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EXECUTIVE DIRECTOR

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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: Global Fence and Supply LLC
File No.: 2025-007
Posting Date: September 16, 2024
Contracting Entity: South Carolina Department of Disabilities and Special Needs
Project No.: J16-2025-013
Description: Pee Dee Center – Mulberry 301 – Anti-Climb Fence

DIGEST

Protest of an award under \$50,000 dismissed for lack of jurisdiction.

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 Global Fence and Supply LLC (Global), which is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

- On August 15, 2024, the South Carolina Department of Disabilities and Special Needs (DDSN) issued a solicitation for quotes for replacement of approximately 450 linear feet of anti-climb chain-link fence (the Project). [Exhibit B]
- By the deadline for receipt of quotes, DDSN received two quotes. [Exhibit C]
- Metric Builders LLC (Metric) submitted a low quote of \$47,300. [Id.]

- On September 4, 2024, DDSN posted an Award a contract to Metric in the amount of \$47,300. [Exhibit D]
- On September 10, 2024, the CPOC received the protest of Global protesting the award.

DISCUSSION

The right to protest an award of a contract is set forth in Section 11-35-4210 of the South Carolina Code of Laws which states:

(1) Right to Protest.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(d) The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are **not available for contracts with an actual or potential value of up to fifty thousand dollars.**

[emphasis supplied]

Because Global protests an award of a contract with a value under \$50,000, the CPOC lacks jurisdiction to consider Global's protest.¹

¹ Even if the CPOC did not lack jurisdiction, Global's protest would be denied. Global essentially protests that Metric has bid under actual cost. A bidder's claim that another bidder has bid an unreasonably low price is not a valid ground of protest. *In Re: Appeal by Catamaran, LLC*, Panel Case No. 2015-2 (Procurement Review Panel). See also, *Ferguson Surveying and Engineering*, B-244570.2, 1991WL 243193, at *1 (Comp. Gen. Nov. 8, 1991) ("A protester's claim that another offeror has submitted an unreasonably low price or even that the price is below the cost of performance – *is not a valid basis for protest*. A bidder or offeror, in its business judgment, properly may decide to submit a price that is extremely low."); *Indeck Power Equipment Co.*, 8 -259151.2, 1995 WL 150472, at

DECISION

For the forgoing reasons, protest dismissed.



John St. C. White
Chief Procurement Officer for Construction

Columbia, South Carolina

*2 (Comp. Gen. April 3, 1995) ("As the inclusion of *"unrealistically" low prices under some line items also does not violate any statute or regulation*, Nationwide's preparing its bid in this manner does not provide a basis for rejecting it. In this regard, we have recognized that a bidder, for various reasons in its business judgment, may decide to submit a below-cost bid, and there generally is *no basis for objecting* to the submission or acceptance of such a bid") (emphasis added); *PHT Corp.*, B-297313, 2005 WL 3533303, at *3 (U.S. Comp. Gen. Dec. 8, 2005) ("[A] protestor's claim that an offeror submitted an 'unreasonably' low price- even that the price is below the cost of performance - is not a valid basis for protest. An offeror, in its business judgment, properly may decide to submit a price that is extremely low.").

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2024)

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 2024 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 Globals, 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.



RECEIVED BID CONTROL

SEP 10 '24 10 9:19AM

September 09, 2024

Chief Procurement Officer for Construction
Office of State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Sir/Madam,

In accordance with our right to protest (SC Code 11-35-4210) project number J16-2025-013, we believe that there are discrepancies in the base bid of \$47,300.00 from Meric Builders, LLC.

The bid from Global Fence and Supply complies with all ASTM standards and requirements as stated in the bid package as well as A3 and A4.

Our fence material costs are approximately \$47,000.00 and Johnson Controls scope of work was approximately \$10,500.00. These two expenses alone are more than the total bid from Meric Builders, LLC.

We would like the opportunity to perform our due diligence with the Department of Disabilities and Special Needs to compare the fence material specifications, Johnson Controls scope of work, removal of the existing 4' foot chain link fence and the linear foot price for 10' foot high no climb commercial grade fence.

