STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**BEFORE THE CHIEF PROCUREMENT OFFICER FOR CONSTRUCTION**
IN THE MATTER OF: BID PROTEST	)	**DECISION**
ENVIROTROLSC, LLC	)	**CASE NO. 2010-004**
v.	)	
TRIDENT TECHNICAL COLLEGE	)	**POSTING DATE: NOVEMBER 19, 2009**
HVAC & MECHANICAL SYSTEMS INDEFINITE DELIVERY CONTRACT PROJECT H59-D582-PG	)	

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by EnvirotrolSC, LLC. (Envirotrol), under the provisions of section 11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review on the bid for indefinite delivery of construction services for HVAC & Mechanical Systems for Trident Technical College (Trident). On November 13, 2009, pursuant to S.C. Code Ann. §11-35-4210(4), the CPOC conducted an administrative review by hearing. At the hearing, attorneys L. Franklin Elmore and Leslie Sullivan represented Envirotrol, Eric A. Hamilton, Trident's Director of Facilities, represented Trident, Phil Gerald, the Office of State Engineer (OSE) Project Manager, represented OSE, and Terri Kutz represented MSI Construction Company, Inc. Present as witnesses were Jeff Farlow, President of Envirotrol, William Johnston, Envirotrol's Head Technician for Charleston, Robert M. Coon, Bond Account Manager for Scott Construction Services, and Jeff Chapman, Bond Manager for Liberty Mutual Surety. At the start of the hearing, the parties submitted into evidence Exhibits 1 through 12. This decision is based on the testimony and evidence presented at the hearing and applicable law.

NATURE OF THE PROTEST

Envirotrol's statement of protest is attached. [Ex. A] Envirotrol protests that Trident improperly rejected as deficient in amount the bid bond Envirotrol submitted with its bid. Alternatively, Envirotrol protests that Trident failed to give Envirotrol one working day from bid opening to cure the alleged deficiency in the bond amount as required by law. Finally, Envirotrol protests rejection of its bid as non-responsive for

failure to acknowledge an addendum because the addendum had no effect on price, quantity, quality, or delivery and because Envirotrol's bid clearly indicates it received the addendum.

FINDINGS OF FACT

The following dates and facts are relevant to the protest:

1. On September 14, 2009, Trident advertised for bids to provide indefinite delivery of HVAC and Mechanical construction services. [1]

2. Trident's solicitation required each bidder to bid a multiplier to apply against unit prices listed in RS Means Mechanical Cost Data 2009 guide to determine the cost of work awarded by Trident over the next two years. [Ex. 1]

3. The bid form included in the solicitation documents did not include all pages of the bid form.

4. On September 23, 2009, Trident issued the only addendum, Addendum No. 1, which provided a complete bid form. Addendum No. 1 did not provide any other information. [Ex. 2]

5. On September 29, 2009, Trident received and opened seven bids. Envirotrol submitted the lowest bid. [Ex. 9]

6. On October 6, 2009, Trident posted Notice of Intent to Award contracts to MSI Construction Company, Inc., Cullum Services, Inc., and Johnson Controls, Inc. [Ex. 9]

7. The Bid Tabulation attached to the Notice of Intent to Award indicated that Envirotrol failed to acknowledge Addendum No. 1 and submitted an improper bid bond.

8. On October 14, 2009, Envirotrol protested Trident's intended award.

DISCUSSION

Indefinite delivery contracts are contracts whereby contractors agree to provide construction services on an "as-needed" or "on-call" basis during the term of the contract. In this case, the contracts are two-year contracts limited to HVAC and mechanical construction services. The method Trident used to solicit proposals to provide indefinite delivery of services is summarized in Section 9.2.3(B) of the 2008 Manual for Planning and Execution of State Permanent Improvement Projects, Part 2 (the Manual).

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[1] The Consolidated Procurement Code permits this delivery method in certain circumstances including this instance. *SC Code Ann § 11-35-3310.*

Under this method, the agency selects a published cost data guide similar to R. S. Means Cost Data series as a basis for determining the price of delivery orders. The Agency then solicits proposals from bidders for a multiplier to be applied to the cost in the cost data guide for determining the cost of their work. The typical base bid is a decimal number. A multiplier of 1.00 reflects the same unit prices as shown in the cost data guide. A multiplier of 0.75 reflects a price 25% lower than the unit prices listed in the cost data guide. The agency awards an indefinite delivery contract to the bidder with the lowest multiplier and may award additional contracts to other bidders going in order from lowest to highest multiplier.

The indefinite delivery contract does not guarantee the contractor work. *See Ex. 1: Section I(A)(6) of the Instructions to Bidders and Article 1(E) Indefinite Delivery Contract.* The contractor will only perform work under the contract if the agency subsequently offers the contractor a delivery order to perform work. However, the contractor agrees to perform any delivery order tendered by the agency within the scope of its contract and contractor's license. *See Article 1(A) of the Indefinite Delivery Contract.* Compensation for the work included in a delivery order is determined by looking up the unit price for various items of work required by the delivery order in RS Means and multiplying that unit price against the contractor's multiplier.

