STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	**BEFORE THE CHIEF PROCUREMENT OFFICER**
IN THE MATTER OF: BID PROTEST	)	**CASE NO. 2014-001**
MONROE CONSTRUCTION COMPANY, LLC	)	**DECISION**
VS.	)	
UNIVERSITY OF SOUTH CAROLINA HORIZON GROUND AND FOURTH FLOORS UPFIT PROJECT H27-6081-AC	)	**POSTING DATE: 10/4/2013**

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by Monroe Construction Company, LLC (Monroe), under the provisions of section 11-35-4210 of the South Carolina Consolidated Procurement Code (Code), for an administrative review of the Horizon Ground and Fourth Floors Upfit bid (the Project), for the University of South Carolina (USC). On September 23, 2014, pursuant to S.C. Code Ann. §11-35-4210(4), the CPOC conducted an administrative review by hearing. At the hearing, attorney D. Ryan McCabe represented Monroe, attorney Alan Peace represented China Construction America of SC, Inc. (China), and attorney George W. Lampl, III represented USC. Appearing as witnesses were Frank Kerr, estimator for Monroe; Pei Tang, Vice President for China; Bing Jia, Pre-Construction Manager for China; Michelle S. Adams, Procurement Manager for USC; J. Sanders Tate, Principal for Watson Tate Savory, the project Architect; and Ronnie Douglas, Vice President for Cayce Company, Inc. (Cayce). During the hearing, the CPOC received Exhibits 1 through 12 into evidence, heard oral arguments, and took testimony from all parties. This decision is based on the testimony and evidence presented at the hearing and applicable law.

NATURE OF THE PROTEST

Monroe's statement of protest is attached is attached as Exhibit A and incorporated herein by reference.

FINDINGS OF FACT

The following dates and facts are relevant to the protest:

1. On July 1, 2013, USC advertised for bids to construct the Project. Pursuant to this advertisement, bidders were to submit their bids on or before August 1, 2013. USC subsequently changed the date for receipt of bids by addenda to August 6, 2013. [Ex. 1 and Project Manual]

2. Pursuant to the subcontractor listing requirements of SC Code Ann § 11-35-3020(b)(i), the bid form included in the solicitation documents required each bidder to list the "Electrical Installer," "Heating Installer," and "Air Conditioning Installer" he intended to use on the project. [Ex. 7]

3. By the time for receipt of bids, USC had received eleven bids. [Ex. 1]

4. China submitted a low bid of $7,620,000 and Monroe submitted a next to the highest bid of $8,543,000. [Ex. 1, Ex. 7 & Ex. 8]

5. In the space for listing the "Electrical Installer," China listed Gregory Electric Co. Inc. (Gregory). [Ex. 8] Six other bidders also listed Gregory, two listed H.R. Allen, Inc., and one listed Constructure, Inc. [Ex. 1] Alone of the eleven bidders, Monroe listed two entities, Gregory and Johnson Controls Inc. (JCI). [Ex. 1 & Ex. 7]

6. On August 26, 2013, USC posted a Notice of Intent to Award a contract to China. [Ex. 1]

7. On September 3, 2013, Monroe protested USC's Notice of Intent to Award a contract to China because China "failed to list the Building Management Systems contractor as one of the electrical installers on the Bid Form." On September 6, Monroe submitted an amended protest, which made no substantive changes in the protest.

DISCUSSION

Monroe claims that of the eleven bidders, it alone properly responded to the listing requirement for "Electrical Installation" and that USC should have awarded it the contract. The protest letter states:

> China, along with all other bidders except Monroe, is a nonresponsible bidder because it failed to list the Building Management Systems contractor as one of the electrical installers on the Bid Form. The bidding documents require the Building Management Systems contractor install all the electrical work relating to and required for its work; therefore, establishing the Building Management Systems contractor as at least one of the subcontractors required to be listed for the Electrical License classification requested on the bid form.

In effect, Monroe argues the specifications created a special standard of responsibility—that the building management systems contractor be licensed to perform and self-performs all electrical work associated with the control systems. If the project manual created a special standard of responsibility, Monroe reasons, then the entity who will actually perform the controls work must be listed as a subcontract.

Regulation 19-445.2125.F defines special standards of responsibility and describe how they must be used:

> Special Standards of Responsibility
>
> When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. **The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors.** A valid special standard of responsibility must be specific, objective and mandatory.

