

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Otis Elevator Company

University of South Carolina
Emergency solicitation issued December
19, 2012

Elevator Preventative Maintenance and
Repair Services of the Vertical
Transportation Equipment for the
Columbia Campus

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2013-116

POSTING DATE: August 26, 2013

MAILING DATE: August 26, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by Otis Elevator Company (Otis) under authority of South Carolina Code Section 11-35-4210. By a request for quotations sent to four vendors, the University of South Carolina (USC) attempts to procure an interim agreement on an emergency basis for elevator maintenance and repairs at its Columbia Campus. After evaluating the bids received USC issued a purchase order to Oracle Elevator Company. Five months later, Otis protested the award of the emergency contract to Oracle, alleging Oracle's quote was submitted late and complaining of other irregularities in the solicitation, evaluation and award of the emergency contract.

In order to resolve the matter, the CPO conducted a hearing August 14, 2013. Appearing before the CPO were Otis, represented by John E. Schmidt, III, Esquire; Oracle, represented by Jeremy Hodges, Esquire; and USC, represented by George Lampl, Esquire. At the beginning of the hearing, USC moved to dismiss the protest as untimely. Oracle joined in the motion. For the reasons discussed below, the CPO grants the motion to dismiss.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On December 19, 2012, USC sent an email to four vendors, requesting quotations for elevator maintenance and service on a monthly basis. [Protest Letter; message from Jerome Provence to R. Bailey, S. Dempsey, D. Allen, and D. West, attached to Protest Letter]
2. By January 2, 2013, USC determined to award an emergency contract to Oracle.
3. On May 13, 2013, Otis filed its protest with the CPO.
4. On June 18, 2013, Otis appealed this case to the Procurement Review Panel, stating “Otis herewith appeals the CPO’s constructive denial of its protest dated May 13, 2013....” The appeal letter is attached and incorporated herein by reference.
5. By order dated July 30, 2013, the Panel dismissed Otis’ appeal, stating:

On July 22, 2013, Otis’s counsel notified the Panel via email that Cannon had decided to withdraw its appeal based on assurances from the Chief Procurement Officer that he would schedule a hearing on Otis’s original protest.

DISCUSSION

There are over two hundred “vertical transportation” devices—elevators, escalators, dumbwaiters and lifts—at the University of South Carolina’s Columbia campus. The University contracts for preventative maintenance service and repairs on a multi-year basis. The contract includes regularly scheduled maintenance services at a fixed monthly rate. Neither USC nor its service vendor can anticipate the exact scope of repairs that may be required during the contract term, so that work is paid for on a time and materials basis.

Near the end of 2012 the incumbent maintenance contractor declined to renew its contract for an additional term. To bridge the period between the end of that contract and an award under a new solicitation, the University determined an emergency procurement was appropriate. There is no challenge to the University’s finding an emergency exists, nor to the propriety of an emergency procurement for maintenance services on a temporary basis.

Jerome Provence is the Safety Manager for USC's Facilities Department. On December 19, 2012, Mr. Provence sent an email to four elevator contractors, including Otis, with a list of elevators to be serviced, a monthly service agreement, and a bid schedule. Mr. Provence requested pricing by the end of the day on December 19, and announced the University's intention to award a purchase order for January 2013 and, if necessary, February. Four vendors responded. Mr. Provence evaluated the bids and recommended USC accept Oracle's bid. USC subsequently issued a purchase order to Oracle for maintenance and repairs. Oracle has performed these services under the emergency contract since.¹

According to Otis' Appeal Letter, its manager contacted the University on January 2, 2013, to inquire about the emergency contract. Mr. Provence told him on that day that the contract had been awarded to another vendor. On January 3, Otis' senior account manager emailed USC requesting the hourly rate, unit pricing and final pricing that was submitted by all bidders for the interim contract. [Ex. 1] Later that same day USC responded with the base bid, hourly rates, and total bid for each of four vendors. The tabulation shows that Oracle's base bid and total bid were lowest of the four offerors. [Ex. 2]

In April 2013, while preparing for a hearing on a separate protest, Otis requested USC produce documents relevant to the emergency procurement. Because that material was not furnished until May 9, Otis contends it had no knowledge of the irregularities it now claims

¹ On January 14, 2013, USC issued solicitation no. USC-BVB-2360-LW. It sought best value bids for elevator maintenance and service for a one-year term, renewable to a maximum period of five years. On March 21, 2013, USC posted its intent to award the contract to Oracle. Otis protested this award on April 1. The CPO heard the protest on May 14. On May 17, USC requested the CPO cancel the BVB pursuant to S. C. Code Ann. Regulation 19-445.2085(C). The CPO posted his determination canceling the solicitation on June 24, 2013. No appeal was taken. According to the USC Purchasing website, it issued solicitation USC-BVB-2485-MR on July 25, 2013. The latest amendment sets the opening date for September 6 and award posting for September 19, 2013. See <http://purchasing.sc.edu/sadownload.php?sid=1438&q=Solicitations> (last viewed August 23, 2013).

existed in USC's emergency procurement. It is undisputed, though, that by January 3, 2013, Otis knew at least the following:

- USC requested quotes for an interim contract to service and maintain the elevators on the Columbia campus
- After receiving the quotes, USC determined to award the contract to another than Otis
- USC provided Otis with a tabulation of quotes received, including base bid, hourly rates, and total pricing

CONCLUSIONS OF LAW

The Panel has held in the past that a protestant does not need to know every minute fact involved in his protest in order to start the ten-day time limit running; it is enough that a party have reasons sufficient to support a protest. *In Re: Protest of Computerland of Columbia*, Case No. 1988-4. It has restated its position many times. For example:

In this case, it is undisputed that PEBSCO learned of the award on June 14 when Mr. Murphy's secretary telephoned State Procurement and then notified Mr. Murphy. At the very least, PEBSCO was notified of the award on June 21 when State Procurement officials read Mr. Murphy substantially all of the contents of the Final Award Report. The Panel holds that PEBSCO's actual knowledge that it was not going to receive the contract and that Johnson was satisfied the "notification of award" requirement and starts the thirty-day time limit running.

Protest of Public Employees Benefit Services Corporation, Panel Case No. 1990-11 (decided under former § 11-35-4210, requiring protest within thirty days of when it "knew or should have known" of facts giving rise to protest). This position has survived changes to the Code:

Precedent of the Panel is clear on this issue. We turn to *In re: Protest of: Atlas Food Systems and Services, Inc.; Appeal by Atlas Food Systems and Services, Inc.*, Case No. 1997-6, for previous consideration of this issue. It is for the most part a finding on the same set of facts. Atlas filed a timely protest, but then after receiving information as a result of a Freedom of Information Act request, they filed an amendment to the appeal. The Panel said the statute does not allow it. Section 11-35-4210 clearly states an appeal must be made within 15 days and state with particularity what issues it is appealing. The ruling of *Atlas* was affirmed again by the Panel in *In re: Protest of Transportation Management Services, Inc., Appeal by Transportation Management Services, Inc.*, Case No. 2000-02. Therefore, the Panel upholds the CPO's decision not to consider those

issues in the Supplemental Notice of Protest and further dismisses those grounds from this appeal.

