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CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

Protest Decision

Matter of: J. Musselman Construction, Inc.
File No.: 2016-006
Posting Date: May 20, 2016
Contracting Entity: The Citadel
Project No.: H09-9615-PG
Description: Byrd Hall Organic Chemistry Lab Renovation

DIGEST

Under a solicitation calling for fixed-price contract for renovation of Byrd Hall Organic Chemistry Lab, protest challenging agency's conclusion that awardee's failure to acknowledge an addendum on its bid form was a minor informality which could be excused is sustained where addendum had an effect on price and the awardee's bid did not in any way indicate the awardee had received the addendum.

AUTHORITY

The Chief Procurement Officer for Construction (CPOC) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

DECISION

J. Musselman Construction, Inc. (Musselman), protests The Citadel's posting of a Notice of Intent to Award a contract to Hill Construction Services of Charleston, Inc. (Hill) under an invitation for bids for renovation of Byrd Hall Organic Chemistry Lab, Project H09-96 15-PG (hereinafter the "project"). Musselman challenges The Citadel's determination that Hill was a responsive bidder. Musselman's letter of protest is hereby incorporated by reference and is attached as Ex. A.

The CPOC sustains the protest.

BACKGROUND

The Citadel solicited bids for the Project on April 6, 2016. [Ex. B] Before the time for receipt of bids, The Citadel amended the solicitation documents by issuing three addenda. The solicitation required each bidder to acknowledge receipt of Addenda 1, 2, and 3.¹ [Ex. C & D] By the time for receipt of bids, The Citadel received seven bids. [Ex. E] Hill submitted the apparent low bid. [Ex. E] However, Hill failed to acknowledge receipt of Addendum 3. [Ex. D] After bid opening, The Citadel investigated the value of Addendum 3 and determined the value to be from \$10,000 to \$15,000. [Ex. F] The Citadel considered this impact to be negligible on a project in excess of \$800,000 and after consulting with the OSE Project Manager proceeded with award to Hill. While it is not clear that The Citadel referred to the minor informality rule set forth in S.C. Code Ann § 11-35-1520(13), it is clear that The Citadel treated Hill's failure to acknowledge Addendum 3 as an excusable minor informality.²

DISCUSSION

The resolution of this protest is governed by Section 11-35-1520(13) which states in relevant part:

Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids **having** no effect or **merely a trivial or negligible effect on total bid price**, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, **but only if:**

(i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the

¹ The Instructions to Bidders is a combination of AIA Document A-701, 1997 Edition, and State modifications to the AIA document set forth in the OSE Form 00201. Section 3.4.4 of the Instructions to Bidders provides that "[e]ach Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid."

² The 2001 edition of the Manual for Planning and Execution of State Permanent Improvement Projects provided for waiver of an addendum that had a minor effect on price not exceeding 1% of the value of the base bid. Subsequent editions removed this provision.

Protest Decision
File No. 2016-002
May 20, 2016

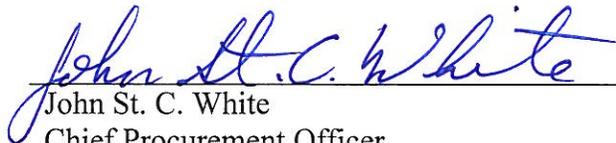
bidder submitted a bid, on it, if the bidder states under oath that it received the amendment before bidding and that the bidder will stand by its bid price; or

(ii) **the amendment has no effect on price** or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;

[emphasis added]

The opening sentences of this section set forth a general requirement allowing a deviation in bid that has a trivial or negligible effect on price. However, the specific controls over the general. *Capco of Summerville, Inc., v. J.H. Gayle Construction Company*, 368 S.C. 137, 628 S.E.2d 38 (2006). Section 11-35-1520(13)(d) specifically addresses acknowledgement of addenda, while the first two sentences of Section 11-35-1520(13) do not. Section 11-35-1520(13)(d) provides that failure to acknowledge an amendment to a solicitation is minor “**only**” if one of the conditions listed in subsection (13)(d)(i) or (ii) are met. By The Citadel’s own admission, neither of these conditions has been met in this case. In its response to the protest, The Citadel acknowledges that Addendum 3 has an effect on price. [Ex. F] The Citadel further acknowledges that “[t]here was nothing readily obvious on the Bid form that would indicate to me if Hill Construction had received the Addendum.” [Ex. F]

The protest is granted. This matter is returned to The Citadel for processing in accordance with the Consolidated Procurement Code.



