

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

IN THE MATTER OF:

DETERMINATION

**CONSTRUCTION AND PLANNING
OFFICE OF GENERAL SERVICES
SOUTH CAROLINA BUDGET AND
CONTROL BOARD**

CASE NO. 2008-009

**COLUMBIA MILLS – MODERNIZE
SCSM HYDRAULIC ELEVATOR
RE-BID
STATE PROJECT F03-N237-JM**

**POSTING DATE:
FEBRUARY 20, 2008**

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Construction and Planning, Office of General Services, South Carolina Budget and Control Board, for authorization to execute a construction contract to modernize an elevator at Columbia Mills Building (“the Project”). Upon review of the request, the Office of State Engineer’s Project Manager determined that Construction and Planning was requesting permission to execute a contract with Otis Elevator Company, Inc., a company whose bid was non-responsive.

CPOC FINDINGS

On August 27, 2007, Construction and Planning advertised for bids on the project. [A copy of the invitation is attached as Exhibit A] Bidders were required to submit their bids by 2 PM on September 20, 2007. By the time for receiving bids, Construction and Planning received two bids, one from Otis Elevator Company, Inc., and the other from Thyssen Krupp Elevator Corporation. [A copy of the bid tabulation is attached as exhibit B] Otis Elevator’s low bid of \$58,985.00 was substantially lower than Thyssens’ bid of \$83,799.00. As Exhibit A to its bid, Otis Elevator’s bid included three pages of “Clarifications to Project Bid Documents” and “Special Otis Elevator Contract Terms and Conditions”. [A copy of Otis Elevator’s bid and the

exhibit is attached as Exhibit C] On the signature page of the bid form, Otis Elevator typed "Pricing is based on attached Otis proposal clarification letter (Exhibit A)." In other words, Otis Elevator conditioned its bid on the State's acceptance of modifications to the bid documents. After bid opening, the OSE Project Manager advised the Construction and Planning project manager that Otis Elevator's bid was non-responsive and could not be cured by removing the conditions or submittal of a new bid.

On October 31, 2007, Construction and Planning posted a Notice of Intent to Award to Otis Elevator. [A copy of the Notice of Intent to Award is attached as Exhibit D] Construction and Planning did not provide the OSE project manager with a copy of this Notice. On February 4, 2008, the OSE project manager received a request from Construction and Planning for authorization to execute a construction contract with Otis Elevator. [A copy of this request is attached as Exhibit E]

DETERMINATION

RESPONSIVENESS

Section 11-35-3020(2)(c) (2007) of the Consolidated Procurement Code states as follows:

"Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location that is specified in the invitation for bids."

According to Section 11-35-1410(7), a responsive bidder "means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." According to Regulation 19-445.2070(A), "[a]ny bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." Similarly, Regulation 19-445.2070(D)(1) provides for rejection when "the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the State, since to allow the bidder to impose such conditions would be prejudicial to other bidders."

A cursory reading of Otis Elevator's bid shows that its bid did not meet the requirements set forth in the invitation for bids. Instead, Otis proposed material new terms including the use of an Otis Elevator technician working for Construction and Planning under a separate and existing contract. This use of a technician that the state was paying for under a separated contract enabled Otis Elevator to lower its bid on the project. However, the actual cost to the state would be greater than reflected in Otis Elevator's bid.

Otis Elevator made other major changes to the requirements of the bid package. For instance, Otis Elevator made changes to the requirements of the bid package concerning damages, payment, indemnity, and project delay. Such changes are significant changes.

In a competitive sealed bidding environment, the Consolidated Procurement Code allows a procurement officer to give a 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." [SC Code Ann. § 11-35-1520(13)] This section of the Code provides a listing of the nature and types of informalities that a procurement officer may consider minor. Otis Elevator's additional conditions are not of the type listed or contemplated in Section 11-35-1520(13) but instead are major changes with a major impact on pricing. Moreover, Otis Elevator's proposed changes mask the true cost to the State. Therefore, it was error for the agency project manager to either allow Otis Elevator to cure its bid informalities or to waive the deficiencies in Otis Elevator's bid and make an award to Otis Elevator.