The Consolidated Procurement Code places certain limits on the total value of an indefinite delivery contract and on the total value of a single delivery order. A single delivery order may not exceed $150,000 and total expenditures under an indefinite delivery contract may not exceed $750,000 over the two-year term of the contract.

Envirotrol's Failure to Acknowledge Addendum No. 1

At the start of the hearing, the parties agreed that there was no dispute that under SC Code Ann § 11-35-1520(13), Envirotrol's failure to acknowledge receipt of Addendum No. 1 on its bid was a minor informality that was or should have been waived. The parties agreed that Addendum No. 1 had no effect on price, quantity, quality or delivery. Moreover, Envirotrol submitted its bid on the bid form included in Addendum No. 1, a clear indication that Envirotrol received the addendum.

Envirotrol's Bid Bond

Trident's solicitation required bidders to include with their bids bid security in the amount of $7,500. *See Ex. 1: Instructions to Bidders, Section VI, C.* Envirotrol submitted a bid bond provided by Liberty Mutual Surety in the amount of "Five Percent of Amount Bid." [Ex. 5] However, the amount bid by Envirotrol was not a dollar amount but, as required by the solicitation, a multiplier. [Ex. 4]

Mr. Hamilton, who opened bids for Trident, testified that he did not note the amount of the bid bond at the bid opening. It was not until two or three days after the bid opening that Mr. Hamilton noted the bond amount. Upon seeing the amount of the bond and not being sure how to calculate the amount, Mr. Hamilton called Phil Gerald, the OSE project manager. Mr. Gerald testified that he advised Mr. Hamilton that in his opinion the bid bond amount was insufficient because the amount did not equal any dollar amount. Mr. Gerald further advised Trident that he would reject Envirotrol's bid as non-responsive. Mr. Hamilton also looked to the Instructions to Bidders, which required Trident to allow correction of the bond amount within one working day of the bid opening if the amount of the bond was within 80% of the required amount. [2] *See Ex. 1 – Instructions to Bidders, Section VI(F).* Mr. Hamilton testified that there was no way for him to determine that the amount of the bond was within 80% of $7,500 because it was five percent of a multiplier of 0.48. For the foregoing reasons, Mr. Hamilton considered Envirotrol's bid bond to be "improper" and, therefore, its bid to be non-responsive.

Liberty Mutual's position is that the bid bond it provided was not deficient in amount because it was greater than $7,500 in amount. In this regard, Mr. Coon, Bond Account Manager for Scott Construction Services and Liberty Mutual's attorney-in-fact, testified that when he issued the bond, he was of the opinion that the bond was $37,500, five percent of the contract's maximum potential value of $750,000. Liberty Mutual's bond manager, Mr. Chapman, testified that the bond was for five percent of any future delivery order Trident issued to Envirotrol during the term of the contract and that the maximum potential loss on the bond was $7,500, five percent of the maximum potential delivery order of $150,000. Mr. Chapman also testified that in deciding to issue the bond, the surety evaluated Envirotrol on the contract's maximum potential value of $750,000. Moreover, in a letter to Trident dated October 13, 2009, Mr. Chapman stated the "bid bond represents a security of $37,500." [Ex. 6] While somewhat confusing, the sum of Mr. Chapman's testimony appears to be that if Trident were to offer Envirotrol a series of delivery orders totaling $750,000, and Envirotrol were to refuse to accept any of the delivery orders, Liberty Mutual's potential exposure would total $37,500 (the sum of 5% of each delivery order).

The surety may have intended the amount of the bid bond to equal five percent of the contract's maximum potential value of $750,000 but the CPOC does not find that the bond and the bid read together actually provides for such an amount. While Mr. Coon or Mr. Chapman's arguments do not convince the CPOC, this is not the end of the matter. If the bid bond was not in the proper amount as Trident determined, the CPOC must decide whether Trident notified Envirotrol of the defect and gave Envirotrol

[2] This is consistent with Part 6.1.9C of the Manual. [Ex. 12]

an opportunity to cure the defect.[3] The Consolidated Procurement Code provides as follows:

> When the invitation for bids requires security, noncompliance requires that the bid be rejected **except that a bidder who fails to provide bid security in the proper amount … must be given one working day from bid opening to cure the deficiencies**. If the bidder is unable to cure these deficiencies within one working day of bid opening, his bid must be rejected. *[Emphasis added] SC Code Ann 11-35-3030(1)(c).*

This provision is unambiguous. The state must provide a bidder one working day after bid opening to cure a deficiency in the amount of the bid bond no matter how great the deficiency.[4] While not stated, the clear implication is that the state has a duty to notify a bidder of any such deficiency at or immediately after the bid opening.[5]

Mr. Hamilton testified that he did not notify Envirotrol that Trident considered Envirotrol's bid bond to be deficient in amount at any time prior to posting of the Notice of Intent to Award. Therefore, Trident did not give Envirotrol the opportunity to cure the deficiency in its bid bond within one working day of the bid opening as required by the Consolidated Procurement Code.