(emphasis added) Since the specifications nowhere designate a separately identified and listed building management systems subcontractor as a special standard, nor identify it as such, the requirement cannot be a special standard of responsibility.[1]

While Monroe's confusion of the concepts of responsiveness and responsibility require some additional review, the analysis here is little different than any other subcontractor listing dispute. Subcontractor listing is a requirement of Section 11-35-3020 (b)(i) & (ii) of the Consolidated Procurement Code (Code) and Section 7 of the bid form. This is a material requirement of the solicitation and Section 11-35-3020(2)(b)(ii) states, "Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive." A review of the history of this provision illustrates its scope. Before 1993 this section stated that "failure to list subcontractors in accordance with this section … shall render the prime contractor's bid unresponsive." Based on this language, the Procurement Review Panel (Panel) issued a number of decisions stating that a failure to list subcontractor in the manner required by law rendered a bid non-responsive.[2] Therefore, if a bidder listed a nonresponsible subcontractor, the bidder was deemed nonresponsive. However, under the current statute responsiveness and responsibility are no longer conflated. Now, as long as the bidder lists a subcontractor, even a nonresponsible

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[1] The requirement is also not "specific, objective and mandatory." The specification section treating the building Management Systems contractor's responsibilities is so vague as to be nearly meaningless. *See* notes 6**Error! Bookmark not defined.** and 7 and accompanying text.

[2] *In Re. Protest of ECB Construction Co., Inc.*, Panel Case No. 1989-7; *In Re. Protest of Tricon Associates, Inc.*, Panel Case No. 1991-11; *In Re. Protest of Pizzagalli Construction Company*, Panel Case No. 1991-8; *In Re. Protest of Delta Industrial Electric Co., Inc.*, Panel Case No. 1992-8(I).

subcontractor, in each space for listing a subcontractor, his bid is responsive. *Protest of Brantley Construction Co., Inc.*, Case No. 1999-3. Here China listed Gregory in the space on the bid form for listing the subcontractor for the Electrical License specialty. Therefore, China's bid was responsive.

A claim that a firm listed as a subcontractor on the bid form is prohibited from performing the work because of a deficiency in its licensing, on the other hand, attacks the responsibility of the bidder. By challenging China's responsibility based on its bid form listing for the Electrical license subcontractor specialty, Monroe, though not expressly saying so, challenges the responsibility of Gregory to perform all of the work falling under this specialty. If Gregory is responsible, that is able to perform or sub-subcontract with others who are able to perform the work requiring an Electrical license, then China is responsible, if Gregory is not responsible, China is not responsible.

The protestant has the burden of proving upon the preponderance of the evidence that USC's determination that China was a responsible bidder is "clearly erroneous, arbitrary, capricious, or contrary to law." *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3. USC's determination regarding responsibility is a matter of discretion that cannot be overturned absent a showing by Monroe that it is "clearly erroneous, arbitrary, capricious, or contrary to law." *See Protest of CollegeSource, Inc.*, Panel Case No. 2008-4. Since agency decisions regarding responsibility are a matter of business judgment, Monroe must demonstrate a lack of reasonable or rationale basis for the responsibility determination. *See Protest of Value Options, et al.*, Panel Case No. 2001-7.

Subcontractor responsibility is the ability to perform the work for which the bidder has listed the subcontractor. Factors to consider in determining subcontractor responsibility are set forth in Regulation 19-445.2125(A). These factors are whether the subcontractor:

> 1) has "available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the **ability to obtain them**, necessary to indicate its capability to meet all contractual requirements;"
> 2) whether the subcontractor has "a satisfactory record of performance;"
> 3) whether the subcontractor has "a satisfactory record of integrity;"
> 4) whether the subcontractor is "qualified legally to contract with the State; and"
> 5) whether the subcontractor "supplied all necessary information in connection with the inquiry concerning responsibility."

[emphasis added]

Even when a subcontractor does not have the ability to self-perform a peculiar aspect of the specifications, he may still be responsible if he has the ability to sub-subcontract with someone who does. S.C. Regs. 19-445.2125(A)(1) and (C). One may illustrate this principal by looking to China and Monroe. Neither China nor Monroe is qualified to perform work requiring any subclassification of a Mechanical

Contractor's license.[3] Nonetheless, they are both qualified to bid this Project, which includes work requiring an Electrical license, Heating license, and Air Conditioning license because they both have the ability to subcontract with subcontractors qualified to perform this work.[4] See S.C. Code Ann. §§ 40-11-20 & 340.