Appeal by Venturi Technology Partners, Panel Case No. 2004-1. While the Panel has acknowledged the difficult position a protestant may find itself when time constraints prevent gathering sufficient information to develop a protest, those difficulties do not extend the time to file:

Although the Panel is bound by the statute, the Panel finds that the way the law is currently written is patently unfair to bidders who seek to protest. The Procurement Code allows fifteen days for a protest to be filed that states with ‘particularity’ the grounds of the protest. See S.C. Code Ann. § 11-35-4210(2). Also by statute, the State is given fifteen days to respond to any requests for documents pursuant to the Freedom of Information Act. See S.C. Code Ann. § 30-4-30. A protestant is therefore precluded from using information gained from its Freedom of Information request in drafting its protest if this information is received after the fifteen day limit has passed as occurred in this case. However, until such time that there is an amendment to one of the statutes, the issue is one of jurisdiction and the Panel is bound by the law as written.

Appeal by Atlas Food Systems and Services, Inc., Panel Case No. 1997-6.

Otis contends this precedent has no application in its case, because Section 11-35-4210 can only be triggered by posting a notice of award. Since USC never posted its award of the emergency contract, Otis argues the protest period has not begun.

Section 11-35-4210 was last amended in 2006. Its relevant provision currently reads:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code....

S.C. Code Ann. § 11-35-4210(1)(b). Emergency procurements are provided for in Section 11-35-1570. A purchase under this section must be justified by a written determination that an emergency exists, and “made with as much competition as is practicable under the

circumstances.”² Additionally, the Board promulgated S.C. Code Ann. Regulation 19-445.2010 governing emergency procurements. Neither the statute nor the regulation—nor any other provision of the Procurement Code—requires or provides for the State to post notice of the award of an emergency contract.

An aggrieved bidder may protest the award of an emergency contract. *Protest of Homer L. Spires, Masonry Contractor*, Panel Case No. 1988-6; *Appeal by Morganti National, Inc.*, Panel Case No. 1995-11. Here, the issue the CPO must decide is, where no posting of the award is required “in accordance with [the] code,” when does the protest period begin? There is no “starting gun” as there is with protests of a posted award. Accepting Otis’ position means the protest clock may never start.³ The Code does not provide a clear answer: it has not attempted to balance the needs of the State for certainty in contracting, against fairness to vendors whose rights may expire without sufficient notice.

In this case, though, the CPO need not perform any balancing analysis. Otis had notice of the award of the contract to another more than four months before it filed its protest. It had a bid tabulation by January 3, 2013. And actual knowledge is certainly an adequate substitute for the notice left undefined by the Code. *See Hannah v. United Refrigerated Services, Inc.*, 312 S.C.

² In a December 20, 2012 internal memorandum justifying an emergency, Don Gibson of USC included this sentence:

We are using competitive bidding to affirm that the contract if (sic) is fair and reasonable.

Otis argued that this language bound USC to conduct the emergency procurement by competitive sealed bidding, pursuant to Code Section 11-35-1520 and its accompanying regulations—including posting notice of the award. Section 11-35-1570 expressly relaxed competitive provisions of the Code in recognition that exigent circumstances giving rise to an emergency renders them impractical. The CPO does not agree that the language in an email message asking for quotations transforms an emergency solicitation into a competitive sealed bid. *See Protest of Homer L. Spires, Masonry Contractor*, Panel Case No. 1988-6 ([T]he Panel agrees that, in an appropriately declared emergency situation, the operation of the usual competitive bidding procedure is suspended.”)

³ Even if USC had posted a notice of award, one could argue that it was not “posted in accordance with this code,” since there is no such provision to be found.

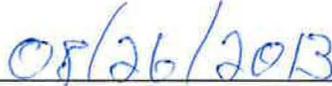
42, 430 S.E.2d 539 (1993) (“A person who knows a thing has notice thereof.”). Like PEBSCO (Panel Case No. 1990-11, supra), Computerland (Panel Case No. 1988-4, supra), and Venturi Technology Partners (Panel Case No. 2004-1, supra), Otis actually knew all information it needed to protest USC’s award on January 3, 2013. Its failure to protest until May means that the CPO has no jurisdiction to hear the matter.

DECISION

For the foregoing reasons the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

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>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2013 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 202, 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.



Attorneys and Counselors at Law

John E. Schmidt, III
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John.Schmidt@TheSCLawfirm.com

Melissa J. Copeland
803.309.4686
Missy.Copeland@TheSCLawfirm.com

May 13, 2013

Via Email to protest-mmo@mmo.sc.gov

Mr. Voight Shealy
Chief Procurement Officer for Goods and Services
Material Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: Protest of Award re: Emergency Solicitation, Issued December 19, 2012 for USC, Elevator Preventative Maintenance and Repair Services of the Vertical Transportation Equipment for the Columbia Campus. Notice Of Award Not Posted.

Dear Mr. Shealy:

This firm represents Otis Elevator Company ("Otis") in connection with the contract and award of a contract to Oracle Elevator Co. as to the above referenced Emergency Invitation for Bid Solicitation. Because there has never been a Notice of Intent to Award issued or posted as required by law, Otis' protest is timely.

Otis hereby protests the award of a contract to Oracle Elevator Co. ("Oracle") under the above Emergency Solicitation. Otis has standing as an actual, aggrieved bidder. The grounds of this protest are set forth below.

This procurement involves an IFB to obtain Emergency Elevator Preventative Maintenance and Repair Services of the Vertical Transportation Equipment for the Columbia Campus. The solicitation issuance date was December 19, 2012. Bids were expressly due by "end of business (5PM)" the same day. Bidders were not notified of the award by way of any formal notice.

Otis protests the award of a contract to Oracle because Oracle's bid was not submitted until after the time that bids were due. Oracle submitted its bid at 5:08 PM on December 19. USC provided to Otis yesterday, on May 9, 2013, documents requested by proper FOIA, which show that Otis was in fact the company that submitted the lowest timely, responsive bid. No other bid was submitted by the deadline that was lower.

Although the simple resolution of the above issue is certainly enough to cancel and replace the current, improper contract with a proper contract with Otis, there are other issues which Otis would point to as well.

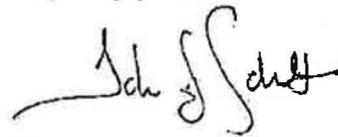
1. The emergency was made on a few hours notice for bid submission at 5 PM on December 19, 2012, even though more time could have been given. Further, USC inexplicably accepted two bids, including the awarded bid, after the deadline. Hence, USC was misapplying the deadline.
2. There are two "Emergency Justification" Memoranda to file that have different dates, language and amounts, but both are signed. One is December 20, which states that they are using "competitive bidding to affirm that the contract is fair and reasonable." Then, the "Estimated cost per month is in the \$40,000 range." The other is dated January 2, 2013, which states that "We requested quotes from 4 vendors to affirm that the contract is fair and reasonable," and that the "Estimated cost per month is between \$35,000 - \$40,000. USC's numbers were shifting.
3. It appears that the USC Facilities Department issued, assessed and awarded this emergency contract. We question whether the USC Facilities Department is authorized under USC policy to issue and award solicitations of this magnitude.
4. There were two alternate bid segments of the Emergency Bid. One was base bid (Oil and Grease or "OG") the other was Alternate 1 (parts, oil and grease, or "POG"). There was also an area for vendors to quote their hourly rates for emergency after hours service. The solicitation did not expressly state how, if at all, the hourly rates would be considered in calculating a total bid amount, if at all. In an explanation memo of Dec 20, 2012, Jerome Provence, the Safety Manager for USC Facilities Department, states that even though Oracle's price in its late bid for the monthly service under the POG Alternate was 600 higher than that of Carolina Elevator's late bid price for the same Alternate "we would like to award the PO for the "parts, oil and grease" alternate to Oracle." His rationale was that he felt that Oracle's hourly rates were lower than Carolina's. However, Otis' timely bid for the POG alternate was also lower than the untimely bid of Oracle. Documents disclosed yesterday also reveal that Lana Widener of USC's purchasing department received the memo of Mr. Provence, and on it, she wrote in handwriting a note which states that "only the base bid was accepted" because Jerome [Provence] stated that "USC would provide the material." Hence, USC's method of award/award criteria were changed, inexplicably.
5. The Emergency bid handling was also suspect in that while the procurement file does show that Mr. Provence received a copy of Carolina Elevator's bid on December 19, (albeit late) Mr. Provence's co-worker, Ron Maxfield, reported to Carolina Elevator that Mr. Provence did not receive that bid. Accordingly, Carolina Elevator sent another copy of its submission the next day. It is puzzling how a vendor's emergency bid came to be mislaid. It is a grave insult to the procurement process for the agency to lose track of, or lose, a bid. It is a grave error of process for the bid not to have been logged in. USC was losing the bids, and on the date of decision, did not even know who sent them in and who did not.
6. There is a serious appearance of impropriety and favoritism toward Oracle in regard to the acceptance of Oracle's late bid, the mishandling of Carolina Elevator's, lost, late, but lower bid, and the changing methods applied to determine how award of the contract could go to Oracle, during a single day. Why did USC at first write a formal note that it