John St. C. White
Chief Procurement Officer
For Construction



Date

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised September 2015)

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 111.1 of the 2015 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 209, 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.



J. MUSSELMAN
CONSTRUCTION

Mr. John White, PE
Chief Procurement Officer for Construction
Office of the State Engineer
1201 Main St.
Suite 600
Columbia SC 29201

Exhibit A

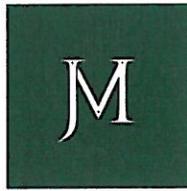
Via email

May 11, 2016

Re: Byrd Hall Organic Chemistry Renovation
Project #: H09-9615-PG

Dear Mr. White, in accordance with SC Law 11-35-4210, please accept this correspondence as formal protest of the intended award of this project to Hill Construction Services of Charleston, Inc. I believe that the bid delivered by Hill should have been deemed non-responsive for the reasons cited below thus making J. Musselman Construction, Inc. the lowest responsive bidder.

1. The 2015 Edition of the Manual for Planning and Execution of State Permanent Improvements in Chapter 6.8.2.C. 4 instructs the procurement officer to record pertinent information on the bid tab including “Acknowledgement of all addenda” (item 4.c)
 - a. The bid tab released with the SE-370 clearly shows that Hill did not acknowledge Addenda #3 as required under SE-330.
2. Failure to comply with Addenda and Instructions to Bidders
 - a. Addenda #3, section 3.1b instructs the bidders to “acknowledge receipt of this Addendum in space provided in Bid Form”. This is in contrast with other wordings that warn that “failure to do so may subject the bidder to disqualification”
3. The State has obviously given a great deal of time into formulating when a bid may be deemed responsive or non-responsive as enacted into code under SC-11-35-3020 and SC-11-35-1520. In these it details specific reasons when a bid must be declared non-responsive as well as detailing minor irregularities where a bid should not be declared non responsive. The issue of whether or not an addenda should be acknowledged is apparently of such importance that under section 1520.13.d the state addresses this issue directly by giving 2 methods of determining whether failure to acknowledge addenda constitutes a “minor informality or irregularity”
 - a. Method 1 allows consideration if the bid “indicates in some way that the bidder received the addendum(a), such as where the addendum(a) added another item to the solicitation and the bidder submitted a bid on it”. In our review of the bid form we can see no means where the bid form would show this because no alternates, changed forms or similar items were part of Addendum #3.



J. MUSSELMAN
CONSTRUCTION

- b. Method 2 clearly states if “The addendum(a) has **no effect on price** or quantity or merely a trivial or negligible effect on quality or delivery”. While I agree that Addendum #3 would probably not have more than a minor effect on project quality of delivery the Addendum clearly had an effect on the price. This is evidenced by DWG Consulting Engineer’s Letter of April 28th, 2016 where they estimate a value of the addendum 3 to be in the \$10,000 to \$15,000 range. As we understand it, this cost has also been validated by Aiken Cost Estimating as part of the 3rd Party review required by OSE.
- c. It appears that The Citadel is of the belief that this value is negligible and that this allows them the option to waive the failure to acknowledge the addenda properly. I believe that the Citadel does not have the right to do this but must reject this bid as non responsive under 11-35-1520 (13d) due to the addendum having an effect on price.

I appreciate your prompt attention to this matter and look forward to your decision.

Sincerely,

Jon Musselman

Jon Musselman
J. Musselman Construction, Inc.

Exhibit B



South Carolina Business Opportunities

Published by Division of Procurement Services – Delbert H. Singleton, Jr., Division Director

Wednesday, April 6, 2016

Volume 36, Issue 66

Today in SCBO

| | | | |
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| IT | 5 | Intent to Sole Source | 9 |
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Construction

Invitations for Construction Bids

Please verify requirements for non-State agency advertisements by contacting the agency / owner. Projects expected to cost less than \$50,000 are listed under the Minor Construction heading.