USC presented evidence that it conducted a responsibility investigation of Gregory and that it was satisfied that Gregory was a responsible subcontractor. Monroe, on the other hand, presented no evidence that that Gregory did not have the ability to perform the requirements of those portions of the specifications requiring a contractor to possess an Electrical license or to sub-subcontract with someone who did.[5]

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[3] China, like Monroe, possesses a license with the classification General Contractors-Building. Neither possesses a license with the classification Mechanical or any subclassification of Mechanical.

[4] In this regard, it is interesting to note that the testimony and the record show that both China and Monroe intend to use the identical contractors for the performance of the Electrical license work, Heating license work, Air Conditioning license work, and Building Management Systems work. Whether China receives the job or Monroe does, Johnson Controls, Inc. (JCI), will be the Building Management System contractor. The only difference between the two bids is that under China's bid, JCI is a sub-subcontractor and under Monroe's bid, JCI is a subcontractor.

One reason that JCI is the Building Management System contractor under both bids is that the specifications provide that the Building Management System manufacturer must be JCI. JCI is both a manufacturer of Building Management systems and an installer for its own systems. This is not to say that no one other than JCI installs JCI systems. Only JCI can answer the question of who can install its systems and JCI was not present at the hearing. Mr. Douglas, Vice-President for Cayce, did testify that from time to time JCI used Cayce to install parts of its Building Management Systems but this would seem to suggest that JCI was in fact the installer subcontracting with Cayce. Nonetheless, on most state projects where the Building Management System is a JCI system, the Building Management System contractor is JCI. Indeed, Mr. Kerr assumed that only JCI could be the Building Management System contractor on the Project and submitted a post bid opening, pre-award email to USC claiming that "the bidder must list the controls contractor (Johnson Controls) as well as the subcontractor(s) they will use for other electrical work." Not only is JCI usually the Building Management System contractor, on multi-discipline projects, JCI often fulfills this role as a sub-subcontractor, not a subcontractor. From his email, Mr. Kerr seems to have believed that the specifications, contrary to common practice, required the bidder to contract directly with the Building Management System Contractor but this is not a requirement of the specifications.

Finally, it should be noted that neither Section 11-35-3020(b) nor the bid form require bidders to list sub-subcontractors. [Ex. 7, p. BF-2A, Note 2]

[5] The Department of Labor, Licensing and Regulations (LLR) licensee lookup website indicates Gregory possesses an unlimited Mechanical Contractor's license with the subclassifications of Electric, Lightning Protection, Air Conditioning, Heating, Process Piping, and Plumbing. Therefore, Gregory is qualified legally to bid both Electrical license work and Heating and Air Conditioning license work, including any Electrical license work that is within the Division 15900 of the specifications. Moreover, Gregory is qualified legally to sub-subcontract part or all of the Building Management System work.

While it is not unusual for the Building Management System installer to be a sub-subcontractor of the heating and/or air conditioning contractor, there is nothing that would preclude the Electrical subcontractor from entering into a sub-subcontract with the Building Management System installer to install the medium volt electrical service to the controls of the Building Management System.

In support of its allegations regarding Gregory's lack of responsibility, Monroe asserts that 1) the specifications for the Building Management System, Division 15900, requires installation of electrical work requiring an Electrical License; 2) the specifications require the Building Management System installer to self-perform all work within Division 15900 that requires an Electrical License;[6] and 3) the specifications require the Building Management System installer to have "an established relationship with the control system manufacturer" and to have "successfully completed control system manufacturer's training."[7] [Ex. 5, Part 2.1(A) and Part 2.2(B)(7) & (12)] Implied in these allegations, but not expressly stated, is an allegation that Gregory must be qualified to offer to install all or part of the Building Management System and is not qualified to do so because of these specification requirements.[8] However, even assuming that that Gregory had to be qualified to offer to install all or part of the Building Management System, Monroe presented no evidence that Gregory was not qualified to do so.

