

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
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)  
IN THE MATTER OF: BID PROTEST )  
INDEFINITE DELIVERY CONTRACT – )  
STATEWIDE CONSTRUCTION – )  
SOUTHERN REGION )  
STATE PROJECT U12–D037-BC )  
AND )  
INDEFINITE DELIVERY CONTRACT – )  
STATEWIDE CONSTRUCTION – )  
NORTHERN REGION )  
STATE PROJECT U12–D038-BC )  
ACCENT CONTRACTING, INC. )  
vs. )  
SOUTH CAROLINA DEPARTMENT OF )  
TRANSPORTATION )  
\_\_\_\_\_ )

**BEFORE THE CHIEF PROCUREMENT  
OFFICER FOR CONSTRUCTION**

**DECISION**

**POSTING DATE: January 18, 2002**

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Accent Contracting, Inc. (Accent) under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code (Code), for administrative reviews on Indefinite Delivery Contract – Statewide Construction – Southern Region and on Indefinite Delivery Contract – Statewide Construction – Northern Region (collectively called “Projects”) for the South Carolina Department of Transportation (DOT). Pursuant to §11-35-4210(3) of the Code, the CPOC evaluated the issues for potential resolution by mutual agreement and determined that mediation was not appropriate. A combined decision on both requests for administrative review is issued without a formal hearing after a thorough review of the bidding documents and the applicable law because the issues and applicable law are identical.

**NATURE OF THE PROTEST**

The DOT solicited bids for the Projects. Included in the Bidding Documents for each Project was a Bid Bond Forms (SE-335) issued by the Office of State Engineer. Accent submitted bids for the Projects, providing another form of Bid Bond. The DOT ruled Accent’s bid non-responsive. Accent protests the ruling by the DOT.

## FINDINGS OF FACT

1. On November 16, 2001 the Projects were authorized for public bidding, including advertisement in *South Carolina Business Opportunities* (SCBO). The Invitation for Bids included SCBO Standard Note 2, which states in relevant part:

*Note 2: The Bidding Documents for this Project shall be a part of this Invitation for Construction Bids, the same as if incorporated herein. Bid Security and Performance and Labor and Material Payment Bonds shall be as stated in the Bidding Documents.* [emphasis added]

2. On December 18, 2001 DOT received bids for the Projects. The Bidding Documents for the two Projects were identical in all material respects. The Instructions to Bidders (00200-IDC) states in Section VI – Preparation and Delivery of Bids:

*C. ...Acceptable Bid Security shall be one of the following:  
1. Form SE-335, Bid Bond, ...*

3. Accent submitted bids using a Bid Bond issued by the DOT for road construction projects. This Bid Bond obligated the Accent to provide Performance and Labor and Material Payment Bonds amounting to 50% of the contract amount.
4. On December 19, 2001 Accent delivered Bid Bonds using SE-335.
5. On December 21, 2001 DOT formally declared Accent's bids to be non-responsive and posted the Notices of Intent to Award.
6. On January 4, 2002 Accent submitted a written protest for each Project, stating in part:

*We delivered the revised bid bond form to South Carolina Department of Transportation within 24 hours from the time of bid opening and believe our bid should be accepted.*

## DISCUSSION

The position of Accent, although not clearly stated in its Protests, is that the exact form of a Bid Bond is not a material element in a bid and therefore any discrepancies should be treated as minor informalities, to be waived or corrected as necessary. The CPOC disagrees. The requirements for Bid Security for the Projects were stated in the Invitations for Construction Bids, including a listing of three acceptable alternatives. Accent failed to comply, submitting a Bid Bonds with terms and conditions at variance with the requirements of the Bidding Documents.

The basic requirement for Bid Security is stated in §11-35-3030 of the Code and bidders' compliance is essential to the integrity of the public bidding process. The terms of the Bid Bond have a direct and material effect on the rights of the State to protect its interests and also on the relative competitive position of the bidders. Subparagraph (1)(c) of §11-35-3030 requires automatic rejection of bids failing to comply with the bid security requirements of the Invitation, with only two exceptions. Neither of these exceptions applies to the instant case. The CPOC finds that DOT acted properly in declaring Accent's bids to be non-responsive.

### **DECISION**

It is the decision of the Chief Procurement Officer for Construction that the bids submitted by Accent Contracting, Inc. on the solicitations for the Indefinite Delivery Contract – Statewide Construction – Southern Region and the Indefinite Delivery Contract – Statewide Construction – Northern Region were non-responsive to the requirements of the Invitations for Construction Bids and are hereby rejected. The South Carolina Department of Transportation is hereby authorized to proceed with the award of indefinite delivery contracts for these projects, consistent with the Department's programmatic needs.

IT IS SO ORDERED



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Michael M. Thomas  
Chief Procurement Officer  
for Construction

January 18, 2002

Date

## **STATEMENT OF THE RIGHT TO APPEAL**

The South Carolina Procurement Code, under Section 11-35-4230, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review shall be directed to the appropriate chief procurement officer who shall forward the request to the Panel or to the Procurement Review Panel and shall be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.