Project Name: BYRD HALL ORGANIC CHEMISTRY LAB RENOVATION

Project Number: H09-9615-PG

Project Location: The Citadel, 171 Moultrie Street, Charleston, SC 29409

Bid Security Required: Yes **Performance Bond Required:** Yes **Payment Bond Required:** Yes

Construction Cost Range: \$800,000 - \$1,000,000

Description of Project: Full renovation to existing Organic Chemistry Lab. Multiple rooms on 4th floor transformed into open lab concept. Renovation will include but not limited to selective demolition, mechanical, HVAC, ductwork, plumbing, electrical, lighting, laboratory fume hoods, casework, flooring, acoustical ceilings and limited asbestos removal. Renovation will include work on 3rd floor. Proper licensure is required. This advertisement is for a non-mandatory pre-bid. Bidders that attended the mandatory pre-bid do not have to attend the second pre-bid. Contractor may be subject to performance appraisal at close of project.

Bidding Documents / Plans May Be Obtained From: A&E DIGITAL PRINTING, 517 KING ST. CHARLESTON, SC

Plan Deposit: \$135.00, nonrefundable

Note: Bidders must obtain bidding Documents/Plans from the above listed source(s) to be listed as an official plan holder. Only those bidding documents / plans obtained from the source(s) are official. Bidders that rely on copies of bidding documents / plans obtained from any other source do so at their own risk. All written communications with official plan holders & bidders will be via email or website posting.

Architect/Engineer: DWG Consulting Engineers

A/E Contact: Mark Uyak

A/E Address: 1009 Anna Knapp Blvd., Suite 202, Mt. Pleasant, SC 29464

A/E E-mail: MUYAK@DWGINC.COM

A/E Telephone: 843-849-1141

A/E Fax: 843-849-6756

Note: All questions & correspondence concerning this Invitation to Bid shall be addressed to the A/E.

Agency/Owner: The Citadel

Name & Title of Agency Coordinator: Kathleen M. Dille, Staff Architect

Address: 171 Moultrie Street, Charleston, SC 29409

E-mail: kdille@citadel.edu

Telephone: 843-953-7063

Fax: 843-953-6880

Pre-Bid Conf./Site Visit: Yes, non-mandatory

Pre-Bid Date/Time: 4/13/2016 8:30am

re-advertise

Place: The Citadel, Facilities & Engineering Conf. Room

Bid Closing Date/Time: 4/28/2016 1:00pm

Place: The Citadel, Facilities & Engineering Conf. Room

Deliver Bids To: Kathleen Dille, Staff Architect, The CITADEL, Facilities & Engineering Bldg., 171 Moultrie Street, Charleston, SC 29409

Project Name: CHAVIS ONE-STOP COMPLEX, ALEX CHATMAN BUILDING AND MAGISTRATE'S OFFICE REROOFING CONSTRUCTION PROJECTS

Project Number: 15001.001.004

Project Location: 2118 S State Hwy 41-51, Hemingway, SC ; 147 W. Main Street, Kingstree, SC ; and 209 Short Street (County Rd S-45-226), Kingstree, SC

Bid Security Required: Yes **Performance Bond Required:** Yes **Payment Bond Required:** Yes

Construction Cost Range: \$500,000 - \$750,000

Description of Project: Chavis One-Stop Complex: Approximately 68,385SF of reroofing consisting of BUR assembly removals, preparations and the new installation of base sheet, tapered insulation system, fully adhered TPO flexible sheet membrane assembly, metal soffit panel assembly and alterations in electrical and gas piping.

Alex Chatman Building: Approximately 14,215SF of reroofing consisting of EPDM assembly removals, preparations and the new installation of base sheet, tapered insulation system, mechanically attached TPO flexible sheet membrane assembly, wall panel system, and ladder.

Magistrates Building: Approximately 5,543SF of reroofing consisting of EPDM flexible sheet membrane assembly removals, preparations and the new installation of base sheet, roof drain, tapered insulation system; and mechanically attached TPO flexible sheet membrane assembly. Contractor may be subject to performance appraisal at close of project.

Bidding Documents / Plans May Be Obtained From: Shepard & Associates, LLC

Plan Deposit: \$50.00, refundable

Architect/Engineer: Shepard & Associates, LLC

A/E Contact: Blount Shepard, AIA

A/E Address: 3547 Dreher Shoals Road, Suite 6, Irmo, SC 29063

A/E E-mail: shepard-admin@sc.rr.com

A/E Telephone: 803-407-8284

A/E Fax: 803-407-8206

Note: All questions & correspondence concerning this Invitation to Bid shall be addressed to the A/E.