Instead of presenting evidence of Gregory's nonresponsibility, Monroe questioned China's witnesses about China's intent regarding subcontractual and sub-subcontractual relationships. This testimony indicated that China did not intend to subcontract with Gregory to perform the Building Management System work but intended to subcontract with its listed Heating and Air Conditioning subcontractor, Cayce, for all of this work including medium voltage work. Moreover, this testimony

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[6] Division 15900 of the specifications is somewhat confusing as to who is required to do what. This Division contains the following terms: 1) Contractor, 2) This Contractor, 3) Control Systems Contractor, 4) BMS Contractor, 5) Mechanical Contractor, and 6) General Contractor. The sixth term is self-explanatory, and one can reasonably conclude from the context that the Mechanical Contractor means the Heating and Air Conditioning Contractor. However, the first four terms are not self-explanatory. Is the Contractor the General Contractor, Mechanical Contractor, Control Systems Contractor, or BMS Contractor? Is This Contractor the Contractor, Control Systems Contractor, or BMS Contractor? What is the difference between the Control Systems Contractor and BMS Contractor, if any? The specifications leave the answers to these questions to conjecture.

[7] The CPOC wonders what depth of a relationship is required to have an established relationship. Does one contractual relationship show an established relationship? Does cooperative interaction on a project without a contractual relationship show an established relationship? Does cooperative interaction on multiple projects show an established relationship?

The CPOC also wonders what manufacturer training entails. The specifications do not say. The CPOC notes that JCI offers all kinds of training. Does successful completion of any training qualify the electrical installer? Is there some specific installer training JCI requires? What if (as implied by the testimony) JCI does not require installers on their controls projects to have any JCI training? [Testimony of Mr. Douglas, Vice-President for Cayce (testified that Cayce does Building Management Systems installation work for JCI from time to time but that Cayce has not completed JCI training)].

While the drafter of Division 15900 presumably had an understanding of what an established relationship is and what JCI training was required, the drafter does not share this information with the bidders. The drafter's failure to do so makes these requirements so ambiguous that they are meaningless.

[8] As noted in footnotes 6 and 7, the specification language that Monroe relies on to build its arguments is so ambiguous that it cannot be considered as setting a standard of responsibility or as being essential.

indicated that Cayce intended to subcontract the Building Management System work to JCI.[9] However, China's intent in this regard is irrelevant to this protest.[10] At issue is the responsibility of the subcontractor China identified on its bid form to perform the subcontractor specialty work of Electrical Installation, Gregory. Again, if Gregory is responsible, so is China.[11] As previously noted, Monroe utterly failed to submit any evidence that Gregory is not responsible.

FRIVOLOUS PROTEST

At the hearing counsel for USC asked that the CPO find this protest was filed in violation of Code Section 11-35-4330, "Frivolous protests." In support of its request, USC offered the following facts.

Eleven bidders responded to this invitation. Both China and Monroe listed the same companies—Gregory and Cayce—to perform the electrical, heating, and air conditioning subcontracts. Both intended for Johnson Controls to furnish and install the building management systems and controls. All three of those companies—Gregory, Cayce, and Johnson—hold unlimited mechanical contractor's licenses in subclassifications of Electrical, Heating, and Air Conditioning. As a practical matter, whether China or Monroe were awarded the contract, the same companies would perform the electrical, HVAC, and building management systems work. And any of those three companies are properly licensed to perform all of that work.

Frank Kerr is an estimator for Monroe. He testified that in preparing the bid for Monroe, he noticed certain requirements in Division 15900 of the specifications governing Building Management Systems controls that dealt with medium voltage wiring serving certain controls. Mr. Kerr interpreted these provisions as requiring the Building Management Systems contractor, and no other, to install such medium voltage wiring. [Ex. 5, Part 2.2(B)(7) & (12)] While by his own admission, Mr. Kerr found it

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[9] While Cayce's responsibility is not an issue raised in Monroe's protest letter, LLR's licensee lookup website indicates Cayce possesses an unlimited Mechanical Contractor's license with the subclassifications of Electrical, Air Conditioning, Heating, and Plumbing. Cayce's intended sub-subcontractor, JCI, also possesses an unlimited Mechanical Contractor's license with the subclassifications of Electrical, Air Conditioning, Heating, and Plumbing.

