

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
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

HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

BRUCE W. BANNISTER
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

Protest Decision

Matter of: Timekey Enterprises, LLC

File No.: 2023-009

Posting Date: February 9, 2023

Contracting Entity: South Carolina Department of the Administration

Project No.: D50-6040-CB

Description: Supreme Court – Waterproof Walls, Windows, and Roof Repairs

DIGEST

Protest of Intent to Award on the grounds that the South Carolina Department of the Administration (Department) erred by finding protestant non-responsible on grounds that protestant lacked an appropriate South Carolina Contractors License denied where the Department's determination was not clearly erroneous, arbitrary, capricious, or contrary to law.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer for Construction (CPOC) conducted an administrative review of a protest filed by Timekey Enterprises, LLC (Timekey) protesting the Department's intention to award a contract to Leitner Construction Company of the Carolinas, LLC (Leitner) for replacement of windows, limestone repair and repointing, installation of new PVC clad metal gutter line, new external downspouts, and repair of the existing roof membrane on the State Supreme Court Building (Project). Timekey's protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

The following are facts relevant to this protest:

- On or about September 21, 2022, the Department published an advertisement for construction services for the Project. On or about October 7, 2022, the Department extended the bid opening date and published a revised invitation for bids. [Exhibit B]

- The solicitation called for a base bid and one add alternate. [Exhibit C]
- By the deadline for receipt of bids, the Department received four bids. [Exhibit D]
- Timekey submitted a low bid on the base bid of \$3,320,520. Leitner submitted a bid for \$3,389,000, which was the second lowest bid. [Id.]
- Timekey has a South Carolina contractor's license with a classification of general contractor - specialty and the subclassification of glass and glazing (GG License). [Exhibit E] Timekey does not have any other South Carolina contractor's license classification or subclassification.
- Leitner has a South Carolina contractor's license with a classification of general contractor – building (BD License). [Exhibit F] Leitner's license has other South Carolina license classifications or subclassifications which are not relevant to this decision.
- After reviewing the scope of work and the estimate of probable cost of the Architect/Engineer (A/E) for the project, the Department determined that Timekey lacked an appropriate contractor's license to bid the Project as a sole prime contractor.¹
- The Department also determined that Leitner did have an appropriate contractor's license to bid the project as a sole prime contractor.
- On January 6, 2023, the Department posted a notice of its intent to award a contract to Leitner for the work of the base bid. [Exhibit G] The Department attached to this notice a copy of the bid tabulation. [Exhibit D] The Department made the following notation on the bid tabulation:

Timekey Enterprises' bid is deemed non-responsive due to their license being unsuitable to serve as the prime contractor per the requirements set forth in SC Code Section 40-11-410.

- On January 17, 2022, Timekey protested the Department's intent to award a contract.²

DISCUSSION

On the bid tabulation, the Department stated that Timekey's bid was nonresponsive, confusing the issue of responsiveness with the issue of responsibility. In fact, the Department's determination that Timekey lacked an appropriate contractor's license to bid as a sole prime contractor was a determination that Timekey was a nonresponsible bidder.

A determination of responsibility is required by S.C. Code Ann. § 11-35-1810, which states "[r]esponsibility of the bidder or offeror shall be ascertained for each contract let by the State." A procurement officer's determination of nonresponsibility is final and conclusive unless it is "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A). To prevail, the protestant must prove the nonresponsibility determination is clearly erroneous, arbitrary, capricious, or contrary to law. *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3.

A responsibility determination is a determination that the bidder has the ability to perform. *See* S.C. Code Ann. Regs. 19-445.2125(A)(1). Possession of the proper contractor license is an issue of responsibility. *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3 (where the State is

¹ A contractor is limited to the scope of his license group and classification both in bidding and performing work. S.C. Code Ann. § 40-11-270; *see also* §§ 40-11-30 and 260(A).

² Timekey emailed its protest on January 16, 2023, a State and Federal holiday.

investigating the bidder's ability to perform it is deciding an issue of responsibility); *Protest of Roofco, Inc.*, Panel Case No. 2000-14(I) (“[T]he lack of a proper license to do the work solicited in a state contract will always render a bidder nonresponsible.”); *see also* S.C. Code Ann. § 40-11-200(B) (“It is a violation of this chapter for an awarding authority ... to consider a bid ... unless the bidder has first obtained the licenses required by this chapter. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority ... if the contractor was not properly licensed at the time the initial bid or contract was submitted.”).

In this case, the Department structured the solicitation and bid documents to seek bids for a sole prime contractor to construct the Project. A prime contractor “is an entity which contracts directly with an owner to perform general or mechanical construction.” S.C. Code Ann. §40-11-20(17). A sole prime contractor is “the prime contractor for a project on which there is only one prime contractor.” S.C. Code Ann. §40-11-20(21). A prime contractor may only bid and perform work within the scope of its license(s). S.C. Code Ann. § 40-11-270. A sole prime contractor may offer to perform work outside the scope of its license provided a certain percentage of the work falls within the scope of its license.³ In this regard, S.C. Code Ann. §40-11-340 states:

An entity licensed under the classifications or subclassifications in Sections 40-11-410(1), (2), or (3) may act as a sole prime contractor on a project if forty percent or more of the work as measured by the total cost of construction falls under one or more of the licensee's license classifications or subclassifications. An entity licensed under the classifications or subclassifications in Section 40-11-410(4) and (5) may act as sole prime contractor if fifty-one percent or more of the work falls under one or more of the licensee's license classifications or subclassifications.

