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STATE TREASURER

BRIAN J. GAINES  
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

## Determination on Request to Cancel Award

**Matter of:** Osmium Development Group, LLC

**File No.:** 2025-015

**Posting Date:** March 12, 2025

**Contracting Entity:** South Carolina State University

**Project No.:** H24-C003-PG

**Description:** TOC – General Contracting Services

### DIGEST

The Chief Procurement Officer (CPO) grants South Carolina State University's (SCSU) request to cancel award where record clearly shows that the award was the result of administrative error. SCSU's request is attached as Exhibit A.

### AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-1520(7) and Regulation 19-445.2085C. This decision is based on materials in the procurement file and applicable law and precedents.

### BACKGROUND

The facts pertinent to this decision are:

- On February 11, 2025, SCSU issued a solicitation seeking offers to provide indefinite delivery of construction services per Section 11-35-3320 governing task order contracting. [Exhibit B]
- The solicitation required offerors to have a South Carolina General Contractors-Building License (BD). [Id.].
- By the deadline for receipt of offers, SCSU received ten offers including one from Osmium Development Group, LLC (Osmium).

- On March 10, 2025, SCSU posted a notice of intent to award four task order contracts, including one to Osmium. [Exhibit C]
- Osmium has a South Carolina General Contractors-Specialty License with a Nonstructural Renovation subclassification (NR). [Exhibit D] Osmium lacks a BD license.
- On March 10, 2025, SCSU asked the CPO to cancel the award to Osmium.

## DISCUSSION

South Carolina Code of Laws Section 11-35-3320 allows the State to solicit construction services by contractor license classification or subclassification for unspecified quantities of services. Per this section, SCSU solicited construction services by the BD classification. No other license classification or subclassification was specified. Chapter 11, Title 40 of the South Carolina Code of Laws sets forth the work of each construction contractor license classification or subclassification. Section 40-11-410(1) specifies the work that may be performed by a contractor with a BD license. This work includes the work of other license subclassifications set forth in Section 40-11-410, including the work under an NR license. However, no other license classification or subclassification includes all of the work of the BD classification. An NR licensed contractor may perform some of the work of a BD licensed contractor but not all. See S.C. Code Ann. § 40-11-410(4)(c).

The State may only award a contract to a responsible offeror. S.C. Code Ann. § 11-35-1810 and Reg. 19-445.2125. A responsible offeror is one who has the ability “in all respect to perform fully the contract requirements.” S.C. Code Ann. § 11-35-1410(8). Ability includes being legally qualified. Reg. 19-445.2125A(4). Because Osmium only has an NR license, it is not legally able to perform all the work that may be required under a task order contract for BD contractor services. Therefore, Osmium is a nonresponsible offeror for the services of this solicitation, and it was administrative error for SCSU to award Osmium a contract.

Section 11-35-1520(7) states:

Correction or Withdrawal of Bids; **Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after award, or **cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with regulations promulgated by the board.** After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, **all decisions** to permit the correction or withdrawal of bids, or to **cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.** [emphasis supplied]

Pursuant to this statute, the state adopted Regulation 19-445.2085, which states in relevant part:

C. Cancellation Of Award Prior To Performance.


After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, **if the Chief Procurement Officer determines** in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
  - (2) Specifications have been revised;
  - (3) The supplies, services, information technology, or construction being procured are no longer required;
  - (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
  - (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
  - (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
  - (7) **Administrative error of the purchasing agency discovered prior to performance, or**
  - (8) For other reasons, cancellation is clearly in the best interest of the State.
- [emphasis supplied]

Due to the error of SCSU in awarding a contract to Osmium when Osmium was not legally able to perform all of the work that may be performed under a BD license, cancellation of the intended award of a contract to Osmium is warranted.

**DECISION**

For the foregoing reason, the CPO cancels the intended award of a contract to Osmium and remands this matter back to SCSU to proceed in accordance with the Consolidated Procurement Code.

  
\_\_\_\_\_  
John St. C. White  
Chief Procurement Officer

Columbia, South Carolina

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised July 2024)*

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
- (b) requests for review of other *written determinations*, decisions, *policies*, and *procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) See generally *Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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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 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 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**

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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.**

# Exhibit A

**From:** [Davis, Ken](#)  
**To:** [White, John](#)  
**Cc:** [Gerald, Phil](#)  
**Subject:** [External] SE-670 H24-C003-PG  
**Date:** Monday, March 10, 2025 2:32:45 PM  
**Attachments:** [SE-670\\_SignedH24-C003-PG.pdf](#)

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Jonh,

Good afternoon, we invertedly awaded a TOC to a GC without the proper lic. NR4 is held but we required a BD3. Will you authorize the rescinding of the attached document?

Ken Davis, CPMM, FMP  
AVP Facilities Management/  
Planning & Construction  
  
Crawford Zimmerman Building  
Suite 107  
Orangeburg, SC  
803-378-5113



SE-670

NOTICE OF INTENT TO AWARD - TASK ORDER CONTRACT

AGENCY: SC State University

TOC CONTRACT NAME: TOC - General Contracting Services

TOC CONTRACT NUMBER: H24-C003-PG

POSTING DATE: 03/10/2025

Notice is hereby given that the Agency Selection Committee has, in accordance with the requirements of SC Code § 11-35-3220, the Manual for Planning and Execution of State Permanent Improvement Projects and the solicitation documents, reviewed the qualifications of interested contractors and determined the contractors listed below to be the most qualified for this Task Order Contract. The Agency hereby announces its intent to award a contract to the following contractors:

NAMES OF CONTRACTORS SELECTED:

- 1. Arnold/Ullman Construction
2. MSI Construction Company, Inc.
3. Paragon Inc. of South Carolina, LLC
4. Osmium Development Group LLC

DATE SELECTION WAS MADE: 03/06/2025

REMARKS: (If "No Contract to be Awarded" is entered above, indicate the reason.)

NA

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 actin on your behalf) consent to receive communications regarding your protest (and any related protests) at the email address from which you sent your protest.

BY: Ken Davis TITLE: AVP Facilities Management DATE: 03/10/2025

ACKNOWLEDGED BY OSE PROJECT MANAGER: Phil Gerald DATE: 03/10/2025



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### Board: Commercial Contractors

**OSMIUM DEVELOPMENT GROUP LLC**  
2001 ASSEMBLY ST STE 102  
COLUMBIA, SC 29201-2153  
(803)397-1203

**License number:** 1224  
**License type:** General Construction Manager  
**Status:** ACTIVE  
**Expiration:** 10/31/2026  
**Classification:** NR  
**CM Limitation:** Group 4-\$1,500,000

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

#### Supervises

[RUSH TORREY - \(CQG\)](#)

[File a Complaint against this licensee](#)

#### Board Public Action History:

View Orders

View Other License for this Person

No Orders Found