[10] Monroe attempts to convert a contract administration issue into a protest issue. China submitted an unqualified bid, which includes using only Gregory to perform the work of the project requiring an Electrical License. If China attempts to do otherwise post award, that is not a protest issue but a matter for USC to handle as a contract administration matter, just as is any intent of a contractor to vary during the course of contract performance from the requirements of the bid he submitted. See S.C. Code Ann. § 11-35-3021.

[11] Monroe also attempts to show that Cayce was not responsible. However, this was not an issue raised in Monroe's letter of protest and is irrelevant to this protest. . "A protest … 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." SC Code Ann § 11-35-4210(2)(b). While the specificity of a protest is not to be judged on highly technical or formal standards, the protest must "alert the parties to the general nature of the grounds for protest." *Protest of Sterile Services Corporation*, Case No. 1983-17; *See also, Protest of the Megg Corporation of Greenville*, Case No. 1992-9.

somewhat confusing as to what he should do with this information as it regarded subcontractor listing, Mr. Kerr decided not to seek guidance from USC. Rather, Mr. Kerr inferred a requirement on the bid form that he list both an Electrical subcontractor and a separate Building Management System subcontractor under the Electrical license subcontractor specialty. Mr. Kerr also concluded that any bidder that failed to list both an Electrical subcontractor and a separate Building Management Systems contractor under the Electrical License subcontractor specialty would be either nonresponsive or nonresponsible or both.[12] [Ex. 6]

USC has solicited upfits for the Horizon Center on at least two other occasions. Both solicitations involved identical language in Section 15900 of the specifications. Monroe bid on each of the prior jobs. Mr. Kerr prepared Monroe's estimates for those bids. Before estimating the current project, Mr. Kerr listed subcontractors for those jobs exactly as China and nine other bidders did here. Despite the confusion he claims occurred bidding this job, he did not ask USC to resolve the ambiguity.

In a prior protest, Monroe argued that though it was third lowest bidder, it should be awarded a Horizon I upfit project because it alone out of 19 bidders listed two subcontractors for the subcontractor specialty of plumbing. *Appeal of Monroe Construction Co.*, Panel Case No. 2011-3(I). In that case, as in this, Monroe had bid on one or more earlier Horizon I upfit projects with nearly identical specifications, in that case, as in this case, Monroe had bid on these earlier Horizon projects listing only one subcontractor for the subcontractor specialty in question. In each case, all other bidders also listed only one subcontractor for the subcontractor specialty in question. However, in *Protest of Monroe*, Mr. Kerr decided his prior practice was wrong. In that case, as in this case, Mr. Kerr was not quite sure what USC intended regarding the listing for Plumbing. In that case, as in this case, rather than seek a clarification, Monroe decided to proceed with listing two subcontractors (in that case a Plumbing subcontractor and a Process Piping subcontractor) for the subcontractor specialty in question and challenge any award to any bidder who failed to do likewise. In this prior protest, the Panel admonished Monroe about not seeking at the appropriate time a clarification of a potential ambiguity in the specifications that they have identified. *Appeal of Monroe Construction, supra,* Footnote 7.

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[12] Mr. Kerr knew or should have known that it would be unlikely that any other bidder would list a separate Building Management System subcontractor under Electrical Installation. On three other bids for the upfit of parts of Horizon I, the specifications contained identical or nearly identical Building Management Systems specifications. On each of those projects, the specifications required bidders to identify their intended subcontractor(s) for the electrical work. In each case, no bidder, including Monroe, listed a separate Building Management System subcontractor in Section 7 of the bid form under the subcontractor specialty of Electric (or Electrical) identified by USC on the bid form. Admittedly, the bid form has changed since that time to make clear that the listed subcontractor specialty is listed by license classification and/or subclassification. The Office of State Engineer made this change as a result of a prior Monroe protest on one of these Horizon I upfit projects involving similar, though not identical, facts to this protest.

Subsequent to the Panel's denial of its appeal, Monroe protested the award of a Coastal Carolina University project. The grounds of its protest were virtually identical to those involved in Panel Case No. 2011-3. After reading the Panel's decision in 2011-3, Monroe could have no doubt as to what the subcontractor specialty of Plumbing was intended to mean. In the Coastal Carolina case, the CPOC was advised that the parties had reached a settlement and Monroe withdrew its protest. USC concludes from these facts that Monroe is searching for ambiguities in the specifications that it thinks will allow it to use the procurement laws to eliminate competition or otherwise obtain a benefit rather than seek clarification and compete fairly on ability and best price.

