HENRY MCMASTER, CHAIR GOVERNOR CURTIS M. LOFTIS, JR. STATE TREASURER RICHARD ECKSTROM, CPA COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR. CHAIRMAN, SENATE FINANCE COMMITTEE G. MURRELL SMITH, JR. CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE GRANT GILLESPIE EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES DELBERT H. SINGLETON, JR. DIVISION DIRECTOR (803) 734-8018 JOHN ST. C. WHITE MATERIALS MANAGEMENT OFFICER

(803) 737-0600 Fax: (803) 737-0639

Protest Decision

| Matter of: | Trane US, Inc., and Hoffman Building Technologies, Inc. | |
|----------------------------|--|--|
| File No.: | 2021-003A | |
| Posting Date: | May 21, 2021 | |
| Contracting Entity: | Department of Corrections | |
| Project No.: | N04-9731-FW-E | |
| Description: | Evans CI & Lieber CI Chilled Water Controls Revision and Commissioning | |

DIGEST

Statement of protest that is not submitted within fifteen calendar days of posting and notice is untimely.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer for Construction (CPOC) conducted an administrative review of nearly identical protests filed by Trane US, Inc., and Hoffman Building Technologies, Inc. Trane and Hoffman's protests are attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

On April 13, 2021, The CPOC received notices of intent to protest the Department of Corrections (DOC) award of a contract to Johnson Controls, Inc., to perform the work pursuant to a written request for written quotes for construction under \$100,000. [Exhibit B] Neither intent to protest sets forth a ground of protest or a request for relief. On that same day, the CPOC received an actual protest from Control Management, Inc. [Exhibit C] On April 26, 2021, Hoffman emailed a statement of protest to the CPOC. On April 27, 2021, Trane emailed a statement of protest to the CPOC.

DOC's Notice of Award included the following statement of a bidders right to protest an award:

RIGHT TO PROTEST (SC Code § 11-35-4210)

Protest Decision, page 2 File No. 2021-003A April 30, 2021

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may be entitled to protest. To protest an award, you must (i) submit notice of your intent to protest within seven (7) business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided.

[emphasis supplied]

Section 11-35-310(4) states "Business day" means a day that is neither a Saturday, Sunday, nor a state or federal holiday.' Section 11-35-310(13) states "Days" means calendar days.'

While DOC's Notice of Award is dated April 6, 2021, Trane's notice of intent to protest states that DOC sent out notice of the award on April 7, 2021. For purposes of this decision, the CPOC will rely on the April 7, 2021 date in Trane's notice of intent to protest for the date of posting. Using that date, both Trane and Hoffman filed a notice of intent to protest within the required seven business days of this date. However, it appears they both erroneously assumed the fifteen days they had to file their actual protest was also calculated in business days.¹ The fifteenth business day after April 7, 2021 was April 28, 2021. However, per the language of the Notice of Award and S.C. Code Ann. §11-35-4210(1)(b), a protestant filing an intent to protest must file its actual protest within fifteen calendar days after the posting of the Notice of Award. The fifteenth calendar day after April 7, 2021 was April 22, 2021. Therefore, Trane and Hoffman's actual protest were due no later than midnight at the end of the day of April 22, 2021. Both Trane and Hoffman failed to file their actual protests by this date. Therefore, the CPOC lacks jurisdiction to consider these protests.

DECISION

Based on the foregoing, the CPOC dismisses the protests of Trane and Hoffman as untimely.

John St. C. White, PE Chief Procurement Officer for Construction

Columbia, South Carolina

¹ Trane's intent to protest states that "we will have our case submitted for review before the 15 **business days** deadline." [emphasis supplied]

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: http://procurement.sc.gov

FILING FEE: Pursuant to Proviso 111.1 of the 2020 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 11-35-4210(6), Carolina Sections 11-35-4220(5), Code 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. [The Request for Filing Fee Waiver form is attached to this Decision.] If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