DECISION

It is the decision of the Chief Procurement Officer for Construction that Envirotrol was not given an opportunity to cure the deficiency in the amount of its bid bond as required by SC Code Ann § 11-35-3030(1)(c).

For the foregoing reasons, the Notice of Intent to Award is canceled and this matter is remanded to Trident Technical College to be awarded in a manner that complies with the provisions of the Consolidated Procurement Code.

John St. C. White

John St. C. White
Chief Procurement Officer for Construction

19 Nov. 09
Date

Columbia, South Carolina

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[3] In all other respects, Envirotrol's bid bond was proper. Envirotrol's bond was submitted on the proper form and Liberty Mutual has the proper financial strength rating.

[4] To the extent this provision of law conflicts with Part 6.1.9 of the Manual and the Instructions to Bidders, it takes precedence over the Manual and Instructions.

[5] When conducting a bid opening, the Procurement Officer should note the amount of the bid bond. If the amount of the bid bond is insufficient, the Procurement Officer should immediately notify the bidder of it right to cure.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

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: www.procurementlaw.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 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 appeal 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).

State Project H59-D582-PG IDC HVAC Mechanical Systems Trident Technical College - Bid Protest

From: Leslie Sullivan [Leslie.Sullivan@elmorewall.com]
Sent: Wednesday, October 14, 2009 2:11 PM
To: White, John
Cc: Jeff Farlow; Frank Elmore
Subject: State Project H59-D582-PG: IDC HVAC & Mechanical Systems Trident Technical College - Bid Protest

Attachments: Letter John White 10-14-09.pdf; Award Protest.pdf; Affidavit Johnston.pdf; Affidavit Farlow with Attachment.pdf; Exhibit E.pdf; Exhibit A.pdf; Exhibit B.pdf; Exhibit C.pdf; Exhibit D.pdf

John,

Please find attached EnvirotrolSC, LLC's protest of the Notice of Intent to Award for the above referenced project. We will be sending the original protest, along with the original affidavits and exhibits via Federal Express for delivery to you tomorrow.

If you have any problems opening the attachments, need further information, or have any questions, please do not hesitate to contact me.

Regards,

Leslie D. Sullivan

Telephone: (864) 255-9500
Facsimile: (864) 255-9505

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L. FRANKLIN ELMORE
S.C. Certified Arbitrator & Mediator
frank.elmore@elmorewall.com

October 14, 2009

Via Federal Express and E-Mail

Mr. John White, P.E.
Chief Procurement Officer for Construction
Office of the State Engineer
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: State Project H59-D582-PG: IDC HVAC & Mechanical Systems for Trident Technical College

Dear John:

We represent EnvirotrolSC, LLC ("Envirotrol"). Trident Technical College posted its SE-370, Notice of Intent to Award for the above referenced project on October 6, 2009. Pursuant to S.C. Code Ann. § 11-35-4210, Envirotrol wishes to protest Trident Technical College's Notice of Intent to Award.

Please find enclosed Envirotrol's protest along with supporting exhibits and affidavits. If you need any additional information, or have any questions, please do not hesitate to contact me or Leslie Sullivan in my office.

Very truly yours,

ELMORE & WALL, P.A.

L. Franklin Elmore

L. Franklin Elmore

LFE/skb
Enclosure
cc Mr. Jeff Farlow *(via email and mail)*
Mr. Eric Hamilton *(via Federal Express)*

In the matter of: **Protest of EnvirotrolSC, LLC** *In re:* **Invitation for Bid** **IDC - HVAC and Mechanical** **Trident Technical College** **State Project No:** **H59-D582-PG**	)	**PROTEST OF ENVIROTROLSC, LLC**

To: John White, Chief Procurement Officer for Construction, State of South Carolina

Pursuant to S.C. Code Ann. § 11-35-4210, EnvirotrolSC, LLC ("Envirotrol") protests Trident Technical College's Notice of Intent to Award, dated October 6, 2009, awarding the above referenced indefinite delivery contract to MSI Construction, Cullum Mechanical and Johnson Controls (collectively "Apparent Low Bidders").

The grounds for this protest are as follows:

1. Envirotrol was an actual bidder on the Invitation for Bids for the IDC - HVAC and Mechanical Systems for Trident Technical College ("Trident Tech"), State Project No. H59-D582-PG and is aggrieved in connection with the Notice of Intent to Award the contract to the Apparent Low Bidders.