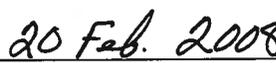
CANCELLATION OF AWARD PRIOR TO PERFORMANCE

Regulation 19-445.2085(C) allows the cancellation of an award prior to performance only upon written determination of the CPOC that cancellation is warranted in accordance with the provisions set forth therein. One such provision is a determination that there was administrative error on the part of the purchasing agency in making the award and that such error was discovered prior to performance. For the reasons set forth above, it was administrative error for Construction and Planning to make an award to Otis Elevator. Moreover, OSE discovered this error before final execution of the contract by the State and before performance by Otis Elevator.

For the foregoing reasons Construction and Planning's Notice of Award to Otis Elevator is hereby cancelled. Construction and Planning is instructed to proceed in accordance with the Procurement Code.



John St. C. White
Chief Procurement Officer
for Construction



Date

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:

(b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

Copies of the Panel's decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.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 66.1 of the 2007 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(4). . . . 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2007 S.C. Act No. 117, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain 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).

for Planning & Execution of State Permanent Improvements, Part II
Construction Cost Range: \$100,000 - \$500,000

Architect/Engineer: SGA Architecture

A/E Contact: James CC Rice, AIA

A/E Address: 245 Business Center Lane, Pawleys Island, SC 29585

A/E Telephone: (843) 237-3421

A/E Fax: (843) 237-1992

A/E E-mail: james@sgaarchitecture.com

Plans on File At:

AGC: Columbia, Charleston

Dodge: Columbia, Charleston

Plans May Be Obtained From: Ervin Engineering, Florence, SC, (843) 662-4941 – deposit required

Plan Deposit: \$30.00, non-refundable

Pre-Bid Conf./Site Visit: Mandatory

Pre-Bid Date/Time: 9/5/07 – 10:00 am

Place: Florence / Pee Dee Market, 2513 West Lucas St., Florence, SC 29501

Agency/Owner: SC Department of Agriculture

Name & Title of Agency Coordinator: E. Wayne Mack, Assistant Director

Address: 1200 Senate St., Fifth Floor, Wade Hampton Building, Columbia, SC 29201

Telephone: (803) 734-2200

Fax: (803) 776-7097

E-mail: wmack@scda.sc.gov

Bid Due Date/Time: 9/19/07 – 2:00 pm

Place: Dept. of Agriculture, 1200 Senate St., Fifth Floor, Columbia

Hand Deliver Bids To: SC Dept. of Agriculture, Attn.: Wayne Mack, 1200 Senate St., Fifth Floor, Wade Hampton Building, Columbia, SC 29201

Mail Bids To: SC Dept. of Agriculture, Attn.: Wayne Mack, PO Box 11280, Columbia, SC 29211-1280

Project Name: CHARLES TOWNE LANDING REDEVELOPMENT – ANIMAL FOREST FENCING

Project Number: P28-9632-PG-U

Location: Charleston County, SC

Applicable SCBO Notes: 2, 4, & 5

Bid Security Required: Yes

Performance Bond Required: Yes

Payment Bond Required: Yes

Description of Project: Demolish approximately 3,900 LF of existing chain link fence. Install approximately 4,300 LF of new chain link fence along with multiple gates. Install some minor wood fencing & gates. The contractor will be subject to a performance appraisal as defined in the Manual for Planning & Execution of State Permanent Improvements, Part II

Construction Cost Range: \$100,000 - \$500,000

Architect/Engineer: SC Dept. of Parks, Recreation & Tourism

A/E Contact: Scott Langford
A/E Address: 1205 Pendleton St., Columbia, SC 29201

A/E Telephone: (803) 734-0188

A/E Fax: (803) 734-1042

A/E E-mail: slangford@scprt.com

Plans on File At:

AGC: Charleston, Columbia

Dodge: Charleston, Columbia

Plans May Be Obtained From: SCPRT – Scott Langford

Plan Deposit: \$30.00, non-refundable

Pre-Bid Conf./Site Visit: Mandatory

Pre-Bid Date/Time: 9/11/07 – 10:00 am

Place: Park Visitor Center, 1500 Old Towne Rd., Charleston, SC 29407

Agency/Owner: SC Dept. of Parks, Recreation & Tourism

Name & Title of Agency Coordinator: Scott Langford, PE, Assistant Chief Engineer

Address: 1205 Pendleton St., Columbia, SC 29201

Telephone: (803) 734-0188

Fax: (803) 734-1042

E-mail: slangford@scprt.com

Bid Due Date/Time: 9/25/07 – 2:00 pm

Place: SCPRT, Room 237, Edgar Brown Building, Columbia

Hand Deliver Bids To: SCPRT, Room 237, Edgar Brown Building, 1205 Pendleton St., Columbia, SC 29201

