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COMPTROLLER GENERAL



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

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
GRANT GILLESPIE
EXECUTIVE DIRECTOR

Dismissal

Matter of: BONITZ, Inc.
File No.: 2022-104A
Date: August 30, 2021
Contracting Entity: Clemson University
Solicitation No.: 139775414
Description: Campus Wide Flooring

DIGEST

Protest of intended award of a contract is dismissed where Chief Procurement Officer's cancellation of the intended award renders the protest moot.

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review per S.C. Code Ann. § 11-35-1520(7) and Regulation 19-445.2085. This determination is based on the evidence and applicable law and precedents.


DETERMINATION

On August 2, 2021, BONITZ, Inc. (BONITZ), protested Clemson University's intended award of a contract for flooring claiming that Michael and Company Interiors, Inc.'s (Michael) bid was nonresponsive. BONITZ's protest is attached as Exhibit A and incorporated herein by reference.

On August 11, 2021, Clemson University (Clemson) requested that the Chief Procurement Officer (CPO) cancel award of contracts to Harris Carpets & Linoleum, Inc. (Harris), and Michael prior to performance. [Exhibit B] Clemson's grounds for the request is an administrative error in deciding which bidders should be awarded a contract. After conducting an administrative review of this request, the CPO cancelled the intended awards to Harris and Michael. File No. 2022-104B. Therefore, the protest of BONITZ is moot.

Written Determination, page 2
File No. 2022-104A, BONITZ, Inc.
August 30, 2021

For the foregoing reasons, the CPO hereby dismisses the rotest of BONITZ

A handwritten signature in blue ink, reading "John St. C. White", is positioned above a horizontal line.

John St. C. White
Chief Procurement Officer
For Construction

Columbia, South Carolina

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 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 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 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.

Exhibit A

From: [Tanya Jones](#)
To: [Protest-MMO](#)
Cc: [Adam Stewart](#)
Subject: [External] Fwd: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST
Date: Monday, August 2, 2021 3:55:55 PM

To who this may concern: please find herein notice of intent to protest. Please confirm receipt.

Regards

From: Tanya Jones <TanyaJones@Bonitz.com>
Sent: Monday, August 2, 2021 1:26 PM
To: Beth Perry <kbperry@clemson.edu>
Cc: Adam Stewart <AdamStewart@Bonitz.com>
Subject: Re: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST

Beth; after careful review , please accept this as notice of INTENT to PROTEST as listed in section [11-35-4210](#)(1)(b) in the South Carolina Consolidated Procurement Code applying to this award.

Pursuant of Section IV. APPENDICES TO SCOPE OF WORK

Offerors are required to provide pricing information for all unit prices throughout the spreadsheet. It clearly states Do NOT enter \$0 for any given price, enter \$0.01 which will indicate you do not carry this product or service, THEREFORE, it will not be considered during evaluation. FAILURE to provide a price in each and every required cell will result in your bid being deemed non-responsive.

In Appendix A Bidding Schedule Michael Co has a \$0.00 in cell G29 on tab 2
Base – Tran – Tread – Strig

In Appendix A Bidding Schedule Michael Co has a NA in cell F19 on tab 3
Carpet

In Appendix A Bidding Schedule Michael Co has a \$0.00 in cell F19 on tab 7
Marmoleum

Tanya Jones, Director of Sales
BONITZ, Inc.
1200 Woodruff Road D-1
Greenville, SC. 29605
864-449-8437
Sent from my iPad

Exhibit B



August 11, 2021

John White, CPO
Division of Procurement Services
1201 Main St., Suite 600
Columbia, SC 29201

Re: Request for Cancellation of Award Pursuant to 19-445.2085(C)

Dear Mr. White:

The State received a notice of Intent to Protest our Campus Wide Flooring Contract (Contract #139775414) on August 3, 2021. Clemson immediately suspended our award and began investigating the point of protest. During our investigation, it became apparent Clemson missed key aspects in the financial proposals/responses of all offerors that we failed to document and resolve prior to award. These items are related to, but did not directly create, the point of protest. I determined that there was a clear administrative error on our part that, once corrected, will require a new award to be made.

Realizing this, I contacted the offeror filing the intent to protest, as well as both of the initially awarded offerors, to discuss the matter. We discussed potential options, one being to simply cancel everything and start the solicitation over, but all involved felt that was not fair with pricing now being exposed. They did all agree with my proposed resolution of revising the evaluation to correct the error and then awarding the contract to all three offerors involved – i.e. awarding to three instead of two. In other words, this solution to expand our award would be allowed under the terms of our solicitation and all agreed that it will provide the fairest resolution to this matter.

In order to complete this re-evaluation and re-award of this contract, I am seeking your approval for a Cancellation of Award Prior to Performance in accordance with 19-445.2085(C).

