

responsive. On March 8, 2005 the College posted a Notice of Intent to Award in favor of Cherokee, Inc. [Exh. 5]. On March 18, 2005 Richardson filed its protest of the intended award, alleging without further explanation, violation of the following sections of the A701 and the 00201-OSE (paragraph numbers refer to the original or amended paragraphs in the A701). In this decision these alleged violations shall be referred to as “protest elements.”

1. A701, §2.1.1 and §2.1.2—Bidder’s representations that the Bidder has read and understood the Bidding Documents; that the Bid has been made in compliance with the Bidding Documents.
2. A701, §3.1.3—Bidder shall use complete set of Bidding Documents.
3. 00201-OSE, §3.4.6—Failure to acknowledge Bid Addenda by number renders a bid non-responsive, with exceptions.
4. A701, §4.1.1 and §4.1.2—Bids shall be submitted on the forms included in the Bidding Documents; that blanks shall be filled in with non-erasable media.
5. A701, §4.1.5 and 00201-OSE. §4.1.5—Bid Alternates must be bid.
6. A701, §4.1.7—Bids shall be in the legal name of the bidder and conform to other requirements to establish a binding bid.
7. 00201, §4.1.8—Unsigned bids must be rejected, with exceptions.
8. A701, §4.3.2—Bids must be timely submitted.
9. A701, §4.4.1—Bids may not be modified, withdrawn or canceled by the Bidder after submission.
10. 00201-OSE, §5.1—Bids shall be made in accordance with the Instructions to Bidders, i.e., the A701, as amended by the 00201-OSE.
11. A701, §5.2—A bid not accompanied by the required bid security; not including required information; or otherwise irregular or incomplete shall be rejected.
12. A701, §5.3.1—Agency intends to award to the lowest qualified bidder, with authority to waive irregularities.
13. A701, §5.3.2—Agency has the right to award Bid Alternates in any order or combination, with the process of determining the low bidder defined.
14. 00201-OSE, §5.3.2.3—Bids shall be rejected for failure to comply with bid security requirements, with exceptions.
15. 00201-OSE, §5.3.2.5—Bids shall be rejected for failure to bid an alternate.
16. 00201-OSE, §5.4.2—Process for evaluating Bid Alternates.

17. 00201-OSE, §5.4.3—Agency has the right to reject Unit Prices; to waive informalities or irregularities.

On April 11, 2005 Richardson submitted a self-titled “clarification” of their initial protest. This document is likewise appended to and is hereby a part of this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Basis of Protest

§11-35-4210(2) of the Code requires that protests “...shall set forth the grounds of protest and the relief requested with enough particularity to give notice of the issues to be decided.” While Richardson clearly stated its requested relief (the rejection of the Cherokee and Palmetto bids with subsequent award to Richardson), it was less forthright about the bases for its protest. A mere listing of paragraphs in the Bidding Documents where otherwise undefined irregularities may have occurred does not facilitate an agency’s or the CPOC’s evaluation of the merits of the protest. Nevertheless, the Panel has held that such a submission does meet the minimum standards of the statute, and will be considered.²

In its second submission Richardson is substantially more specific in stating its grounds for protest. Richardson states that the details its April 11, 2005 letter are the result of its analysis of the Bid Forms submitted by Cherokee and Palmetto Paving [see paragraphs 2 and 3]. This letter is clearly untimely as a protest based on the chronology of the post-bid opening activities: March 8, 2005—Posting of the Notice of Intent to Award; March 18, 2005—Richardson protest received, including a request for copies of the Bid Forms of Cherokee and Palmetto; March 18, 2005—Bid Forms sent to Richardson as requested [Exh. 10]; March 23, 2005—Protest period expires; April 11, 2005—Richardson submits second letter. Again the Panel has established clear guidelines regarding a protestant’s right to perfect its claim. In short, those guidelines state that a protestant may provide additional evidence supporting its original claim, but such evidence cannot introduce new grounds for protest.³ Accordingly, the CPOC will consider the second

² See, *In Re: Protest of Andersen Consulting; Appeal by Andersen Consulting*, Panel Case No. 1994-1. The Panel allowed argument on violation of one provision of the Code cited in the original letter of protest, but declined to hear argument on two additional provisions that were not cited in the original letter of protest..