Mail Bids To: SCPRT, Room 246, Edgar Brown Building, 1205 Pendleton St., Columbia, SC 29201



RE-BID

Project Name: COLUMBIA MILLS BUILDING (110708) – MODERNIZE S.C.S.M. HYDRAULIC ELEVATOR

Project Number: F03-N237-JM

Location: Columbia, SC

Applicable SCBO Notes: 2, 4, & 5

Bid Security Required: Yes

Performance Bond Required: Yes

Payment Bond Required: Yes

Description of Project: This work covers the upgrading of one existing hydraulic elevator located in the Columbia Mills Building, Columbia. Work to include rebuilding of existing valve & replacing controller, replacement of all hoistway & machine room wiring, providing new signal fixtures & door operator. Existing hoistway doors & frames are to be reused. Existing jack is to be reused. Additional work outside the actual elevator is required & includes, but is not limited to, electrical work, including new main line shunt trip device & related heat detectors. In addition, provide new machine room smoke detector to activate flashing fireman's in-car signal. The contractor will be subject to a performance appraisal as defined in

the Manual for Planning & Execution of State Permanent Improvements, Part II

Architect/Engineer: Elevator Advisors

A/E Contact: Bob Beyers

A/E Address: 1075 Peachtree Walk NE, Ste. A-120, Atlanta, Ga. 30309

A/E Telephone: (404) 532-1980

A/E Fax: (404) 607-0982

A/E E-mail: bob@elevatoradvisors.com

Plans on File At:

AGC: Columbia

Dodge: Columbia

CMD: Columbia

Plans May Be Obtained From: Construction & Planning Unit, 915 Main St., Columbia, SC 29201

Plan Deposit: \$30.00, non-refundable

Pre-Bid Conf./Site Visit: Mandatory

Pre-Bid Date/Time: 9/6/07 – 2:00 pm

Place: Conference Room 225, Second Floor, 915 Main St., Columbia

Agency/Owner: SC Budget & Control Board / Office of General Services

Name & Title of Agency Coordinator: George A. Holmstrom, III, Project Manager

Address: 915 Main St., Columbia, SC 29201

Telephone: (803) 734-3340

Fax: (803) 734-6815

E-mail: gholmstrom@gss.sc.gov

Bid Closing Date/Time: 9/20/07 – 2:00 pm

Place: Conference Room 225, Second Floor, 915 Main St., Columbia

Hand Deliver Bids To: SC Budget & Control Board / Office of General Services, Construction & Planning Unit, 915 Main St., Columbia, SC 29201

Mail Bids To: SC Budget & Control Board / Office of General Services, Construction & Planning Unit, 915 Main St., Columbia, SC 29201

Project Name: SANDHILLS RECREATION FACILITY

Project Number: 06-054

Location: Swansea, SC

Bid Security Required: Yes, 5%

Performance Bond Required: Yes

Payment Bond Required: Yes

Description of Project: The work includes the construction of soccer fields, a parking lot, & lighting for fields as shown on the plans

Construction Cost Range: \$550,000 - \$600,000

Architect/Engineer: American Engineering Consultants, Inc.

A/E Contact: Joseph H. Privette, PE

A/E E-mail: jprivette@aec-sc.com

Plans May Be Obtained From: American Engineering Consultants, Inc.

A/E Address: 1300 12th St., PO Box 2299, Cayce, SC 29171

A/E Telephone: (803) 791-1400

A/E Fax: (803) 791-8110

Plan Deposit: \$100.00, non-refundable

BID TABULATION

PROJECT:	Columbia Mills Building (110708) - Modernize SCSM Hydraulic Elevator - Rebid
STATE PROJECT NO.	F03-N237-JM
C&P PROJECT NO.	2861
BID LOCATION:	915 Main Street, Columbia, South Carolina - Main Conference Room
BID DATE:	September 20, 2007
BID TIME:	2:00 PM
OWNER:	South Carolina Budget & Control Board/Office of General Services

BIDDER:	Thyssen Krupp Elevator Corporation
Bid Security:	✓
Addendum(s):	1 ✓
Base Bid:	\$ 83,799.00
Subcontractor Listing/Specialty:	Electrical - Cashims Electricians, Inc.

