**	)))))))))	**DETERMINATION** **CASE NO. 2009-007** **POSTING DATE: NOVEMBER 18, 2008**

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from the Department of Corrections (DOC) to cancel award of an Indefinite Delivery Contract to SIMPLEXGRINNELL, LP, (Simplex) for fire protection services. Simpex's bid was submitted by its West Columbia, South Carolina, branch office using the fire sprinkler contractor license number for Simplex's North Charleston, South Carolina, branch office. [A copy of Simplex's bid is attached as Exhibit "A"]. Because the West Columbia branch office does not possess a fire sprinkler contractor license, DOC requests that the CPOC cancel the award to Simplex. [A copy of DOC's request is attached as Exhibit "B"].

CPOC FINDINGS

On September 22, 2008, DOC advertised for bids to provide indefinite delivery of services for fire sprinkler systems work. On October 9, 2008, DOC opened all bids including a bid from Simplex. On October 10, 2008, DOC posted a Notice of Intent to Award a contract for each of the successful bidder's including Simplex. [DOC's Notice of Intent to Award a contract to Simplex is attached as Exhibit "C"] Subsequent to award, DOC realized that Simplex listed an address for a branch of its company that did not match the address for the license that was entered on its bid form.

The Fire Protection Sprinkler Systems Act requires each fire sprinkler contractor's main office and branch office to be licensed separately. SC Code Ann § 40-10-41(C). The license of one branch office cannot be assigned to or used by another branch office. SC Code Ann § 40-10-41(D), See also Protest of Delta Industrial Electric Company, Inc., Case No. 1992-8(I) and Case No. 1992-8(II). A fire protection contractor must possess the proper license at the time of bidding. SC Code Ann § 40-10-110(13). Moreover, S.C. Code Ann. § 11-10-280(C) and (D) precludes an owner from awarding a contract for fire protection services to an entity or individual that does not posses the proper license. Possession of the proper contractor license is an issue of responsibility. Protest of Burkwood Construction Company, Inc.,

Case No. 1997-8; Protest of Roofco, Inc., Case No. 2000-14(I). If, at the time of bidding, the West Columbia office of Simplex did not possess the proper license for performing fire protection systems work, then DOC was legally precluded from awarding Simplex a contract and should have declared Simplex to be a non-responsible bidder.

At the time of bidding, the West Columbia office of Simplex did not possess a fire sprinkler company license. Instead, the West Columbia office only possessed a fire alarm company license and a burglar alarm company license. [Copies of the West Columbia Office licenses are attached as Exhibit "D"] Apparently, because the West Columbia office lacked the proper license, it bid using the fire sprinkler license of the North Charleston office, a practice precluded by law.

DETERMINATION

CANCELLATION OF AWARD PRIOR TO PERFORMANCE

The S.C.Code Ann. § 11-35-1520(7) authorizes the cancellation of awards or contracts after award but before performance in accordance with regulations promulgated by the Board. Regulation 19-445.2085(C) allows the cancellation of an award prior to performance only upon written determination of the chief procurement officer that cancellation is warranted in accordance with the provisions set forth therein. One such provision is a determination that there was administrative error on the part of the purchasing agency in making the award and that such error was discovered prior to performance.

While the authority to cancel awards and solicitations should be exercised carefully and sparingly, cancellation is warranted where, as here, the award is a violation of the explicit language of the Fire Protection Systems Act that prohibits the award of a contract. For the reasons set forth above, it was a violation of the Fire Protection Systems Act and therefore administrative error for DOC to offer an indefinite delivery contract to Simplex for fire protection system services. Moreover, this error was discovered before final execution of the contract by the State and before any performance by Simplex.

For the foregoing reasons the Department of Correction's Notice of Award to SIMPLEXGRINNELL, LP, is hereby cancelled.

John St. C. White
Chief Procurement Officer for Construction

18 Nov 08
Date

Columbia, South Carolina

STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW

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.

Copies of the Pane's decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Requests 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 2008 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(4). . . . . 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an action before the Panel, a business must retain 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).