³ See, for example, *In Re: Protest of DPConsultants, Inc. and Horizon Software Systems, Inc.; Appeal by DPConsultants, Inc. and Horizon Software Systems, Inc.*, Panel Case No. 1998-6. “The protest letters establish the issues of the case and any issues not established in the protest letters are untimely filed under the time constraints of S. C. Code §11-35-4210.”

Richardson letter as a memorandum or brief, but the second letter may not be used to raise any issues of protest.

Burden of Proof and Abandonment of Issues

The protestant bears the burden of proof by the preponderance of the evidence.⁴ To meet this burden at a hearing, evidence or testimony on the issues must be submitted to the CPOC. Failure to submit such evidence or testimony constitutes abandonment of the issue. Of the protest elements listed above, Richardson failed to provide specific evidence or testimony on protest elements 1, 2, 5, 6, 8, 9, 10, 11-13,⁵ 15 and 16. Given the total lack of evidence provided on these protest elements, the CPOC finds that Richardson has failed to meet its burden of proof on these elements, which are hereby denied.

The CPOC notes that four of the 17 protest elements filed by Richardson relate to the evaluation of bid alternates. This solicitation included no alternates. Richardson was clearly aware of this fact. To then include multiple protests of non-existent features of a solicitation suggests intent to frustrate the procurement process and does much to undermine the credibility of the remainder of Richardson's protest.

Rather than maintain the structure of its protest letter, Richardson's April 11, 2005 letter presented its supporting evidence in terms of alleged defects on pages of the Project Bid Form. Again this is not particularly helpful to an orderly evaluate of the actual issues of protest. Cherokee provided an itemized response to each of the alleged errors. These will be discussed in turn.

Bid Form Errors

Page BF-1

1. Failure to Properly Acknowledge Addenda—Protest Element 3.

Richardson alleges that Cherokee did not properly complete its Bid Form by failing to include the dates of issuance for each of the four Addenda to the Bidding Documents.

⁴ See, *In Re: Protest of Johnson Controls, Inc.*, Panel Case No. 1989-8. "Instead the burden of proof lies with the protestant, which must sustain its allegations by the weight or preponderance of the evidence."

⁵ These provisions of the A701 have been deleted in their entirety and replaced by the provisions of the 00201-OSE, a fact which should have been readily apparent to Richardson.

Cherokee responds that the Addenda were properly acknowledged by number in the appropriate space on page BF-1.

The Supplemental Instructions to Bidders, in §3.4.6, define the requirements for acknowledgment of Addenda to the Bidding Documents, as follows:

Bid Forms wherein the Bidder fails to acknowledge all issued Addenda by number shall be rejected as non-responsive, except for the following:... [emphasis added]

The Cherokee Bid Form [Exh. 6] acknowledges each of the four issued Addenda by number. The Supplemental Instructions to Bidders make it patently obvious that insertion of the date(s) of issue is not required. This is not a question of failure to carry its burden of proof—Richardson is simply wrong.

PROTEST DENIED

2. Qualification of the Cherokee Bid.

Richardson alleges that Cherokee included an impermissible qualification of its bid by referring to an “Attachment A” that was submitted as part of the Cherokee bid. This was not an issue raised in the original letter of protest and, following the Panel’s ruling in *DPCconsultants*, the protest is dismissed as untimely.

PROTEST DENIED

While not properly raised in its letter of protest, the CPOC believes that Richardson has identified an issue that merits discussion.

Cherokee counters that its Attachment A is not a “qualification” of its bid, but a “clarification” as expressly envisaged by the Bidding Documents. [see Exh. 4, last page] Cherokee argues that these clarifications do not alter the final Bid Amount quoted by Cherokee.