I hereby certify this bid tabulation is a true and accurate representation.

[Signature]

Pete Creighton, Project Manager
Construction & Planning Unit

[Signature]
Albert Shealy, Associate Engineer II
Facilities Management



SE-330 Bid Form

07/01 Edition

Bids shall be submitted only on SE-330

BID SUBMITTED BY: OTIS ELEVATOR COMPANY
(Bidder's Name)

BID SUBMITTED TO: South Carolina Budget and Control Board/Office of General Services
(Agency Name)

FOR PROJECT: F03 - N237 - JM - Columbia Mills Building (110708) - Modernize SCSM Hydraulic Elevator
(Number) (Name)

OFFER

1. In response to the Form SE-310, *Invitation for Construction Bids*, 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 **AGENCY** in the form 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 11-32-3030(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**, by submitting this Bid, affirms that it has carefully examined the Bidding Documents and the other related data identified in the Bidding Documents, has visited the actual location of the Work, has satisfied itself as to all conditions and understands that, in signing this Bid Form, it waives all rights to plead any misunderstanding regarding same and agrees to be bound by the provisions of said Bidding Documents and all statements made therein

4. **BIDDER** acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into its Bid:

ADDENDUM No: #1 dated 9/14/07

5. **BIDDER** accepts all terms and conditions of the *Invitation for Construction 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 **AGENCY**. **BIDDER** understands that Bid Alternates that are not accepted in an initial award shall remain open for acceptance for the entire period set above and for such longer period as requested by **AGENCY** and agreed to by **BIDDER**.

6. **BIDDER** herewith submits its offer 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):

This work covers the upgrading of one (1) existing hydraulic elevator located in the in the Columbia Mills Building, Columbia, SC. Work to include rebuilding of existing valve and replacing of controller, replacement of all hoistway and machine room wiring, providing of new signal fixtures and door operator. Existing hoistway doors and frames are to be reused. Existing jack is to be reused. Additional work outside the actual elevator is required and includes, but is not limited to electrical work including new main line shunt trip device and related heat detectors. In addition provide new machine room smoke detector to activate flashing fireman's in-car signal.

\$ 58,985.00 , which sum is hereafter called the **BASE BID**
(enter BASE BID in figures only)

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SE-330 Bid Form

LISTING OF PROPOSED SUBCONTRACTORS

1. A **SUBCONTRACTOR** is an entity who will perform work or render service to the prime contractor to or about the construction site. Material suppliers, manufacturers and fabricators are not **SUBCONTRACTORS** and are not to be listed.
2. Any **BIDDER** responding to an *Invitation for Construction Bids* shall list in its bid the name of only those **SUBCONTRACTOR(S)** that will perform the work so identified in the *Invitation*.
3. If **BIDDER** determines to use its own employees to perform any portion of the work listed below, and if **BIDDER** is qualified to perform such work under the terms of the Bidding Documents, **BIDDER** shall list itself in the appropriate place in its bid and not subcontract any of that work except with the approval of the Agency for good cause shown.
4. **BIDDER** hereby acknowledges and agrees that any failure by **BIDDER** to list **SUBCONTRACTORS** in accordance with the requirements of the SC Code of Laws shall render the **BID** non-responsive.
5. A **SUBCONTRACTOR** listed for a **BID ALTERNATE** may be used for all work, including the Base Bid work, if the **BID ALTERNATE** is accepted.
6. **BIDDER** hereby states its commitment to use the below-listed **SUBCONTRACTORS** in the performance of the Subcontractor Speciality work listed:

SUBCONTRACTOR SPECIALTY (COMPLETED BY A/E)	SUBCONTRACTOR'S NAME or PRIME BIDDER'S NAME (MUST BE COMPLETED BY BIDDER)	SUBCONTRACTOR'S SC LICENSE NUMBER (FOR INFORMATION)
<u>BASE BID WORK</u>		
Electrical	Snipes Electric	M-96533
Fire Security	Fire Security Upgrades	FAC3137
	N/A	
<u>ALTERNATE BID WORK</u>		
<u>BID ALTERNATE NO. 1</u>		
	N/A	
	N/A	
<u>BID ALTERNATE NO. 2</u>		
	N/A	
	N/A	
<u>BID ALTERNATE NO. 3</u>		
	N/A	
	N/A	
<u>BID ALTERNATE NO. 4</u>		
	N/A	
	N/A	

