STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE MATTER OF: BID PROTEST

NBM CONSTRUCTION, INC.,

VS.

COLLEGE OF CHARLESTON
GENERAL CONSTRUCTION INDEFINITE DELIVERY CONTRACT
PROJECT H15-D105-PG

BEFORE THECHIEF PROCUREMENT OFFICER FOR CONSTRUCTION

CASE NO. 2015-007

DECISION

POSTING DATE: 4/29/2015

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by NBM Construction, Inc. (NBM), under the provisions of section 11-35-4210 of the South Carolina Consolidated Procurement Code (Code), for an administrative review of the General Construction Indefinite Delivery Contract bid (the Project), for the College of Charleston (College). Subsequent to receipt of NBM's protest, the College requested the CPO to cancel award pursuant to Regulation 19-445.2085(C)(7).

NATURE OF THE PROTEST

NBM's statement of protest is attached as Exhibit 1 and incorporated herein by reference.

The College's request for cancellation of award is attached as Exhibit 2 and incorporated herein by reference.

DISCUSSION

NBM claims that the Project Specification Manual required each bidder to submit a qualification package with its bid and that the College awarded contract to bidders that failed to do so. While NBM calls this an issue of responsiveness, the failure to provide required documentation of qualifications goes to responsibility. Reg. 19-445.2125. Therefore, interpreting NBM's protest liberally, the protest alleges the College failed to make a responsibility determination for each awardee and challenges the responsibility of some or all of the intended awardees. *See Appeal by Sterile Services Corporation*, Panel Case No. 1983-17 ("While the Panel does not intend to require that the **specificity** of protests be judged by highly technical or formal standards, the Panel concludes that §11-35-4210(1) does require that the

protest must in some way alert the parties to the general nature of the grounds for protest." (emphasis supplied)

Subsequent to the receipt of NBM's protest, the College admitted the validity of NBM's protest by asking the CPOC to cancel the award because the College did not receive the required documentation of qualifications from some of the awardees and failed to determine the responsibility of bidders as required by S.C. Code Ann. § 11-35-1810.

DECISION

It is the decision of the Chief Procurement Officer for Construction that the College has admitted that it failed to consider the awardees' qualifications before posting the Notice of Intent to Award.

For the foregoing reasons, the Protest is granted.

John St. C. White
Chief Procurement Officer
For Construction

29 April 15
Date

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised October 2014)

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 2014 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 for 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

To: Protest-OSE
Subject: RE: H15-D105-PG General Construction IDC NOTICE OF INTENT TO AWARD

EXHIBIT 1

From: Protest-OSE
Sent: Monday, March 30, 2015 9:11 AM
To: White, John; Singh, Anastasia
Subject: FW: H15-D105-PG General Construction IDC NOTICE OF INTENT TO AWARD

From: Will Danielson
Sent: Monday, March 30, 2015 9:11:28 AM (UTC-05:00) Eastern Time (US & Canada)
To: Protest-OSE
Cc: Shana Bland
Subject: H15-D105-PG General Construction IDC NOTICE OF INTENT TO AWARD

To whom it may concern,

NBM Construction wishes to fill a protest on the above referenced project.

The Project Specification Manual requires bidders to submit a qualification package with the bid. It is our position that these qualifications were not submitted by all of the contractors listed on the Notice of Intent to Award and that they should have been found non-responsive for not making a complete submission.

Thank you for your time and consideration.

William E. Danielson, Jr.
President
NBM Construction Company, Inc.
4012 Meeting Street Road / PO Box 31027
North Charleston, SC 29405 / Charleston, SC 29417
Office: (843) 566-9738
Fax: (843) 744-6239
Cell: (843) 367-8329
http://www.nbmconstruction.com

COLLEGE of CHARLESTON

EXHIBIT 2

March 30, 2015

John White, PE
State Engineer & CPO for Construction
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Cancellation of the Notice of Intent to Award (SE-670) for project H15-D105-PG General Construction IDC.

Dear Mr. White,

The College of Charleston is requesting the cancellation of the Notice of Intent to Award (SE-670) for project H15-D105-PG General Construction IDC under South Carolina Regulation 19-445.2085. Due to a change of project managers, the new College of Charleston project manager failed to recognize the requirement of qualifications in the bid package for responsibility.

The Notice of Intent to Award (SE-670) should have listed the responsible contractors and identified those contractors found to be Non-Responsible.

Sincerely,

Roland Craft 4/14/15

Roland Craft, PC