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

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

| Name of Requestor | | | Address | |
|--|--|-------------------------|--|----|
| City | State | Zip | Business Phone | |
| 1. What is | your/your comp | any's monthly income | ? | |
| 2. What are | e your/your com | pany's monthly expens | ses? | |
| 3. List any | other circumsta | nces which you think a | affect your/your company's ability to pay the filing fee | 9: |
| | | | | |
| misreprese administra Sworn to b | ent my/my comp tive review be w before me this | pany's financial condi- | above is true and accurate. I have made no attempt tion. I hereby request that the filing fee for request | |
| Notary Pul | blic of South Ca | rolina | Requestor/Appellant | |
| My Comm | ission expires: _ | | | |
| For officia | l use only: | Fee Waived | Waiver Denied | |
| Chairman | or Vice Chairma | in, SC Procurement Re | view Panel | |
| | _day of South Carolina | , 20 | _ | |

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

Exhibit A - Trane

| From: | Green, Peter |
|----------------|--|
| То: | Protest-OSE |
| Cc: | <u>Peak, Scott; Green, Shawn; Malberg, Korey</u> |
| Subject: | [External] Intent to Protest: Evans CI & Lieber CI Chilled Water Controls Revision and Commissioning |
| Date: | Tuesday, April 13, 2021 9:18:55 AM |
| Attachments: | image001.png |
| Actuellineites | indecorprise and indeco |

Good Morning,

We are submitting an intent to protest project number: N04-9731-FW-E; Evans CI & Lieber CI Chilled Water Controls Revision and Commissioning

The award was sent out 4/7/2021 and we will have our case submitted for review before the 15 business days deadline of 4/28/2021.

Thank you,

Peter Green Controls Account Manager 4951 Rivers Ave | Charleston, SC 29406 Mobile: 843.693.4499 E-mail: peter.green@trane.com



Mr. Fred Walker,

Please see the protest letter below and let us know if any further action is required from us.

Grounds of protest: The background of this project is that it is solely the result of a contractor, JCI, not completing their scope of work on a previous project to finish the chiller plant controls and make the system work. Had JCI completed their previous project, this new project would have never been put to bid. However, since JCI was not able to meet the design of the engineer's drawings, SCDC was ultimately left with an incomplete system that is not operational. SCDC was forced to create a new scope of work to complete the remaining work JCI did not finish. Our objections to this bid are as follows:

- The scope of work presented by SCDC was not the same to all the bidders. By allowing JCI to bid this
 project, they had much less work to do than Hoffman, Trane, or CMI. JCI already had the majority of
 their controls system installed in the chiller plant. Any of the other three companies would have had
 to remove JCI's hardware infrastructure, and start fresh with their own. Additionally, JCI already has
 their own engineered drawings and will simply need to add on to them, instead of starting from
 scratch, like everyone else.
- 2. JCl has already been paid to complete most of this work. Why are they being paid to complete it again? They submitted a bid for \$78,000 to get paid for a few minor changes. Everyone else's price was for complete new systems, not including sensors. JCl's price to the taxpayers is beyond unreasonable.
- 3. The scope of work (on page 3 of the project manual for project number N04-9731-FW-E) clearly states "Project includes replacement of actuators CV-4, 5 & 6 with new proportional actuators and feedback sensors". It was brought to our attention that other bidders were planning on reusing the existing actuators but adding a computer chip to make them do what they need. This is not the same as replacement, and ultimately helped them cut cost. But this does not meet the statement of work.
- 4. At the onsite walk through on 3/17/2021, CMI, Hoffman, and Trane were all told this project was the result of JCI not being able to make the system work. It was made clear SCDC wanted nothing more to do with JCI. Why they were even allowed to bid this project is a question that needs to be answered.
- 5. At the onsite walk through on 3/17/2021, CMI, Hoffman, and Trane were all told that this would not be a low bid award, it would be a decision based on value determined by SCDC. Additionally, we were told the winner of this project would likely get future projects to replace the rest of the controls throughout the campus at each facility. The bid ended up being a low bid award which only incentivized bidders to get as low as possible for this project, with the promise of future work. However, SCDC will still be stuck long term with the company that wins this bid. So while a few thousand dollars may be good for SCDC to save up front, that is not worth it if the company that wins is not able to provide the same long term service value as the companies that were only a few thousand dollars higher. With this bid having such a large implication on the future of the rest of campuses, SCDC should have full say over who they chose to install based on the perceived long term value in relation to the price. SCDC should not be stuck with the low bidder.