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SE-330 Bid Form

TIME OF CONTRACT PERFORMANCE

BIDDER hereby agrees to complete the construction work in accordance with the following schedule:

1. The **DATE OF COMMENCEMENT** shall be established in Form SE-390, *Notice to Proceed*. The **BIDDER** shall not incur any expense chargeable to this Project until the Contract has been executed by both the Agency and the Contractor, and a Notice to Proceed has been issued.
2. The **DATE OF SUBSTANTIAL COMPLETION**, to be documented on Form SE-550A, *Certificate of Substantial Completion*, shall be (150) **CALENDAR DAYS** from the **DATE OF COMMENCEMENT** set forth in the SE-390, subject to adjustments as provided in the Contract Documents.
3. The **DATE OF FINAL COMPLETION**, to be documented on Form SE-560C, *Certificate of Final Completion*, shall be (7) **CALENDAR DAYS** from the **DATE OF SUBSTANTIAL COMPLETION**, subject to adjustments as provided in the Contract Documents.

LIQUIDATED DAMAGES AND EARLY COMPLETION AWARD

1. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as Step One Liquidated Damages the amount of \$500.00 for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** exceeds the specified or adjusted Contract time for **SUBSTANTIAL COMPLETION**, as provided in the Contract Documents.
2. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as Step Two Liquidated Damages the amount of \$250.00 for each calendar day the actual construction time required to achieve **FINAL COMPLETION** exceeds the specified or adjusted Contract Time for **FINAL COMPLETION**, as provided in the Contract Documents.
3. The undersigned further agrees that in full and complete satisfaction for the best efforts of the undersigned to achieve **SUBSTANTIAL COMPLETION** before the date established above, the Agency shall pay the undersigned an Early Completion Award in the amount of \$0.00 for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** is less than the originally specified Contract Time for **SUBSTANTIAL COMPLETION**, as provided in the Contract Documents.

AGREEMENTS

By submitting this Bid, **BIDDER** hereby agrees to the following terms and conditions:

1. An incomplete Bid, or information not requested that is written on or attached to this Bid Form that could be considered a qualification of the Bid, may be cause for rejection of the Bid.
2. The failure of the **BIDDER** to indicate a price for a **BID ALTERNATE** shall render the Bid non-responsive. A **BID ALTERNATE** shall be bid by indicating either a dollar amount or the words "No Change", "Zero", or "0 00". A typed or printed "No Bid", or words of similar meaning, shall render the Bid non-responsive. **BIDDER** must indicate whether the amount of the **BID ALTERNATE** is an "ADD" to or a "DEDUCT" from the amount of the Base Bid. The Bid may be determined non-responsive for failure of the **BIDDER** to indicate the appropriate "ADD" or "DEDUCT" for each **BID ALTERNATE**, unless the adjustment is obvious to the Agency.
3. If any **BID ALTERNATES** should be accepted by the **AGENCY**, they shall be incorporated into the executed Contract. **BID ALTERNATES** may be accepted in any combination or order, at the sole discretion of the **AGENCY**.
4. The **BIDDER** shall list only **SUBCONTRACTORS** (as defined in the Bidding Documents) who are qualified to perform items of work as specified in the Bidding Documents or as required by any material or equipment substitutions approved at the time of bidding. No **BIDDER** whose Bid is accepted shall substitute another entity as **SUBCONTRACTOR** in place of the **SUBCONTRACTOR** listed in the original Bid, except for one or more of the reasons allowed by the SC Code of Laws.
5. The failure of the **BIDDER** to provide the name(s) of listed **SUBCONTRACTORS** in accordance with the SC Code of Laws shall render the Bid non-responsive.
6. Unless otherwise provided in the Bidding Documents, **BIDDER** will provide Performance and Labor and Material Payment Bonds, each in the amount equal to 100% of the Contract Award, as a condition of execution of the Contract. Failure to supply such bonds as required by the Contract Documents shall result in cancellation of the Notice of Intent to Award and forfeiture of the Bid Bond.

07/01 Edition

SE-330 Bid Form

7. **BIDDER** agrees to provide all information requested by the **AGENCY** to support the **AGENCY'S** evaluation and determination of the **BIDDER'S** responsibility, including completion of Form SE-350, *Questionnaire for Contractors*. The Questionnaire shall be completed fully and returned to the **AGENCY** within SEVEN (7) DAYS from date of receipt by the **BIDDER** by certified mail. The completed Form SE-350 must be received by the Agency no later than the close of business on the seventh day. Failure by **BIDDER** to supply requested information with respect to responsibility may be grounds for a determination of non-responsibility.