Monroe has appealed the Panel's decision in 2011-3 to the Circuit Court. Regardless how the Court treats its appeal, though, the Panel's admonition to Monroe and other bidders—if confused, ask questions—will not be affected. The Panel delivered this message to Monroe in their 2011 decision:

> The Panel has previously expressed concern about bidders who recognize a potential ambiguity in the solicitation requirements, but fail to protest those requirements or ask questions seeking clarification at the appropriate time. It is too late to address ambiguity in a solicitation's specifications once bids have been received and a notice of intent to award has been posted.

(citations omitted) Having ignored the Panel's warning, and having filed a protest consistent with the pattern Monroe has established, the CPO is inclined to agree with USC that Monroe's protest is frivolous.

However, S.C. Code Ann. § 11-35-4330 is clear: Only the Panel has authority to issue sanctions for filing a frivolous protest. Accordingly, the CPO denies USC's request to find Monroe has violated Section 11-35-4330.

DECISION

It is the decision of the Chief Procurement Officer for Construction that Monroe has failed to prove upon the preponderance of the evidence that the USC's determination regarding China's responsibility was "clearly erroneous, arbitrary, capricious, or contrary to law."

For the foregoing reasons, the Protest is dismissed.

John St. C. White
Chief Procurement Officer
For Construction

4 Oct 13
Date

Columbia, South Carolina

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.

McCabe, Trotter & Beverly, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW
www.mccabetrotter.com

EXHIBIT
A

September 6, 2013

<<< CORRECTED LETTER >>>

VIA EMAIL (JWhite@mmo.sc.gov)

Mr. John St. C. White, P.E.
State Engineer and Chief Procurement Officer for Construction
Office of the State Engineer
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: Protest of University of South Carolina intent to award China Construction a construction contract for Horizon Ground & Fourth Floors Upfit in Columbia, South Carolina (Project No. H27-6081-AC)
MTB File No.: 17024.3

Dear Mr. White:

On behalf of Monroe Construction Company ("Monroe"), this firm protests and requests an administrative review pursuant to S. C. Code § 11-35-4210(4) of the University of South Carolina's ("USC") August 26, 2013 notice of intent to award China Construction ("China") a construction contract for the Horizon Ground & Fourth Floors Upfit in Columbia, South Carolina (Project No. H27-6081-AC) on the following grounds.

China, along with all other bidders except Monroe, is a nonresponsible bidder because it failed to list the Building Management Systems contractor as one of the electrical installers on the Bid Form. The bidding documents require the Building Management Systems contractor install all the electrical work relating to and required for its work; therefore, establishing the Building Management Systems contractor as at least one of the subcontractors required to be listed for the Electrical License classification requested on the bid form.

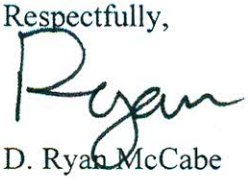
Section 15900 of the Project Specifications requires the Building Management Systems contractor install all electrical work relating to and required for the Building Management System contractor's work. Pursuant to the Bid Form 2A, Paragraph 3, "Bidder must only insert the names of subcontractors who are qualified to perform the work of the listed specialties as specified in the Bidding Documents and South Carolina Licensing Laws." Paragraph 5 requires

a Bidder to insert the names of each subcontractor if Bidder intends to use multiple subcontractors to perform the work of a single specialty listing.

For the above-mentioned reasons, Monroe is the only responsible bidder. Monroe respectfully requests relief in the form of having all other Bidders be determined nonresponsible and that the contract be awarded to Monroe. Under S.C. Cod 11-35-4210(3) Monroe respectfully requests that it, USA and/or OSE, by and through their designees, attempt to settle this protest by mutual agreement prior to an official administrative review. If a mutual agreement cannot be reached, Monroe requests that every effort be made to complete the administrative review and render a final decision within the sixty (60) day bid period to avoid potential material escalation costs for the owner, affected contractor and subcontractors.

Please contact me with any questions.

Respectfully,



D. Ryan McCabe

DRM/ahw

cc: Monroe Construction (via email)