Included in the original issue of the Bidding Documents was a form entitled “Bid Tabulation Sheet”. The Bid Form (SE-330) refers to “Attachment Sheet BF-4A.” [See Exh. 2, second tab 3, ¶6.1 of SE-330] Subsequent to the mandatory pre-bid meeting, the College issued Addendum 1, which included the following: [see Exh. 3, DCA memo dated February 21, 2005, page 3]:

[Question]	[Answer]
<p><i>12. A bid tabulation form has been provided that will be used in the bid opening.</i></p>	<p><i>12. Please use this bid tabulation to provide your numbers and not just a lump sum for the entire project. Use this form for your bid submittal. See Attachment E, also the electronic version in on the ftp site when you pull all documents off.</i></p>

Finally, Addendum 3 to the Bidding Documents included a modified Bid Tabulation Sheet. [see Exh. 3, pg. 5] From the totality of the evidence available, the CPOC concludes that, while it was clearly labeled as such, it was the intent of the Bidding Documents that the Bid Tabulation Sheet was part of the Project’s SE-330 as sheet BF-4A. Therefore, and along with the remainder of the Bid Form, the full and proper completion of the Bid Tabulation Sheet is an element in the College’s evaluation of the responsiveness of the bidder.

The College clearly solicited bid breakdown information in a structure that allowed for no adjustments in the line items to better comport with an individual bidder’s approach to organizing the work and estimating the Project. The College clearly recognized that individual bidders might need to communicate specific details of how other, unnamed costs had been allocated to the mandatory list of cost elements.

The College testified that its intent in asking for the data was to: (1) provide assurance that bidders had addressed the full scope of the Project; and, (2) in the event bids exceeded the budget, to provide an indication of high-cost portions of work in the event the Agency needed to either negotiate the scope of a final contract or revise the design to bring costs down. [testimony of Jack Roach, project director]. While a request for such information at the time of bidding is highly unusual for State projects and seriously questionable value, the CPOC finds that the form and manner of the request permissible. While the issue is not before the CPOC, based on the evidence and testimony presented, the CPOC does not believe Cherokee’s response to the State’s expectations is an impermissible qualification of its bid.

BF-1A

3. Unit Prices and Quantities—Protest Element 17.

Richardson contends that the unit prices quoted on page BF-1A [see Exh. 6] are exorbitant and the quantities estimated are greatly underestimated. Cherokee rejects Richardson's statement as, "irrelevant, subjective and not a valid basis for protest." [Exh.7]

The CPOC disagrees with Cherokee's response, but notes that the issue raised by Richardson addresses only the three items of unit price work listed in ¶6.3 of BF-1A. Richardson submitted no evidence or testimony concerning these three items. CPOC finds that Richardson has failed to meet its burden of proof on this protest element.

PROTEST DENIED

BF-2

4. Missing Subcontractor Pricing—Protest Element 4

Richardson claims that page BF-2 of the Cherokee Bid Form is improperly completed because no amount is provided for what Richardson terms "subcontractors." [see Exh. 6]

This section of the Bid Form is intended to collect information on proposed subcontractors pursuant to §11-35-3020(2)(b)(i) of the Code. In reviewing the as-issued Bid Form it is clear that the College had misguided intentions of using this section for another purpose, specifically to document the total price offered by a single bidder for three distinct major phases of the total construction program. In fact, only the "Site" line item is the subject of this solicitation, therefore the line items labeled "AMC" and "Pod/IT" are irrelevant, as is the line labeled "Total \$", to the stated purpose of this section." During the hearing Richardson was asked if it was protesting Cherokee's failure to enter information in the "AMC", "Pod/IT" and "Total \$" line items. Richardson responded in the negative. [testimony of R. Joseph Richardson]. Accordingly, this protest element is considered to be withdrawn by Richardson and is hereby dismissed.

PROTEST DENIED

BF-4

5. Failure to Provide Required Information and Sign Bid—Protest Elements 4 and 7.

Richardson contends that Cherokee's bid is non-responsive for failure to provide the requested identifying information (FEIN and license information) and to sign the bid.