2. With its bid, Envirotrol submitted bid security in the form of a bid bond on Form SE-335 (the "Bid Bond"). A copy of Envirotrol's Bid Bond is attached as Exhibit A. The Instructions to Bidders, 00200-IDC, Section VI, paragraph C., stated that the amount of the Bid Security should be $7,500.00. Envirotrol's Bid Bond was in the amount of five percent (5%) of the total indefinite delivery quantity of $750,000.00. The Bid Bond therefore represented $37,500.00 of bid security, which greatly exceeded the amount of bid security required by the Bidding Documents. See Exhibit B.

3. When the bids were opened and publically read aloud at the bid opening on September 29, 2009, Trident Tech's representatives read aloud and recorded Envirotrol's bid. Trident Tech's representatives did not reject Envirotrol's bid on the grounds of failing to provide a proper bid bond or Bid Security. See Affidavit Johnston.

4. After the bid opening, Trident Tech did not officially notify Envirotrol that Trident Tech had determined that Envirotrol's Bid Bond was improper. On October 9, 2009, Patric Wheeler of Trident Tech called Jeff Farlow of Envirotrol and unofficially informed Farlow that Envirotrol had not been awarded the Contract because Trident Tech had determined that Envirotrol's Bid Bond did not comply with the Bid Security requirements. See Affidavit Farlow.

5. October 9, 2009 was the first date that Envirotrol had any knowledge that Trident Tech considered Envirotrol's Bid Bond to be improper. See Affidavit Farlow.

6. On October 12, 2009, Billy Johnston of Envirotrol went to Trident Tech to see if the official Notice of Intent to Award had been posted and obtained a copy of the Notice of Intent to Award, along with a copy of Trident Tech's Bid Summary Form, which was attached to the Notice of Intent to Award. See Affidavits Farlow and Johnston. A copy of the Notice of Intent to Award and the Bid Summary Form are attached as Exhibit C. The Bid Summary Form indicated that Envirotrol had submitted an improper bid bond.

7. S.C. Code Ann. § 11-35-3030 (1)(c) provides as follows:

> When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating must be given one working day from bid opening to cure the deficiencies. If the bidder is unable to cure these deficiencies within one working day of bid opening, his bid must be rejected.

8. Envirotrol asserts that its Bid Bond met all the requirements of the Bidding Documents and S.C. Code Ann. § 11-35-3030. Envirotrol's bid should not have been rejected for noncompliance because Envirotrol provided Bid Security on Form SE-335 and in excess of the $7,500.00 required by the Bidding Documents. See Exhibit B.

9. Alternatively, should Envirotrol's Bid Bond be deemed noncompliant, which Envirotrol denies, Envirotrol was denied the opportunity to cure the deficiency in the Bid Bond within the time period allowed by S.C. Code Ann. § 11-35-3030 (1)(c) due to Trident Tech's failure to: (1) reject Envirotrol's bid for non-compliance with Bid Security requirements at the bid opening; and, (2) Trident Tech's failure to timely notify Envirotrol of Trident Tech's rejection of Envirotrol's Bid Bond.

10. If Trident Tech had rejected Envirotrol's bid or notified Envirotrol that the Bid Bond was not in the proper amount, Envirotrol would have been ready, willing and able to cure the deficiency within one working day of bid opening. See Affidavit Farlow.

11. To demonstrate that Envirotrol would have been ready, willing and able to cure any deficiency in the amount of the bond within one working day of bid opening, Envirotrol obtained a revised bid bond from its surety on October 12, 2009, the same day that Envirotrol obtained an official copy of Trident Tech's Form SE-370 and the Bid Summary Form indicating that Trident Tech had ruled Envirotrol's Bid Bond to be improper. See Affidavit Farlow. An original of the revised bid bond is attached to the Affidavit of Jeffrey Farlow.

12. Trident Tech's Bid Summary Form indicates that Envirotrol did not acknowledge the addenda. One Addendum was issued during the bid period. A copy of the Addendum 1 is attached as Exhibit D.

13. The Instruction to Bidders, 00200- IDC, Section V, states that:

> Bids received that do not acknowledge receipt of all addenda shall be rejected as non-responsive except for the following reasons: (1) The addendum only give clarifications or list attendees at a mandatory pre-bid conference; or, (2) The bid received clearly indicates that the bidder received the addendum; or, (3) The addendum clearly would have had no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery as defined in Chapter 6 of the Manual, and does not affect the relative standing of the Bidders.

14. Envirotrol's bid should not be rejected as non-responsive for failure to acknowledge the addendum because:

    a. The addendum only gave clarifications on the Bid Form and indicated that the Bid Form consisted of form SE 330, pages BF-1, BF-3 and BF-4;

    b. Envirotrol inserted the information on its Bid Form to conform to the clarifications listed in Addendum No. 1, including, the agency name, the project number, and the number 60 in paragraph 5. Envirotrol also submitted pages BF-1, BF-3 and BF-4 as indicated in the Addendum. The face of Envirotrol's bid clearly indicates that Envirotrol received the addendum as Envirotrol conformed its Bid Form to the clarifications in the addendum. A copy of Envirotrol's Bid is attached as Exhibit E; and,

    c. The addendum clearly had no effect on price, quality, quantity, or delivery as defined in Chapter 6 of the Manual, and did not affect the relative standing of the Bidders.