Agency/Owner: Williamsburg County Government

Name & Title of Agency Coordinator: Walt Ackerman

Address: Public Service Administration Building, 201 West Main Street, Kingstree, SC 29556

E-mail: walt.ackerman@williamsburgcounty.sc.gov

Telephone: 843-355-9321 ext. 5102

Fax: 843-355-1587

Pre-Bid Conf./Site Visit: Yes, non-mandatory

Pre-Bid Date/Time: 4/19/2016 11:00am

Place: Public Service Administration Building

Bid Closing Date/Time: 5/3/2016 2:00pm

Place: Public Service Administration Building

Deliver Bids To: Walt Ackerman, 201 West Main Street, Kingstree, SC 29556

Project Name: OSF PORTION OF BASEBALL PROJECT

Project Number: 2015-2016 - 3

Project Location: James Island Charter High School, 1000 Fort Johnson Road, Charleston, SC 29412

Bid Security Required: No **Performance Bond Required:** No **Payment Bond Required:** No

Construction Cost Range: Greater than \$50,000

Description of Project: Contractor may be subject to performance appraisal at close of project.

Bidding Documents / Plans May Be Obtained From: OSF Portion of Baseball Project

Exhibit C

**The CITADEL
Byrd Hall Organic Chemistry Lab Renovation
State Project No. H09-9615-PG
ADDENDUM NO. 3**

- R. Sheet P102 – Provide chemical resistant Air Admittance Valves conforming to ASSE 1049 and ASTM F 1412 for all bench sinks, at lab sink along plan north wall, and at dishwasher standpipe.
- S. Sheet P102 – Delete notes reading ‘Provide 2" combination W & V for bench sink. Typical for all.’
- T. Sheet P102 – Vent piping for Lab Sink LS-1 along plan east wall shall be routed through new wall behind fume hood adjacent to sink.

PART THREE - EXECUTION

3.1 ACKNOWLEDGEMENT & COORDINATION

- A. Immediately after receipt of Addendum, and to maximum extent practicable, thoroughly, and clearly advise all necessary personnel and suppliers involved as to all changes in the work caused by the Addendum.
- B. Contractors shall acknowledge receipt of this Addendum in space provided in Bid Form.

END OF ADDENDUM NUMBER THREE

**SE-330
LUMP SUM BID FORM**

Exhibit D

Bidders shall submit bids on only Bid Form SE-330.

BID SUBMITTED BY: HILL CONSTRUCTION SERVICES OF CHARLESTON, INC.
(Bidder's Name)

BID SUBMITTED TO: The CITADEL, 171 MOULTRIE STREET, CHARLESTON, SC 29409
(Owner's Name)

FOR: PROJECT NAME: BYRD HALL ORGANIC CHEMISTRY LAB RENOVATION
PROJECT NUMBER: H09-9615-PG

OFFER

§ 1. In response to the Invitation for Construction Services and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

§ 2. Pursuant to Section 11-35-3030(1) of the SC Code of Laws, as amended, Bidder has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

Bid Bond with Power of Attorney Electronic Bid Bond Cashier's Check
(Bidder check one)

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid:

(Bidder, check all that apply. Note, there may be more boxes than actual addenda. Do not check boxes that do not apply)

ADDENDA: #1 #2 #3 #4 #5

§ 4. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid, including all Bid Alternates, if any, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of **60** Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Owner.

§ 5. Bidder herewith offers to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6.1 **BASE BID WORK** *(as indicated in the Bidding Documents and generally described as follows):* Full renovation to existing Organic Chemistry Lab. Multiple rooms on 4th floor transformed into open lab concept. Renovation will include but not limited to selective demolition, mechanical, HVAC, ductwork, plumbing, electrical, lighting, laboratory fume hoods, casework, flooring, acoustical ceilings and limited asbestos removal. Renovation will include work on 3rd floor.

\$ 907,007⁰⁰, which sum is hereafter called the Base Bid.

(Bidder - insert Base Bid Amount on line above)

**SE-330
LUMP SUM BID FORM**

§ 6.2 **BID ALTERNATES** as indicated in the Bidding Documents and generally described as follows:

ALTERNATE # 1 (Brief Description): Provide and install new light fixtures in 3rd floor ceilings removed beneath Organic Laboratory to allow for installation of utilities.

ADD TO or **DEDUCT FROM BASE BID:** \$ 14,775⁰⁰

(Bidder to Mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

ALTERNATE # 2 (Brief Description): N/A

ADD TO or **DEDUCT FROM BASE BID:** \$ _____

(Bidder to Mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

ALTERNATE # 3 (Brief Description): N/A

ADD TO or **DEDUCT FROM BASE BID:** \$ _____

(Bidder to Mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

§ 6.3 **UNIT PRICES:**

BIDDER offers for the Agency's consideration and use, the following **UNIT PRICES**. The **UNIT PRICES** offered by **BIDDER** indicate the amount to be added to or deducted from the **CONTRACT SUM** for each item-unit combination. **UNIT PRICES** include all costs to the Agency, including those for materials, labor, equipment, tools of trades and labor, fees, taxes, insurance, bonding, overhead, profit, etc. The Agency reserves the right to include or not to include any of the following **UNIT PRICES** in the Contract and to negotiate the **UNIT PRICES** with **BIDDER**.

| <u>No.</u> | <u>ITEM</u> | <u>UNIT OF MEASURE</u> | <u>ADD</u> | <u>DEDUCT</u> |
|------------|-------------|------------------------|------------|---------------|
| <u>1.</u> | _____ | _____ | \$ _____ | \$ _____ |
| <u>2.</u> | _____ | _____ | \$ _____ | \$ _____ |
| <u>3.</u> | _____ | _____ | \$ _____ | \$ _____ |
| <u>4.</u> | _____ | _____ | \$ _____ | \$ _____ |
| <u>5.</u> | _____ | _____ | \$ _____ | \$ _____ |
| <u>6.</u> | _____ | _____ | \$ _____ | \$ _____ |
| <u>7.</u> | _____ | _____ | \$ _____ | \$ _____ |
| <u>8.</u> | _____ | _____ | \$ _____ | \$ _____ |

SE-330
LUMP SUM BID FORM

§ 7. LISTING OF PROPOSED SUBCONTRACTORS PURSUANT TO SECTION 3020(b)(i), CHAPTER 35, TITLE 11 OF THE SOUTH CAROLINA CODE OF LAWS, AS AMENDED
(See Instructions on the following page BF-2A)

Bidder shall use the below-listed Subcontractors in the performance of the Subcontractor Classification work listed:

| SUBCONTRACTOR CLASSIFICATION By License Classification and/or Subclassification <i>(Completed by Owner)</i> | SUBCONTRACTOR'S PRIME CONTRACTOR'S NAME <i>(Must be completed by Bidder)</i> | SUBCONTRACTOR'S PRIME CONTRACTOR'S SC LICENSE NUMBER <i>(Requested, but not Required)</i> |
|--|---|--|
| BASE BID | | |
| ELECTRICAL | TRANSWORLD | M2368 |
| PLUMBING | ALL PLUMBING | M108123 |
| AC/HT | SOUTHERN ATLANTIC MECHANICAL | M107551 |
| ALTERNATE #1 | | |
| ELECTRICAL | TRANSWORLD | M2368 |
| | | |
| | | |
| | | |
| ALTERNATE #2 | | |
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| ALTERNATE #3 | | |
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If a Bid Alternate is accepted, Subcontractors listed for the Bid Alternate shall be used for the work of both the Alternate and the Base Bid work.