The Agency and the OSE Project Manager, R. L. Chartier, evaluated these errors and determined them to be immaterial informalities that could be waived. This evaluation was documented on the Cherokee Bid Form, page BF-4, which Mr. Chartier annotated by stating:

3-4-5. Based on 00201-OSE §5.3.3.9 recommend acceptance of bid as responsive. /s/ R. L. Chartier. Proj. Mgr./OSE

Paragraph 5.3.3 of the Instructions to Bidders enumerates several reasons which have been determined to be minor informalities. Sub-paragraph 5.3.3.9 specifically refers to the conditions under which an unsigned bid may be accepted. This sub-paragraph states that a bid shall not be rejected for:

5.3.3.9 Failure of the Bidder to sign the Bid, provided it is accompanied by a properly prepared Bid Security, or other information, as required by this Section...

The CPOC agrees with the College's determination, which is clearly based on the information available to the College within the four corners of the material submitted by Cherokee. Cherokee's general contractor's license number was provided both on BF-2 and also on the outside of the bid envelope. [Exh. 9] Cherokee's TIN/FEIN was also provided on the outside of the envelope. Cherokee's legal name is provided on the bid envelope, on page BF-2 of the Bid Form, "Exhibit A" and on the Bid Bond. While the CPOC is not much impressed with the sloppy way Cherokee submitted its bid, the "attached Exhibit A" and "Bid Tabulation Sheet" discussed above, coupled with a properly executed Bid Bond (see below) are persuasive indicia of just who is Cherokee, Inc. and of Cherokee's intent to be bound by the terms of the Bid Form. [see §11-35-1520(13)(c) of the Code] Accordingly,

PROTEST DENIED

SE-335

6. Invalid Bid Bond—Protest Element 14

Richardson contends that Cherokee's Bid Bond is invalid because it references an incorrect project number.

While there was some initial misdirection in the Bidding Documents and Addenda, contrary to Richardson's assertion, the project number cited by Cherokee is the correct number. [see Exh. 3, pg. 3] Accordingly,

PROTEST DENIED

Bid Tabulation Sheet Errors

While not raised in its protest letter and therefore untimely raised, Richardson believes that there are significant discrepancies in several of the Cherokee line items, either due to high unit prices or low quantities. Richardson argues that these discrepancies were of such magnitude as to render Cherokee's bid non-responsive to the solicitation requirements. Richardson [testimony of Mr. Robert M. Richardson] offered considerable testimony regarding the "Bid Tabulation Sheet"⁶ and its intended use. Richardson characterized the solicitation as a hybrid of lump sum and unit price. Richardson claimed that the Lump Sum bid amount shown on BF-1 was in fact the extension of the quantity and unit price values provided in the Bid Tabulation Sheet. Richardson then argued that if Cherokee proceeded with the actual construction they would find that some quantity requirements exceeded their underestimated values. According to Richardson's scenario, Cherokee would then claim entitlement to a change order at the inflated unit prices shown on the Bid Tabulation. Richardson produced a recapitulation of the Bid Tabulation Sheets for itself and Cherokee. [Exh. 8] The most glaring examples of underestimated quantities, as stated in Richardson's April 11, 2005 clarification of its protest, are 3 line items in the Offsite Roadway Connector Unit, 3 line items in the Onsite Roadway Unit and 3 items in the Remaining Site Work Unit. The net result, according to Richardson, and assuming that Richardson's quantity estimates were correct, would be an increase in the Contract Sum of just over \$ 1 million.

Mr. Gerald Ringer, Richardson estimator primarily responsible for developing the estimated quantities for the Richardson bid, testified to the process used by his firm to develop Richardson's values and also his analysis of the Cherokee Bid Tabulation Sheet as it related to the Offsite Roadway Connector Unit. Considerable time was devoted to discussing the apparent omission of some 4,250 sq. yards of paving in the Offsite Roadway Connector. There was no testimony concerning the other alleged discrepancies.

