

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**In Re:** Cancellation of Award to  
CED Perry Mann Electric Co.

**Cancellation of Award Prior to  
Performance**

Solicitation No. USC-RFQ-2868-MS  
Furnish & Deliver Padmounted  
Transformer

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**WRITTEN DETERMINATION**

CASE NO.: 2016-112

POSTING DATE: October 16, 2015

MAILING DATE: October 16, 2015

This matter is before the Chief Procurement Officer for Information Technology (CPO) pursuant to a request from the University of South Carolina (USC) [Ex. 1] under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), and Budget and Control Board Regulation 19-445.2085(C) to cancel an award to CED Perry Mann Electric Co. (Perry Mann) to Furnish & Deliver a Padmounted Transformer prior to performance due ambiguous specifications and an administrative error in determining the lowest responsive and responsible bidder.

**Basis for the Request**

USC issued solicitation USC-RFQ-2868-MS to Furnish & Deliver a Padmounted Transformer on September 4, 2015. The solicitation required a transformer with a 480Y/277 configuration which provides 3 hot or phase wires and 1 neutral wire (the ground is implied), which leads to a total of 4-wire system (4 spades or bushings), in a Y (or wye) configuration. The line to neutral voltage is 277, and the line-to-line voltage is 480. This is the configuration USC required. When issuing Amendment One, USC modified the requirement as follows:

Amendment No. 1 modifies the Request for Quotation only in the manner and to the extent as stated herein.

**Item One – Amend Specifications**

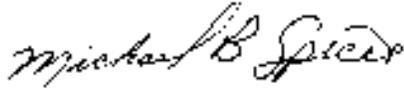
- 480V
- 1000 kVA

A 480V configuration alone means it is a Delta configuration with only 3 wires (3 spades or bushings). There is no 277 voltage coming out of this configuration. A pure and straight 480 Volt Delta has no neutral, and therefore no line to neutral voltage.

The lowest quote by Wenco, LLC was for a 480V configuration and was determined to be nonresponsive. Purchase Order USC01-2000008849 was issued to Perry Mann for a 480Y/277 configuration on September 14, 2015. [Ex 2] After discussions with Wenco, USC determined that it had inadvertently modified the requirement from a 480Y/277 configuration to a 480V configuration. A 480Y/277 configuration is what is actually required. USC requested cancellation of the award prior to performance under Regulation 19-445.2085(C)(1) and (7), citing ambiguous specification and an administrative error in determining the lowest responsive and responsible bidder.

## **Determination**

The award to CED Perry Mann Electric Co. is cancelled under Regulation 19-445.2085(C) and the University of South Carolina is directed to resolicit these requirements in accordance with the Consolidated Procurement Code.



---

**Michael B. Spicer**  
**Chief Procurement Officer for Information Technology**

**STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW**  
*Written Determination Appeal Notice (Revised September 2015)*

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](http://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 111.1 of the 2015 General Appropriations Act, “[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of 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.” PLEASE MAKE YOUR CHECK PAYABLE TO THE “SC PROCUREMENT REVIEW PANEL.”

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1105 Pendleton Street, Suite 209, Columbia, SC 29201**

---

\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

1. What is your/your company's monthly income? \_\_\_\_\_

2. What are your/your company's monthly expenses? \_\_\_\_\_

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

---

For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**



UNIVERSITY OF  
**SOUTH CAROLINA**

**MEMORANDUM**

September 24, 2015

To: Mike Spicer, State Chief Procurement Officer  
From: Mac Stiles, Procurement Manager  
Re: Cancellation of Award  
Cc: Venis Manigo, Director of Purchasing  
Kevin Sanders, Procurement Manager

Dear Mr. Spicer,

The University of South Carolina issued solicitation USC-RFQ-2868-MS to acquire a padmounted transformer on September 4, 2015. An amendment to the solicitation was posted on September 9, 2015. Deadline for receipt of quotations was September 11, 2015. Three offers were received in response to the solicitation. During the evaluation of the quotations, it was determined that the product literature for the apparent lowest bidder was not responsive to the specifications. An award was made to the second low bidder, based on the determination that the offer was responsive.