SE-330
Bid Form

2008 Edition

Bids shall be submitted only on SE-330

BID SUBMITTED BY: Snyder Brinwell, LP
(Bidder's Name)

BID SUBMITTED TO: South Carolina Department of Corrections
(Agency Name)

FOR PROJECT: N04-D046-LC Indefinite Delivery Contract for Fire Protection Services
(Number) *(Name)*

OFFER

1. In response to the Form SE-310, *Invitation for Construction Bids,* and in compliance with the *Instructions to Bidders* for the above-named Project, the undersigned **BIDDER** proposes and agrees, if this Bid is accepted, to enter into a Contract with the **AGENCY** in the form included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2. Pursuant to Section 11-32-3030(1) of the SC Code of Laws, as amended, **BIDDER** has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

☑ Bid Bond with Power of Attorney ☐ Electronic Bid Bond ☐ Cashier's Check
(BIDDER check one)

3. **BIDDER,** by submitting this Bid, affirms that it has carefully examined the Bidding Documents and the other related data identified in the Bidding Documents, has visited the actual location of the Work, has satisfied itself as to all conditions and understands that, in signing this Bid Form, it waives all rights to plead any misunderstanding regarding same and agrees to be bound by the provisions of said Bidding Documents and all statements made therein.

4. **BIDDER** acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into its Bid:
ADDENDUM No: #1

5. **BIDDER** accepts all terms and conditions of the *Invitation for Construction Bids*, including, without limitation, those dealing with the disposition of Bid Security. **BIDDER** agrees that this Bid, including all Alternate Base Bids, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of 60 Days following the Bid Date, or for such longer period of time that **BIDDER** may agree to in writing upon request of the **AGENCY**.

6. **BIDDER** herewith submits its offer to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

6.1 BASE BID WORK (BASE BID NO. 1) ***(as indicated in the Bidding Documents and generally described as follows):***
Base bid to be a multiplier (such as 0.85 or 1.15) to be applied to all unit prices listed in RS Means Plumbing Cost Data 2008 Book as "Total including OH&P"

MULTIPLIER: 1.4, which sum is hereafter called the **BASE BID No. 1**.
(enter BASE BID in figures only)

SE-330 - Bid Form

6.2 ALTERNATE BASE BIDS *(as indicated in the Bidding Documents and generally described as follows)*:

	DESCRIPTION	AMOUNT
BASE BID NO. 2		
BASE BID NO. 3		

6.3 UNIT PRICE WORK

BIDDER offers for the Agency's consideration and use the following **UNIT PRICES.** The **UNIT PRICES** offered by **BIDDER** indicate the amount to be added to or deducted from the Contract Sum for each item-unit combination. **UNIT PRICES** include all costs to the Agency, including those for materials, labor, equipment, tools of trades and labor, fees, taxes, insurance, bonding, overhead, profit, etc. The Agency reserves the right to include or not to include any of the following **UNIT PRICES** in the Contract and to negotiate the **UNIT PRICES** with **BIDDER.**

No.	ITEM	Base Bid Qty.	Unit of Measure	ADD	DEDUCT

SE-330 Bid Form

2008 Edition

LISTING OF PROPOSED SUBCONTRACTORS

1. A Subcontractor is an entity who will perform work or render service to the prime contractor to or about the construction site. Material suppliers, manufacturers and fabricators are not Subcontractors and are not to be listed.

2. Bidder must list in its bid the name of only those Subcontractors that will perform the work so identified in the Invitation.

3. If Bidder determines to use its own employees to perform any portion of the work listed below, and if Bidder is qualified to perform such work under the terms of the Bidding Documents, Bidder must list itself in the appropriate place in its bid and not subcontract any of that work except with the approval of the Agency for good cause shown.

4. Bidder's failure to list a Subcontractor for each listed Specialty Subcontractor will render the BID non-responsive.

5. A Subcontractor listed for an Alternate Base Bid must be used for all work if the Alternate Base Bid is accepted.

6. Bidder hereby states its commitment to use the below-listed Subcontractors in the performance of the Subcontractor Specialty work listed:

SUBCONTRACTOR SPECIALTY *(COMPLETED BY A/E)*	SUBCONTRACTOR OR PRIME CONTRACTOR'S NAME (MUST BE COMPLETED BY BIDDER)	SUBCONTRACTOR'S SC LICENSE NUMBER *(For Information)*
	BASE BID 1	
	BASE BID 2	
	BASE BID 3	

SE-330 Bid Form

2008 Edition

TIME OF CONTRACT PERFORMANCE

BIDDER hereby agrees to complete the construction work in accordance with the following schedule:

1. The **DATE OF COMMENCEMENT** shall be established in Form SE-390, *Notice to Proceed.* The **BIDDER** shall not incur any expense chargeable to this Project until the Contract has been executed by both the Agency and the Contractor, and a Notice to Proceed has been issued.
2. The **DATE OF SUBSTANTIAL COMPLETION**, to be documented on Form SE-550A, *Certificate of Substantial Completion*, shall be (_____) **CALENDAR DAYS** from the **DATE OF COMMENCEMENT** set forth in the SE-390, subject to adjustments as provided in the Contract Documents.
3. The **DATE OF FINAL COMPLETION**, to be documented on Form SE-560C, *Certificate of Final Completion*, shall be (_____) **CALENDAR DAYS** from the **DATE OF SUBSTANTIAL COMPLETION**, subject to adjustments as provided in the Contract Documents.