Relief requested:

- Trane requests this project rebids with the exclusion of JCI, who has no right to rebid work they did not complete in the first place. The rebid should not be low bidder. SCDC should be able to choose who they want to partner with for the long term. At a minimum if rebidding is not feasible, JCI's bid should be thrown out, and SCDC should be able to choose who they want to work with from the three bidders that remain.
- 2. If the scope of work submitted by the bidder does not explicitly include replacement of actuators (on page 3 of the project manual for project number N04-9731-FW-E), it should be thrown out since this will make their bid look artificially low.
- 3. Written explanation for why JCI was allowed to bid this project when they were not able to complete the job the first time, thus charging the taxpayers again for work they were already paid to do.

Thank you,

Peter Green

Peter Green Controls Account Manager 4951 Rivers Ave | Charleston, SC 29406 Mobile: 843.693.4499 E-mail: peter.green@trane.com



| From: | <u>Green, Peter</u> |
|--------------|---|
| То: | Walker, Fred; Protest-OSE |
| Cc: | <u>Green, Shawn</u> ; <u>Peak, Scott</u> ; <u>Malberg, Korey</u> |
| Subject: | [External] N04-9731-FW-E Evans CI & Lieber CI Chilled Water Controls Revision and Commissioning |
| Date: | Tuesday, April 27, 2021 3:51:01 PM |
| Attachments: | image001.png |
| | Intent to Protest Evans CI Lieber CI Chilled Water Controls Revision and Commissioning.msg |
| | Protest Letter.pdf |

Good Afternoon Mr. Walker,

Please see our attached protest letter, submitted within the 15 business day window ending on 4/28/2021. I also attached the intent to protest email that was sent to <u>protest-ose@mmo.sc.gov</u> on 4/13/2021. Please let us know if anything further is required from us.

Thank you,

Peter Green Controls Account Manager

4951 Rivers Ave | Charleston, SC 29406 Mobile: 843.693.4499 E-mail: <u>peter.green@trane.com</u>



Exhibit A - HBT

| From: | Michael Rushing |
|--------------|--|
| То: | Protest-OSE |
| Cc: | Walker, Fred; Aaron Turner (C039989); Brice Milbourne; David Place (C050637) |
| Subject: | [External] Protest of PROJECT NUMBER: N04-9731-FW-E |
| Date: | Tuesday, April 13, 2021 10:11:09 AM |
| Attachments: | image001.png |
| | image002.png |

To whom it may concern,

Hoffman Building Technologies would like to protest the award to Johnson Controls for the following project: Project number: N04-9731-FW-E Project Name: Evans CI & Lieber CI Chilled Water Controls Revision and Commissioning Agency: South Carolina Department of Corrections Bid Date: April 5, 2021 Date of Notice of Award: April 6, 2021

This email serves as our intent to protest.

Michael



Michael Rushing Sales Engineer

mobile: 704-517-9201 direct: 803-451-8345 email: <u>Michael.Rushing@hbtech.com</u> 104 Vantage Point Drive Cayce, SC 29033



| From: | Michael Rushing | |
|--------------|--|--|
| То: | Protest-OSE | |
| Cc: | Walker, Fred; Aaron Turner (C039989); Brice Milbourne; David Place (C050637) | |
| Subject: | [External] Protest of PROJECT NUMBER: N04-9731-FW-E | |
| Date: | Monday, April 26, 2021 9:36:13 AM | |
| Attachments: | image001.png | |
| | image002.png | |
| | image005.png | |
| | image006.png | |

To whom it may concern,

Hoffman Building Technologies is protesting the award to Johnson Controls for the following project: Project number: N04-9731-FW-E Project Name: Evans CI & Lieber CI Chilled Water Controls Revision and Commissioning Agency: South Carolina Department of Corrections Bid Date: April 5, 2021 Date of Notice of Award: April 6, 2021

Reasons for protest.