wished to award a contract to Oracle for Parts Oil and Grease (based on unspecified adjustments by USC to the bid prices, which showed that Oracle's late bid had actually been third lowest), then on the same day, change the preference to (per handwritten note) "USC will provide the parts" and an award to Oracle for Oil and Grease, not parts?

7. Also, there are a wide range of numbers associated with the purported bid of Oracle and award in the notes in the purchasing file - 26,800/month (OG), 27,895/month (OG plus rates x 1 hour each), 30,200/month (POG) as shown in the dual signed Purchase Requisition, 55,000 for two months which Mr. Provence states "will cover a fair number of after hour calls and some parts and repairs," and 51,988/two months, as stated to David West of Oracle by Jerome in an e-mail (25,994/mo). Indeed, there is a handwritten note on the Purchase Order revising the amount of the two month order from 55,000 to 80,000, with no explanation. The number does appear to not equal any two or three month numbers in the file. And the document does not show any change in term. The amount of the formal Justification for Emergency Procurement (dated Jan 2, 2013 well after the procurement was done) is \$55,000. The bid price of Oracle shown in that document is 27,895. Base bid plus rates @ 1 hour. The memo attached to the justification states an expected cost is 35,000 - 40,000. USC's documents show the relevant numbers constantly changing throughout the process, inexplicably.

With bids lost, numbers changing, acceptance of late bids, failure to log bids, failure to read and announce bids publicly, failure to post a notice of intent to award, justifications changing, award criteria changing, and the other extreme issues with the emergency contract, it simply cannot be allowed to stand under any circumstances. Otis requests a stay of any contract and award to Oracle, a hearing on this matter, and that the intent to award and contract and purchase order to Oracle be cancelled, and that the contract be re-awarded to Otis – the lowest responsive and responsible vendor that submitted a timely bid.

Very truly yours,



John E. Schmidt, III

PROVENCE, JEROME

From: Bailey, Ronnie [Ronnie.Bailey@otis.com]
Sent: Wednesday, December 19, 2012 3:12 PM
To: PROVENCE, JEROME
Cc: Vanairsdale, Chris J
Subject: RE: Request for Quotation
Attachments: POG Maintenance OTIS Response.pdf; POG Maintenance SpecY.pdf.pdf

Jerome.

Otis Elevator Company respectfully submits the attached quotation for the POG Maintenance Specification.

Please let me know if you require any additional information.

Regards,

Ronnie Bailey | Account Manager
Otis Elevator Company
2557 Oscar Johnson Drive | North Charleston, SC 29405
T 843 529 9502 x-19 | F 843 529 9504 | C 843 296 3325
ronnie.bailey@otis.com | www.otis.com

From: PROVENCE, JEROME [<mailto:JCP@fmc.sc.edu>]
Sent: Wednesday, December 19, 2012 9:07 AM
To: Bailey, Ronnie; 'Steve Dempsey'; 'Allen, Dave'; 'david.west@atlanticcoastelevator.com'
Cc: MAXFIELD, RONALD; WIDENER, LANA; GIBSON, DON
Subject: Request for Quotation

Sir:

Attached are a monthly service agreement and an inventory listing of units to be serviced under the agreement. The last page of the PDF document is a pricing schedule.

Please print the agreement, fill out your pricing and submit the agreement electronically to me as a quotation by the end of business (5:00 PM) today, December 19, 2012.. A purchase order will be awarded tomorrow to the vendor with the best quotation.

This agreement will be in effect for the months of January and possibly extended through February of 2013.

Please call me at 803-315-3103 with questions.

Many thanks,

Jerome Provence
Safety Manager
Facilities Department
The University of South Carolina
700 Pendleton Street
Columbia, SC 29208
803.777.6793
fax: 803.777.3990
jcp@sc.edu

WIDENER, LANA

From: David West <david.west@oracleelevator.com>
Sent: Wednesday, December 19, 2012 5:08 PM
To: jcp@sc.edu
Cc: WIDENER, LANA; GIBSON, DON
Subject: Oracle Elevator Bid
Attachments: Oracle Elevator Bid.pdf

Jerome;

Please see the attached bid from Oracle Elevator for the O and G contract for January. Let me know if you have any questions.

Thanks

David West
Oracle Elevator.
Office: 912-351-9536
Fax: 912-354-1407
Cell: 912-755-5264
david.west@oracleelevator.com

PROVENCE, JEROME

From: Steve Dempsey [SteveDempsey@carolinaelevatorservice.com]
Sent: Wednesday, December 19, 2012 8:46 PM
To: jcp@sc.edu
Subject: {SpamScore: ssss} USC Temporary Service Bid
Attachments: USC Temporary Service Bid.pdf
Importance: High

Hello Jerome,

Thank you for the opportunity to bid our service to you.
Attached is our bid per your request.
Please do not hesitate to ask if you have any questions.

Steve

Steve Dempsey
Carolina Elevator Service Inc.
Senior Vice-President of Operations
P. O. Box 206
Elgin, SC 29045
Work: 803-438-9599
Fax: 803-438-9544
Cell: 803-669-2347
SteveDempsey@carolinaelevatorservice.com

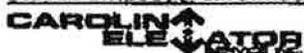


WIDENER, LANA

From: Steve Dempsey <SteveDempsey@carolinaelevatorservice.com>
Sent: Thursday, December 20, 2012 8:28 AM
To: PROVENCE, JEROME
Cc: MAXFIELD, RONALD; WIDENER, LANA; GIBSON, DON
Subject: RE: Request for Quotation
Attachments: USC Temporary Service Bid.pdf

Jerome,
I am resending this because Ron said you had not received it.

Steve Dempsey
Carolina Elevator Service Inc.
Senior Vice-President of Operations
P. O. Box 206
Elgin, SC 29045
Work: 803-438-9599
Fax: 803-438-9544
Cell: 803-669-2347
SteveDempsey@carolinaelevatorservice.com



From: PROVENCE, JEROME [<mailto:JCP@fmc.sc.edu>]
Sent: Wednesday, December 19, 2012 9:07 AM
To: 'Bailey, Ronnie'; 'Steve Dempsey'; 'Allen, Dave'; 'david.west@atlanticcoastelevator.com'
Cc: MAXFIELD, RONALD; WIDENER, LANA; GIBSON, DON
Subject: Request for Quotation

Sir:

Attached are a monthly service agreement and an inventory listing of units to be serviced under the agreement. The last page of the PDF document is a pricing schedule.