Upon discovery of this fact, the lowest bidder provided evidence that its product literature was responsive to the specifications on the grounds that the amendment that USC posted materially modified one of the previous specifications in the original solicitation. The perceived modification was not the intent of the University at the time of posting the amendment. The aggrieved bidder provided evidence to show that the product offered was responsive to the written specification that was included in the amendment. Meanwhile, the remaining bidders did not draw the same conclusion from the amendment and their offers were responsive to the original specifications and to the intended effect of the amendment.

Therefore, due to the separate understandings reached by the different bidders in the field of offers, it is the opinion of the USC Purchasing Department that the specifications, including the amendment, are ambiguous in nature, such that more than one interpretation can be reasonably drawn from the same set of specifications.

It is the request of the USC Purchasing Department, under State Regulation 19-445.2085, that it be allowed to cancel this award prior to performance and re-solicit with an unambiguous scope of work and specifications. We submit this request to the Chief Procurement Officer for consideration of this matter.

Purchasing Department | 1600 Hampton Street, Suite 606 | Columbia, SC 29208 | (803) 777-4115



**Purchase Order**

**University of South Carolina**  
 Purchasing Department  
 1600 Hampton Street  
 Columbia SC 29208  
 United States

Approved		Email Dispatch
<b>Purchase Order</b> USC01-2000008849	<b>Date</b> 09-14-2015	<b>Revision</b> 1 -
<b>Payment Terms</b> Net 30 Day	<b>Freight Terms</b> DESTFP	<b>Ship Via</b> COMMON
<b>Buyer</b> Mac Stiles	<b>Phone</b> 803/777-6718	<b>Currency</b> USD

**Supplier:** C000001432  
 CED PERRY MANN  
 ELECTRIC CO  
 31356 VIA COLINAS  
 WESTLAKE VILLAGE CA  
 91362-3915  
 United States

**Ship To:** 350 WAYNE STREET  
 COLUMBIA SC 29208  
 United States

**Attention:** See Detail Below

**Bill To:** FACILITIES CENTER  
 743 GREENE STREET  
 COLUMBIA SC 29208  
 United States

Line-Sch	Item/Description	Mfg ID	Quantity	UOM	PO Price	Extended Amt	Due Date
----------	------------------	--------	----------	-----	----------	--------------	----------

1 - 1	480V 1000 KVA PADMOUNTED TRANSFORMER		1.00	LOT	17,235.00	17,235.00	09/14/2015
	PER USC-RFQ-2868-MS						

**SUT Code:** 1,378.80  
**SC2160 (8%)**  
 Attention: Jeffrey Ronald  
 Abrams  
**Schedule Total** 18,613.80

For delivery contact:  
 Jeff Abrams, Architect  
 Project Manager  
 Facilities Design and Construction  
 University of South Carolina  
 803-239-8074  
 JAbrams@fmc.sc.edu