Upon these grounds, Envirotrol protests Trident Tech's Notice of Intent to Award the Contract to the Apparent Low Bidders. Envirotrol requests that Trident Tech proceed to award the Contract to Envirotrol as the one of the three lowest responsive and responsible bidders.

Respectfully Submitted this 14th day of October, 2009

L. Franklin Elmore
Leslie Sullivan
Elmore & Wall, P.A.
301 North Main Street, Suite 2000
Greenville, South Carolina 29601
(864) 255-9500

Attorneys for EnvirotrolSC, LLC

In the matter of: **Protest of EnvirotrolSC, LLC** *In re:* **Invitation for Bid** **IDC - HVAC and Mechanical** **Trident Technical College** **State Project No:** **H59-D582-PG**	)	**AFFIDAVIT** **BILLY JOHNSTON**

PERSONALLY appeared before me, Billy Johnston, who first being duly sworn, deposes and states that:

1. My name is Billy Johnston, and I am over the age of eighteen (18) years and under no legal disability. The facts stated in this Affidavit are based upon my personal knowledge and are true and correct to the best of my knowledge and belief.

2. I am a field technician at EnvirotrolSC, LLC ("Envirotrol") in Envirotrol's Charleston, South Carolina office.

3. I attended the bid opening for the above referenced project on September 29, 2009.

4. Trident Technical College's ("Trident Tech") representatives opened and read Envirotrol's bid aloud at the bid opening. During the bid opening, Trident Tech's representatives did not reject Envirotrol's bid on the grounds of failing to provide a proper bid bond or bid security or otherwise indicate that Envirotrol's bid was not responsive.

5. After the bid opening, I went to lunch with Miles Owens of Envirotrol and Patric Wheeler of Trident Tech. At lunch, Patric Wheeler congratulated Envirotrol on submitting one of the low bids for the project.

6. As of October 12, 2009, I had not heard any further information from Trident Tech regarding the bids or the award of the contract.

7. On October 12, 2009, Jeff Farlow of Envirotrol asked me to go to Trident Tech to see if Trident Tech had posted a Notice of Intent to Award. I went to Trident Tech and obtained a copy of the Notice of Intent to Award along with Trident Tech's Bid Summary Form.

FURTHER AFFIANT SAITH NOT.

Billy Johnston
EnvirotrolSC, LLC

SWORN to before me this
13 day of October, 2009.

Notary Public
My Commission Expires: 9-19-2015

SARAH JANE MOCK
Notary Public, South Carolina
My Commission Expires
September 19, 2015

In the matter of: **Protest of EnvirotrolSC, LLC** *In re:* **Invitation for Bid** **IDC - HVAC and Mechanical** **Trident Technical College** **State Project No:** **H59-D582-PG**	)	**AFFIDAVIT** **JEFFREY C. FARLOW**

PERSONALLY appeared before me, Jeffery C. Farlow, who first being duly sworn, deposes and states that:

1. My name is Jeffrey Farlow, and I am over the age of eighteen (18) years and under no legal disability. The facts stated in this Affidavit are based upon my personal knowledge and are true and correct to the best of my knowledge and belief.

2. I am President of EnvirotrolSC, LLC ("Envirotrol") and executed Envirotrol's SE-330 Bid Form and SE-335 Bid Bond on behalf of Envirotrol for the above referenced project.

3. After the bid opening, Trident Technical College ("Trident Tech") did not notify me or anyone else at Envirotrol that Envirotrol's Bid Bond was improper until Friday, October 9, 2009, when Patric Wheeler of Trident Tech called me and unofficially informed me that Envirotrol had not been awarded the contract because Envirotrol had not submitted a proper Bid Bond.

4. Friday, October 9, 2009 was the first date that Envirotrol had any knowledge that Trident Tech considered Envirotrol's Bid Bond to be improper.

5. On Monday, October 12, 2009, Billy Johnston of Envirotrol's Charleston office went to Trident Tech to see if Trident Tech had posted a Notice of Intent to Award. Johnston obtained a copy of the Notice of Intent to Award along with Trident Tech's Bid Summary Form.

6. The Bid Summary Form that Envirotrol obtained on October 12, 2009 indicated that Envirotrol had submitted an improper bid bond.

7. If Trident Tech had rejected Envirotrol's bid at the bid opening or notified Envirotrol that the Bid Bond was not in the proper amount, Envirotrol would have been ready, willing and able to cure any deficiency in the amount of the bond within one working day of bid opening.