8. The **BIDDER** certifies that it will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the SC Code of Laws, and shall comply with the requirements set forth in Title 44, Chapter 107.

9. At any time prior to the issuance of the Notice to Proceed for this Project, this Contract may be canceled for the convenience of the State.

10. 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.

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 Form SE-335 included in the Bidding Documents.

N/A	See Attached SE-335 Bid Bond
<i>(Electronic Bid Bond Number)</i>	<i>(Signature and Title)</i>

BIDDER'S TAXPAYER IDENTIFICATION

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 13553387

OR

SOCIAL SECURITY NUMBER: _____

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

<u>Elevator/Escalator</u>	<u>N/A</u>	<u>N/A</u>
<i>(Classification)</i>	<i>(Subclassification)</i>	<i>(Limitations)</i>

0006941 (SC Vendor #)

(SC Contractor's License Number)

SIGNATURE

Otis Elevator Company

(Legal Name of Person, Firm or Corporation Submitting Bid)

101 Corporate Blvd Suite 105 West Columbia SC

(Mailing Address for the above)

	<u>September 20, 2007</u>
<u>John C. Wagner</u>	<i>(Date)</i>
<i>(Signature)</i>	
<u>Account Manager</u>	<u>(803) 739-8013</u>
<i>(Title)</i>	<i>(Phone)</i>

* Pricing is based on attached Otis proposal clarification letter (Exhibit A) dated September 20, 2007

September 20, 2007

EXHIBIT "A" - PROJECT F03- N237- JM, JOB NO. 2861
(COLUMBIA MILLS BUILDING- 110708) MODERNIZE SCSM HYDRAULIC ELEVATOR
OTIS PROPOSAL CLARIFICATIONS

Special Otis Elevator Contract Terms and Conditions:

1. In order to provide the state of South Carolina with significant budgetary savings, Otis will perform the Columbia Mills Building Hydraulic Elevator Modernization under the terms and conditions of our existing Maintenance Contract No. TAH 5007 (IFB Solicitation No 06-S7169 for Vertical Transportation and Repair Services)
2. Otis Elevator will utilize Helper Denny Grover, Currently assigned to Contract TAH 5007, as a member of the two-man elevator installation team performing the modernization. A qualified Otis mechanic, not assigned to Contract TAH 5007, will lead the install team.
3. *The Acceptance of this order is expressly conditioned upon the incorporation and application of the terms and conditions of our existing contract No. TAH 5007 with the State of South Carolina.*

.....
Clarifications to Project Bid Documents:

Damages

Under no circumstances shall either party be liable for special, indirect, or liquidated damages of any kind including, but not limited to, loss of goodwill, loss of business opportunity, additional financing costs or loss of use of any equipment or property. We do not waive our right to an equitable adjustment in price in the event of delay, acceleration, interference or other reasons beyond our control.

Payment Terms

Otis' acceptance of the payment terms is conditioned on the understanding that:

- a) Fifty percent (50%) of the price shall be paid after we have completed processing your equipment requirements if any, and orders are placed. The balance shall be paid on completion if the work is completed within a thirty-day period;
- b) If the work is not completed within a thirty-day period, monthly progress payments shall be made based on the value of any equipment ready or delivered, if any, and labor performed through the end of the month, less a five percent (5%) retainage and the aggregate of previous payments. The retainage shall be paid when the work is completed;
- c) We reserve the right to discontinue our work at any time until payments shall have been made as agreed and we have assurance satisfactory to us that subsequent payments will be made when due; and
- d) Any payment not made when due shall be subject to interest at the rate of one and one-half percent (1.5%) per month or the maximum permitted by law, whichever is less, plus reasonable attorney's fees and collection costs

Indemnity

Notwithstanding any other provision to the contrary, we agree to indemnify you only for losses due to personal injury, or property damage to the extent caused by our negligent acts or omissions, or the negligent acts or omissions of our employees, agents and subcontractors during the performance of this contract, but not to the extent caused by others. Each party shall defend itself in the event of a lawsuit

Project Delay

Notwithstanding any other provision in the contract to the contrary, neither party shall be liable for any loss, damage or delay due to any cause beyond either party's reasonable control, including but not limited to acts of government, labor disputes, theft, weather, natural or man-made disaster, civil commotion, mischief or act of God.