Please print the agreement, fill out your pricing and submit the agreement electronically to me as a quotation by the end of business (5:00 PM) today, December 19, 2012.. A purchase order will be awarded tomorrow to the vendor with the best quotation.

This agreement will be in effect for the months of January and possibly extended through February of 2013.

Please call me at 803-315-3103 with questions.

Many thanks,

Jerome Provence
Safety Manager
Facilities Department
The University of South Carolina
700 Pendleton Street
Columbia, SC 29208

PROVENCE, JEROME

From: PROVENCE, JEROME
Sent: Thursday, December 20, 2012 9:24 AM
To: WIDENER, LANA
Cc: ADAMS, MICHELLE; CAMPBELL, MELANIE; GIBSON, DON; KATZ, RICHARD; DEMAREST, JAMES
Subject: Emergency Elevator Service PR
Attachments: POG Maintenance SpecY.pdf; ELEVATOR LISTING.xls; Quotations.pdf; Letter PR.pdf

Good morning Lana:

Attached are scanned documents related to a request to purchase elevator maintenance and repair services. A justification memorandum, four quotations, a purchase requisition, the agreement and an elevator inventory are included.

The purchase requisition is for Oracle Elevator out of Charlotte. Their quotation for "parts, oil and grease" service is about \$600 higher than Carolina Elevator, but their labor rates are significantly lower. We project a potential for several repairs during the agreement. We believe that we would recoup the \$600 difference in the course of one or two repair orders, thus, we would like to award the PO for the "parts, oil and grease" alternate to Oracle. Please contact me with questions or concerns.

We would like to notify Oracle today with a PO number if possible.

Many thanks, as always, for your most accommodating assistance and patience during this process.
Jerome

Jerome Provence
Safety Manager
Facilities Department
The University of South Carolina
700 Pendleton Street
Columbia, SC 29208
803.777.6793
fax: 803.777.3990
jcp@sc.edu

*12/20/12 -
Spoke with Jerome -
He can only take
Base Bid or
Base Bid + Alternate!
He said USC would
provide the material.
Therefore only the
Base Bid was
accepted.
Lidwiler*

SOUTH CAROLINA

PURCHASE OF

No. 51989
 SHOW THIS NUMBER
 INVOICES, PACKAGES,
 IN CONNECTION WITH
 PURCHASE ORDER.

REQ#

DATE 01/14/2013

VENDOR NO. 52170
 (203452855V)

PC#

ORACLE ELEVATOR CO
 519 ENTERPRISE DR
 CHARLOTTE

NC 28206

PLEASE DELIVER THE FOLLOWING TO:

N/A

ANY QUESTION CONCERNING THIS P.O. CALL (803) ***777-4115 AND ASK FOR LANA WIDENER

DEPT NUMBER	FUND	CLASS	ANALYTICAL		AMOUNT	REQUISITIONED BY
50010	A000	52070		LW/SH -25-13	\$55,000.00 80,000.00	JEROME PROVENCE 803-777-6793

ITEM	QUANTITY	U/M	COMM CODE	DESCRIPTION	UNIT PRICE	EXTENSION
01	1.00	LOT		<p>BLANKET ORDER EFFECTIVE 1/1/13 THRU 2/28/13</p> <p>PROVIDE OIL AND GREASE ELEVATOR MAINTENANCE SERVICE, CALLBACK SERVICE AND REPAIRS AS PER THE ATTACHED AGREEMENT AND PRICE SCHEDULE, FOR THE MONTH OF JANUARY 2013 (BASE BID = \$26,800/MO)</p> <p>CP00367791 FM00415071</p> <p>DO NOT EXCEED \$55,000</p> <p>TERMS NET 30</p> <p>DO NOT ADD SALES TAX TO INVOICES. WE ACCEPT LIABILITY FOR S.C. SALES TAX UNDER EXEMPT. CERTIF. # 7358 (19).</p>	55000.00	55000.
						55000.

SEND ALL INVOICES TO ACCOUNTS PAYABLE DEPARTMENT

1. Submit invoice IN DUPLICATE to ACCOUNTS PAYABLE DEPT., University of South Carolina, Columbia, S.C. 29208.
2. Please render separate invoices to cover each Purchase Order Number.
3. Contact Accounts Payable Dept., University of South Carolina, Phone No. (803) 777-4818 for any questions concerning invoices.

UNIVERSITY OF SOUTH CAROLINA

Authorized Signature

NUMERICAL FILE (PURCHASING DEPT.)

MEMORANDUM OF RECORD

DATE:

December 20, 2012

THROUGH: Venis Manigo
Procurement

TO: Helen Zeigler
Business Affairs

FROM: Don Gibson 

SUBJECT: Emergency justification for interim Elevator service contract

The last week of November, our Elevator maintenance and safety service provider gave us notice that they were terminating their agreement as of December 31st of 2012. USC is in the process of awarding a new contract. Due to the short notice we have a need for an interim agreement to provide basic elevator maintenance and adjustment to insure safe operation of 196 Columbia campus elevators. The agreement includes all manner of emergency on-call service at the same level of our expiring contract. Failure to have this service creates a life-safety risk. This interim service will be provided in one-month blocks until a permanent contract is required. We are using competitive bidding to affirm that the contract is fair and reasonable. Estimated cost per month is in the \$40,000 range.

MEMORANDUM OF RECORD

DATE:

January 2, 2013

THROUGH: Venis Manigo
Procurement

TO: Helen Zeigler
Business Affairs

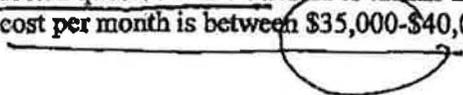
FROM:

Don Gibson 

SUBJECT: Emergency justification for interim Elevator service contract

The last week of November, our Elevator maintenance and safety service provider gave us notice that they were terminating their agreement as of December 31st of 2012 after the 2nd year of a total 5 year term contract. We immediately began plans to solicit for a new 5 year term contract. We realized that the contract would not be in place before December 31st.

Due to the short notice termination, we have a need for an interim agreement to provide basic elevator maintenance and adjustment to insure safe operation of 196 Columbia campus elevators. The agreement includes all manner of emergency on-call service at the same level of our expiring contract. Failure to have this service creates a life-safety risk. This interim service will be provided in one-month blocks. We requested quotes from 4 vendors to affirm that the contract is fair and reasonable. Estimated cost per month is between \$35,000-\$40,000.





Attorneys and Counselors at Law

John E. Schmidt, III
803.348.2984
John.Schmidt@TheSCLawfirm.com

Melissa J. Copeland
803.309.4686
Missy.Copeland@TheSCLawfirm.com

June 18, 2013

Hand Delivered (with check) and Via Email to protest-mmo@mmo.sc.gov

Mr. Voight Shealy
Chief Procurement Officer for Goods and Services
Material Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: Appeal regarding Protest of Award re: Emergency Solicitation, Issued December 19, 2012 for USC, Elevator Preventative Maintenance and Repair Services of the Vertical Transportation Equipment for the Columbia Campus. **Notice Of Award Not Posted.**

Dear Mr. Shealy,

This firm represents Otis Elevator Company ("Otis") in connection with the contract and award of a contract to Oracle Elevator Co. ("Oracle") as to the above referenced Emergency Invitation for Bid Solicitation. Because there has never been an Award or a Notice of Intent to Award issued or posted as required by law, Otis' protest was timely, and this appeal is likewise timely.

