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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:** AOS Specialty Contractors, Inc.  
**File No.:** 2021-002  
**Posting Date:** February 26, 2021  
**Contracting Entity:** Central Carolina Technical College  
**Project No.:** H59-N074-PD  
**Description:** Main Campus Parking Infrastructure Renovations

### DIGEST

Protest alleging that Central Carolina Technical College (CCTC) inappropriately awarded a contract to a contractor who was not properly licensed to perform the work required by the project specifications granted where CCTC admits to administrative error in determining the contractor licensing requirements and intended awardee requests to withdraw its bid “due to a misinterpretation of the classification of license required for the project.”

### AUTHORITY

Per S.C. Code Ann. § 11-35-4210(4), the Chief Procurement Officer for Construction (CPOC) conducted an administrative review of a protest filed by AOS Specialty Contractors, Inc. (AOS). AOS’s protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

### BACKGROUND

On January 15, 2021, CCTC advertised for bid for the Main Campus Parking Infrastructure Renovations (the Project). By the deadline for receipt of bids, CCTC received six bids including one from Hardee Construction Company (Hardee) and one from AOS. On February 17, 2021, CCTC posted a Notice of Intent to Award a contract to Hardee. On February 23, 2021, the CPOC received a notice of intent to protest the intended award from AOS Specialty Contractors, Inc. (AOS). AOS’s letter of intent to protest states: “The basis for the protest is that Hardee is not properly licensed to perform the work required by the project specifications.” The CPOC finds that AOS’s notice of intent to protest, by its terms, constitutes an actual protest and nothing more is needed to address this matter.

Protest Decision, page 2

File No. 2021-003

February 24, 2021

On February 24, 2021, the CPOC received a letter from CCTC stating that it committed administrative error in issuing a Notice of Intent to Award a contract. [Exhibit B] On February 26, 2021, the CPOC received a copy of a letter that Hardee sent to CCTC that same day stating that they were withdrawing their bid for the Project “due to a misinterpretation of the classification of license required for the project.”

## **DECISION**

Based on the foregoing, the CPOC sustains the protest of AOS and remands this procurement back to CCTC to proceed in accordance with the Consolidated Procurement Code.



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John St. C. White, PE

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.

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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**

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\_\_\_\_\_  
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: \_\_\_\_\_

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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.**

**BRUNER, POWELL, WALL & MULLINS, LLC**

ATTORNEYS AND COUNSELORS AT LAW  
1735 ST. JULIAN PLACE, SUITE 200  
POST OFFICE BOX 61110  
COLUMBIA, SOUTH CAROLINA 29260-1110  
TELEPHONE 803-252-7693  
FAX 803-254-5719  
[WWW.BRUNERPOWELL.COM](http://WWW.BRUNERPOWELL.COM)

JAMES L. BRUNER, P.A. (RETIRED)

CHELSEA J. CLARK  
ABIGAIL A. CARSON

WARREN C. POWELL, JR., P.A.\*  
HENRY P. WALL  
E. WADE MULLINS III, P.A.  
WESLEY D. PEEL, P.A.  
JOEY R. FLOYD, P.A.  
BENJAMIN C. BRUNER, P.A.

\* ALSO ADMITTED IN DISTRICT OF COLUMBIA

\*\* OF COUNSEL

AUTHOR'S E-MAIL: [WPEEL@BRUNERPOWELL.COM](mailto:WPEEL@BRUNERPOWELL.COM)

February 23, 2021

**VIA ELECTRONIC MAIL AND  
COURIER**

Mr. John White  
Chief Procurement Officer for Construction ([protest-ose@mmo.sc.gov](mailto:protest-ose@mmo.sc.gov))  
Office of State Engineer  
1201 Main Street, Suite 600  
Columbia, SC 229201

Re: Notice of Intent to Protest by AOS Specialty Contractors, Inc.  
Agency: Central Carolina Technical College  
Project Name: Main Campus Parking Infrastructure Renovations'  
Project Number: H59-N074-OD  
BPWM File 5-1597.114

Dear Mr. White:

Please allow this letter to serve as AOS Specialty Contractors, Inc.'s (AOS) notice of intent to protest the award of the referenced project to Hardee Construction Co., Inc. The attached Notice of Intent to Award was posted by the Agency on February 17, 2021 (Exhibit 1). AOS was an actual bidder as shown on the attached bid tabulation. (Exhibit 2). The basis for the protest is that Hardee is not properly licensed to perform the work required by the project specifications. AOS will supplement this notice with its protest as required under S.C. Code Section 11-35-4210 (2).