Timekey is licensed under the “classifications or subclassifications in Section 40-11-410(4).” Therefore, to find Timekey responsible, the Department had to determine that 51% or more of the work falls under Timekey's GG license. Based on the A/E's estimate of the probable cost of the construction, the Department determined that only 44% of the work fell under a GG license. [Exhibit E].

After seeing the notice of intent to award and bid tabulation, Timekey contacted the A/E to inquire why the Department determined that Timekey was not properly licensed. Timekey followed this conversation up with an email dated November 10, 2022, attaching its contractor's license and an experience packet. [Exhibit F] In response to this email, the A/E asked Timekey for a schedule of values of all the work. [Id.] In response, Timekey provided the requested schedule of values. [Id.] The A/E analyzed this schedule of values and determined using these numbers the percentage of the work that fell under Timekey's GG license was 48%, not the required 51% or greater. [Id.] On November 15, 2022, the A/E notified Timekey of its analysis and provided Timekey with the language of S.C. Code Ann. §40-11-340. [Exhibit G] In response, Timekey provided a new schedule of values stating that in providing the earlier schedule it “did not understand the purpose or significance of the data provided last week.” Timekey further asserted that “this revised schedule is accurate and utilizes actual amounts.” [Id.] This revised scheduled substantially increased the value of the GG work to be 55% of the total.

³ A sole prime contractor must subcontract any work outside the scope of its license(s).

Timekey's protest can be summed up into one main argument—the Department committed error in relying solely on the project Architect/Engineer's (A/E) to determine Timekey lacked an appropriate contractor's license to bid the Project as a sole prime contractor. Timekey contends that since the A/E's estimate underestimated the probable construction cost by 11%, the Department should have relied on Timekey's schedule of values. In so arguing, Timekey asks the CPOC to rely on its second schedule of values, not its first.

The question before the CPOC is whether the Department's decision that Timekey was not a responsible bidder is "clearly erroneous, arbitrary, capricious, or contrary to law"? Where the Department's decision has a rational basis in law and fact, the CPOC will not, indeed cannot, substitute his opinion for that of the Department's. The State is entitled to rely on the project architect/engineer's estimate of probable cost when determining if a bidder was qualified to bid as a sole prime contractor. *See Appeal by Cannon Construction Co., Inc.*, Panel Case No. 2012-4 (finding architect's estimate, considerably higher than the protestant's bid, justified investigating the "total cost of construction" to determine if protestant had the proper license)

The CPOC recognizes that this is not the only rational approach to such a determination. The Department could have chosen to seek additional information but the fact that it did not does not mean the basis of its decision was "clearly erroneous, arbitrary, capricious, or contrary to law." Indeed, the fact that Timekey provided two different schedules of values with two different results shows the dilemma facing an owner when determining licensure requirements. Reliance on numbers provided by the bidder is not necessarily a reliable basis for determining whether the bidder meets the requirements to bid as a sole prime contractor. Therefore, the CPOC finds that the Department's reliance on the A/E estimate of probable cost to determine that Timekey lacked an appropriate license to bid as a sole prime contractor was not "clearly erroneous, arbitrary, capricious, or contrary to law."

Finally, Timekey protests the failure of the Department to publish the A/E's estimate as a part of the solicitation to allow bidders to know which license or combination of licenses the Department believes a bidder must have to bid the project as a sole prime contractor. The actual estimate prepared by the A/E is protected source-selection information that the State cannot release until after publication of the notice of intent to award. S.C. Reg. 19-445.2010. Moreover, to the extent that Timekey is arguing that the Department should have published in the solicitation the license or combination of licenses required to bid as a sole prime contractor, Timekey is protesting the solicitation.⁴ A protest of the solicitation must be submitted to the CPOC within 15 calendar days of the publication of the solicitation. The Department published the solicitation for bids on the Project on or about September 21, 2022. The Department published an amendment to the solicitation on October 7, 2022. [Exhibit H] Timekey submitted its

⁴ Under the licensing laws of this State, contractors have an obligation to determine for themselves that they are qualified to bid a project before doing so. Agencies are required to determine that the low bidder has the proper license before awarding a contract. However, Timekey asks the CPOC to impose a requirement that State agencies make that determination for potential bidders in the solicitation documents. This ignores the complexity of the licensing laws. South Carolina's licensing laws provide for numerous license classifications and subclassifications. A combination of licenses may qualify a contractor to bid as a sole prime contractor, and the Agency would have to determine every possible combination to satisfy Timekey's demand. It is neither practicable nor reasonable to consider every possible combination before receipt of bids and attempts to do so have proven problematic in the past.

Protest Decision, page 5
File No. 2023-009
February 9, 2023

protest on January 7, 2023, well after the 15-day deadline for protesting the solicitation or amended solicitation.

DECISION

Based on the foregoing, the CPOC denies Timekey's protest.

A handwritten signature in blue ink, reading "John St. C. White".