It is our objective to have a fair review of the bids with a breakdown of costs from both Meric Builders, LLC and Global Fence and Supply.

Please contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Malcolm Smith".

Malcolm Smith
President/Owner

South Carolina Business Opportunities

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

Ad Category: Minor Construction

Ad Start Date: August 15, 2024

Agency/Owner: Department of Disabilities and Special Needs

Project Name: Pee Dee Center - Mulberry 301 - Anti-Climb Fence

Project Number: J16-2025-013

Construction Cost Range: \$30,000-\$50,000

Project Location: 714 E. National Cemetery Road, Florence, South Carolina, 29506

Description of Project/Services:

Removal of existing fence & replacement w/approx 450LF of 8' Anti-Climb chainlink, site prep, gates & gate alarm controls for Mulberry 301. Site visit is strongly encouraged, to schedule - contact Marcia Sommer 843-664-2627, marcia.sommer@ddsn.sc.gov. Bid Opening @ SCDDSN Central Office, 3440 Harden St. Ext., Ste 178, Columbia, SC 29203. Email Claire.Thompson@ddsn.sc.gov to request bid documents. Bidders must be registered SC State Vendors. Performance and Payment Bonds Required.

Quote Due Date & Time: September 4, 2024 - 2:30am

Documents May Be Obtained From: Claire.Thompson@ddsn.sc.gov

Project Details: N/A

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>



SE-311

INVITATION FOR MINOR CONSTRUCTION QUOTES

AGENCY/OWNER: South Carolina Department of Disabilities and Special Needs

PROJECT NAME: Pee Dee Center - Mulberry 301 - Anti-Climb Fence

PROJECT NUMBER: J16-2025-013 **CONSTRUCTION COST RANGE:** \$ 30,000.00 to \$ 50,000.00

PROJECT LOCATION: 714 E. National Cemetery Road, Florence, South Carolina, 29506

DESCRIPTION OF PROJECT: Removal of existing fence & replacement with approx 450 LF of 8' Anti-Climb chainlink, site prep, gates & gate alarm controls for Mulberry 301. No Mandatory PRE-BID! Site visit is strongly encouraged. To schedule site visit contact Marcia Sommer (843) 664-2627, marcia.sommer@ddsn.sc.gov. Bid Opening @ SCDDSN Central Office, 3440 Harden St. Ext., Ste 178, Columbia, SC 29203. Email Claire.Thompson@ddsn.sc.gov to request bid documents. .

QUOTE DUE DATE: 9/4/24

TIME: 2:30 PM

AGENCY PROJECT COORDINATOR: Claire Thompson

EMAIL: Claire.Thompson@ddsn.sc.gov

TELEPHONE: (803) 898-9665

DOCUMENTS MAY BE OBTAINED FROM: Claire Thompson, Claire.Thompson@ddsn.sc.gov, SCDDSN Engineering & Planning, 3440 Harden Street Extension, Suite 178, Columbia, SC 29203

DOCUMENT DEPOSIT AMOUNT: \$ N/A **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 listed source(s) to be listed as an official plan holder. All written communications with official plan holders & Contractors submitting quotes will be via email or website posting.

PUBLIC NOTICES: All notices (Notice of Award) shall be posted at the following location: SCDDSN Engineering & Planning, 3440 Harden Street Extension, Suite 178, Columbia, SC 29203

RIGHT TO PROTEST (SC Code § 11-35-4210) (This only applies to contracts exceeding \$50,000.)

Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with this solicitation or the intended award or award of a contract under this solicitation may protest to the State Engineer in accordance with Section 11-35-4210 at: CPO, Office of State Engineer, 1201 Main Street, Suite 600, Columbia, SC 29201. EMAIL: protest-ose@mso.sc.gov

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

A/E NAME: SCDDSN

A/E CONTACT: Claire Thompson

EMAIL: Claire.Thompson@ddsn.sc.gov

TELEPHONE: (803) 898-9665

PRE-QUOTE CONFERENCE: Yes No

DATE: _____ **TIME:** _____

PRE-QUOTE PLACE: _____

QUOTE DELIVERY ADDRESSES:

HAND-DELIVERY:

Attn: Claire Thompson, Project Manager

construction-bids@ddsn.sc.gov

EMAIL ONLY

MAIL SERVICE:

Attn: Claire Thompson, Project Manager

construction-bids@ddsn.sc.gov

EMAIL ONLY

IS PROJECT WITHIN AGENCY CONSTRUCTION CERTIFICATION? (Agency MUST check one) Yes No

APPROVED BY: _____

(OSE Project Manager)

DATE: _____



Exhibit C

PROJECT NO.: J16-2025-013
PROJECT NAME: Pee Dee Center - Mulberry 301 - Anit-Climb Fence
ARCHITECT/ENGINEER: SCDDSN
BID DATE: 9/4/2024
TIME: 2:30 PM
LOCATION: 3440 Harden Street Etn., Columbia, SC 29203

SCDDSN Engineering and Planning Division
3440 Harden St. Extension
Columbia, SC 29203
Phone: (803) 898-9796
Fax: (803) 832-8188



BID TABULATION			
	CONTRACTOR NAME	Base Bid	TOTAL
1	Meric Builders, LLC	\$47,300.00	\$47,300.00
2	Global Fence and Supply	\$79,316.44	\$79,316.44


Project Manager

Witness

SE-331
QUOTE FORM

QUOTE SUBMITTED BY: Global Fence and Supply

(Offeror's Name)

QUOTE SUBMITTED TO: South Carolina Department of Disabilities and Special Needs

(Agency's Name)

FOR: PROJECT NAME: Pee Dee Center - Mulberry 301 - Anti-Climb Fence

PROJECT NUMBER: J16-2025-013

OFFER

- § 1. In response to the Invitation for Minor Construction Quotes for the above-named Project, the undersigned OFFEROR proposes and agrees, if this Quote is accepted, to enter into a Contract with the Agency in the form included in the Solicitation Documents, and to perform all Work as specified or indicated in the Solicitation Documents, for the prices and within the time frames indicated in the Solicitation and in accordance with the other terms and conditions stated.
- § 2. OFFEROR acknowledges the receipt of the following Addenda to the Solicitation documents and has incorporated the effects of said Addenda into its Quote (Check only boxes that apply.):
- ADDENDA: #1 #2 #3 #4 #5
- § 3. OFFEROR agrees that this Quote, including all alternates, if any, may not be revoked or withdrawn after the opening of quotes, and shall remain open for acceptance for a period of 60 Days following the Quote Date, or for such longer period of time that OFFEROR may agree to in writing upon request of the Agency.
- § 4. OFFEROR agrees that the Date of Commencement of the Work shall be established in a Notice to Proceed to be issued by the Agency. Offeror agrees to substantially complete the Work within 30 Calendar Days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.
- § 5. OFFEROR agrees that from the compensation to be paid, the Agency shall retain as Liquidated Damages the amount of \$ 100.00 for each calendar day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted Contract Time for Substantial Completion, as provided in the Contract Documents.
- § 6. OFFEROR herewith submits its offer to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fee, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6.1 BASE QUOTE \$79,316.44

(enter BASE QUOTE in figures only)

§ 6.1.1 ALTERNATE NO. 1 \$ N/A to be ADDED / DEDUCTED from BASE QUOTE.
(circle one)

§ 6.1.2 ALTERNATE NO. 2 \$ N/A to be ADDED / DEDUCTED from BASE QUOTE.
(circle one)

SC Contractor's License Number: 33325

Classification(s) & Limits: Business License #

Address: 4108 Carolina Commercial Dr

Suite 4, Myrtle Beach, SC 29579

Telephone: 843-903-6963

E-mail: macs@globalfenceandsupply.com

This Quote is hereby submitted on behalf of the Offeror named above.