Software

All software supplied with your elevator is licensed to you or your successors but only for use with, and for the operation of this elevator. Use of such software for any other purpose is prohibited. We will supply an owner's manual with instructions on how to operate and maintain this elevator. Otis will not supply any additional information such as internal Otis manuals, manufacturing drawings or source code.

Any counters, meters, tools, remote monitoring devices, communication devices, resident software or other service equipment ("Otis Peripherals") which we may use or install to deliver service under this Contract remains our property, solely for the use of our employees. Otis Peripherals are not considered as part of the elevator. If this contract or subsequent maintenance service is terminated for any reason, we will be given access to the premises to remove the Otis Peripherals at our expense.

Termination

In the event our Agreement is terminated through no fault of ours, we shall be paid for all material furnished, or manufactured, and labor performed up to the date of termination, including a reasonable margin.

This Agreement may be terminated for default provided that we are first allowed a reasonable time, upon receipt of written notice, to commence and continue to cure a deficiency

Occupational Health & Safety

We agree to abide by Customer's Safety Policy as long as said policy is not in conflict with our own Safety Policy.

Otis agrees to accept liability for the cost of penalties incurred by you pursuant to governing Occupational Health & Safety acts that result from our acts or omissions on the condition that the cost of any similar penalties imposed on Otis because of your acts or omissions or anyone employed by you shall be borne by you.

Storage

You will provide suitable storage areas, adjacent to the elevator shafts, for our material and equipment during the course of the work. Added costs to Otis resulting from off-site storage or relocation of the storage facilities at your request shall be reimbursed by you.

Overtime

Should Otis agree to work overtime, you agree to pay us overtime premium wages. If Otis is solely responsible for a delay, it may, at its own expense, work overtime to complete the work.

Searched and Tests

Otis supports your efforts in attempting to maintain a safe, healthy and productive working environment; however, we cannot agree to authorize any party to search our employees or require our employees to submit to any tests. Otis will take appropriate action in the event that you advise us of any action by any of our employees that is contrary to the maintenance of a safe, healthy and productive workplace.

Hazardous Material

You agree to notify Otis if you are aware or become aware prior to the completion of the work of the existence of asbestos or other hazardous material in any elevator hoistway, machine room, hallway or other place in the building where Otis' personnel are or may be required to perform their work. In the event it should become necessary to abate, encapsulate or remove asbestos or other hazardous material from the building, you agree to be responsible for such abatement, encapsulation or removal, and any governmental reporting, and in such event Otis shall be entitled to (i) delay its work until it is determined to Otis' satisfaction that no hazard exists and (ii) compensation for delays encountered.

Re-Inspection Costs

Otis agrees to pay for the cost of one inspection after completion of the Work. Should additional inspections be necessary for causes not attributable to Otis, Customer agrees to pay for said inspections.

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Section 14240, Hydraulic Passenger Elevator Specification (Clarifications)

- 2.02 A.1- Otis will replace the existing Maxton Valve with a new Maxton Valve
- 2.06 A. – Otis Signal Fixtures will be installed and shall be considered an approved equal of PTL. Fixtures
- 2.08 A. – Otis hall button fixtures will be installed and shall be considered an approved equal of PTL Fixtures.
- 2.09 A. – Otis will install new Otis manufactured In-Car Lanterns
- 2.16 A. – An Otis manufactured Closed Loop Door Operator will be installed and shall be considered an approved equal to GAL.

John C. Wagner

**OTIS ELEVATOR COMPANY
JOHN C. WAGNER
ACCOUNT MANAGER
COLUMBIA, SC**



SE-370
Notice of Intent to Award

07/01 Edition

EXH. D

AGENCY: South Carolina Budget and Control Board/Office of General Services

(Name)

PROJECT: F03 - N237 - JM -

(Number)

Columbia Mills Building (110708) - Modernize SCSM Hydraulic Elevator

(Name)

TO ALL BIDDERS:

The Agency has determined that the below-named Bidder is responsible in accordance with the requirements of the Bidding Documents and has submitted the lowest responsive Bid. The Agency hereby announces its intent to enter into a contract with this Bidder for the construction of the above-named Project, subject to the provisions of SC law.