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

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2022)

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 2022 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
1205 Pendleton Street, Suite 367, 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: [Craig Lytle](#)
To: [Protest-OSE](#)
Cc: [Jordan Wilson](#); [Purini, Dan](#); [Joseph Guido](#); [Craig Lytle](#)
Subject: [External] Bid Protest- D50-6040, Supreme Court - Waterproofing Walls and Windows and Roof Repairs
Date: Monday, January 16, 2023 9:37:57 AM
Attachments: [image001.png](#)
[D50-6040-CB- Timekey Enterprise LLC Protest.pdf](#)
[Bid Tab, D50-6040, 11.10.2022.pdf](#)
[SE-370, D50-6040, 01.06.2023.pdf](#)
Importance: High

Please see attached

Craig Lytle
T I M E K E Y Glazing
www.timekey.us
m: 816-225-8442
o: 816-434-3190



T I M E K E Y GLAZING
VISUAL. VALUE. DESIGN.

January 12, 2023

VIA U.S. MAIL AND E-MAIL

Office of State Engineer
Attn: Chief Procurement Officer for Construction (protest-ose@mmo.sc.gov)
1201 Main Street, Suite 600
Columbia, S.C. 29201



REFERENCE: Notice of Protest by Timekey Enterprise LLC
Agency: SC Department of Administration –Division of Facilities
Management and Property Services
Project: Supreme Court – Waterproof Walls and Windows and Roof Repairs
Project No.: D50-6040-CB

Timekey Enterprise LLC protests the Notice of Intent to Award with respect to the above referenced Project. A copy of the Notice of Intent to Award is attached hereto as Exhibit 1.–The basis for this Protest is that Timekey Enterprise LLC was the lowest responsive and responsible bidder for this project (see Official Quote Tabulation at Ex. 1). As indicated in the bid tabulation, the procuring agency disqualified Timekey's bid based on the erroneous determination that bidders were required to have a General Contractors license in lieu of Glass and Glazing subclassification.

The applicable license determination was based solely on the Architect's estimate alone. Section 40-11-340 notes that the Architect's estimate can be used...it does not say it must be used (May 22, 2020 protest decision, page 5, footnote 5). We believe this is an important distinction that allows the license determination to consider relevant factors beyond the Architect's estimate. For the award being protested today, three key factors must be considered.

1. The Architect's estimated 48% of work applying to Glass and Glazing...this appears within a reasonable margin of error whereas 51% would render the GG license sufficient.
2. The Architect's estimate was incorrect or insufficient as all bids were returned over this estimate, and whereas the State still desires to award the work. This suggests errors within the Architect's estimates in specific scopes which could reasonably alter the all-important breakdowns central to this issue.
3. Timekey supplied glazing-only subcontractor bids to other prime bidders prior to bid day. This proves Timekey's claim to 51%+ of GG work is not altered after-the-fact to support this argument. These quotes were confirmed as competitive to other glaziers by the project's third-place bidder. The timestamped emails of this prior-to-bid quote was provided.

If the Architect's estimate is the ultimate deciding factor on license applicability, it should have been listed in the bid documents. Such an estimate would be compiled prior to bid, and a matter of this importance ought to be stated in the bid requirements. It was not. On a project like this with few scopes so evenly distributed, it would seem critical to state beforehand. Especially considering how close the Architect's own estimate was to 50% glazing. We submitted our Glass and Glazing license along with our bid, which was accepted on bid day.

Timekey provided supporting documentation the same day requested after bid supporting our position. All bidders are to review, interpret, and price the work per their knowledge and experience...while prices can end up close, no bidders price the work the same, and no one can know how a competitor compiled their pricing. The obvious example here being different bidders self-performing some piece of the scope. Our bid provided the lowest price, was responsive in all other requirements as shown on the bid tab, AND coincidentally met this 51% threshold that was never mentioned until after the bid.

It seems the justification to date is based on precedence that does not indicate the Architect's estimate must be used. The ability to consider other factors seems critical here when that Architect's estimate was

on a razors edge relative to GG license viability, and knowing the estimate was insufficient overall.

We believe this should conclude with Timekey receiving the award, in keeping with actual competitive pricing provided, and protecting the competitive bid process, wherein bidders are tasked with pricing work appropriately. While the Architect's estimate was no doubt close (both in overall weight and dollars), the bid process proved them off fractionally, thus directly impacting this license argument. Our ability to objectively prove we're above 51% and that our bid was accepted knowing our license-type makes these considerations different. We believe it would be improper to award to any entity other than Timekey.

Respectfully,
TIMEKEY GLAZING,

A handwritten signature in black ink, appearing to read "Jordan Wilson". The signature is fluid and cursive, with the first name "Jordan" being more prominent than the last name "Wilson".

Jordan Wilson
President.

SE-310

INVITATION FOR DESIGN-BID-BUILD CONSTRUCTION SERVICES

AGENCY/OWNER: SC Department of Administration - Division of Facilities Management and Property ServicesPROJECT NAME: Supreme Court - Waterproof Walls and Windows and Roof RepairsPROJECT NUMBER: D50-6040-CB CONSTRUCTION COST RANGE: \$ 2,500,000 to \$ 3,000,000PROJECT LOCATION: SC Supreme Court Building, 1231 Gervais Street, Columbia, SC 29201DESCRIPTION OF PROJECT/SERVICES: Replacement of existing operable and fixed metal select windows and doors, with new ballistic rated metal windows, frames and doors to match original historical profiles. Limestone repairs and repointing, the installation of new PVC clad metal gutter liner, new external downspouts, and the repair to the existing thermoplastic roof membrane as necessary for the installation of the new fall protection anchors.BID/SUBMITTAL DUE DATE: 10/27/22 TIME: 2:00 PM NUMBER OF COPIES: 1PROJECT DELIVERY METHOD: Design-Bid-BuildAGENCY PROJECT COORDINATOR: Dan PuriniEMAIL: dan.purini@admin.sc.govTELEPHONE: 803-737-4377DOCUMENTS MAY BE OBTAINED FROM: via electronic sharefile access maintained by the Architect. Contact Joseph Guido, jguido@gmka.com, for access to the documents.