LIQUIDATED DAMAGES AND EARLY COMPLETION AWARD

1 The undersigned further agrees that from the compensation to be paid, the Agency shall retain as **Step One Liquidated Damages** the amount of Per Delivery Order for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** exceeds the specified or adjusted Contract time for **SUBSTANTIAL COMPLETION,** as provided in the Contract Documents.

2 The undersigned further agrees that from the compensation to be paid, the Agency shall retain as **Step Two Liquidated Damages** the amount of Per Delivery Order for each calendar day the actual construction time required to achieve **FINAL COMPLETION** exceeds the specified or adjusted Contract Time for **FINAL COMPLETION**, as provided in the Contract Documents.

3 The undersigned further agrees that in full and complete satisfaction for the best efforts of the undersigned to achieve **SUBSTANTIAL COMPLETION** before the date established above, the Agency shall pay the undersigned an **Early Completion Award** in the amount of $0.00 for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** is less than the originally specified Contract Time for **SUBSTANTIAL COMPLETION,** as provided in the Contract Documents.

AGREEMENTS

By submitting this Bid, **BIDDER** hereby agrees to the following terms and conditions:

1. An incomplete Bid, or information not requested that is written on or attached to this Bid Form that could be considered a qualification of the Bid, may be cause for rejection of the Bid.
2. The failure of the **BIDDER** to indicate a price for an **ALTERNATE BASE BID** shall render the Bid non-responsive. A typed or printed "No Bid", or words of similar meaning, shall render the Bid non-responsive.
3. The **BIDDER** shall list only **SUBCONTRACTORS** (as defined in the Bidding Documents) who are qualified to perform items of work as specified in the Bidding Documents or as required by any material or equipment substitutions approved at the time of bidding. No **BIDDER** whose Bid is accepted shall substitute another entity as **SUBCONTRACTOR** in place of the **SUBCONTRACTOR** listed in the original Bid, except for one or more of the reasons allowed by the SC Code of Laws.
4. The failure of the **BIDDER** to provide the name(s) of listed **SUBCONTRACTORS** in accordance with the SC Code of Laws shall render the Bid non-responsive.
5. Unless otherwise provided in the Bidding Documents, **BIDDER** will provide Performance and Labor and Material Payment Bonds, each in the amount equal to 100% of the Contract Award, as a condition of execution of the Contract. Failure to supply such bonds as required by the Contract Documents shall result in cancellation of the Notice of Intent to Award and forfeiture of the Bid Bond.
6. **BIDDER** agrees to provide all information requested by the **AGENCY** to support the **AGENCY'S** evaluation and determination of the **BIDDER'S** responsibility, including completion of Form SE-350, *Questionnaire for Contractors.* The Questionnaire shall be completed fully and returned to the **AGENCY** within SEVEN (7) DAYS from date of receipt by the **BIDDER** by certified mail. The completed Form SE-350 must be received by the Agency no later than the close of business on the seventh day. Failure by **BIDDER** to supply requested information with respect to responsibility may be grounds for a determination of non-responsibility.
7. The **BIDDER** certifies that it will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the SC Code of Laws, and shall comply with the requirements set forth in Title 44, Chapter 107.

SE-330 Bid Form

2008 Edition

8. At any time prior to the issuance of the Notice to Proceed for this Project, this Contract may be canceled for the convenience of the State.
9. Neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to the issuance of the Notice to Proceed.

ELECTRONIC BID BOND

By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the Form SE-335 included in the Bidding Documents.

(Electronic Bid Bond Number) *(Signature and Title)*

BIDDER'S TAXPAYER IDENTIFICATION

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 58-2608861

OR

SOCIAL SECURITY NUMBER:

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

(Classification) *(Subclassification)* *(Limitations)*

ESC 1587

(SC Contractor's License Number)

SIGNATURE

Simplex Grinnell, LP

(Legal Name of Person, Firm or Corporation Submitting Bid)

3243 Sunset Blvd. West Col, SC 29169

(Mailing Address for the above)

BY: *(Signature)* 10/9/08 *(Date)*

Service Sales Rep *(Title)* 803-476-0000 *(Phone)*

EXH. B

South Carolina Department of Corrections

MARK SANFORD, Governor
JON OZMINT, Director

November 5, 2008

Mr. John St. C. White, PE – State Engineer and Chief State Procurement Officer
Office of the State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

Re: N04-D046-LC Indefinite Delivery Contract – Fire Protection Services

Dear Mr. White:

After reviewing our documentation from the bid submittals for the above referenced project, I discovered that one of our bidders had listed an address for a branch of their company (Simplex Grinnell) that did not match the address for the license that was entered on their SE-330 – Bid Form.

