

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
))
))
IN THE MATTER OF: BID PROTEST)
))
YEARGIN POTTER SHACKELFORD)
CONSTRUCTION, INC.)
))
V.)
))
SOUTH CAROLINA SCHOOL FOR)
THE DEAF AND THE BLIND)
))
MULTI-HANDICAPPED SCHOOL)
NEW CONSTRUCTION/HERBERT)
CENTER RENOVATION)
PROJECT H75-9542-JM)
_____)

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

**WRITTEN DETERMINATION
LIFTING STAY**

CASE NO: 2010-015

**POSTING DATE:
JUNE 9, 2010**

Based on the attached request [Ex. A] from the South Carolina School for the Deaf and Blind (the School) and discussions with the School, I find that it is in the best interest of the state that the solicitation and award of this procurement shall not be delayed.

This matter came before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by Yeargin Potter Shackleford Construction, Inc., (Yeargin) under the provisions of section 11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review of the Multi-Handicapped School New Construction/Herbert Center Renovation bid (“the Project”), for the South Carolina School for the Deaf and the Blind (School). Yeargin protested School’s posting of a Notice of Intent to Award a contract for the project to SYS Constructors, Inc. (SYS).

The following dates and facts are relevant to this decision:

1. On March 25, 2010, School advertised for bids to construct the Project.
2. During the bid period, the School issued two Addendums to the Solicitation Documents.
3. At 2 PM on April 22, 2010, School opened bids.
4. Yeargin, the low bidder, failed to acknowledge Addendum No. 2 on its bid and the School declared

Yeargin's bid to be non-responsive.

5. On April 22, 2010, School posted of Notice of Intent to Award a contract to SYS, the second low bidder and Yeargin protested.

6. On May 28, 2010, the CPOC conducted an administrative review by hearing pursuant to S.C. Code Ann. §11-35-4210(4).

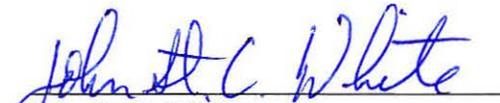
7. On June 7, 2010, the CPOC posted his decision on the protest wherein he denied the protest. The CPOC's decision is incorporated herein by reference.

8. On June 8, 2010, Mr. R. Lynn Yeargin, President of Yeargin, notified the CPOC that Yeargin was not going to request further administrative review by the Procurement Review Panel. [Ex. B]

9. On June 9, 2010, Ms. Margaret E. Parker, Interim President of the School, submitted a letter to the CPOC requesting that the CPOC lift the automatic stay on the award.

10. The project includes classrooms, a dining hall and kitchen, three dormitory wings, administrative space, and a small gymnasium. The School needs to have one of the dormitory wings completed before the start of the new school year in August 2010, in order to provide swing space for work on another dormitory wing.

Based on the foregoing, the CPOC finds that the award of the contact without further delay is in the best interest of the State.



John St. C. White
Chief Procurement Officer
For Construction



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 Panel'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).

SOUTH CAROLINA
SCHOOL FOR THE DEAF AND THE BLIND
Serving Individuals Who Are Deaf, Blind or Sensory Multidisabled

June 9, 2010

Mr. John White, PE
State Engineer
Office of the State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

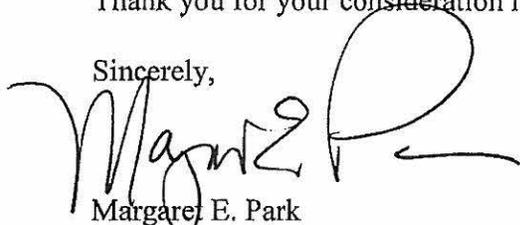
Dear Mr. White,

We are requesting that the 10-day protest period be lifted in light of Mr. Yeargin's email to you expressing his intention not to appeal the SCSDB Herbert Center Bid Protest Decision.

The school needs to have the project started as soon as possible in order to complete as much construction as possible before the school year starts in early August 2010.

Thank you for your consideration in this matter.

Sincerely,



Margaret E. Park
Interim President

MEP:bk

C: Jon Castro
John O'Brien
Jim McVey

SCSDB Accreditations

South Carolina State Department of Education (SDE) • Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD)
Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)
A Palmetto Gold School • A Red Carpet School

White, John

From: Lynn Yeargin [lyeargin@ypsconst.com]
Sent: Tuesday, June 08, 2010 3:42 PM
To: White, John
Cc: O'Brien, John; Mike Taylor (Mtaylor@dp3architects.com); Anna King; djdoherthy@sysconstructors.com
Subject: SCSSDB Herbert Center Bid Protest Decision

Mr. White,
We have received the Decision regarding our Protest.
We respect and intend to honor your decision.
Thank you for your time and consideration of this matter.
I am sure the School is eager to get started with the project.
Respectfully,
Lynn Yeargin

R. Lynn Yeargin, Pres
Yeargin Potter Shackelford Construction
171 Edinburgh Court
Greenville, SC 29607

864-232-1491(x-207)
864-242-9054(fax)
864-419-9927(cell)
Direct Line (864)678-5403

L.Yeargin@YPSconst.com