BID SECURITY IS REQUIRED IN AN AMOUNT NOT LESS THAN 5% OF THE BASE BID.

PERFORMANCE AND LABOR & MATERIAL PAYMENT BONDS: The successful Contactor will be required to provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the Contract Price.

DOCUMENT DEPOSIT AMOUNT: \$ 0.00 IS DEPOSIT REFUNDABLE Yes ☐ No ☐ N/A ☒

Bidders must obtain Bidding Documents/Plans from the above listed source(s) to be listed as an official plan holder. Bidders that rely on copies obtained from any other source do so at their own risk. All written communications with official plan holders & bidders will be via email or website posting.

Agency WILL NOT accept Bids sent via email.

All questions & correspondence concerning this Invitation shall be addressed to the A/E.

A/E NAME: GMK AssociatesA/E CONTACT: Joseph GuidoEMAIL: jguido@gmka.comTELEPHONE: 803-255-0334PRE-BID CONFERENCE: Yes ☒ No ☐MANDATORY ATTENDANCE: Yes ☐ No ☒PRE-BID DATE: 10/5/2022TIME: 10:00 AMPRE-BID PLACE: SC Supreme Court Building, 1231 Gervais Street, Columbia, SC 29201BID OPENING PLACE: 915 Main Street, C&P Conference Room (Rm. 225), Columbia, SC 29201

BID DELIVERY ADDRESSES:

HAND-DELIVERY:

Attn: Dan Purini (Bid Enclosed)921 Main StreetColumbia, SC 29201

MAIL SERVICE:

Attn: Dan Purini (Bid Enclosed)921 Main StreetColumbia, SC 29201

IS PROJECT WITHIN AGENCY CONSTRUCTION CERTIFICATION? (Agency MUST check one)

Yes ☐No ☒APPROVED BY: 

(OSE Project Manager)

DATE: 9.21.22

SE-310

INVITATION FOR DESIGN-BID-BUILD CONSTRUCTION SERVICES

AGENCY/OWNER: SC Department of Administration - Division of Facilities Management and Property Services

PROJECT NAME: Supreme Court - Waterproof Walls and Windows and Roof Repairs

PROJECT NUMBER: D50-6040-CB **CONSTRUCTION COST RANGE:** \$ 2,500,000 to \$ 3,000,000

PROJECT LOCATION: SC Supreme Court Building, 1231 Gervais Street, Columbia, SC 29201

DESCRIPTION OF PROJECT/SERVICES: Replacement of existing operable and fixed metal select windows and doors, with new ballistic rated metal windows, frames and doors to match original historical profiles. Limestone repairs and repointing, the installation of new PVC clad metal gutter liner, new external downspouts, and the repair to the existing thermoplastic roof membrane as necessary for the installation of the new fall protection anchors.

BID/SUBMITTAL DUE DATE: 11/10/22 **TIME:** 2:00 PM **NUMBER OF COPIES:** 1

PROJECT DELIVERY METHOD: Design-Bid-Build

AGENCY PROJECT COORDINATOR: Dan Purini

EMAIL: Dan.Purini@admin.sc.gov

TELEPHONE: 803-737-4377

DOCUMENTS MAY BE OBTAINED FROM: via electronic sharefile access maintained by the Architect. Contact Joseph Guido, jguido@gmka.com, for access to the documents.

BID SECURITY IS REQUIRED IN AN AMOUNT NOT LESS THAN 5% OF THE BASE BID.

PERFORMANCE AND LABOR & MATERIAL PAYMENT BONDS: The successful Contactor will be required to provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the Contract Price.

DOCUMENT DEPOSIT AMOUNT: \$ 0.00 **IS DEPOSIT REFUNDABLE** Yes ☐ No ☐ N/A ☒

Bidders must obtain Bidding Documents/Plans from the above listed source(s) to be listed as an official plan holder. Bidders that rely on copies obtained from any other source do so at their own risk. All written communications with official plan holders & bidders will be via email or website posting. Agency **WILL NOT** accept Bids sent via email.

All questions & correspondence concerning this Invitation shall be addressed to the A/E.

A/E NAME: GMK Associates

A/E CONTACT: Joseph Guido

EMAIL: jguido@gmka.com

TELEPHONE: 803-255-0334

PRE-BID CONFERENCE: Yes ☒ No ☐

MANDATORY ATTENDANCE: Yes ☐ No ☒

PRE-BID DATE: 10/5/2022

TIME: 10:00 AM

PRE-BID PLACE: SC Supreme Court Building, 1231 Gervais Street, Columbia, SC 29201

BID OPENING PLACE: 915 Main Street, C&P Conference Room (Rm. 225), Columbia, SC 29201

BID DELIVERY ADDRESSES:

HAND-DELIVERY:

Attn: Dan Purini (Bid Enclosed)

921 Main Street

Columbia, SC 29201

MAIL SERVICE:

Attn: Dan Purini (Bid Enclosed)

921 Main Street


Columbia, SC 29201

IS PROJECT WITHIN AGENCY CONSTRUCTION CERTIFICATION? (Agency MUST check one)

Yes ☐

No ☒

APPROVED BY:


(OSE Project Manager)

DATE: 10.7.22

SE-330
LUMP SUM BID FORM

Exhibit C

2021 Edition

Bidders shall submit bids on only Bid Form SE-330.