SE-330
LUMP SUM BID FORM

INSTRUCTIONS FOR
SUBCONTRACTOR LISTING

1. Section 7 of the Bid Form sets forth an Owner developed list of contractor/subcontractor specialties by contractor license category and/or subcategory for which bidder is required to identify the entity (subcontractor(s) and/or himself) Bidder will use to perform the work of each listed specialty..
 - a. **Column A:** The Owner fills out this column, which identifies the contractor/subcontractor specialties for which the bidder must list either a subcontractor or himself as the entity that will perform this work. Subcontractor specialties are identified by contractor license categories or subcategories listed in Title 40 of the South Carolina Code of laws. If the owner has not identified a specialty, the bidder does not list a subcontractor.
 - b. **Columns B and C:** In these columns, the Bidder identifies the subcontractors it will use for the work of each specialty listed by the Owner in Column A. Bidder must identify only the subcontractor(s) who will perform the work and no others. Bidders should make sure that their identification of each subcontractor is clear and unambiguous. A listing that could be any number of different entities may be cause for rejection of the bid as non-responsive. For example, a listing of M&M without more may be problematic if there are multiple different licensed contractors in South Carolina whose names start with M&M.
2. **Subcontractor Defined:** For purposes of subcontractor listing, a subcontractor is an entity who will perform work or render service to the prime contractor to or about the construction site pursuant to a contract with the prime contractor. Bidder should not identify sub-subcontractors in the spaces provided on the bid form but only those entities with which bidder will contract directly. Likewise, do not identify material suppliers, manufacturers, and fabricators that will not perform physical work at the site of the project but will only supply materials or equipment to the bidder or proposed subcontractor(s).
3. **Subcontractor Qualifications:** Bidder must only list subcontractors who possess a South Carolina Contractor's license with the license classification and/or subclassification identified by the Owner in the first column on the left. The subcontractor license must also be within the appropriate license group for the work of the specialty. If Bidder lists a subcontractor who is not qualified to perform the work, the Bidder will be rejected as non-responsible.
4. **Use of Own forces:** If under the terms of the Bidding Documents, Bidder is qualified to perform the work of a listed specialty and Bidder does not intend to subcontract such work but to use Bidder's own employees to perform such work, the Bidder must insert its own name in the space provided for that specialty.
5. **Use of Multiple Subcontractors:**
 - a. If Bidder intends to use multiple subcontractors to perform the work of a single specialty listing, Bidder must insert the name of each subcontractor Bidder will use, preferably separating the name of each by the word "and". If Bidder intends to use both his own employees to perform a part of the work of a single specialty listing and to use one or more subcontractors to perform the remaining work for that specialty listing, bidder must insert his own name and the name of each subcontractor, preferably separating the name of each with the word "and". Bidder must use each entity listed for the work of a single specialty listing in the performance of that work.
 - b. **Optional Listing Prohibited:** Bidder may not list multiple subcontractors for a specialty listing, in a form that provides the Bidder the option, after bid opening or award, to choose to use one or more but not all the listed subcontractors to perform the work for which they are listed. A listing, which on its face requires subsequent explanation to determine whether it is an optional listing, is non-responsive. If bidder intends to use multiple entities to perform the work for a single specialty listing, bidder must clearly set forth on the bid form such intent. Bidder may accomplish this by simply inserting the word "and" between the names of each entity listed for that specialty. Agency will reject as non-responsive a listing that contains the names of multiple subcontractors separated by a blank space, the word "or", a virgule (that is a /), or any separator that the Agency may reasonably interpret as an optional listing.
6. If Bidder is awarded the contract, bidder must, except with the approval of the Agency for good cause shown, use the listed entities to perform the work for which they are listed.
7. If bidder is awarded the contract, bidder will not be allowed to substitute another entity as subcontractor in place of a subcontractor listed in Section 7 of the Bid except for one or more of the reasons allowed by the SC Code of Laws.
8. Bidder's failure to identify an entity (subcontractor or himself) to perform the work of a subcontractor specialty listed in the first column on the left will render the Bid non-responsive.

SE-330 LUMP SUM BID FORM

§ 8. LIST OF MANUFACTURERS, MATERIAL SUPPLIERS, AND SUBCONTRACTORS OTHER THAN SUBCONTRACTORS LISTED IN SECTION 7 ABOVE (*FOR INFORMATION ONLY*):

Pursuant to instructions in the Invitation for Construction Services, if any, Bidder will provide to Owner upon the Owner's request and within 24 hours of such request, a listing of manufacturers, material suppliers, and subcontractors, other than those listed in Section 7 above, that Bidder intends to use on the project. Bidder acknowledges and agrees that this list is provided for purposes of determining responsibility and not pursuant to the subcontractor listing requirements of SC Code Ann § 11-35-3020(b)(i).

§ 9. TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES

a) CONTRACT TIME

Bidder agrees that the Date of Commencement of the Work shall be established in a Notice to Proceed to be issued by the Owner. Bidder agrees to substantially complete the Work within 170 Calendar Days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.

b) LIQUIDATED DAMAGES

Bidder further agrees that from the compensation to be paid, the Owner shall retain as Liquidated Damages the amount of \$ 100.00 for each Calendar Day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. This amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty for nonperformance.

§ 10. AGREEMENTS

- a) Bidder agrees that this bid is subject to the requirements of the laws of the State of South Carolina.
- b) Bidder agrees that at any time prior to the issuance of the Notice to Proceed for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
- c) Bidder agrees that neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to the issuance of the Notice to Proceed.

§ 11. ELECTRONIC BID BOND

By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the AIA Document A310, Bid Bond, included in the Bidding Documents.

ELECTRONIC BID BOND NUMBER: _____

SIGNATURE AND TITLE: _____

**SE-330
LUMP SUM BID FORM**

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION

SC Contractor's License Number(s): G113608

Classification(s) & Limits: BD-5 & Building, Unlimited

Subclassification(s) & Limits: _____

By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the Instructions to Bidders, is expressly incorporated by reference.

BIDDER'S LEGAL NAME: Hill Construction Services of Charleston Inc.

ADDRESS: 295 Seven Farms Drive, Suite 301

Charleston, South Carolina 29492

TELEPHONE: 843-884-6888

EMAIL: bob@hillcon.com cc: suzi@hillcon.com

SIGNATURE:  DATE: 4/28/2016

PRINT NAME: Robert E. Dunn, Jr.

TITLE: President

Exhibit E

The CITADEL Byrd Hall Organic Chemistry Lab Renovation
 State Project No. H09-9615-PG
 Bid Date: April 28, 2016 @ 1 PM

DWG, Inc.
 1009 Anna Knapp Blvd, Suite 202
 Mt. Pleasant, SC 29464
 (843) 849-1141

Bid Tabulation

| Bidder's Name | Addenda | | | Bid Bond | List of Subcontractors | BID AMOUNTS |
|---|---------|-------|-------|----------|---|--|
| | No. 1 | No. 2 | No. 3 | | | |
| Omitted sub-contractor listing C.R. Hipp Constr. non-responsive bid | ✓ | ✓ | ✓ | ✓ | ELEC: Transworld PLUM: CR Hipp ACHT: - ALT 1 ELEC: Transworld | Base: 932,790.00 ALT 1: +15,600.00 Total: 948,390.00 |
| Cullum Constructors | ✓ | ✓ | ✓ | ✓ | ELEC: Transworld PLUM: Cullum ACHT: Cullum ALT 1 ELEC: Transworld | Base: 1,057,607.00 ALT 1: + 16,800.00 Total: 1,074,407.00 |
| Hill Construction | ✓ | ✓ | ✓ | ✓ | ELEC: Transworld PLUM: All Plumbing ACHT: Samco ALT 1 ELEC: Transworld | Base: 807,007.00 ALT 1: + 14,775.00 Total: 821,782.00 |
| Howell & Howell | ✓ | ✓ | ✓ | ✓ | ELEC: Metro PLUM: Triad ACHT: Triad ALT 1 ELEC: Metro | Base: 976,000.00 ALT 1: + 30,800.00 Total: 1,006,800.00 |
| IPW CONST. | ✓ | ✓ | ✓ | ✓ | ELEC: Reserve PLUM: IPW ACHT: Triad ALT 1 ELEC: Reserve | Base: 939,410.00 ALT 1: + 42,350.00 Total: 981,760.00 |
| J. Musselman | ✓ | ✓ | ✓ | ✓ | ELEC: Quality PLUM: Keystone ACHT: SAMCO ALT 1 ELEC: Quality | Base: 927,416.00 ALT 1: + 18,700.00 Total: 946,116.00 |

Recorded By: Mark Ayer
 Witnessed By: Patricia M. Deep

Date: 4/28/16

The CITADEL Byrd Hall Organic Chemistry Lab Renovation
 State Project No. H09-9615-PG
 Bid Date: April 28, 2016 @ 1 PM

DWG, Inc.
 1009 Anna Knapp Blvd, Suite 202
 Mt. Pleasant, SC 29464
 (843) 849-1141

Bid Tabulation

| Bidder's Name | Addenda | | | Bid Bond | List of Subcontractors | BID AMOUNTS |
|--|---------|-------|-------|----------|--|--|
| | No. 1 | No. 2 | No. 3 | | | |
| Summerville non-responsible bid Mechanical responsive bid • improper licensing | ✓ | ✓ | ✓ | | ELEC: Trans World PLUM: Summ. Mech AC/HT: Summ. Mech ALT 1 ELEC: Transworld | Base: 925,000.00 ALT 1: + 17,000.00 Total: 942,000.00 |
| | | | | | ELEC: PLUM: AC/HT: ALT 1 ELEC: | Base: ALT 1: Total: |
| | | | | | ELEC: PLUM: AC/HT: ALT 1 ELEC: | Base: ALT 1: Total: |
| | | | | | ELEC: PLUM: AC/HT: ALT 1 ELEC: | Base: ALT 1: Total: |
| | | | | | ELEC: PLUM: AC/HT: ALT 1 ELEC: | Base: ALT 1: Total: |
| | | | | | ELEC: PLUM: AC/HT: ALT 1 ELEC: | Base: ALT 1: Total: |

Date: 4/28/16

Recorded By: [Signature]

Witnessed By: [Signature]



Exhibit F

May 17, 2016

Mr. John White
Materials Management Officer and State Engineer
Office of the State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Bid Protest
Byrd Hall Organic Chemistry Lab Renovation
H09-9615-PG

Dear Mr. White,

This project was first advertised in SCBO on 3/30/16. The Description of Project included the note "Contractors are cautioned that the value of the HVAC work associated with this project is greater than 51% of the project total. Proper Licensure is required." The Citadel and Phil Gerald, OSE representative, initially determined this to be a mechanical prime project based on the cost estimate dated 3/23/16 by Aiken Cost Consultants. This was based on the combination of subclassifications Plumbing, HVAC and Electrical line items on the estimate [page 5 - D20, D30 and D50]. The Citadel advertised the project in SCBO on 3/30/16. A mandatory Pre-Bid was scheduled and held on 4/6/16.

After being questioned by a contractor about the mechanical prime licensure, I contacted Phil Gerald for a clarification about the classifications and license requirements. After reviewing SC Code of laws 40-11-340, we determined that the individual mechanical classifications were not to be combined, but that the single subclassification license determined prime contractor. Referencing the cost estimate, no single mechanical subclassification [PB, HT/AC/ EL] exceeded 40% of the base bid. Therefore, since no classification was more than 40% of the total cost of construction, then the project would require a General Contractor license.

The project was re-advertised on 4/6/16. An additional non-mandatory Pre-Bid Conference was scheduled and held on 4/13/16. The Bid Date was extended to 4/28/16 at 1:00pm.

Addendum one was issued on 4/6/16, Addendum 2 was issued on 4/13/16, and Addendum 3 was issued on 4/22/16.

Bid Opening took place on 4/28/16. Hill Construction was apparent low-bidder at \$807,007.00, with an Alternate #1 bid of \$14,775.00 [total bid amount \$821,782.00]. Hill Construction did not acknowledge Addendum # 3 on their Bid Form, and this was

The Citadel, Facilities & Engineering, 171 Moultrie Street, Charleston, SC 29409



verbally announced during the reading of their Bid (See Bid Tabulation Form). There was nothing readily obvious on the Bid Form that would indicate to me if Hill Construction had received the Addendum or not because there were no changes to the Bid Form issued in Addendum #3.

After the bid opening, a discussion took place regarding this omission with myself, John Gardner, Mark Uyak (DWG Engineering). Our first step was to talk with Mark Uyak about the value of Addendum #3. His rough estimate was \$10,000 - \$15,000.00. Mark emailed me a letter confirming this estimate on 4/29/16.

We then called Bob Dunn, President of Hill Construction to ask him about his apparent low bid. He acknowledged that he received Addendum # 3 and that he mistakenly omitted acknowledgement on the Bid Form. He also stated that he has reviewed his numbers and he was comfortable with his Bid. He was given the choice to either withdraw his bid or confirm it. He chose to confirm it, and emailed me a confirmation letter dated 4/29/16.

Our OSE Project Manager, Phil Gerald, was unable to attend the Bid Opening. We then called Phil by telephone. I explained the situation to him. Phil asked for the estimated dollar amount of Addendum #3, and based on Mark Uyak's estimate of \$10,000 - \$15,000.00 with a project value of \$807,000 - \$900,000, it was determined to be 1.7% - 1.9%. The Citadel deemed that amount to be negligible.

Based on that decision, I submitted the SE-360 package to Phil Gerald on 5/3/16 requesting concurrence in posting the Notice of Intent to Award to Hill Construction Services of Charleston, Inc. Phil signed the SE-360 that day and the SE-370 Notice of Intent to Award was posted on 5/3/16.

Mark later submitted a formal Estimate of Probable Cost of Addendum #3 to me on 5/13/16, which valued Addendum #3 at \$10,375.20. Therefore, with the value of Addendum #3 determined to be \$10,375.20 and with a low bid was \$821,782.00, the percentage of the construction cost would be 1.2%.

Respectfully Submitted,

Kathleen M. Dille
Staff Architect
Facilities & Engineering
The Citadel
Phone 843-953-7063
kdille@citadel.edu