- 1. The scope of work is not the same for all bidders. All bidders except for Johnson Controls (HBT, Trane and CMI) would have to replace the Global Controller (NCE) and expansion controllers with inputs and outputs associated with the chiller plant. This gives Johnson controls a large advantage on hardware costs. Johnson would also have a huge advantage on labor. All other bidders would need to produce engineered drawings, wiring diagrams, program controller, perform a point to point check out, commission the system and start it up. Johnson would only have to amend existing drawings and programs and test the new sequence. Additionally, all other bidders except for Johnson would need to demo existing controllers and rewire existing controls panels, giving Johnson another advantage on installation labor.
- A portion of the scope in this RFP should have been done as part of SCDC project number N04-9731-FW-C. See page M302 of the construction drawings showing BACnet integration to the new chiller at Lieber.



Also, see Johnson controls as-builts on drawing number 01.002 Network Riser Diagram showing

BACnet integration to the new chiller.



BACnet integration to the chiller is also called out in the sequence of operations of the Johnson asbuilts on page 002.003

K. BAS INTERFACE

 THE CHILLER WILL BE PROVIDED WITH A BACNET-COMPLIANT DIGITAL GATEWAY. THE BAS WILL BE CONNECTED TO THE DIGITAL GATEWAY FOR FULL COMMUNICATIONS AND NUMERIC AND GRAPHIC DISPLAY OF THE SPECIFIED CHILLER PARAMETERS (PER SCDC GUIDELINES).
 THE BAS WILL PROVIDE ALL CONTROL LOGIC AND CONTROL FUNCTIONS. THE CCP WILL CONTROL CHILLER CAPACITY AND SAFETIES ONLY.
 THE BAS WILL CONNECT TO ANALOG CONDENSER WATER SUPPLY TEMPERATURE, CONDENSER WATER RETURN TEMPERATURE AND CONDENSER WATER FLOW SIGNALS AT THE CCP.

This was never performed, and bidders were asked to incorporate this scope into our bid. If awarded to Johnson, they would get paid to perform a scope of work that they have already been paid to perform.

3. Johnson controls bid does not reflect market price for their scope of work. I have documented Johnson's several price advantages in item 1. Since Johnson doesn't need to replace a global and IO, all they need to do is add a touch screen, integrate to the new chiller at Lieber and tweak existing sequences. This scope is worth a fraction of their award of \$78,000.

In our opinion, there are 2 options for resolution.

- 1. If SCDC would like to work with Johnson controls, they should request a quote as an extension of or as a Change Order to the existing job with price justification or break out of pricing for their quote.
- 2. Re-bid this project as-is and exclude Johnson controls from bidding.

Michael Rushing

Hoffman Building Technologies

104 Vantage Point Dr. Cayce | South Carolina 29033 Dir +1 803 451 8345 | Mobile +1 704 517 9201

From: Michael Rushing Sent: Tuesday, April 13, 2021 10:11 AM

To: Protest-ose@mmo.sc.gov

Cc: Fred walker <fwalker@mmo.sc.gov>; Aaron Turner (C039989) <Turner.Aaron@doc.sc.gov>; Brice Milbourne <Brice.Milbourne@hbtech.com>; David Place (C050637) <Place.David@doc.sc.gov> **Subject:** Protest of PROJECT NUMBER: N04-9731-FW-E

To whom it may concern,

Hoffman Building Technologies would like to protest the award to Johnson Controls for the following project: Project number: N04-9731-FW-E Project Name: Evans CI & Lieber CI Chilled Water Controls Revision and Commissioning Agency: South Carolina Department of Corrections Bid Date: April 5, 2021 Date of Notice of Award: April 6, 2021

This email serves as our intent to protest.