9. To demonstrate that Envirotrol would have been ready, willing and and able to cure any deficiency in the amount of the bond within one working day of bid opening, Envirotrol obtained a revised bid bond from its surety on October 12, 2009 in the amount of $7,500.00, the same day that Envirotrol obtained an official copy of Trident Tech's Form SE-370, Notice of Intent to Award. An original of the revised bid bond is attached to this affidavit.

FURTHER AFFIANT SAITH NOT.

Jeffrey Earlow
President, EnvirotrolSC, LLC

SWORN to before me this
13 day of October, 2009.

Notary Public
My Commission Expires: 10-10-10

07/01 Edition

SE-335
Bid Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT Envirotrol SC, LLC
2203 Sullivan Street, Greensboro, NC 27405
(Insert full name and address or legal title of Bidder)
hereinafter referred to as "Principal," and Liberty Mutual Insurance Company
175 Berkeley Street, Boston, MA 02116
(Insert full name and address of principal place of business of Surety)
a corporation duly organized and existing under the laws of the State of MA, with its principal office in the City of Boston, and authorized to transact business in this State, hereinafter called the "Surety", are jointly and severally held and firmly bound unto
Trident Technical College
(Insert full name of Agency)
hereinafter referred to as "Obligee", the sum of $7500.00, being the sum of the Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for
H59-D582-PG IDC-HVAC & Mechanical Systems
(Insert the State Project Number and Name as found on the SE-330, Bid Form)

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that default of Principal shall occur upon the failure of the Principal to deliver, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents. This obligation shall be null and void if the Obligee shall accept Principal's Bid and Principal delivers, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents; or all Bids are rejected by Obligee; or Obligee fails to issue a Notice of Intended Award to Principal within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Principal). Payment under this Bond shall be due and payable in full upon default of Principal and within 30 calendar days after receipt by Principal and Surety of written notice of default from Obligee, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue the Notice of Intended Award agreed to in writing by Obligee and Principal. Any dispute, suit, action or proceeding arising out of or relating to this Bond shall be governed by the Dispute Resolution process defined in the Bidding Documents and the laws of the State of South Carolina. Surety shall cause to be attached to the Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

IN WITNESS WHEREOF, Surety and Principal, intending to be legally bound hereby, subject to the terms stated above, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this 29th day of September, 2009 **BOND NUMBER** Bid Bond

PRINCIPAL	**SURETY**
Envirotrol SC, LLC	Liberty Mutual Insurance Company
(Principal's Name)	*(Surety's Name)*
BY: President	**BY:**
(Signature and Title)	*(Signature and Title)*
	(Attach Power of Attorney)
	Robert M.Coon Attorney-in-Fact
ATTEST: Lisa Chapman, Executive Administrative Assistant	**ATTEST:**
(Signature and Title)	*(Signature and Title)*
	Geraldine B.Dent Witness

2259219

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint

ROBERT M. COON, SUSAN F. QUEEN, LINDA P. GREENWAY, LINDSEY M. DEJARNETTE, BETHANY A. MURPHY, KELLY BARKER, ALL OF THE CITY OF GREENSBORO, STATE OF NORTH CAROLINA .....

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding **FIFTY MILLION AND 00/100**********_____ DOLLARS ($ **50,000,000.00*****_____) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 4th day of January, 2008.

LIBERTY MUTUAL INSURANCE COMPANY

By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 4th day of January, 2008, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

TERESA PASTELLA COMMONWEALTH OF PENNSYLVANIA NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires Mar. 28, 2009
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 29th day of September 2009.

By David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

07/01 Edition

SE-335
Bid Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT Envirotrol SC, LLC

2203 Sullivan Street Greensboro NC 27405

(Insert full name and address or legal title of Bidder)

hereinafter referred to as "Principal," and Liberty Mutual Insurance Company

175 Berkeley Street Boston MA 02116

(Insert full name and address of principal place of business of Surety)

a corporation duly organized and existing under the laws of the State of MA, with its principal office in the City of Boston, and authorized to transact business in this State, hereinafter called the "Surety", are jointly and severally held and firmly bound unto

Trident Technical College

(Insert full name of Agency)

hereinafter referred to as "Obligee", the sum of Five Percent of Amount Bid 5%, being the sum of the Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for

H59-D582-PG IDC-HVAC & Mechanical Systems

(Insert the State Project Number and Name as found on the SE-330, Bid Form)

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that default of Principal shall occur upon the failure of the Principal to deliver, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents. This obligation shall be null and void if the Obligee shall accept Principal's Bid and Principal delivers, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents; or all Bids are rejected by Obligee; or Obligee fails to issue a Notice of Intended Award to Principal within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Principal). Payment under this Bond shall be due and payable in full upon default of Principal and within 30 calendar days after receipt by Principal and Surety of written notice of default from Obligee, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue the Notice of Intended Award agreed to in writing by Obligee and Principal. Any dispute, suit, action or proceeding arising out of or relating to this Bond shall be governed by the Dispute Resolution process defined in the Bidding Documents and the laws of the State of South Carolina. Surety shall cause to be attached to the Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