BY: 
(Signature of Offeror's Representative)

Malcolm Smith
(Print or Type Name of Offeror's Representative)

TITLE: President

DATE: 09-04-2024

**SE-331
QUOTE FORM**

QUOTE SUBMITTED BY: Meric Builders LLC
(Offeror's Name)

QUOTE SUBMITTED TO: South Carolina Department of Disabilities and Special Needs
(Agency's Name)

FOR: PROJECT NAME: Pee Dee Center - Mulberry 301 - Anti-Climb Fence
PROJECT NUMBER: J16-2025-013

OFFER

§ 1. In response to the Invitation for Minor Construction Quotes for the above-named Project, the undersigned OFFEROR proposes and agrees, if this Quote is accepted, to enter into a Contract with the Agency in the form included in the Solicitation Documents, and to perform all Work as specified or indicated in the Solicitation Documents, for the prices and within the time frames indicated in the Solicitation and in accordance with the other terms and conditions stated.

§ 2. OFFEROR acknowledges the receipt of the following Addenda to the Solicitation documents and has incorporated the effects of said Addenda into its Quote *(Check only boxes that apply.)*:

ADDENDA: #1 #2 #3 #4 #5

§ 3. OFFEROR agrees that this Quote, including all alternates, if any, may not be revoked or withdrawn after the opening of quotes, and shall remain open for acceptance for a period of 60 Days following the Quote Date, or for such longer period of time that OFFEROR may agree to in writing upon request of the Agency.

§ 4. OFFEROR agrees that the Date of Commencement of the Work shall be established in a Notice to Proceed to be issued by the Agency. Offeror agrees to substantially complete the Work within 30 Calendar Days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.

§ 5. OFFEROR agrees that from the compensation to be paid, the Agency shall retain as Liquidated Damages the amount of \$ 100.00 for each calendar day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted Contract Time for Substantial Completion, as provided in the Contract Documents.

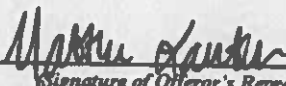
§ 6. OFFEROR herewith submits its offer to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fee, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6.1 BASE QUOTE \$ 47,300.00
(enter BASE QUOTE in figures only)

§ 6.1.1 ALTERNATE NO. 1 \$ N/A to be ADDED / DEDUCTED from BASE QUOTE.
(circle one)

§ 6.1.2 ALTERNATE NO. 2 \$ N/A to be ADDED / DEDUCTED from BASE QUOTE.
(circle one)

SC Contractor's License Number: 125369
Classification(s) & Limits: BD2, GD2, CT2, HI2
Address: 1235 State Line Rd.
Gaffney, SC 29341
Telephone: 864-205-7796
E-mail: Matt@MericBuilders.com

This Quote is hereby submitted on behalf of the Offeror named above.
BY: 
(Signature of Offeror's Representative)
Matthew Lawter
(Print or Type Name of Offeror's Representative)
TITLE: Owner
DATE: 9/3/2024

SE-375

NOTICE OF AWARD - MINOR CONSTRUCTION CONTRACT

AGENCY: South Carolina Department of Disabilities and Special Needs

PROJECT NAME: Pee Dee Center - Mulberry 301 - Anti-Climb Fence

PROJECT NUMBER: J16-2025-013

POSTING DATE: 9/4/2024

TO ALL OFFERORS:

The Agency has entered into a contract as noted below. The successful quote has been accepted and the contract formed by execution of the contract documents.

NAME OF OFFEROR: Meric Builders, LLC

QUOTE INFORMATION:

BASE QUOTE AMOUNT: \$ 47,300.00

ALTERNATES: #1 ACCEPTED [] \$ N/A

#2 ACCEPTED [] \$ N/A

TOTAL CONTRACT AWARD: \$ 47,300.00

DATE QUOTES WERE RECEIVED: 09/04/2024

REMARKS: (If "No Contract to be Awarded" in entered above, indicate the reason.) N/A

Contractor should not perform any work prior to 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 APPROVAL:

Claire Thompson
(Agency Procurement Officer Signature)

Claire Thompson
(Print or Type Name)

OSE APPROVAL REQUIRED: YES [] NO [X]

(OSE Project Manager) DATE: