STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** **IN THE MATTER OF: PROTEST** **BUILDING TECHNOLOGY** **ASSOCIATES** **vs.** **TRIDENT TECHNICAL COLLEGE** **ROOFING/WATERPROOFING** **CONSULTANT SERVICES** **INDEFINITE DELIVERY CONTRACT** **STATE PROJECT NO. H59-D730-PG**	)	**BEFORE THE CHIEF PROCUREMENT OFFICER FOR CONSTRUCTION** **DECISION** **CASE NO. 2013-007** **POSTING DATE: March 22, 2013**

This matter is before the Chief Procurement Officer for Construction ("CPOC") pursuant to request from Building Technology Associates, Inc. (BTA), under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review on the Roofing/Waterproofing Consultant Services Indefinite Delivery Contract bid for Trident Technical College (College). BTA protests the College's selection of with Stafford Consulting Engineers, Applied Building Science, Inc., REI Engineers, Raymond Engineering, and ADC Engineering Specialists as finalist for consideration of award of Indefinite Delivery Contracts or conversely, the College's failure to select BTA. At the time of BTA's protest, the College had not yet posted a Notice of Intent to Negotiate a contract and, therefore, the CPO held the matter in abeyance until such time as the College posted such Notice. On February 25, 2013, the College posted Notices of Intent to Negotiate indefinite delivery contracts with Stafford Consulting Engineers, Applied Building Science, Inc., and ADC Engineering Specialists. Twenty-one days have transpired since the College posted Notices of Intent to Negotiate and BTA has not subsequently amended its protest. Pursuant to S.C. Code Ann. §11-35-4210(4), the CPOC conducted an administrative review. This decision is based on the evidence and applicable law and precedents.

NATURE OF THE PROTEST

BTA's protest appears in an email message sent to the protest address in the solicitation. A copy of the message is attached hereto as Exhibit A and is incorporated herein by reference.

FACTS

1. On August 13, 2012, the College solicited statements of qualifications for professional and design services for a range of roofing and waterproofing projects. [Ex. B]

2. The College received eight statements, including one from BTA.

3. On November 9, 2012, the College posted a Notice of Selection of Stafford Consulting Engineers, Applied Building Science, Inc., REI Engineers, Raymond Engineering, and ADC Engineering Specialists for interviews and mailed copies of this notice to the firms that were not selected. [Ex. C]

4. BTA alleges that it received the Notice on November 26, 2012, the same day it filed its protest.

DISCUSSION

Because all information necessary to the determination appears in BTA's email message, the CPOC decides the case without a hearing. Assuming for purposes of this decision that BTA's message was timely,[1] the CPOC must still deny the 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,* Panel Case No. 1983-17. The grounds of protest must set forth a claim for which relief can be granted. That is, the grounds must allege a breach of a duty imposed by the South Carolina Consolidated Procurement Code. Moreover, the protestant has the burden of proving the grounds of protest by a preponderance of the evidence.

[1] The College provided a copy of the envelope in which it mailed the notice to BTA. The envelope bears a date stamp of November 9, 2012, and was sent to the same street address listed in BTA's brochure and its email. BTA offers no explanation why the notice took two and a half weeks to travel from South Carolina to Michigan.

relief can be granted. That is, the grounds must allege a breach of a duty imposed by the South Carolina Consolidated Procurement Code. Moreover, the protestant has the burden of proving the grounds of protest by a preponderance of the evidence.

BTA's protest focuses on BTA's capabilities and includes a brochure extolling those capabilities with respect to roofs. In short, BTA's protest is simply a statement that BTA is better qualified than the selected firms are. The selected firms possess a certificate of authorization to provide engineering services in this state, and have successfully provided such services, including roofing/waterproofing services to state agencies in the past. BTA's opinion of its own abilities vis-à-vis the selected firms does not form a basis of protest. BTA's protest does not allege any violation of the Procurement Code by the College and its selection committee, nor does it request any relief. BTA has failed to state a claim on which relief can be granted. *Protest of Travelsigns*, Panel Case No. 1995-8; *Protest of First Sun EAP Alliance, Inc.*, Panel Case No. 1994-11 ("The Panel will not re-evaluate and compare the professional qualifications of the offerors, and thus second guess the decision of the evaluators."); and *Protest of Coastal Rapid Public Transit Authority*, Panel Case No. 1992-16.

DECISION

For the foregoing reason, protest denied.

John St. C. White
Chief Procurement Officer
For Construction

22 March 13
Date

Columbia, South Carolina

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, 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.

Singh, Anastasia

From: Protest-OSE <Protest-OSE@mmo.sc.gov>
Sent: Wednesday, November 28, 2012 5:39 PM
To: White, John; Singh, Anastasia
Subject: FW: Roofing IDC selection / Project Number H59-D730-PG
Attachments: InformationPacket.pdf

EXHIBIT A

From: Donnelly, Brian[SMTP:BDONNELLY@BTAWW.COM]
Sent: Wednesday, November 28, 2012 5:38:51 PM
To: Protest-OSE
Subject: Roofing IDC selection / Project Number H59-D730-PG
Auto forwarded by a Rule

I am filing a protest to Mr. Eric Hamilton's selection of Stafford Consulting, Applied Building Sciences, REI Engineers, ADC Engineering and Raymond Engineering as the finalists in the Trident Technical College Roofing/waterproofing Project listed above.

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, Applied, REI ADC and Raymond are all extremely small and inexperienced in Total Roof Management and clearly have NO systems and reporting tools to provide Trident Technical College with the proper Roofing/Waterproofing 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

EXHIBIT B

Project Name: ROOFING / WATERPROOFING CONSULTANT SERVICES I.D.C.
Project Number: H59-D730-PG
Project Location: Trident Technical College's three campuses
Applicable SCBO Notes: 1, 4, & 5
Location at Which Public Notice of Meetings Will Be Posted: 2050 Mabeline Rd., North Charleston, SC 29406-4654
Description of Project: Provide professional & design services on an as-needed basis for a range of roofing & waterproofing projects for Trident Technical College's three campuses – Main Campus, North Charleston; Palmer Campus, Charleston; Berkeley Campus, Moncks Corner. The work will include, but not be limited to, design of new projects, renovation projects, maintenance projects & repair projects. The Agency may elect to award IDC contracts to more than one person or firm. Each IDC contract shall not exceed $200,000 per delivery order per project & the total delivery order amount for each IDC shall not exceed $500,000 during the term of the contract, not to exceed 24 months. The professional may be subject to a performance appraisal at the close of the project. Any questions concerning the terms & conditions of the proposed contract must be addressed to the Agency Coordinator listed later in this ad.
Anticipated Construction Cost Range: Varies
Information to Be Submitted In Addition to Standard Federal Form 330: None
Note: Interested parties should submit the name & contact information, including E-mail address, of a primary contact as part of their submittal, but written communication with a party submitting information will not be done via E-mail.
Resume Deadline: 9/7/12 – 10:00am
Number of Copies: 6
Agency/Owner: Trident Technical College
Name & Title of Agency Coordinator: Eric A. Hamilton, Director, Facilities Management
Agency Address: Building 600, PO Box 118067, Charleston, SC 29423-8067
Agency Phone: (843) 574-6248
Agency Fax: (843) 574-6510
Agency Coordinator E-mail: eric.hamilton@tridenttech.edu – Agency will not accept submittals via E-mail.

CONSTRUCTION

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: VACANCY PAINTING & VACANCY CLEANING
Project Numbers: HUD Project FOB-12-08 & HUD Project FOB-10-07
Project Location: Florence, SC
Bid Security Required: No
Performance Bond Required: No
Payment Bond Required: No
Description of Project: HUD Project FOB-12-08 – Vacancy Painting – the work consists of all labor, equipment & services required for interior painting of vacated apartments & single family houses

HUD Project FOB-10-07 - Vacancy Cleaning – the work consists of all labor, equipment, materials & services required for interior cleaning of vacated apartments & single family house
Architect/Engineer: N/A
Plans May Be Obtained From: Housing Authority of Florence
Plan Deposit: $5.00
Pre-Bid Conf./Site Visit: None
Agency/Owner: Housing Authority of Florence
Name & Title of Agency Coordinator: Lisa F. Watford, Modernization Coordinator
Address: 400 East Pine St., Florence, SC 29506
Telephone: (843) 669-4163
Fax: (843) 679-2626
E-mail: mwatford@hafsc.org
Bid Opening for FOB-12-08 Date/Time: 9/13/12 – 10:00am, local time
Bid Opening for FOB-10-07 Date/Time: 9/13/12 – 11:00am, local time
Place: Housing Authority of Florence, 400 East Pine St., Florence, SC 29506

Project Name: CITY OF WALHALLA PAVING
Project Number: C-PCN-41984
Project Location: Oconee County – City of Walhalla
Bid Security Required: Yes
Performance Bond Required: Yes
Payment Bond Required: No
Description of Project: Resurface Rimrodt Road (city street)
Architect/Engineer: N/A
Plans May Be Obtained From: City Public Works Department, 395 South Cedar St., Walhalla
Plan Deposit: N/A
Pre-Bid Conf./Site Visit: Not mandatory
Agency/Owner: City of Walhalla
Agency Coordinator: James Moore, Public Works Department, (864) 638-4351
Bid Opening Date/Time: 8/29/12 – 2:30pm. Bids will be publicly opened at that time
Place: City Hall, 206 North Church St., Walhalla, SC
Hand Deliver/Mail Bids To: City of Walhalla, 206 North Church St., PO Box 1099, Walhalla, SC 29691. Envelope should be marked with SC Contractors License Number, SCDOT Pre-Qualification Number & "City of Walhalla Rimrodt Bid"

SEATING FOR TERMINAL CAPACITY ENHANCEMENT PROJECT

Sealed Bids From Contractors Properly Licensed In South Carolina will be received by Horry County Procurement on Wednesday, September 5, 2012, at 2:00pm, local time, at Horry County, Office of Procurement, 3230 Highway 319, Conway, SC 29526, where they will be publicly opened & read aloud for Terminal Capacity Enhancement Project, Bid Package S--FF & E Seating & Furniture Pkg. 1, Horry Co Bid # 2012-13-024.

Bid Date/ Time/ Place: Wednesday, September 5, 2012, at 2:00pm, at the Horry County Procurement Office, 3230 Hwy 319, Conway, SC 29526, (843) 915-5380.

A Mandatory Pre-Bid Conference Will Be Held Wednesday, August 22, 2012, at 10:00am, The pre-bid conference will be held at the Myrtle Beach International Airport, 1100 Jetport Road, Myrtle Beach, SC. Attending this conference is a prerequisite for submitting a bid by prime contractors.

The Work Includes Hold Room Seating for the new & existing Terminal as well as Ticketing, Meet & Greet & Baggage Claim Seating.

Bidding Documents Will Be Available for inspection at the offices of LS3P Associates, Charlotte, NC, (by appointment); M. B. Kahn Construction Co., Inc., 1028 Jetport Road, Myrtle Beach, SC 29577; & the plan rooms of AGC & McGraw Hill Dodge. Plans, specifications, bid list & addenda can be accessed through www.mbkahn.com. Email Ross Tilton, rtilton@mbkahn.com, with the bidder's name of company & all contact information for link & password to view the corresponding drawings & specifications. Requests for hard copies of bid documents will be made to Duncan Parnell, 1478 Dividend Loop, Myrtle Beach, SC 29577, (843) 626.3641 or http://www.dpibidroom.com. Bidders will make payment directly to Dun-

EXHIBIT C

SE-212
Notification of Selection for Interview

AGENCY: TRIDENT TECHNICAL COLLEGE
PROJECT NAME: ROOFING / WATERPROOFING CONSULTANT SERVICES
PROJECT NO.: H59-D730-PG

Charleston, SC

TO ALL PERSONS OR FIRMS RESPONDING TO THE INVITATION FOR PROFESSIONAL SERVICES IN CONNECTION WITH THE ABOVE NAMED PROJECT:

The Agency Selection Committee, having reviewed the resumes submitted in response to the *Invitation for Professional Services* for the above-named Project, and having evaluated those responses and other information available to the Committee in accordance with the requirements of Section 11-35-3220 of the SC Code of Laws, has determined that the persons or firms listed below are deemed the most qualified to provide the required services. The below-listed firms are selected for interview.

Name of A/E: STAFFORD CONSULTING ENGINEERS

Name of A/E: APPLIED BUILDING SCIENCES, INC. (ABS)

Name of A/E: REI ENGINEERS, INC.

Name of A/E: ADC ENGINEERING SPECIALISTS

Name of A/E: RAYMOND ENGINEERING

Name of A/E: _____

☐ Click here and attach Exhibit A if additional firms have been selected for interviews.

AGENCY CERTIFICATION

I hereby certify that the above-named persons or firms have submitted all of the information required in the *Invitation for Professional Services*. I further certify that the Agency Selection Committee conducted this A/E selection in accordance with the requirements of the SC Consolidated Procurement Code and Regulations and the *Manual for Planning and Execution of State Permanent Improvements, Part II*, and that the above-named persons or firms have been selected for interview and priority ranking.

BY: _____ **DATE:** 11/9/2012
(Signature of Selection Committee Chair)

Print Name: Eric D. Hamilton

Title: Director of Facilities Management

INSTRUCTIONS TO THE AGENCY:
1. Submit a copy of the completed SE-212 to the OSE Project Manager.
2. Send a copy of the completed SE-212 to all persons or firms who responded to the Invitation.
3. Retain the original in the Agency's procurement file.

TRIDENT TECHNICAL COLLEGE

P. O. Box 118067
Charleston, SC 29423-8067

11-09-12 P04:04 IN Mailed 11-2-12
C S

BUILDING TECHNOLOGY ASSOCIATES
ATTN: BRIAN DONNELLY, PRESIDENT
21850 GREENFIELD ROAD
OAK PARK, MI 48237