IN WITNESS WHEREOF, Surety and Principal, intending to be legally bound hereby, subject to the terms stated above, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this 29th day of September, 2009 **BOND NUMBER** Bid Bond

PRINCIPAL	**SURETY**
Envirotrol SC, LLC	Liberty Mutual Insurance Company
(Principal's Name)	*(Surety's Name)*
BY: [signature] PRESIDENT	BY: [signature]
(Signature and Title)	*(Signature and Title)*
	(Attach Power of Attorney)
Jeffrey C Farlow, President	Robert M.Coon Attorney-in-Fact
ATTEST: Lisa Chapman, Executive Admin. Asst.	ATTEST: [signature]
(Signature and Title)	*(Signature and Title)*
Lisa Chapman, Executive Admin. Asst.	Geraldine B.Dent Witness

EXHIBIT A

2259213

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint

ROBERT M. COON, SUSAN F. QUEEN, LINDA P. GREENWAY, LINDSEY M. DEJARNETTE, BETHANY A. MURPHY, KELLY BARKER, ALL OF THE CITY OF GREENSBORO, STATE OF NORTH CAROLINA

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding **FIFTY MILLION AND 00/100**********DOLLARS ($ **50,000,000.00*****) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 4th day of January, 2008.

LIBERTY MUTUAL INSURANCE COMPANY

By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 4th day of January, 2008, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires Mar. 28, 2009
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 29th day of September, 2009.

By David M. Carey
David M. Carey, Assistant Secretary

EXHIBIT A

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call

Liberty Mutual Surety

Jeff Chapman
Regional Surety Manager

P. O. Box 49669
Charlotte, NC 28277-0082
Telephone: (704) 759-7301
Facsimile: (704) 849-7050

Jeffrey.chapman@LibertyMutual.com

October 13, 2009

Scott Poelker
VP Finance and Administration
Trident Technical College
P.O. Box 118067
Charleston, SC 29423

Re: Trident Technical College
H59-D582-PG IDC-HVAC & Mechanical Systems
Bid date: September 29, 2009

Dear Scott:

In response to the request for bids on the captioned contract, Envirotol SC, LLC bid an indefinite quantity of $750,000 over a two year period, with no single incidence over $150,000. The bid specifications required a bid bond in the amount of seventy five hundred dollars ($7,500.00).

We issued a bid bond for five percent of the amount bid (5%) for the above captioned project on behalf of Envirotol SC, LLC. This bid bond represents bid security of $37,500 (5% of Envirotrol SC, LLC's bid of $750,000) or five times the amount required by the bid specifications. Under the most conservative interpretation of the bid specifications, five percent of the single incidence limit of $150,000 is equal to the required $7,500 bid bond requirement. Under either interpretation, the bid bond meets or exceeds the specifications of the bid.

Best regards,

Jeff Chapman /ht

Jeff Chapman
Regional Surety Manager

07/01 Edition

SE-370
Notice of Intent to Award

AGENCY: Trident Technical College
(Name)

PROJECT: H59 - D582 - PG - IDC - HVAC and Mechanical Systems
(Number) *(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: MSI Construction/ Cullum/Johnson Control

DATE BIDS WERE RECEIVED: September 29, 2009

AMOUNT OF BASE BID: See Remarks

ALTERNATE(S) ACCEPTED: # N/A TOTAL: $0.00

TOTAL AMOUNT OF BASE BID PLUS ACCEPTED ALTERNATE(S): See Remarks

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)*

IDC - HVAC and Mechanical Systems will be awarded to the three low bidders. The bidders are as follows: *Tie breaker held 10/06/09 at 11:00am*

MSI Construction	Multiplier	.49
Cullum	Multiplier	.51
Johnson Control	Multiplier	.51

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, as amended, within 15 days of the date the *Notice of Intent to Award* is posted.

Scott Poelker
(Signature of Awarding Authority)

10/6/09
(Date Posted)

Scott Poelker
(Print or Type Name of Awarding Authority)

Vice President, Finance and Administration
(Awarding Authority Title)

INSTRUCTIONS TO AGENCY:
1. MAIL A COPY OF THE FINAL BID TABULATION TO ALL BIDDERS AND OSE WITHIN 10 DAYS OF BID OPENING.
2. POST A COPY OF THIS FORM ON THE DATE AND AT THE LOCATION ANNOUNCED AT BID OPENING.
3. MAIL A COPY OF THIS FORM TO ALL BIDDERS AND THE OSE.