Cherokee and the College reject Richardson's characterization of the solicitation as some form of hybrid bid. Both argue that the contract offered is a lump sum contract for the scope of work as shown defined in the Project plans and specifications. As to the differences in the Offsite Roadway Connector Unit, Cherokee admitted the inadvertent omission of the estimated quantities

⁶ This choice of terminology is particularly unfortunate because it is not a recognized term of art and the Code and the OSE Manual expressly define a Bid Tabulation Sheet, which is used for an entirely different purpose.

for the paving for some 1500-1600 feet of asphalt roadway. Cherokee stated this was a bid compilation error and that their bid, based on the clarification contained in “Exhibit A” made clear their intent and commitment to fully construct the road as designed and shown on the plans. At the hearing Cherokee’s vice-president affirmed its commitment to undertake the full scope of the Project, as shown in the plans and specifications, for the lump sum price tendered in their bid, not limited by the so-called Bid Tabulation Sheet.

For its part, the College’s intended use for the Bid Tabulation Sheet was to verify the scope of each bid and to provide budget information for possible scope reductions in the event of unacceptably high bids.

In reviewing this issue, the CPOC must first comment that responsibility for this issue rests fully on the College and is primarily due to the unnecessary lack of clarity in the Bidding Documents as to the purpose and status of the ill-named Bid Tabulation Sheet. The Bidding Documents contained only an implied reference to the Sheet and there were no instructions regarding its completion beyond those on the Sheet itself, the guidance from Addendum 1 cited above and the following exchange at the pre-bid meeting. When asked at the pre-bid meeting to clarify the nature of the bid—lump sum or unit price—the response from Mr. David Brandes, Project Civil Engineer, was a masterpiece of obfuscation [see Exh. 3, Attachment B, page 2]. To wit,

Q: Is it a lump sum or do you have units?

A: I believe it is a lump sum, but you bid in units. There will be units for pricing, but this will be a lump sum, but paid in unit prices for payment and if there are a few change orders there will be a place for that.

It is axiomatic in public contracting that oral statements made at pre-bid meetings are not binding unless reduced to writing and issued to all prospective bidders by addendum.⁷ In what is yet another unique approach to contract management, the College issued a transcript of the pre-bid meeting, which made both the contents and consequences of any misspoken or cryptic comments, such as those of Mr. Brandes, binding on the College.

While the CPOC is sympathetic to the position now espoused by Mr. Roach, it is not relevant to Richardson’s complaint, which arises out of the ambiguous status and actual usage of the Bid Tabulation Sheet. The Bid Tabulation Sheet was clearly a part of the as-issued Bidding

⁷ See, for example, ¶3.2.3 of the A701. (“Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding and Bidders shall not rely upon them.”)

Documents; it was revised in Addendum 3 and it was used by the College as justification for declaring the Palmetto Paving bid non-responsive. Simply put, the Bid Tabulation Sheet and its completion was a material factor in the College's evaluation of the bids and the determination of the lowest responsive and responsible bidder. Bidders were clearly puzzled by the form; hence the question at the pre-bid meeting and Mr. Brandes' notably unclear clarification. This response apparently satisfied the bidders, as no prospective bidder, including Richardson, raised any formal concern about the form or its status until after an award was made. Protests regarding the form and content of a solicitation are untimely unless submitted within 15 days of the date the relevant solicitation document is issued. Had a timely protest been raised, the CPOC could have addressed any ambiguities or other concerns before bidding. But the CPOC lacks the jurisdiction under §11-35-4210 to hear untimely protests.

Further, and despite the multiple missteps made by the College in constructing the Bidding Documents and by Cherokee in responding, as discussed in this decision, the CPOC believes that it would be inappropriate and an unnecessary waste of public and private resources to overturn this procurement now. In reaching this conclusion, the CPOC notes that by completing the Bid Tabulation Sheets the bidders have revealed not only their lump sum price but also details of their internal cost structure and bidding strategies. Cancellation of the award will require either a significant restructuring of the scope of the solicitation or a substantial waiting period before rebidding will be allowed, in order for sensitive pricing information to grow stale.

DECISION

It is the decision of the Chief Procurement Officer for Construction that the protest of Richardson Construction Company is denied. Florence-Darlington Technical College may proceed with the award of the contract for Site Work, consistent with its programmatic needs.