CLEMSON UNIVERSITY PROCUREMENT

391 College Ave Suite 203, Clemson, S.C. 29634-5106

P 864-656-2390 | F 864-656-2394 | www.clemson.edu/procurement



I appreciate your consideration into this request. Please let me know if you have any questions or require additional details regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Nebesky". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael J. Nebesky,
Director, Procurement & Business Services

From: [Michael Nebesky](#)
To: [White, John](#)
Cc: [Grier, Manton](#); [Craig, Kimber](#); [Spicer, Michael](#)
Subject: RE: [External] Fwd: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST
Date: Friday, August 13, 2021 6:47:45 AM
Attachments: [image001.png](#)
[Scope of Work, 139775414 Flooring.pdf](#)
[Appendix A - Bidding Schedule 139775414 Rev1.xlsx](#)
[Appendix A - Bidding ScheduleHarris.xlsx](#)
[Appendix A - Bidding Schedule Michael Co.xlsx](#)
[BONITZ Appendix A Bidding Schedule 139775414 \(2\).xlsx](#)

John

I understand. I didn't want to overwhelm with details (and honestly to admit how basic this oversight was). This never should have happened and will be a learning point for my team on many levels.

The specifics are as follows:

1 – the RFP scope of work stated in part in Section IV:

Offerors are required to provide pricing information for all unit prices throughout the spreadsheet. Do not enter \$0 for any given price, enter \$0.01 which will indicate you do not carry this product or service, therefore, it will not be considered during evaluation. Failure to provide a price in each and every required cell will result in your bid being deemed non- responsive.

This was the language the protester raised in the email below. In addition to this, the Bidding Schedule stated:

Offerors must enter a Unit Price in all required cells in tabs 1-8.

2 – the issue was this language taken together was intended to require bidders bid ALL line items – saying you couldn't bid an item could result in your bid being thrown out. That second sentence in the scope of work above was poorly written, but from past bids for this work where it was an issue, we were attempting to point out that we were asking them to use \$0.01 if someone was not able to provide an item and \$0 if it was something they would offer for free. In the past folks entered \$0 as a way to say "no, I can't do that" and we accepted it as a \$0/free bid. Again, this is the embarrassing part because that language isn't super clear and depending how you read it could actually contradict itself.

3 – the Administrative oversight stemmed from that language and how we handled it. We had offerors bid both \$0 and \$0.01 and appear to have simply accepted it all and added it up. The buyer failed to address lines that ALL bidders bid as \$0.01 – in essence saying they don't supply that item. In one case, ALL bidders provided \$0.01 on one particular item, so it appears we accepted as a minor informality – not effecting their overall bid (line 19 of tab 3 of the bid schedule) but didn't document it as such. But another bidder (Michaels) submitted \$0.01 on several items (tabs 1 and 8), thus making their overall bid the lowest value by far. Clearly they should have been deemed non-

responsive or at minimum should not have been compared as apples-to-apples with the other bids that DID offer all lines if possible to look at as awarding by lots. That is why I am requesting the award be canceled.

In my letter I shared some details on how I intend to move forward to simply show that I had acceptance from the offerors involved in this matter where they felt canceling this award was the best option. One option was to simply cancel this whole thing and start over, but all the bidders felt that would be a disaster with pricing already out there publically and I agreed, so worked hard on an option that would work for everyone. I am intentionally not providing specific details on how we plan to move forward once the award is canceled since I don't believe it is required as part of your determination here. Happy to share those details and discuss if you need that now.

Attached is the scope of work and bid schedule from the solicitation. Also attached is the bid schedules for the two awarded offerors (Harris and Michaels) and the protestor (Bonitz).

Please let me know if you have questions or need more specifics or details.

Thanks

Mike

Mike Nebesky [CLEMSON UNIVERSITY](#)

Procurement Director
Procurement and Business Services
391 College Ave, Suite 203, Clemson, SC 29634
864.656.2067 Office

[Procurement and Business Services website](#)
[Current Bid Opportunities](#)

From: White, John <jswwhite@mmo.sc.gov>

Sent: Thursday, August 12, 2021 11:34 AM

To: Michael Nebesky <mnebesk@clemson.edu>

Cc: Grier, Manton <mgrier@ogc.sc.gov>; Craig, Kimber <kcraig@mmo.sc.gov>; Spicer, Michael <mspicer@mmo.sc.gov>

Subject: RE: [External] Fwd: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST

Mike,

I will need the details of the administrative error.