Otis herewith appeals the CPO's constructive denial of its protest dated May 13, 2013 as to the above referenced award of a contract in violation of law, University of South Carolina Policies, Rules and Regulations and in violation of the emergency solicitation itself.

Otis' protest was timely submitted on May 13, 2013. Otis made an oral request for a hearing on May 14, 2013, due to the fact that the contract in question is an "emergency" contract, yet no hearing was set. On June 6, 2013, Otis requested a hearing to be set in writing, and yet as of today, no hearing has been set, and no response has been given of any kind, though it has been well over a month since the protest was filed.

Accordingly, Otis raises this appeal to the Panel, as the CPO's failure to set a hearing in regard to this matter constitutes a constructive denial of the protest.

This matter is simple. An emergency solicitation, a bid invitation, was issued for certain Elevator Preventive Maintenance Services, with vendor responses by 5pm the same day as the solicitation was issued. (See attachments to Protest Letter, Exhibit A, attached). A number of vendors

participated, including Otis. Internal USC documents revealed shortly before the protest was filed that Otis was actually the lowest timely bidder. However, the award was made to a bidder whose bid was submitted after the deadline. USC has never explained why the award was issued the award to a bidder whose bid was late, when there were a number of timely bids submitted, including Otis' bid which was only slightly higher than the late awardee bid. The award of a contract to a vendor whose bid was late under the emergency solicitation was clearly erroneous, arbitrary, capricious and contrary to law.

The bid invitation was issued December 19, 2012 at around 9 am, for responses the same day by 5 pm. This deadline was explicit and a number of vendors complied with it. The documents disclosing that the award was made to a late bid were revealed only shortly before this protest was filed. Otis' protest is timely because this solicitation and award were never posted in accordance with S.C. Code Ann. § 11-35-1520 (10). The statutory deadline for a protest under 11-35-4210 (1)(b) is within ten days of the date award or notification of intent to award, whichever is earlier, is posted accordance with this code." Until such posting is made, the time for protest does not expire under the statute. Here, the irregularities of this emergency procurement require close inspection of the matter. See *In re Protest of Homer L. Spires*, SCPD 1988-6 (1988).

Otis and other vendors had made requests for appropriate bid information during and since January of 2013, but until shortly before the protest was filed, the documents showing that the awarded contractor Oracle, had submitted an untimely, late bid, were not released. Otis protested promptly after that release of documents, because the documents showed that Otis was indeed the lowest on time bid, and should have been awarded this contract, which to Otis' knowledge is still ongoing. Otis asks that the Panel issue an immediate stay order as to performance of the unlawful contract.

The solicitation at issue was conducted as an emergency solicitation, and was evidently issued, evaluated and awarded by Jerome Provence, who is the Safety Manager of the Facilities Department at USC, rather than by the Purchasing Department at USC.

There was no publishing or posting of the solicitation, or of the intent to award or award. Mr. Provence had informed Otis in December 2012 that Otis would be contacted promptly about an award, but no such contact was made. In fact, Otis was unaware that the award had already been made to another vendor until much later, (January 2, 2013), when Otis called Mr. Provence to inquire when an award was expected.

Because the CPO has constructively denied the protest, this appeal states and incorporates all issues raised in the appeal, specifically:

This procurement involves an IFB to obtain Emergency Elevator Preventative Maintenance and Repair Services of the Vertical Transportation Equipment for the Columbia Campus. The solicitation issuance date was December 19, 2012. Bids were expressly due by "end of business (5PM)" the same day. Bidders were not notified of the award by way of any formal notice.

Otis protests and appeals the award of a contract to Oracle because Oracle's bid was not submitted until after the time that bids were due. Oracle submitted its bid at 5:08 PM on December 19. USC provided to Otis on May 9, 2013, documents requested by proper FOIA, which show that Otis was in fact the company that submitted the lowest timely, responsive bid. No other bid was submitted by the deadline that was lower.

Although the simple resolution of the above issue is certainly enough to cancel and replace the current, improper contract with a proper contract with Otis, there are other issues, which Otis would point to as well.

1. The emergency was made on a few hours notice for bid submission at 5 PM on December 19, 2012, even though more time could have been given. Further, USC inexplicably accepted two bids, including the awarded bid, after the deadline. Hence, USC was misapplying the deadline.
2. There are two "Emergency Justification" Memoranda to file that have different dates, language and amounts, but both are signed. One is December 20, which states that they are using "competitive bidding to affirm that the contract is fair and reasonable." Then, the "Estimated cost per month is in the \$40,000 range." The other is dated January 2, 2013, which states that "We requested quotes from 4 vendors to affirm that the contract is fair and reasonable," and that the "Estimated cost per month is between \$35,000 - \$40,000. USC's numbers were shifting.
3. It appears that the USC Facilities Department issued, assessed and awarded this emergency contract. We question whether the USC Facilities Department is authorized under USC policy to issue and award solicitations of this magnitude.
4. There were two alternate bid segments of the Emergency Bid. One was base bid (Oil and Grease or "OG") the other was Alternate 1 (parts, oil and grease, or "POG"). There was also an area for vendors to quote their hourly rates for emergency after hours service. The solicitation did not expressly state how, if at all, the hourly rates would be considered in calculating a total bid amount, if at all. In an explanation memo of Dec 20, 2012, Jerome Provence, the Safety Manager for USC Facilities Department, states that even though Oracle's price in its late bid for the monthly service under the POG Alternate was 600 higher than that of Carolina Elevator's late bid price for the same Alternate "we would like to award the PO for the "parts, oil and grease" alternate to Oracle." His rationale was that he felt that Oracle's hourly rates were lower than Carolina's. However, Otis' timely bid for the POG alternate was also lower than the untimely bid of Oracle. Documents disclosed yesterday also reveal that Lana Widener of USC's purchasing department received the memo of Mr. Provence, and on it, she wrote in handwriting a note which states that "only the base bid was accepted" because Jerome [Provence] stated that "USC would provide the material." Hence, USC's method of award/award criteria were changed, inexplicably.
5. The Emergency bid handling was also suspect in that while the procurement file does show that Mr. Provence received a copy of Carolina Elevator's bid on December 19, (albeit late) Mr. Provence's co-worker, Ron Maxfield, reported to Carolina Elevator that

Mr. Provence did not receive that bid. Accordingly, Carolina Elevator sent another copy of its submission the next day. It is puzzling how a vendor's emergency bid came to be mislaid. It is a grave insult to the procurement process for the agency to lose track of, or lose, a bid. It is a grave error of process for the bid not to have been logged in. USC was losing the bids, and on the date of decision, did not even know who sent them in and who did not.