BID SUBMITTED BY: _____
(Bidder's Name)

BID SUBMITTED TO: South Carolina Department of Administration-Division of Facilities
Management and Property Services
(Agency's Name)

FOR: PROJECT NAME: Supreme Court Waterproof Walls and Windows and Roof Repairs
PROJECT NUMBER: D50-6040-CB

OFFER

§ 1. In response to the Invitation for Construction Services 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 on the terms 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 SC Code § 11-35-3030(1), Bidder has submitted Bid Security in the amount and form required by the Bidding Documents.

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid:

(Bidder, check all that apply. Note, there may be more boxes than actual addenda. Do not check boxes that do not apply)

ADDENDA: ☐ #1 ☐ #2 ☐ #3 ☐ #4 ☐ #5

§ 4. Bidder accepts all terms and conditions of the Invitation for 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.

§ 5. Bidder herewith offers 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): Replacement of existing operable and fixed metal select windows and doors, with new ballistic rated metal windows, frames and doors to match original historical profiles. Limestone repairs and repointing, the installation of new PVC clad metal gutter liner, new external downspouts, and the repair to the existing thermoplastic roof membrane as necessary for the installation of the new fall protection anchors.

\$ _____, which sum is hereafter called the Base Bid.

(Bidder to insert Base Bid Amount on line above)

SE-330

LUMP SUM BID FORM

Bidders shall submit bids on only Bid Form SE-330.

§ 6.2 **BID ALTERNATES** as indicated in the Bidding Documents and generally described as follows:

ALTERNATE # 1 (Brief Description): Portico Entrances

☒ **ADD TO** or ☐ **DEDUCT FROM BASE BID: \$** _____

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

ALTERNATE # 2 (Brief Description): _____

☐ **ADD TO** or ☐ **DEDUCT FROM BASE BID: \$** _____

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

ALTERNATE # 3 (Brief Description): _____

☐ **ADD TO** or ☐ **DEDUCT FROM BASE BID: \$** _____

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

§ 6.3 UNIT PRICES:

BIDDER offers for the Agency's consideration and use, the following UNIT PRICES. The UNIT PRICES offered by BIDDER indicate the amount to be added to or deducted from the CONTRACT SUM for each item-unit combination. UNIT PRICES include all costs to the Agency, including those for materials, labor, equipment, tools of trades and labor, fees, taxes, insurance, bonding, overhead, profit, etc. The Agency reserves the right to include or not to include any of the following UNIT PRICES in the Contract and to negotiate the UNIT PRICES with BIDDER prior to including in the Contract.

<u>No.</u>	<u>ITEM</u>	<u>UNIT OF MEASURE</u>	<u>ADD</u>	<u>DEDUCT</u>
<u>1.</u>	<u>NA</u>	_____	<u>\$</u> _____	<u>\$</u> _____
<u>2.</u>	_____	_____	<u>\$</u> _____	<u>\$</u> _____
<u>3.</u>	_____	_____	<u>\$</u> _____	<u>\$</u> _____
<u>4.</u>	_____	_____	<u>\$</u> _____	<u>\$</u> _____
<u>5.</u>	_____	_____	<u>\$</u> _____	<u>\$</u> _____
<u>6.</u>	_____	_____	<u>\$</u> _____	<u>\$</u> _____

CERTIFIED BID TABULATION

Exhibit D

South Carolina Department of Administration – Division of Facilities Management and Property Services

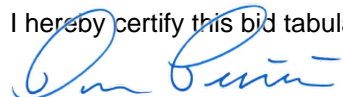
Provided for INFORMATION ONLY. This is not an indication of contract and/or PO award.

NAME:	Supreme Court – Waterproof Walls and windows and Roof Repairs
STATE PROJECT NO:	D50-6040-CB
BID DATE & TIME	Thursday, November 10, 2022 @ 2:00 P.M.
BID OPENING LOCATION:	915 Main Street, Rm. 225, Columbia, SC 29201

BIDDER (Name as it appears on the Bid Form)	BID BOND (Y or N)	Addendum #1 Acknowledged (Y or N)	Addendum #2 Acknowledged (Y or N)	BASE BID	ADD ALTERNATE
Leitner Construction Company of the Carolins, LLC	Y	Y	Y	\$3,389,000.00	\$263,000.00
Mashburn Construction Company, Inc.	Y	Y	Y	\$3,477,600.00	\$297,000.00
Midwest Maintenance, Inc.	Y	Y	Y	\$3,528,000.00	\$272,000.00
Timekey Enterprises, LLC	Y	Y	Y	\$3,320,520.00	\$327,000.00

Notes: Timekey Enterprises' bid is deemed non-responsive due to their license being unsuitable to serve as the prime contractor per the requirements set forth in SC Code Section 40-11-410.

I hereby certify this bid tabulation is a true and accurate representation.