EXHIBIT C

TRIDENT TECHNICAL COLLEGE
BID SUMMARY FORM

IDC – HVAC and Mechanical Systems
H59-D582-PG
September 29, 2009 – 11:30 AM

Contractor	Addenda Acknowledged	Lump Sum Base Bid	Sub. Listing	Bid Bond	Power of Attorney
Cullum Services	X	.51	N/A	X	X
Johnson Controls	X	.51	N/A	X	X
Trane	X	.65	N/A	Improper Bond	X
H. R Allen	X	.51	N/A	X	X
MSI Construction	X	.49 ✓	N/A	X	X
W.O Blackstone	X	.51	N/A	X	X
Envirotrol SC		.498 ✓	N/A	Improper Bond	X

Eric Hamilton, Trident Technical College

Patric Wheeler, Trident Technical College

EXHIBIT C

Addendum No. 1
Clarification of SE-330 Bid Form
Trident IDC –HVAC and Mechanical Systems
H59-D582-PG
September 23, 2009

Attached: SE-330 Bid Form, pages BF-1, BF-3, BF-4

1. The attached SE-330 Form should clarify any questions regarding submittal of bid form for this IDC.

Contact Information:

Trident Technical College
P. O. Box 118067
Charleston, SC 29423-8067

Phone: 843-574-6248
Fax: 843-574-6510

POC: Eric Hamilton

EXHIBIT D

07/01 Edition

SE-330
Bid Form

BID SUBMITTED BY: _____
(Bidder's Name)

BID SUBMITTED TO: Trident Technical College
(Agency Name)

FOR PROJECT: H59 - D582 - PG - IDC - HVAC & Mechanical Systems
(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: _____

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 Bid Alternates, if any, 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**. **BIDDER** understands that Bid Alternates that are not accepted in an initial award shall remain open for acceptance for the entire period set above and for such longer period as requested by **AGENCY** and agreed to by **BIDDER**.

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** *(as indicated in the Bidding Documents and generally described as follows):*

_____

_____, which sum is hereafter called the **BASE BID**.
(enter BASE BID in figures only)

EXHIBIT D

TRIDENT TECHNICAL COLLEGE

FAX TRANSMITTAL SHEET

To: Jeff Farlow
From: TTC
Company: Etol
Title:
Fax #:
Phone:
Date:
This transmission contains 3 pages including this page.

IDC
Addendum #1
SE 330

Facilities and Environmental Management
7000 Rivers Avenue ■ PO Box 118067 ■ Charleston, SC ■ 29423-8067
Fax Number 843.574.6510 ■ Phone Number 843.574.6248

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the US Postal Service. Thank you.

SE-330
Bid Form

Bids shall be submitted only on SE-330

BID SUBMITTED BY: ENVIROTROLSC, LLC
(Bidder's Name)

BID SUBMITTED TO: Trident Technical College
(Agency Name)

FOR PROJECT: H59 - D582 - PG - IDC - HVAC & Mechanical Systems
(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:

[X] 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: _____

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 Bid Alternates, if any, 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**. **BIDDER** understands that Bid Alternates that are not accepted in an initial award shall remain open for acceptance for the entire period set above and for such longer period as requested by **AGENCY** and agreed to by **BIDDER.**

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 *(as indicated in the Bidding Documents and generally described as follows):*

ENVIROTROLSC, LLC multiplier times the published unit prices (RS Means Mechanical Cost Data 2009) times the quantity of the work to be performed. Multiplier is 0.498

Multiplier is 0.498, which sum is hereafter called the BASE BID.
(enter BASE BID in figures only)

SE-330 Bid Form

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 _____ 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 _____ 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 _____ 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 a **BID ALTERNATE** shall render the Bid non-responsive. A **BID ALTERNATE** shall be bid by indicating either a dollar amount or the words "No Change", "Zero", or "0.00". A typed or printed "No Bid", or words of similar meaning, shall render the Bid non-responsive. BIDDER must indicate whether the amount of the **BID ALTERNATE** is an "ADD" to or a "DEDUCT" from the amount of the Base Bid. The Bid may be determined non-responsive for failure of the BIDDER to indicate the appropriate "ADD" or "DEDUCT" for each **BID ALTERNATE**, unless the adjustment is obvious to the Agency.
3. If any **BID ALTERNATES** should be accepted by the **AGENCY**, they shall be incorporated into the executed Contract. **BID ALTERNATES** may be accepted in any combination or order, at the sole discretion of the **AGENCY**.
4. 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.
5. 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.
6. 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.

EXHIBIT E

SE-330 Bid Form

7. **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.

8. 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.

9. 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.

10. 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: 56-1736820

OR

SOCIAL SECURITY NUMBER:

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

(Classification)	*(Subclassification)*	*(Limitations)*
Mechanical Contractor	AC5, HT5, EL5	UNLIMITED

M110698

(SC Contractor's License Number)

SIGNATURE

ENVIROTROLSC, LLC

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

(Mailing Address for the above)

2203 Sullivan Street Greensboro, NC 27405

September 29, 2009

BY Jeffrey C Farlow *(Signature)* *(Date)*

President President 336-273-9587

(Title) *(Phone)*

EXHIBIT E