IT IS SO ORDERED



Michael M. Thomas
Chief Procurement Officer
for Construction

May 5, 2005
Date

STATEMENT OF THE RIGHT TO APPEAL

The South Carolina Procurement Code, under Section 11-35-4210, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten calendar days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the Panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site: <http://www.state.sc.us/mmo/legal/lawmenu.htm>

FILING FEE: Pursuant to Proviso 66.1 of the 2004 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(4). . . . 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2004 S.C. Act No. 248, Part IB, § 66.1. **PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."**

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain 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).

**RICHARDSON
CONSTRUCTION CO.**
OF COLUMBIA, SOUTH CAROLINA, INC.

P.O. Box 3506
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3-18-05

mobile 360-2595

Mr. Bob Chartier
State Engineer's Office
SC Budget and Control Board
Materials Management Office
1201 Main St.
Suite 600
Columbia, SC 29201

Dear Mr. Chartier,

We are writing to protest the bid process and award for the site work on the Southeastern Institute of Manufacturing and Technology at Florence Darlington Technical College pursuant to the South Carolina Procurement Code §11-35-4210(1).

We are informed and believe that the bids of both Cherokee Construction Company and Palmetto Paving Company were non-responsive. If these bids were non-responsive, our bid would be the lowest responsive bid.

The bases of our protest include but are not limited to the following sections of the Instructions to Bidders and Supplemental instructions to Bidders provided in the Bid Documents and the South Carolina Procurement Code as a whole.

Instructions to Bidders

- | | |
|-----------|-----------|
| a. §2.1.1 | g. §4.1.7 |
| b. §2.1.2 | h. §4.3.2 |
| c. §3.1.3 | i. §4.4.1 |
| d. §4.1.1 | j. §5.2 |
| e. §4.1.2 | k. §5.3.1 |
| f. §4.1.5 | l. §5.3.2 |

Supplemental Instructions To Bidders

- | | |
|-------------|-------------|
| m. §3.20 | r. §5.1 |
| n. §4.1.5 | s. §5.3.2.3 |
| o. §4.1.5.1 | t. §5.3.2.5 |
| p. §4.1.5.2 | u. §5.4.2 |
| q. §4.1.8 | v. §5.4.3 |

We hereby formally request reconsideration of the bids submitted for this project and further request that we be provided with copies of the bids of Cherokee and Palmetto prior to any hearing or decision by the State Engineer and as soon as is possible so that we may further define the grounds of our protest. Finally, we request that Richardson Construction Company be declared the lowest responsive bidder and awarded the contract for this project

Very Truly Yours,



Robert M. Richardson - President and Owner, Richardson Construction Company of Columbia, SC

R. JOSEPH RICHARDSON

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Columbia, South Carolina 29203
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Columbia, South Carolina 29230
(803) 530-3139

4-11-05

Mike Thomas, P.E., SC State Engineer
SC Budget and Control Board
Materials Management Office
1201 Main St.
Suite 600
Columbia, SC 29201

Dear Mr. Thomas,

The following is a clarification of our original protest of the site work bid and award for the Southeast Institute of Manufacturing Technology at Florence Darlington Technical College. Richardson Construction relied on the information that was communicated in the bid package, the Site Specifications and Drawings prepared by Daniel Cook, Architect, and various addenda and prepared its bid in accord with the intent of the bid package despite the disjointed and confusing nature of the information available.

As you are aware, at the time of our protest we were not in possession of the bid(s) of Palmetto Paving Corporation and Cherokee, Inc. which we allege were non-responsive and otherwise insufficient under the bid requirements including the Site Specifications prepared by Daniel Cook, Architect, the site work drawings and the South Carolina Procurement Code. We have now received copies of these bids and analyzed them.

It is our understanding that your office had already decided to reject the bid of Palmetto Paving and award the job to Cherokee at the time of our protest. However, in the interest of being thorough we now address the non-responsiveness and insufficiency of both Palmetto's and Cherokee's bids.

Palmetto Paving

The fatal omission in the Palmetto bid was Palmetto's failure to quote the Roadway "(Off-Site Connection to US-62)" line item on the bid form. Palmetto's bid did not include in a proposal to complete the work described by the line item and therefore did not address the full scope of the project and was non-responsive.