**Item Total** 18,613.80  
**Total SUT Code** 1,378.80  
**SC2160 (8%)**  
**Total PO Amount** 18,613.80

Unauthorized

**TERMS AND CONDITIONS**  
BY ACCEPTANCE OF THIS ORDER SELLER AGREES WITH BUYER AS FOLLOWS

1. Buyer will not be responsible for goods for services supplied without an official properly authorized, written, and pre-numbered purchase order.
2. Subject to conditions beyond the control of the seller, delivery or completion must actually be effected within the time stated on the purchase order. If for any reason whatsoever, including conditions beyond the control of seller, completion is not timely, the buyer reserves the right to obtain the goods or services elsewhere and to charge seller with any loss incurred as a result thereof or, as its option, to cancel the order.
3. Whenever the seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, seller shall so inform buyer immediately.
4. Any materials shipped in excess of the quantity specified in the order may, at buyer's option, be returned to the seller at seller's expense or kept by the buyer. Buyer will not be obligated to pay for services or labor provided in excess of that specified in the order. For regulations on printing services, please refer to the South Carolina Consolidated Procurement Code effective July 1, 1993.
5. In addition to any warranties provided by applicable law, the seller hereby represents and warrants that the goods delivered or services performed on this order will be in accordance with the buyer's specifications, drawings, or samples, if such were submitted. If any goods or workmanship proves defective within one year from delivery or completion, or is not in accordance with specifications, drawings, or samples, the buyer may cancel and return this order or correct the defective goods or work at seller's expense. The foregoing representations and warranties shall survive acceptance of the goods or services and termination or cancellation of this agreement.
6. This purchase order is not assignable by the seller without the prior written consent of the buyer.
7. This order shall be governed in all respects by the laws of the State of South Carolina. Jurisdiction of any dispute regarding the terms and conditions of this order shall be vested in the courts of Richland County, State of South Carolina. This order shall not be modified except by written agreement of buyer and seller. This agreement and its attachments is the sole agreement of the parties and supersedes and replaces any and all prior understandings of the parties, written or oral, related to its subject matter.
8. If any other work is specified by this order to be performed at the buyer's premises, the seller may be required, prior to commencement of work, to furnish buyer with certificates of insurance showing that it has currently in force comprehensive general liability insurance providing coverage for bodily injury of \$500,000.00 for each person and \$500,000.00 for each occurrence and coverage for property damage for \$50,000.00 for each occurrence and \$100,000.00 aggregate and Worker's Compensation insurance and employer's liability coverage with a limit of \$500,000.00.
9. All transportation, insurance, crating and/or packing charges are to be entered as separate items on seller's invoice, unless goods are sold F.O.B destination or such charges are included in seller's price.
10. Whenever seller acts as buyer's agent in importing goods from other countries, the seller agrees to show on its invoice the amount of any customs or import duties paid to the United States Government, as a separate item.
11. Notwithstanding any other provisions of this agreement, the parties hereto agree that the charges hereunder are payable by the University of South Carolina (buyer) from appropriations, grants, and monies received by the buyer from the State Legislature and other government entities. In the event such appropriations, grants, & monies are determined in the sole discretion of the Vice President for Business and Finance of the University of South Carolina to no longer exist or to be insufficient with respect to charges payable hereunder, during or at the end of any fiscal year, this agreement shall terminate without further obligation to the seller or buyer. In such event, the Vice President for Business and Finance of the University of South Carolina shall certify to the seller the occurrence thereof.
12. The seller, by acceptance of this order, will be deemed to represent that seller has complied, or will comply with all applicable Federal, State and local laws and ordinances and all lawful orders, rules and regulations thereunder.
13. The University of South Carolina is an Affirmation Action/Equal Opportunity Employer and does not discriminate on the base of race, color, religion, sex, national origin, age, handicap or veteran status. The successful vendor will take affirmative action in complying with all Federal and State requirements concerning fair employment of the handicapped, and concerning the treatment of all employees and applicants for employment without discrimination by reason of race, color, religion, sex, national origin, age, handicap or veteran status.
14. When Federal funds are used for this procurement, this contract is subject to all applicable Federal Acquisition Regulations (April, 1984 or as amended).
15. The University of South Carolina requires all contractual activities to be in compliance with local, State, and Federal mandates concerning the "Protection of Human Health and the Environment". Any contractor doing business with the University of South Carolina will be required to document compliance and to specify prudent practices used by the contractor to address applicable mandates including, but not restricted to, "The Hazard Communication Standard" OSHA CFR 1910, 1200 ( SCRR Article1, 71-1910, 1200). By acceptance of this contract, the contractor agrees to take all necessary steps to ensure compliance with these requirements.
16. Seller certifies compliance with Federal (41 U.S.C. 81) and State (Title 44, Chapter 107) Drug Free Workplace Acts.
17. In compliance with the State of South Carolina Higher Education Transparency initiative, payments issued by the University of South Carolina are subject to public reporting via the University website at <http://spend.admin.sc.edu>.
18. Seller certifies compliance with the State Iran Divestment Act of 2014 (Title 11, Chapter 57).

Unauthorized