Dan Purini, Mgr. of Construction & Planning Svcs. (Procurement Officer)



Tom Weiland, AIA (Witness, GMK Associates)

[Print this page](#)**Board: Commercial Contractors**

TIMEKEY ENTERPRISE LLC
DBA: TIMEKEY GLAZING
13510 OAK STREET
KANSAS CITY, MO 64145
(816) 434-3612

License number: 124316
License type: GENERAL CONTRACTOR
Status: ACTIVE
Expiration: 10/31/2024
First Issuance Date: 06/29/2022
Classification:
Glass & Glazing-GG5

Qualified By: Surety Bond
President / Owner: JORDAN WILSON

[Click here for Classification definitions and licensee's contract dollar limit](#)

Supervised By
WILSON JORDAN (CQG)

[File a Complaint against this licensee](#)

Board Public Action History:[View Orders](#)[View Other License for this Person](#)

No Orders Found

[Print this page](#)**Board: Commercial Contractors****LEITNER CONSTRUCTION COMPANY OF THE CAROLINAS LLC**

1800 SALUDA RD
ROCK HILL, SC 29731
(803)324-5665

License number: 119818**License type:** GENERAL CONTRACTOR**Status:** ACTIVE**Expiration:** 10/31/2024**First Issuance Date:** 12/16/2015**Classification:**

Building-BD5

Concrete Paving-CP5

Grading-GD5

Asphalt Paving-AP5

Concrete-CT5

Structural Framing-SF5

Bridges-BR5

Qualified By: Financial Statement**President / Owner:** JOHN W LEITNER II**Vice President:** KENNETH M SMITH (KENNY)[Click here for Classification definitions and licensee's contract dollar limit](#)**Supervised By**[ESTRIDGE ASHTON \(CQG\)](#)[LEITNER JOHN \(CQG\)](#)[LEITNER SIMMS \(CQG\)](#)[File a Complaint against this licensee](#)**Board Public Action History:**[View Orders](#)[View Other License for this Person](#)

No Orders Found

SE-370

NOTICE OF INTENT TO AWARD - DESIGN-BID-BUILD CONTRACT**AGENCY:** SC Department of Administration - Division of Facilities Management and Property Services**PROJECT NAME:** Supreme Court - Waterproof Walls and Windows and Roof Repairs**PROJECT NUMBER:** D50-6040-CB**POSTING DATE:** 1/6/2023**TO ALL BIDDERS:**

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below. The successful bid will be accepted, and the contract formed by execution of the contract documents. All bid bonds remain in effect for the bid acceptance period as provided in Section 4 of the Bid Form, except as otherwise provided in the Instructions to Bidders.

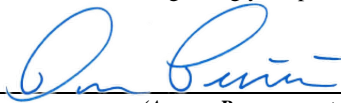
NAME OF BIDDER: Leitner Construction company of the Carolinas, LLC**DATE BIDS WERE OPENED:** November 10, 2022**BID INFORMATION:****BASE BID AMOUNT:** \$ 3,389,000.00**ALTERNATES: #1** ☐ **ACCEPTED** \$ 263,000.00#2 ☐ **ACCEPTED** \$ _____#3 ☐ **ACCEPTED** \$ _____**TOTAL BID AMOUNT:** \$ 3,389,000.00**TOTAL CONTRACT AWARD:** \$ 3,389,000.00*(If the Total Contract Award is different from the Total Bid Amount, explain any negotiations that resulted in the change.)* N/A**REMARKS:** *(If "No Contract to Be Awarded" was entered above, indicate the reason.)* N/A

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work before receipt of the Agency's written Notice to Proceed.

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

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 (15) 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.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: protest-ose@mmo.sc.gov, or (b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the email address from which you sent your protest.



(Agency Procurement Officer Signature)

Dan Purini, Mgr. of Construction & Planning Svcs.

(Print or Type Name)

INSTRUCTIONS TO THE AGENCY:

1. Post a copy of the SE-370 at the location specified by the Instructions to Bidders and announced at the Bid Opening.
2. Send the SE-370 and the final Bid Tabulation electronically to all Bidders and OSE (if required) the same day it is posted.

White, John

From: Joseph Guido <JGuido@gmka.com>
Sent: Tuesday, November 15, 2022 2:52 PM
To: Craig Lytle
Cc: Jordan Wilson
Subject: RE: D50-6040, Supreme Court - Waterproofing Walls and Windows and Roof Repairs - Bid Opening

Craig,

Per our conversation here are two links to the licensing classifications and to the SC Code of Laws Chapter 11. You'll want to scroll down to section **40-11-340** to see qualifications for acting as sole prime contractor. The see section **40-11-410** License classifications and subclassifications.

<https://llr.sc.gov/clb/PDFfiles/CLBClassificationAbbreviations.pdf>

Licensing Classifications link.

<https://www.scstatehouse.gov/code/t40c011.php>

SC code of Laws Chapter 11.

We submitted the plans, specifications and a cost estimate to the State for solicitation in SCBO back on 7/01/22. In the cost estimate to the State Engineer's Office, our number for aluminum window work was \$1,280,000 and the total construction value of the project we anticipated at \$2,845,629. Based on these number the window work did not meet the minimum threshold of 51%. I realize our construction estimate is a little old, but we feel they were proportionally correct. We did consult with both Wind Vent and Graham in developing the window portion of the estimate.