Cherokee, Inc.

Cherokec's bid contains multiple qualifications and was not filled out completely

1. **Bid Form 1**
 - a. No dates are included on the addenda acknowledgment
 - b. Reference is made to an attachment (Exhibit A) which qualifies the bid
2. **Bid Form 1(a)**
 - a. Quotes exhorbitant and unconscionable unit prices while grossly underestimating the actual quantities for the corresponding unit price work
3. **Bid Form 2**
 - a. No total amount is provided for subcontractors
4. **Bid Form 4**
 - a. No federal tax I.D. or Social Security Number is provided
 - b. No license classification, limitation or number is provided
 - c. There is no signature
 - d. There is no legal name of the corporation
5. **Bond**
 - a. The bond references an incorrect project number. The bond is for project number H-59-9852 – RC- C
6. **Bid Tabulation Sheet –**

Exhorbitant unit prices coupled with gross underestimates of the actual quantities mask the actual cost of completing the project under Cherokee's proposal

- a. **Item 1** – stated quantity is less than the actual quantity by 4250 s.y. lowering the bid price by \$130,900.00
- b. **Item 2** – stated quantity is less than the actual quantity by 4250 s.y. lowering the bid price by \$34,000.00
- c. **Item 3** – stated quantity is less than the actual quantity by 4250 s.y. lowering the bid price by \$27,625.00
- d. **Item 7** – stated quantity is less than the actual quantity by 6944 s.y. lowering the bid price by \$62,496.00
- e. **Item 8** – stated quantity is less than the actual quantity by 6944 s.y. lowering the bid price by \$132,543.00
- f. **Item 9** – stated quantity is less than the actual quantity by 14,727 s.y. lowering the bid price by \$132,543.00
- g. **Item 11** – stated quantity is less than the actual quantity by 14,727 s.y. lowering the bid price by \$95,725.00
- h. **Between Items 26 and 27** – an amount of \$345,000.00 is entered in a space entitled "Remaining Sitework" which does not require a price.
- i. **Items 30 and 34** – scope of work is qualified so as not to include all work required by the plans and specifications
- j. **Item 35** – the construction of a fountain in item 35 is specifically excluded from Cherokee's bid by attachment "Exhibit A"

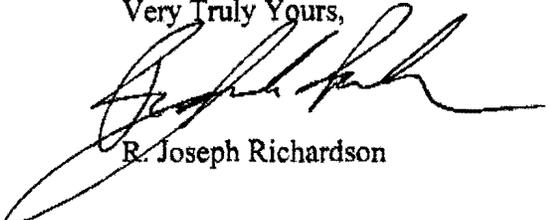
We believe that Cherokee's proposal, when properly analyzed will require significantly more payment than their total bid of \$6,999,732.30. If the unit prices above are applied to the gross underestimates made by Cherokee for the corresponding work items, their bid totals \$8,441,258.30.

Relief Requested

1. Richardson requests that Palmetto Paving's bid be rejected as non-responsive for failure to quote the full scope of work required by the bid requirements, plans and specifications
2. Richardson requests that Cherokee, Inc's bid be rejected as non-responsive for failure to quote the full scope of work required by the bid requirements, plans and specifications
3. Richardson requests that Cherokee, Inc's bid be rejected as non-responsive for failure to comply with the form requirements in the submission of its bid in violation of the Instructions to Bidders, the Supplemental Instructions to bidders, and the South Carolina Procurement Code general form requirements for the submission of competitive sealed bids
4. Richardson requests that Cherokee, Inc's bid be rejected for non-responsiveness because various items of the bid are qualified and certain work items are specifically excluded from its bid
5. Richardson requests that Cherokee, Inc's bid be rejected because it is not the low bid when tabulated using Cherokee's unit prices as applied to the accurate quantities for the corresponding work items
6. Richardson requests that Richardson Construction Company, Inc. be awarded the contract for the project because it is the lowest responsive and responsible bidder for the reasons stated hereinabove.

Please call me as soon as possible to set a date for a hearing on this matter.

Very Truly Yours,



R. Joseph Richardson