Michael



Michael Rushing Sales Engineer

mobile: 704-517-9201 direct: 803-451-8345 email: <u>Michael.Rushing@hbtech.com</u> 104 Vantage Point Drive Cayce, SC 29033



Exhibit B SE-311 INVITATION FOR MINOR CONSTRUCTION QUOTES

| AGENCY/OWNER: South Carolina Department of Correction | າກເ |
|---|--|
| PROJECT NAME: Evans CI & Lieber CI Chilled Water Con | |
| | CTION COST RANGE: \$ 70,000 to \$ 94,000 |
| PROJECT LOCATION: Lieber CI, Ridgeville SC and Evan | |
| | nt of actuators CV-4, 5 & 6 with new proportional actuators and |
| | isting chillers, removal of any actuators and/or sensors currently |
| present that are not required for operation, relabeling valves an | |
| QUOTE DUE DATE: <u>4/5/2021</u> | TIME: 2:00 |
| AGENCY PROJECT COORDINATOR: David Place | |
| EMAIL: Place.david@doc.sc.gov | TELEPHONE: <u>803-605-5922</u> |
| DOCUMENTS MAY BE OBTAINED FROM: <u>Bid Docum</u> emailing a request to David Place at the SC Department of Cor | |
| DOCUMENT DEPOSIT AMOUNT: \$ | IS DEPOSIT REFUNDABLE Yes 🗌 No 🗌 N/A 🖂 |
| PERFORMANCE BOND REQUIRED? Yes No [| 🗋 🛛 PAYMENT BOND REQUIRED? Yes 🖾 No 🗌 |
| Contractors must obtain Documents/Plans from the above list communications with official plan holders & Contractors subm | ed source(s) to be listed as an official plan holder. All written itting quotes will be via email or website posting. |
| PUBLIC NOTICES: All notices (Notice of Award) shall Columbia, SC 29210 | be posted at the following location: <u>4322 Broad River Road</u> |
| All questions & correspondence concerning this Invitation shall be addressed A/E NAME: RMF Engineering, Inc. | |
| A/E CONTACT: Mr. Miles Martschrink, Jr. | |
| EMAIL: miles.martschink@rmf.com | TELEPHONE: (843) 971-9639 |
| PRE-QUOTE CONFERENCE: Yes No X PRE-QUOTE CONFERENCE LOCATION: | DATE: TIME: |
| QUOTE DELIVERY ADDRESSES: | |
| HAND-DELIVERY: | MAIL SERVICE: |
| Attn: David Place | Attn: David Place |
| Division of Facilities Management, 4322 Broad River Rd Division of Facilities Management, 4322 Broad River Rd | |
| Columbia, SC 29210 | Columbia, SC 29210 |
| IS PROJECT WITHIN AGENCY CONSTRUCTION CERTIFIC | CATION? (Agency MUST check one) Yes 🛛 No 🗌 |
| APPROVED BY: | DATE: |





COLUMBIA- MAIN OFFICE 3101 Carlisle Street Columbia, SC 29205 Phone (803) 765-9070 Fax (803) 779-8191 *CHARLESTON* 1850 Northbrook Blvd. Hanahan, SC 29410 Phone (843) 764-0212 Fax (843) 764-3942 *GREENVILLE* 30-B Cessna Court Greenville, SC 29607 Phone (864) 213-9003 Fax (864) 213-9005 *MYRTLE BEACH* 3803 Wesley Street Myrtle Beach, SC 29579 Phone (843) 236-5999 Fax (843) 236-3263

Notice of Intent to Protest State Project Number N04-9731-FW-E 04/13/2021

All,

I am officially notifying the Chief Procurement Officer (Aaron Turner) and the Office of State Engineer (Fred Walker) that Control Management, Inc is protesting the above state project award. The cause for protest is listed below.

- 1. The project scope was not equal for all bidders, the awarded bidder had a distinct advantage on the project. Three bidders had to produce new engineered control drawings, new control hardware and provide new programing. Johnson Controls the winning bidder only needed to modify existing control programs and control drawings.
- 2. The awarded bidder is getting paid to perform work that was previously paid for by SCDC under a previous contract and is shown as provided on the As-Built drawings for the previous contract. The other bidders have additional cost to perform the specified scope that was already paid to the winning bidder on another project.

Thanks

Eric Scales Control Management, Inc. Project Manager 803-351-0881