6. There is a serious appearance of impropriety and favoritism toward Oracle in regard to the acceptance of Oracle's late bid, the mishandling of Carolina Elevator's, lost, late, but lower bid, and the changing methods applied to determine how award of the contract could go to Oracle, during a single day. Why did USC at first write a formal note that it wished to award a contract to Oracle for Parts Oil and Grease (based on unspecified adjustments by USC to the bid prices, which showed that Oracle's late bid had actually been third lowest), then on the same day, change the preference to (per handwritten note) "USC will provide the parts" and an award to Oracle for Oil and Grease, not parts?
7. Also, there are a wide range of numbers associated with the purported bid of Oracle and award in the notes in the purchasing file - 26,800/month (OG), 27,895/month (OG plus rates x 1 hour each), 30,200/month (POG) as shown in the dual signed Purchase Requisition, 55,000 for two months which Mr. Provence states "will cover a fair number of after hour calls and some parts and repairs," and 51,988/two months, as stated to David West of Oracle by Jerome in an e-mail (25,994/mo). Indeed, there is a handwritten note on the Purchase Order revising the amount of the two month order from 55,000 to 80,000, with no explanation. The number does appear to not equal any two or three month numbers in the file. And the document does not show any change in term. The amount of the formal Justification for Emergency Procurement (dated Jan 2, 2013 well after the procurement was done) is \$55,000. The bid price of Oracle shown in that document is 27,895. Base bid plus rates @ 1 hour. The memo attached to the justification states an expected cost is 35,000 - 40,000. USC's documents show the relevant numbers constantly changing throughout the process, inexplicably.

In regard to all of the above matters, the conduct of USC was clearly erroneous, arbitrary, capricious and contrary to law. As stated by this Panel in *In re Protest of Morganti National, Inc, Appeal by Morganti National, Inc*, SCPD 1995-11 (1995), "An emergency procurement under S. C. Code Ann. Section 11-35-1570 is clearly subject to review...." The Panel also stated in that case that "The Panel takes this opportunity to reiterate the Panel's position as stated in Procurement Review Panel Case No. 1988-6, *In re: Protest of Homer L. Spires*, which expresses the Panel's belief that emergency procurements are subject to very close scrutiny."

In *In re Protest of Homer L. Spires*, SCPD 1988-6 (1988) the Panel stated that:

The Procurement Code has as two of its stated purposes the assurance of "fair and equitable treatment of all persons who deal with the procurement system of this State" and the provision of "safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules

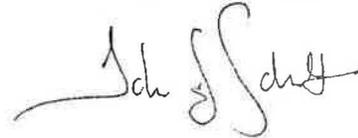
for ethical behavior on the part of all persons engaged in the public procurement process.” S. C. Code Ann. § 11-35-20 (1976). Section 11-35-30 further provides that every contract imposes an obligation of good faith in its negotiation, performance and enforcement.

The emergency regulations themselves recognize that even in an emergency such competition as is practicable must be obtained. Reg. 19-445.2110(E).

The existence of an emergency, therefore, does not justify the wholesale suspension of the basic policies and safeguards built into the Procurement Code. Even in an emergency, an agency must act fairly and ethically towards all parties concerned.

Here, with bids lost, numbers changing, acceptance of late bids, failure to log bids, failure to read and announce bids publicly, failure to post a notice of intent to award, justifications changing, award criteria changing, and the other extreme issues with the emergency contract, it simply cannot be allowed to stand under any circumstances. Otis requests a stay of any contract, award to Oracle and performance of this unlawful contract, a hearing on this matter, and that the intent to award and contract and purchase order to Oracle be cancelled, and that the contract be re-awarded to Otis – the lowest responsive and responsible vendor that submitted a timely bid.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Schmidt, III". The signature is fluid and cursive, with the first name "John" and last name "Schmidt" being the most prominent parts.

John E. Schmidt, III

cc: Christie Emanuel
Rivers Stilwell
George Lampl



Attorneys and Counselors at Law

John E. Schmidt, III
803.348.2984
John.Schmidt@TheSCLawfirm.com

Melissa J. Copeland
803.309.4686
Missy.Copeland@TheSCLawfirm.com

May 13, 2013

Via Email to protest-mmo@mimo.sc.gov

Mr. Voight Shealy
Chief Procurement Officer for Goods and Services
Material Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: Protest of Award re: Emergency Solicitation, Issued December 19, 2012 for USC, Elevator Preventative Maintenance and Repair Services of the Vertical Transportation Equipment for the Columbia Campus. Notice Of Award Not Posted.

Dear Mr. Shealy:

This firm represents Otis Elevator Company ("Otis") in connection with the contract and award of a contract to Oracle Elevator Co. as to the above referenced Emergency Invitation for Bid Solicitation. Because there has never been a Notice of Intent to Award issued or posted as required by law, Otis' protest is timely.

Otis hereby protests the award of a contract to Oracle Elevator Co. ("Oracle") under the above Emergency Solicitation. Otis has standing as an actual, aggrieved bidder. The grounds of this protest are set forth below.

This procurement involves an IFB to obtain Emergency Elevator Preventative Maintenance and Repair Services of the Vertical Transportation Equipment for the Columbia Campus. The solicitation issuance date was December 19, 2012. Bids were expressly due by "end of business (5PM)" the same day. Bidders were not notified of the award by way of any formal notice.

Otis protests the award of a contract to Oracle because Oracle's bid was not submitted until after the time that bids were due. Oracle submitted its bid at 5:08 PM on December 19. USC provided to Otis yesterday, on May 9, 2013, documents requested by proper FOIA, which show that Otis was in fact the company that submitted the lowest timely, responsive bid. No other bid was submitted by the deadline that was lower.

Although the simple resolution of the above issue is certainly enough to cancel and replace the current, improper contract with a proper contract with Otis, there are other issues which Otis would point to as well.

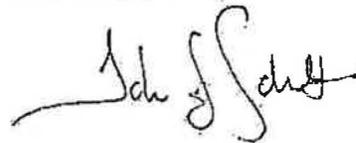
1. The emergency was made on a few hours notice for bid submission at 5 PM on December 19, 2012, even though more time could have been given. Further, USC inexplicably accepted two bids, including the awarded bid, after the deadline. Hence, USC was misapplying the deadline.
2. There are two "Emergency Justification" Memoranda to file that have different dates, language and amounts, but both are signed. One is December 20, which states that they are using "competitive bidding to affirm that the contract is fair and reasonable." Then, the "Estimated cost per month is in the \$40,000 range." The other is dated January 2, 2013, which states that "We requested quotes from 4 vendors to affirm that the contract is fair and reasonable," and that the "Estimated cost per month is between \$35,000 - \$40,000. USC's numbers were shifting.
3. It appears that the USC Facilities Department issued, assessed and awarded this emergency contract. We question whether the USC Facilities Department is authorized under USC policy to issue and award solicitations of this magnitude.
4. There were two alternate bid segments of the Emergency Bid. One was base bid (Oil and Grease or "OG") the other was Alternate 1 (parts, oil and grease, or "POG"). There was also an area for vendors to quote their hourly rates for emergency after hours service. The solicitation did not expressly state how, if at all, the hourly rates would be considered in calculating a total bid amount, if at all. In an explanation memo of Dec 20, 2012, Jerome Provence, the Safety Manager for USC Facilities Department, states that even though Oracle's price in its late bid for the monthly service under the POG Alternate was 600 higher than that of Carolina Elevator's late bid price for the same Alternate "we would like to award the PO for the "parts, oil and grease" alternate to Oracle." His rationale was that he felt that Oracle's hourly rates were lower than Carolina's. However, Otis' timely bid for the POG alternate was also lower than the untimely bid of Oracle. Documents disclosed yesterday also reveal that Lana Widener of USC's purchasing department received the memo of Mr. Provence, and on it, she wrote in handwriting a note which states that "only the base bid was accepted" because Jerome [Provence] stated that "USC would provide the material." Hence, USC's method of award/award criteria were changed, inexplicably.
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wished to award a contract to Oracle for Parts Oil and Grease (based on unspecified adjustments by USC to the bid prices, which showed that Oracle's late bid had actually been third lowest), then on the same day, change the preference to (per handwritten note) "USC will provide the parts" and an award to Oracle for Oil and Grease, not parts?