I spoke with the person that submitted the bid and determined that both locations are separate profit centers. Since the SE-370 – Notice of Intent to Award had been issued, SCDC's conclusion was that the bid should be disqualified per Section19-445.2085, Paragraph C, Item 7 of the South Carolina Consolidated Procurement Code & Regulations Annotated. We are asking your approval to disqualify this bid.

Sincerely,

Wade Poston

Wade Poston

cc: Lyth Clark
Paul O'Dell

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555

EXH. C

SE-370
Notice of Intent to Award

2008 Edition

AGENCY: South Carolina Department of Corrections
(Agency Name)

PROJECT: N04-D046-LC — Indefinite Delivery Contract - Fire Protection Services
(Project Number) *(Project Name)*

TO ALL BIDDERS:

The Agency has determined that the below-named Bidder is responsible in accordance with the requirements of the Bidding Documents and has submitted the lowest responsive Bid. The Agency hereby announces its intent to enter into a contract with this Bidder for the construction of the above-named Project, subject to the provisions of SC law.

NAME OF BIDDER(S): Simplex Grinnell

DATE BIDS WERE RECEIVED: October 9, 2008

AMOUNT OF BASE BID: $ Multiplier of 1.4

ALTERNATE(S) ACCEPTED: # N/A Total: $ N/A

TOTAL AMOUNT OF BASE BID WITH ALTERNATE(S): $ N/A

Remarks: *(In accordance with Chapter 6 of the OSE Manual, explain any negotiations that resulted in a change in either the Base Bid or the accepted Bid Alternates)*

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@mmo.sc.gov

Wade Poston
(Signature of Awarding Authority)

10/10/08
(Date Posted)

Wade Poston
(Print or Type Name of Awarding Authority)

A/E Project Coordinator
(Awarding Authority Title)

INSTRUCTIONS TO THE AGENCY:

1. Post a copy of this form on the Date and at the Location announced at the Bid Opening.
2. Mail a copy of this Form and the final Bid Tabulation to all responsive Bidders and OSE.

Professional Licensing Boards | Board Member Lookup

Main Menu : **Burglar/Fire Alarm And Fire Sprinklers** Note: All fields are not required for searching

Last/Company name: Simplex **First name:**

License number: **City:**

State:

County: All Find

Your search returned: 14 record(s).

CLICK ON THE LICENSE NUMBER BELOW TO DISPLAY VERIFICATION INFORMATION FOR THAT RECORD.

	Status	Company Name	City	State	Type
5061	Active	SIMPLEXGRINNELL LP	CHARLOTTE	NC	Burglar Alarm Company
3131	Active	SIMPLEXGRINNELL LP	CHARLOTTE	NC	Fire Alarm Company
5071	Active	SIMPLEXGRINNELL LP	MYRTLE BEACH	SC	Burglar Alarm Company
5039	Active	SIMPLEXGRINNELL LP	BOCA RATON	FL	Burglar Alarm Company
3138	Active	SIMPLEXGRINNELL LP	MYRTLE BEACH	SC	Fire Alarm Company
5095	Active	SIMPLEXGRINNELL LP	NORTH CHARLESTON	SC	Burglar Alarm Company
3160	Active	SIMPLEXGRINNELL LP	NORTH CHARLESTON	SC	Fire Alarm Company
1587	Active	SIMPLEXGRINNELL LP	NORTH CHARLESTON	SC	Fire Sprinkler Company
1506	Active	SIMPLEXGRINNELL LP	CHARLOTTE	NC	Fire Sprinkler Company
1527	Active	SIMPLEXGRINNELL LP	RALEIGH	NC	Fire Sprinkler Company
5070	Active	SIMPLEXGRINNELL LP	WEST COLUMBIA	SC	Burglar Alarm Company
3137	Active	SIMPLEXGRINNELL LP	WEST COLUMBIA	SC	Fire Alarm Company
3113	Active	SIMPLEXGRINNELL LP	BOCA RATON	FL	Fire Alarm Company
1584	Active	SIMPLEXGRINNELL LP	BOCA RATON	FL	Fire Sprinkler Company

Search Tip:
For more results, only type in the first few characters of your search.

Questions / Contact Information
Tracy Gunter
PO Box 11329
Columbia, S.C. 29211
Telephone: 803-896-4608

South Carolina Department of Labor, Licensing & Regulation