Respectfully,
Joseph Guido



ASSOCIATES, INC

From: Craig Lytle <craig@timekey.us>
Sent: Monday, November 14, 2022 10:01 PM
To: Joseph Guido <JGuido@gmka.com>
Cc: Jordan Wilson <jordan@timekey.us>; Craig Lytle <craig@timekey.us>
Subject: RE: D50-6040, Supreme Court - Waterproofing Walls and Windows and Roof Repairs - Bid Opening

Joe,

Very sorry, I did not understand the purpose or significance of the data provided last week. We're above the 51%. Those were preliminary/ back-of-the-napkin numbers and in error. This revised schedule is accurate, and utilizes actual amounts. The glazing amount noted is validated by a glazing-only subcontractor bid we provided prior to bid time.

Now understanding the significance. Given the change (and the fact it is in our favor, so to speak), supporting documentation attached.

White, John

From: Craig Lytle <craig@timekey.us>
Sent: Thursday, November 10, 2022 6:20 PM
To: Joseph Guido
Cc: Ed Pearce; Tom Weiland; Jordan Wilson; Craig Lytle
Subject: RE: SC Supreme Court

Sure thing. Bid amount is Correct. Of that we'll self-perform roughly \$2 million which is mainly comprised of site operations & windows.

Roofing/ Masonry & Gutter work will for the most part be turnkey w/ supervision. Abatement will be as well. But when we get to the window portion (demo/install) - we believe that's where we have our biggest competitive advantage. Having our team instantly ready to install/ caulk/ patch & put back any finishes upon abatement is a big part of what makes us successful. Windows of this size/ and on a high profile job like this, proper board up/securing might take more labor than installing a new window.

We like to install/ caulk/ finish/ clean and sell as we go... Leave work "in process" for as little time as possible. If the windows weren't "hot" we'd self perform demo as well.

Schedule of values by Division:

\$	290,520	Division 00/01
\$	150,000.00	Division 02
\$	950,000.00	Division 04
\$	10,000.00	Division 06
\$	225,000.00	Division 07
\$	1,600,000.00	Division 08
\$	95,000.00	Division 11
\$	3,320,520	

Subs we plan to use:

- Abatement= Charles Demo & Construction
- Masonry= Watertight Systems Inc.
- Roofing = CDS Roofing

Hope this answers your question. Please let me know if you have any further.

Thanks

Craig Lytle
T I M E K E Y Glazing
www.timekey.us
m: 816-225-8442
o: 816-434-3190



From: Joseph Guido <JGuido@gmka.com>
Sent: Thursday, November 10, 2022 4:25 PM

To: Craig Lytle <craig@timekey.us>
Cc: Ed Pearce <EPearce@gmka.com>; Tom Weiland <TWeiland@gmka.com>
Subject: RE: SC Supreme Court

Craig,

I was good to talk with you on the phone and thank you for the follow up email with your licensing information.

Craig, I believe that your base bid was \$3,320,520.00. I am trying to figure out what percentage of work Timekey will be self-performing. Can you give me a schedule of values of the total project, or a dollar amount of all the work that Timekey will be performing?

Respectfully,
Joseph Guido



From: Craig Lytle <craig@timekey.us>
Sent: Thursday, November 10, 2022 5:02 PM
To: Joseph Guido <JGuido@gmka.com>
Cc: Jordan Wilson <jordan@timekey.us>; Craig Lytle <craig@timekey.us>
Subject: SC Supreme Court

Joe,

Nice chatting with you. Per our conversation attached:

1. Copy of our SC license
2. Copy of our experience packet we included with our bid
 - a. Also – link in my signature is a video about us.

We're qualified, experienced and hope we get a chance to work together with your team. This is a cool project.

In the meantime I'll reach out to Watertight Systems & Winvent about potential savings so we're not so close to the 10% threshold.

Please let me know if you have any questions.

Thanks
CL

Craig Lytle
TIMEKEY Glazing
www.timekey.us
m: 816-225-8442
o: 816-434-3190



[Link to Our Team and Purpose Video](#)

White, John

From: Joseph Guido <JGuido@gmka.com>
Sent: Tuesday, November 15, 2022 2:52 PM
To: Craig Lytle
Cc: Jordan Wilson
Subject: RE: D50-6040, Supreme Court - Waterproofing Walls and Windows and Roof Repairs - Bid Opening

Craig,
Per our conversation here are two links to the licensing classifications and to the SC Code of Laws Chapter 11. You'll want to scroll down to section **40-11-340** to see qualifications for acting as sole prime contractor. The see section **40-11-410** License classifications and subclassifications.

Licensing Classifications link:
<https://llr.sc.gov/clb/PDFFiles/CLBClassificationAbbreviations.pdf>

SC code of Laws Chapter 11:
<https://www.scstatehouse.gov/code/t40c011.php>

We submitted the plans, specifications and a cost estimate to the State for solicitation in SCBO back on 7/01/22. In the cost estimate to the State Engineer's Office, our number for aluminum window work was \$1,280,000 and the total construction value of the project we anticipated at \$2,845,629. Based on these number the window work did not meet the minimum threshold of 51%. I realize our construction estimate is a little old, but we feel they were proportionally correct. We did consult with both Wind Vent and Graham in developing the window portion of the estimate.