With my best regards, I am

Sincerely,



Wesley D. Peel

Enclosures (Exhibits 1-2)

cc: Terry L. Booth, CPA ([boothl@cctech.edu](mailto:boothl@cctech.edu))



**SE-370  
NOTICE OF INTENT TO AWARD DESIGN-BID-BUILD CONTRACT**

**AGENCY:** Central Carolina Technical College  
**PROJECT NAME:** Main Campus Parking Infrastructure Renovations  
**PROJECT NUMBER:** H59-N074-PD

**POSTING DATE:** 2/17/2021

**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:** Hardee Construction Co., Inc.

**DATE BIDS WERE OPENED:** 2/17/21

**BID INFORMATION:**

<b>BASE BID AMOUNT:</b>				\$ <u>364,000.00</u>
<b>ALTERNATES:</b>	<b>#1</b>	<b>ACCEPTED</b>	<input type="checkbox"/>	\$ _____
	<b>#2</b>	<b>ACCEPTED</b>	<input type="checkbox"/>	\$ _____
	<b>#3</b>	<b>ACCEPTED</b>	<input type="checkbox"/>	\$ _____

**TOTAL CONTRACT AWARD:** \$ 364,000.00

**REMARKS** *(explain any negotiations that resulted in a change in any Bid amounts):* \_\_\_\_\_

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 prior to (1) delivering to the Agency both certificates of insurance and Performance and Payment Bonds meeting the requirements of the solicitation; and (2) receipt of the Agency’s written Notice to Proceed. The State assumes no liability for any expenses incurred by the Contractor prior to issuance of a Notice to Proceed, other than the Contractor’s non-reimbursable costs incurred in providing such bonds.

**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 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](mailto: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 e-mail address from which you sent your protest.

Jerry L. Booth  
*(Agency Procurement Officer Signature)*

Terry L. Booth  
*(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.



Architect's Project No: 20.267.01  
State Project No: H59-N074-PD

General Contractor (Bidder)	Bid Bond	License	Addendum No. 1	Addendum No. 2	BID AMOUNT	SUBCONTRACTOR	
					Base Bid	N/A	N/A
1 AOS SPECIALTY CONTRACTORS, INC.	X		X	X	\$428,557.00		
2 ARMSTRONG CONTRACTORS, LLC	X		X	X	\$626,850.00		
3 CARRAWAY CONSTRUCTION	X		X	X	\$478,400.00		
4 CHARLES SMITH COMPANY [non-responsive]	X		X	X	\$258,896.45		
5 CONTRACTOR SERVICES OF KERSHAW, LLC	X		X	X	\$582,996.75		
6 HARDEE CONSTRUCTION COMPANY	X		X	X	\$364,000.00		
7							
8							
9							

Signature:  Date: 2/17/21  
Witness: SPENCER HUTCHINSON, AIA

Signature:  Date: 2/17/21  
Witness: Terry L. Duth



**CENTRAL CAROLINA**  
TECHNICAL COLLEGE

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506 North Guignard Drive | Sumter, SC 29150-2468 | 803.778.1961 | [www.cctech.edu](http://www.cctech.edu)

February 24, 2021

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

Re: H59-N074-PD CCTC Main Campus Parking Lot & Infrastructure Renovations  
Notice of Intent to Protest by AOS Specialty Contractors, Inc.

Dear Mr. White,

Central Carolina Technical College concurs with our architect, Quackenbush Architects + Planners that an administrative error was made in issuing a Notice of Intent to Award to Hardee Construction (see attached letter).

As such, we agree and recommend that the project be awarded to AOS Specialty Contractors, Inc., the apparent next lowest bidder. Please let me know if you have any questions or need any additional information, and advise on what the next steps are in making this correction.

Sincerely,

A handwritten signature in black ink that reads "Terry L. Booth". The signature is written in a cursive, slightly slanted style.

Terry L. Booth, CPA  
Vice President for Business Affairs

Cc: Perry Derrick, Doug Quackenbush, Spencer Hutchinson





# HARDEE

CONSTRUCTION COMPANY, INC.

1254 WILSON HALL ROAD  
SUMTER, SOUTH CAROLINA 29150  
WWW.HARDEECONSTRUCTION.COM  
(803) 469-9787 OFFICE (803) 469-9801 FAX

PLANNING ● DESIGN ● DEVELOPMENT ● BUILDING ● GENERAL CONTRACTORS

February 26, 2021

Terry L. Booth  
Interim President, Vice President, Business Affairs  
Central Carolina Technical College  
506 N. Guignard Drive  
Sumter, SC 29150

RE: State Project H59-N074-PD  
Main Campus Parking Lot &  
Infrastructure Renovations

Dear Ms. Booth,

I am writing to inform you that we are withdrawing our bid for the above mentioned project, due to a misinterpretation of the classification of license required for this project.

Sorry for any inconvenience this may have caused. If you have any questions feel free to contact me at 803-468-1801.

Cordially,

HARDEE CONSTRUCTION CO., INC.

Dwayne Hardee  
President

Cc: Perry Derrick