7. Also, there are a wide range of numbers associated with the purported bid of Oracle and award in the notes in the purchasing file - 26,800/month (OG), 27,895/month (OG plus rates x 1 hour each), 30,200/month (POG) as shown in the dual signed Purchase Requisition, 55,000 for two months which Mr. Provence states "will cover a fair number of after hour calls and some parts and repairs," and 51,988/two months, as stated to David West of Oracle by Jerome in an e-mail (25,994/mo). Indeed, there is a handwritten note on the Purchase Order revising the amount of the two month order from 55,000 to 80,000, with no explanation. The number does appear to not equal any two or three month numbers in the file. And the document does not show any change in term. The amount of the formal Justification for Emergency Procurement (dated Jan 2, 2013 well after the procurement was done) is \$55,000. The bid price of Oracle shown in that document is 27,895. Base bid plus rates @ 1 hour. The memo attached to the justification states an expected cost is 35,000 - 40,000. USC's documents show the relevant numbers constantly changing throughout the process, inexplicably.

With bids lost, numbers changing, acceptance of late bids, failure to log bids, failure to read and announce bids publicly, failure to post a notice of intent to award, justifications changing, award criteria changing, and the other extreme issues with the emergency contract, it simply cannot be allowed to stand under any circumstances. Otis requests a stay of any contract and award to Oracle, a hearing on this matter, and that the intent to award and contract and purchase order to Oracle be cancelled, and that the contract be re-awarded to Otis – the lowest responsive and responsible vendor that submitted a timely bid.

Very truly yours,



John E. Schmidt, III

PROVENCE, JEROME

From: Bailey, Ronnie [Ronnie.Bailey@otis.com]
Sent: Wednesday, December 19, 2012 3:12 PM
To: PROVENCE, JEROME
Cc: Vanairsdale, Chris J
Subject: RE: Request for Quotation
Attachments: POG Maintenance OTIS Response.pdf; POG Maintenance SpecY.pdf.pdf

Jerome.

Otis Elevator Company respectfully submits the attached quotation for the POG Maintenance Specification.

Please let me know if you require any additional information.

Regards,

Ronnie Bailey | Account Manager
Otis Elevator Company
2557 Oscar Johnson Drive | North Charleston, SC 29405
T 843 529 9502 x-19 | F 843 529 9504 | C 843 296 3325
ronnie.bailey@otis.com | www.otis.com

From: PROVENCE, JEROME [<mailto:JCP@fmc.sc.edu>]
Sent: Wednesday, December 19, 2012 9:07 AM
To: Bailey, Ronnie; 'Steve Dempsey'; 'Allen, Dave'; 'david.west@atlanticcoastelevator.com'
Cc: MAXFIELD, RONALD; WIDENER, LANA; GIBSON, DON
Subject: Request for Quotation

Sir:

Attached are a monthly service agreement and an inventory listing of units to be serviced under the agreement. The last page of the PDF document is a pricing schedule.

Please print the agreement, fill out your pricing and submit the agreement electronically to me as a quotation by the end of business (5:00 PM) today, December 19, 2012.. A purchase order will be awarded tomorrow to the vendor with the best quotation.

This agreement will be in effect for the months of January and possibly extended through February of 2013.

Please call me at 803-315-3103 with questions.

Many thanks,

Jerome Provence
Safety Manager
Facilities Department
The University of South Carolina
700 Pendleton Street
Columbia, SC 29208
803.777.6793
fax: 803.777.3990
jcp@sc.edu

WIDENER, LANA

From: David West <david.west@oracleelevator.com>
Sent: Wednesday, December 19, 2012 5:08 PM
To: jcp@sc.edu
Cc: WIDENER, LANA; GIBSON, DON
Subject: Oracle Elevator Bid
Attachments: Oracle Elevator Bid.pdf

Jerome,

Please see the attached bid from Oracle Elevator for the O and G contract for January. Let me know if you have any questions.

Thanks

David West
Oracle Elevator.
Office: 912-351-9536
Fax: 912-354-1407
Cell: 912-755-5264
david.west@oracleelevator.com

PROVENCE, JEROME

From: Steve Dempsey [SteveDempsey@carolinaelevatorservice.com]
Sent: Wednesday, December 19, 2012 8:46 PM
To: jcp@sc.edu
Subject: (SpamScore: ssss) USC Temporary Service Bid
Attachments: USC Temporary Service Bid.pdf

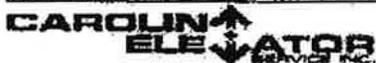
Importance: High

Hello Jerome,

Thank you for the opportunity to bid our service to you.
Attached is our bid per your request.
Please do not hesitate to ask if you have any questions.

Steve

Steve Dempsey
Carolina Elevator Service Inc.
Senior Vice-President of Operations
P. O. Box 206
Elgin, SC 29045
Work: 803-438-9599
Fax: 803-438-9544
Cell: 803-669-2347
SteveDempsey@carolinaelevatorservice.com



WIDENER, LANA

From: Steve Dempsey <SteveDempsey@carolinaelevatorservice.com>
Sent: Thursday, December 20, 2012 8:28 AM
To: PROVENCE, JEROME
Cc: MAXFIELD, RONALD; WIDENER, LANA; GIBSON, DON
Subject: RE: Request for Quotation
Attachments: USC Temporary Service Bid.pdf

Jerome,

I am resending this because Ron said you had not received it.

Steve Dempsey
Carolina Elevator Service Inc. _____
Senior Vice-President of Operations
P. O. Box 206
Elgin, SC 29045
Work: 803-438-9599
Fax: 803-438-9544
Cell: 803-669-2347
SteveDempsey@carolinaelevatorservice.com



From: PROVENCE, JEROME [<mailto:JCP@fmc.sc.edu>]
Sent: Wednesday, December 19, 2012 9:07 AM
To: 'Bailey, Ronnie'; 'Steve Dempsey'; 'Allen, Dave'; 'david.west@atlanticcoastelevator.com'
Cc: MAXFIELD, RONALD; WIDENER, LANA; GIBSON, DON
Subject: Request for Quotation

Sir:

Attached are a monthly service agreement and an inventory listing of units to be serviced under the agreement. The last page of the PDF document is a pricing schedule.

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This agreement will be in effect for the months of January and possibly extended through February of 2013.

Please call me at 803-315-3103 with questions.

Many thanks,

Jerome Provence
Safety Manager
Facilities Department
The University of South Carolina
700 Pendleton Street
Columbia, SC 29208

PROVENCE, JEROME

From: PROVENCE, JEROME
Sent: Thursday, December 20, 2012 9:24 AM
To: WIDENER, LANA
Cc: ADAMS, MICHELLE; CAMPBELL, MELANIE; GIBSON, DON; KATZ, RICHARD; DEMAREST, JAMES
Subject: Emergency Elevator Service PR
Attachments: POG Maintenance SpecY.pdf; ELEVATOR LISTING.xls; Quotations.pdf; Letter PR.pdf

Good morning Lana:

Attached are scanned documents related to a request to purchase elevator maintenance and repair services. A justification memorandum, four quotations, a purchase requisition, the agreement and an elevator inventory are included.