NAME OF BIDDER: Otis Elevator Company

DATE BIDS WERE RECEIVED:

September 20, 2007

AMOUNT OF BASE BID:

\$58,895.00

ALTERNATE(S) ACCEPTED: # N/A

TOTAL:

\$0.00

TOTAL AMOUNT OF BASE BID PLUS ACCEPTED ALTERNATE(S):

\$58,895.00

Remarks: *(In accordance with Chapter 6 of the OSE Manual, explain any negotiations that resulted in a change in either the Base Bid or the accepted Bid Alternates)*

RIGHT TO PROTEST:

Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of this Contract may protest to the State Engineer in accordance with Section 11-35-4210 of the SC Code of Laws, as amended, within 15 days of the date the *Notice of Intent to Award* is posted.

(Signature of Awarding Authority)

October 31, 2007

(Date Posted)

William B. McCallum

(Print or Type Name of Awarding Authority)

Manager, Construction & Planning/OGS/B&CB

(Awarding Authority Title)

INSTRUCTIONS TO AGENCY:

1. MAIL A COPY OF THE FINAL BID TABULATION TO ALL BIDDERS AND OSE WITHIN 10 DAYS OF BID OPENING.
2. POST A COPY OF THIS FORM ON THE DATE AND AT THE LOCATION ANNOUNCED AT BID OPENING.
3. MAIL A COPY OF THIS FORM TO ALL BIDDERS AND THE OSE.



SE-380 Request for Authority to Execute a Construction Contract

EXH. **E**

AGENCY: South Carolina Budget and Control Board/Office of General Services

(Name)

PROJECT: F03 - N237 -JM - Columbia Mills Building (110708) - Modernize SCSM Hydraulic Elevator

(Number)

(Name)

CONTRACT DATES:

DATE BIDS OR QUOTES WERE RECEIVED: September 20, 2007

DATE BID OR QUOTE EXPIRES (INCLUDING EXTENSIONS): November 19, 2007

DATE NOTICE OF INTENT TO AWARD WAS POSTED: September 20, 2007

AUTHORIZATION IS REQUESTED TO ENTER INTO A CONTRACT WITH:

NAME OF BIDDER: Otis Elevator Company

TYPE OF CONTRACT (Check one) Single Project Indefinite Delivery

AMOUNT OF BASE BID OR QUOTE: (Check one) \$58,985.00

ALTERNATE(S) ACCEPTED: Nos. none ALTs. TOTAL AMT.: \$0.00

TOTAL OF BASE BID OR QUOTE PLUS ACCEPTED ALTERNATE(S): \$58,985.00

AMOUNT OF MULTIPLIER FOR INDEFINITE DELIVERY CONTRACTS: N/A

AGENCY CERTIFICATION:

I hereby certify that the Agency has conducted this solicitation in accordance with the requirements of the SC Consolidated Procurement Code and the *Manual for Planning and Execution of State Permanent Improvements, Part II*, and that the proposed expenditure is within the authorized scope and budget for this Project. I further certify that the Agency has authorized, unencumbered funds available for obligation to this contract. I hereby request the approval of the State Engineer to execute the attached Contract for construction services in support of the above-named Project.

BY: William B. McCallum
(Signature)

DATE: 02/01/08

WILLIAM B. McCallum
William B. McCallum

Manager, Construction &
Planning/OGS/B&CB

(Print or Type Name)

(Title)

APPROVED BY: _____
(State Engineer)

(Date)

INSTRUCTIONS TO THE AGENCY

For a Single Project Contract, submit the following:

1. SE-380 (Original & 1 copy).
2. Copy of SE-330 (if sealed bid) or SE-331 (if quotes).
3. Copy of Bid Security, if required.
4. Copy of Bid Tabulation.
5. Copy of SE-370, as applicable.
6. Copy of proposed Contract, signed by Contractor, but NOT by the Agency.
7. Copy of SE-355, with Power of Attorney, if required.
8. Copy of SE-357, with Power of Attorney, if required.

For an Indefinite Delivery Contract, submit the following:

1. SE-380 (Original & 1 copy).
2. Copy of SE-330.
3. Copy of Bid Security, if required.
4. Copy of Bid Tabulation.
5. Copy of SE-370, as applicable.
6. Copy of proposed Contract, signed by Contractor, but NOT by the Agency.