John



John St. C. White | Materials Management Officer and State Engineer
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-0768 |

From: Michael Nebesky <mnebesk@clemson.edu>
Sent: Wednesday, August 11, 2021 7:36 AM
To: White, John <jswhite@mmo.sc.gov>
Cc: Grier, Manton <mgrier@ogc.sc.gov>; Craig, Kimber <kcraig@mmo.sc.gov>; Spicer, Michael <mspicer@mmo.sc.gov>
Subject: RE: [External] Fwd: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST

John

Please find the attached request to cancel the award made for this contract.

Note, I think John Schmidt was inadvertently added to the email chain below – I removed him. I AM working with him on a separate Intent to Protest that he filed for our Ring contract, but the flooring contract we are discussing below and in the attached request did not involve outside counsel.

Thank you

Mike Nebesky [CLEMSON UNIVERSITY](#)

Procurement Director
Procurement and Business Services
391 College Ave, Suite 203, Clemson, SC 29634
864.656.2067 Office

[Procurement and Business Services website](#)
[Current Bid Opportunities](#)

From: Spicer, Michael <mspicer@mmo.sc.gov>
Sent: Monday, August 9, 2021 11:10 AM
To: Michael Nebesky <mnebesk@clemson.edu>
Cc: Grier, Manton <mgrier@ogc.sc.gov>; Craig, Kimber <kcraig@mmo.sc.gov>; White, John <jswhite@mmo.sc.gov>; John Schmidt <john.schmidt@thesclawfirm.com>
Subject: RE: [External] Fwd: Clemson Bidding Bid Message Notification: 139775414 Addendum 1

(Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST

Mike,

You should request a cancellation of the award under Regulation 19-445.2085(C) citing an administrative error by the procuring agency. This should be directed to John White since this is a goods and services procurement.



Michael B. Spicer | Information Technology Management Officer
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896-5225 | mspicer@mmo.sc.gov

From: Michael Nebesky <mnebesk@clemson.edu>
Sent: Monday, August 9, 2021 10:41 AM
To: Spicer, Michael <mspicer@mmo.sc.gov>
Subject: RE: [External] Fwd: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST

Mike

Can you confirm my options on this one? I've reviewed what Bonitz is protesting and agree that we missed items that should have resulted in one of the two awarded suppliers (our solicitation and award said we'd award to the two lowest evaluated bidders). Given that I suspended the award, am I able to document and issue a new Intent to Award at this point or is there some other way I need to handle this? Since they appear to be protesting one of the two awards made, is there a way the other award stands?

Thanks for any guidance

Mike

Mike Nebesky [CLEMSON UNIVERSITY](#)

Procurement Director
Procurement and Business Services
391 College Ave, Suite 203, Clemson, SC 29634
864.656.2067 Office

[Procurement and Business Services website](#)
[Current Bid Opportunities](#)

From: Spicer, Michael <mspicer@mmo.sc.gov>
Sent: Tuesday, August 3, 2021 9:51 AM
To: Tanya Jones <TanyaJones@Bonitz.com>; Beth Perry <kbperry@clemson.edu>

Cc: Adam Stewart <AdamStewart@Bonitz.com>; Grier, Manton <mngrier@ogc.sc.gov>; White, John <jswhite@mmo.sc.gov>; nebesky@clemson.edu

Subject: RE: [External] Fwd: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST

Intent to Protest received.



Michael B. Spicer | Information Technology Management Officer
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896-5225 | mspicer@mmo.sc.gov

From: Tanya Jones <TanyaJones@Bonitz.com>

Sent: Monday, August 2, 2021 3:56 PM

To: Protest-MMO <protest-mmo@mmo.state.sc.us>

Cc: Adam Stewart <AdamStewart@Bonitz.com>

Subject: [External] Fwd: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST

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Sent: Monday, August 2, 2021 1:26 PM

To: Beth Perry <kbperry@clemson.edu>

Cc: Adam Stewart <AdamStewart@Bonitz.com>

Subject: Re: Clemson Bidding Bid Message Notification: 139775414 Addendum 1 (Campus Wide Flooring Contract) - NOTICE of INTENT to PROTEST

Beth; after careful review , please accept this as notice of INTENT to PROTEST as listed in section [11-35-4210](#)(1)(b) in the South Carolina Consolidated Procurement Code applying to this award.

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Offerors are required to provide pricing information for all unit prices throughout the spreadsheet. It clearly states Do NOT enter \$0 for any given price, enter \$0.01 which will indicate you do not carry this product or service, THEREFORE, it will not be considered during evaluation. FAILURE to provide a price in each and every required cell will result in your bid being deemed non-responsive.

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In Appendix A Bidding Schedule Michael Co has a NA in cell F19 on tab 3 Carpet

In Appendix A Bidding Schedule Michael Co has a \$0.00 in cell F19 on tab 7 Marmoleum

Tanya Jones, Director of Sales
BONITZ, Inc.
1200 Woodruff Road D-1
Greenville, SC. 29605
864-449-8437
Sent from my iPad