The purchase requisition is for Oracle Elevator out of Charlotte. Their quotation for "parts, oil and grease" service is about \$600 higher than Carolina Elevator, but their labor rates are significantly lower. We project a potential for several repairs during the agreement. We believe that we would recoup the \$600 difference in the course of one or two repair orders, thus, we would like to award the PO for the "parts, oil and grease" alternate to Oracle. Please contact me with questions or concerns.

We would like to notify Oracle today with a PO number if possible.

Many thanks, as always, for your most accommodating assistance and patience during this process.
Jerome

Jerome Provence
Safety Manager
Facilities Department
The University of South Carolina
700 Pendleton Street
Columbia, SC 29208
803.777.6793
fax: 803.777.3990
jcp@sc.edu

*12/20/12
Spoke with Jerome -
He can only take
Base Bid or
Base Bid + Alternate!
He said USC would
provide the material.
Therefore only the
Base Bid was
accepted.
L Widener*

No. 51989
SHOW THIS NUMBER
INVOICES, PACKAGES,
IN CONNECTION WITH
PURCHASE ORDER.

REQ#

DATE 01/14/2013

VENDOR NO. 52170

PC#

(203452855V)

PLEASE DELIVER THE FOLLOWING TO:

N/A

ORACLE ELEVATOR CO

519 ENTERPRISE DR

CHARLOTTE

NC 28206

ANY QUESTION CONCERNING THIS P.O. CALL (803) ***777-4115 AND ASK FOR LANA WIDENER

DEPT. NUMBER	FUND	CLASS	ANALYTICAL	AMOUNT	REQUISITIONED BY
50010	A000	52070	LW/SH - 25-13	\$55,000.00 <u>80000.00</u>	JEROME PROVENCE 803-777-6793

ITEM	QUANTITY	U/M	COMM CODE	DESCRIPTION	UNIT PRICE	EXTENSION
01	1.00	LOT		<p style="text-align: center;">BLANKET ORDER</p> <p style="text-align: center;">EFFECTIVE 1/1/13 THRU 2/28/13</p> <p>PROVIDE OIL AND GREASE ELEVATOR MAINTENANCE SERVICE, CALLBACK SERVICE AND REPAIRS AS PER THE ATTACHED AGREEMENT AND PRICE SCHEDULE, FOR THE MONTH OF JANUARY 2013 (BASE BID = \$26,800/MO)</p> <p>CP00367791 FM00415071</p> <p>DO NOT EXCEED \$55,000</p> <p>TERMS NET 30</p> <p>DO NOT ADD SALES TAX TO INVOICES. WE ACCEPT LIABILITY FOR S.C. SALES TAX UNDER EXEMPT. CERTIF. # 7358 (19).</p>	55000.00	55000.
						55000.

SEND ALL INVOICES TO ACCOUNTS PAYABLE DEPARTMENT

1. Submit Invoice **IN DUPLICATE** to ACCOUNTS PAYABLE DEPT., University of South Carolina, Columbia, S.C. 29208.
2. Please render separate Invoices to cover each Purchase Order Number.
3. Contact Accounts Payable Dept., University of South Carolina, Phone No. (803) 777-4818 for any questions concerning invoices.

UNIVERSITY OF SOUTH CAROLINA

Authorized Signature

MEMORANDUM OF RECORD

DATE:

December 20, 2012

THROUGH: Venis Manigo
Procurement

TO: Helen Zeigler
Business Affairs

FROM: Don Gibson 

SUBJECT: Emergency justification for interim Elevator service contract

The last week of November, our Elevator maintenance and safety service provider gave us notice that they were terminating their agreement as of December 31st of 2012. USC is in the process of awarding a new contract. Due to the short notice we have a need for an interim agreement to provide basic elevator maintenance and adjustment to insure safe operation of 196 Columbia campus elevators. The agreement includes all manner of emergency on-call service at the same level of our expiring contract. Failure to have this service creates a life-safety risk. This interim service will be provided in one-month blocks until a permanent contract is required. We are using competitive bidding to affirm that the contract is fair and reasonable. Estimated cost per month is in the \$40,000 range.

MEMORANDUM OF RECORD

DATE: January 2, 2013

THROUGH: Venis Manigo
Procurement

TO: Helen Zeigler
Business Affairs

FROM: Don Gibson *dgibson*

SUBJECT: Emergency justification for interim Elevator service contract

The last week of November, our Elevator maintenance and safety service provider gave us notice that they were terminating their agreement as of December 31st of 2012 after the 2nd year of a total 5 year term contract. We immediately began plans to solicit for a new 5 year term contract. We realized that the contract would not be in place before December 31st.

Due to the short notice termination, we have a need for an interim agreement to provide basic elevator maintenance and adjustment to insure safe operation of 196 Columbia campus elevators. The agreement includes all manner of emergency on-call service at the same level of our expiring contract. Failure to have this service creates a life-safety risk. This interim service will be provided in one-month blocks. We requested quotes from 4 vendors to affirm that the contract is fair and reasonable. Estimated cost per month is between \$35,000-\$40,000.

From: Yankowitz, Burt [<mailto:Burt.Yankowitz@otis.com>]
Sent: Thursday, January 03, 2013 7:54 AM
To: jcp@sc.edu
Cc: WIDENER, LANA
Subject: Otis Elevator Company- USC Maintenance interim bid
Importance: High

Jerome,

Otis Elevator Company is requesting the pricing that was submitted by all bidders for the USC interim maintenance bid. If you could include the hourly rate, unit pricing and final pricing I would appreciate it.

Thank you in advance for this information.

Burt

Burt Yankowitz
Senior Account Manager

101 Corporate Blvd, Suite 105
West Columbia, SC 29169
Tel.: 803-242-5180 (Mobile)
Fax: 860-353-0438
Burt.Yankowitz@otis.com

WIDENER, LANA

From: Yankowitz, Burt <Burt.Yankowitz@otis.com>
Sent: Thursday, January 03, 2013 1:49 PM
To: WIDENER, LANA
Cc: PROVENCE, JEROME
Subject: RE: Otis Elevator Company- USC Maintenance interim bid

Thank you

Burt Yankowitz
Senior Account Manager

101 Corporate Blvd, Suite 105
West Columbia, SC 29169
Tel.: 803-242-5180 (Mobile)
Fax: 860-353-0438
Burt.Yankowitz@otis.com

From: WIDENER, LANA [<mailto:LLW@mailbox.sc.edu>]
Sent: Thursday, January 03, 2013 1:16 PM
To: Yankowitz, Burt
Cc: PROVENCE, JEROME
Subject: RE: Otis Elevator Company- USC Maintenance interim bid

Burt

Quotes submitted – Base Bid and Hourly Rates are noted below:

Company Name:	Base Bid:	Hourly Rates	Total
Oracle Elevator	\$26,800	\$155, \$80, \$235, \$225, \$95, \$305	\$27,895.00
Otis Elevator:	\$27,000	\$195, \$135, \$330, \$290, \$200, \$490	\$28,640.00
Carolina Elevator:	\$27,410	\$166, \$139, \$306, \$241, N/A, \$528	\$28,790.00
Thyssenkrupp Elev.:	\$37,660.95	\$217, \$177, \$394, \$369 (\$434 Sun/Holidays), \$301 (\$354 Sun/Holidays), \$670 (\$788 Sun/Holidays)	\$39,788.95

Thank you for submitting a quote.

Sincerely,

Lana



Lana Widener
Procurement Manager
USC – Purchasing Department
1600 Hampton Street, Suite 600
Columbia, SC 29208
803-777-7776