STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**BEFORE THE CHIEF PROCUREMENT OFFICER FOR CONSTRUCTION**
IN THE MATTER OF: PROTEST	)	**DISMISSAL**
BUILDING TECHNOLOGY ASSOCIATES, INC.	)	**CASE No. 2013-008**
vs.	)	
UNIVERSITY OF SOUTH CAROLINA	)	
ROOFING INDEFINITE DELIVERY CONSULTANT **STATE PROJECT No. H27-D168-CA**	)	**POSTING DATE:** **January 28, 2013**

This matter is before the Chief Procurement Officer for Construction ("CPOC") pursuant to an email to the University of South Carolina (USC) wherein Building Technology Associates, Inc. (BTA), questions USC's selection of Stafford Consulting Engineers, Shepard & Associates, Lyon and Associates, and REI Engineers to provide indefinite delivery of roof consulting services. BTA sent the CPOC a copy of this email via an email address set up for protesting solicitations and awards related to construction projects under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code. However, BTA's email to USC does not include a statement of protest to the CPOC. [Ex. A] Nonetheless, subsequent communication from BTA indicates BTA believes it has effectively protested USC's posting of Intent to Negotiate contracts with Stafford Consulting Engineers, Shepard & Associates, Lyon and Associates, and REI Engineers.

If BTA intended its email to constitute a protest, it fails to do so. The Consolidated Procurement Code states: "A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided." S.C. Code Ann. § 11-35-4210(2)(b) (2011). BTA's email is nothing more than a question to USC, not the CPOC, as to how USC arrived at its

decision. The email does not set forth any grounds of protest and does not request any relief.

Even though BTA did not make a statement of protest, the CPOC did perform a limited administrative review of USC's award and determined that to the extent BTA intended to protest the intended award, its email to the CPOC was untimely. The Consolidated Procurement Code states that a protest of an intended award must be received by the CPOC within ten days of the date that the notice of intended award is posted. S.C. Code Ann. § 11-35-4210(1)(b) & (2)(b). USC posted its notice of intent on November 6, 2013, and emailed a copy of this Notice to BTA that same day. [Ex. A and B] Later that day, BTA responded acknowledging receipt of the notice and requesting a de-briefing.[1] [Ex. C] Twenty-two days later, twelve days after the deadline for protesting, BTA sent its email to the CPOC questioning USC's decision.

DECISION

For the foregoing reasons, to the extent that BTA's email can be construed as a protest, the protest is dismissed.[2]

John St. C. White
Chief Procurement Officer
For Construction

January 28, 2013
Date

Columbia, South Carolina

[1] The CPOC received a notarized letter from BTA on January 2, 2013, stating that BTA only received notice from USC "via regular mail approximately November 26, 2012, and did not receive any additional documentation or emails of any form pertaining to these contracts." Obviously, this notarized letter is in error since the record clearly indicates BTA received notice by email on November 6, 2012.

[2] BTA has requested USC to provide a debriefing. If USC has not already done so, USC should make arrangements with BTA to provide the requested debriefing as soon as possible.

EXHIBIT - A

From: Protest-OSE
To: White, John; Singh, Anastasia
Subject: FW: Roofing IDC selection / Project Number H27-D168-CA
Date: Wednesday, November 28, 2012 5:31:53 PM

From: Donnelly, Brian[SMTP:BDONNELLY@BTAWW.COM]
Sent: Wednesday, November 28, 2012 5:31:40 PM
To: JACKSON, LIND
Cc: Protest-OSE
Subject: RE: Roofing IDC selection / Project Number H27-D168-CA
Auto forwarded by a Rule

Ms. Lind,

I would be curious to understand how Stafford Consulting is included and BTA is not, since Stafford is headquartered in Kansas and do not have a focus on Total Roof Management or a Roof Management System?

Also, Shepard, Lyon and REI are all extremely small and inexperienced in Total Roof Management and clearly have NO systems and reporting tools to provide the University of South Carolina with the proper Roofing Consulting Tools.

BTA has 50+ years of experience solely on roofing and handles billions of square feet of roofing. You can add all of these together and not be close to BTA's experience, background, capabilities and supporting budgeting and planning systems/tools. We have performed work in South Carolina for the federal government and other school systems and we are currently handling over 25 Universities Roofing Programs and growing that number every month.

Brian Donnelly
President
Building Technology Associates, Inc.
248-631-7240 cell

-----Original Message-----
From: JACKSON, LIND [mailto:LJACKSON@fmc.sc.edu]
Sent: Wednesday, November 28, 2012 3:48 PM
To: Donnelly, Brian
Subject: RE: Roofing IDC selection

A debrief cannot be held until 30 days after I have fully executed contracts. The contracts must be approved by our Board of Trustees at the December 18th meeting; therefore, I anticipate fully executed contracts after the Holidays. This will be sometime in mid-January 2013.
Sincerely,
Lind Jackson

Ms. Lind Jackson
University of South Carolina
743 Greene Street
Columbia, SC 29208

EXHIBIT - B

2011 Edition

SE-219

Notification of Selection for Contract Negotiation for Architectural-Engineering, Land Surveying, or Interior Design Services Pertaining to Construction or Construction Management-Agent Services

AGENCY NAME: University of South Carolina
PROJECT NUMBER: H27-D168-CA
PROJECT NAME: Roofing Indefinite Delivery Consultant

Notice is hereby given that the Agency Selection Committee has, in accordance with the requirements of SC Code Ann § 11-35-3220, the Manual for Planning and Execution of State Permanent Improvement Projects, Part II, and the solicitation documents, reviewed the qualifications of interested persons and firms and determined the below listed person(s) or firm(s) to be the most qualified person(s) or firm(s). The Agency hereby announces its intent to negotiate a professional services contract with the following person(s) or firm(s):

NAME(S) OF A/E: Stafford Consulting Engineers, Shepard & Associates, Lyon and Associates, and REI Engineers
DATE OF INTERVIEWS: 11/6/2012

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

BY: Lind Jackson
(Signature of Agency Head or Designee)

DATE POSTED: 11/6/2012

Print Name: Lind Jackson
Title: Committee Chair

INSTRUCTIONS TO THE AGENCY:
1. Post a copy of the SE-219 *(as announced at the A/E interviews).*
2. Email a copy of the SE-219 to the OSE Project Manager.
3. Send a copy of the SE-219 to all persons or firms that responded to the Invitation for Professional Services.
4. Retain the original SE-219 in the Agency's procurement file.

EXHIBIT - C

From: Donnelly, Brian [mailto:bdonnelly@btaww.com]
Sent: Tuesday, November 06, 2012 2:31 PM
To: JACKSON, LIND
Subject: Re: Roofing IDC selection

Ms. Jackson,

BTA has received this email.

Can we arrange a time for a de-brief?

Thanks,

Brian Donnelly
248-631-7240 cell

On Nov 6, 2012, at 2:23 PM, "JACKSON, LIND" <LJACKSON@fmc.sc.edu> wrote:

> Please acknowledge receipt of the attached with a return email.
> Thank you in advance,
> Lind
>
> Ms. Lind Jackson
> University of South Carolina
> 743 Greene Street
> Columbia, SC 29208
>
>
>
> <SKMBT_28312110614180.pdf>

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised January 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 83.1 of the 2012 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, an incorporated 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); 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.