Respectfully,
Joseph Guido



From: Craig Lytle <craig@timekey.us>
Sent: Monday, November 14, 2022 10:01 PM
To: Joseph Guido <JGuido@gmka.com>
Cc: Jordan Wilson <jordan@timekey.us>; Craig Lytle <craig@timekey.us>
Subject: RE: D50-6040, Supreme Court - Waterproofing Walls and Windows and Roof Repairs - Bid Opening

Joe,

Very sorry, I did not understand the purpose or significance of the data provided last week. We're above the 51%. Those were preliminary/ back-of-the-napkin numbers and in error. This revised schedule is accurate, and utilizes actual amounts. The glazing amount noted is validated by a glazing-only subcontractor bid we provided prior to bid time.

Now understanding the significance. Given the change (and the fact it is in our favor, so to speak), supporting documentation attached.

Revised

\$ 140,020.00	Division 00/01
\$ 102,000.00	Division 02
\$ 706,500.00	Division 04
\$ 31,000.00	Division 06
\$ 405,000.00	Division 07
\$ 1,831,000.00	Division 08
\$ 20,000.00	Division 09
\$ 85,000.00	Division 11
<hr/>	
\$ 3,320,520	

Previous

\$ 290,520	Division 00/01
\$ 150,000.00	Division 02
\$ 950,000.00	Division 04
\$ 10,000.00	Division 06
\$ 225,000.00	Division 07
\$ 1,600,000.00	Division 08
\$ 95,000.00	Division 11
<hr/>	
\$ 3,320,520	

Sorry again for the confusion. Glad you provided the background info, and more glad we could provide a positive and accurate correction.

Craig Lytle

TIMEKEY Glazing

www.timekey.us

m: 816-225-8442

o: 816-434-3190



From: Joseph Guido <JGuido@gmka.com>

Sent: Monday, November 14, 2022 4:31 PM

To: Craig Lytle <craig@timekey.us>

Subject: D50-6040, Supreme Court - Waterproofing Walls and Windows and Roof Repairs - Bid Opening

Craig,

Timekey Enterprise LLC has a Glass and Glazing (GG5) license here in the State of South Carolina. Per the South Carolina Code of Laws -Title 40, Chapter 11. A general contractor with a GG5 subclassification can act as the prime contractor if 51% of the work falls under his license classification. I've copied the code excerpt from the website below.

SECTION 40-11-340. Qualifications for acting as sole prime contractor.

An entity licensed under the classifications or subclassifications in Sections 40-11-410(General Contractors - Building: BD, LB &UB), (General Contractors - Highway), or (General Contractor's Public Utility) may act as a sole prime contractor on a project if 41% or more of the work as measured by the total cost of construction falls under one or more of the licensee's license classifications or subclassifications. An entity licensed under the classifications or subclassifications in Section 40-11-410(General Contractors – Specialty which included Glass and Glazing (GG) and (Mechanical Contractors) may act as sole prime contractor if 51% or more of the work falls under one or more of the licensee's license classifications or subclassifications.

Just to be clear, I have no say in the State Procurement process. I met with the Agency and the State Engineer's office earlier today to confirm the requirements listed above and to review the percentages with them to make sure that it was done correctly. The way the State evaluates the percentage is by taking just the work associated with your licensing subclassification (glass and glazing) and divides it by the total construction value. $\$1,600,000 / \$3,320,520 = 48\%$. It does not include the other work that you might be performing as the Prime Contractor such as site operations. Based on this

simple evaluation, it appears that the amount of glass and glazing work does not meet the 51% threshold requirement and per the Code of Laws a general contractor with a GG5 specialty license cannot act as Prime on this project.

I realize you put a lot of time and effort into the bid, I am sorry that this situation has occurred. I will follow up with a call tomorrow if you would like to discuss this at further length.

Respectfully,
Joseph Guido



Joseph Guido – Senior Architect, AIA

1201 Main Street Ste. 2100, Columbia, SC 29201

O: 803.255.0334 | F: 803.256.9610 | jguido@gmka.com

South Carolina Business Opportunities

Published by Division of Procurement Services - Delbert H. Singleton, Jr., Division Director

Ad Category: Construction

Ad Start Date: October 7, 2022

Agency/Owner: Department of Administration

Project Name: Supreme Court - Waterproof Walls and Windows and Roof Repairs RE-ADVERTISED

Project Number: D50-6040-CB

Construction Cost Range: \$2,500,000 to \$3,000,000

Project Location: SC Supreme Court Building, 1231 Gervais Street, Columbia, SC 29201

Description of Project/Services:

Replacement of existing operable and fixed metal select windows and doors, with new ballistic rated metal windows, frames and doors to match original historical profiles. Limestone repairs and repointing, the installation of new PVC cladded metal gutter liner, new external downspouts, and the repair to the existing thermoplastic roof membrane as necessary for the installation of the new fall protection anchors.

Bid/Submittal Due Date & Time: November 10, 2022 - 2:00pm

Number of Bid/Submittal Copies: 1

Project Delivery Method: Design-Bid-Build

Agency Project Coordinator: Dan Purini

Email: Dan.Purini@admin.sc.gov

Telephone: 803-737-4377

Documents May Be Obtained From: via electronic sharefile access maintained by the Architect. Contact Joseph Guido, jguido@gmka.com, for access to the documents.

Project Details: <https://scbo.sc.gov/files/scbo/SE-310%20READVERTISED%20signed.pdf>

South Carolina Business Opportunities • SCBO Team • 1201 Main Street, Suite 600 • Columbia, SC 29201
803-737-0600 • scbo@mmo.sc.gov • <https://scbo.sc.gov> • <https://procurement.sc.gov>

