

<p>STATE OF SOUTH CAROLINA COUNTY OF RICHLAND</p> <p>IN THE MATTER OF: BID PROTEST</p> <p>PC CONSTRUCTION OF GREENWOOD, INC.</p> <p style="text-align: center;">v.</p> <p>COASTAL CAROLINA UNIVERSITY STUDENT RECREATION CONVOCATION CENTER STATE PROJECT NO. H17-9557-MJ</p> <hr/>	<p>) BEFORE THE CHIEF PROCUREMENT) OFFICER FOR CONSTRUCTION</p> <p>)</p> <p>)</p> <p>)</p> <p>) WRITTEN DETERMINATION</p> <p>) CASE NO. 2010-017</p> <p>)</p> <p>) POSTING DATE:) MAY 20, 2010</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>
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Based on the attached request from Coastal Carolina University (CCU) and discussions with CCU, I find that it is in the best interest of the state that the solicitation and award of this procurement shall not be delayed.

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by PC Construction of Greenwood, Inc. (PC), pursuant to the provisions of section 11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review of the Student Recreation/Convocation Center bid (“the Project”), for Coastal Carolina University (CCU). In its letter of protest, PC protests the price of the contract upon which the award to PC was based, not the decision to award a contract to PC. PC alleges that it made a substantial mistake in its bid and is requesting an upward correction to its bid of \$328,700.¹ Moreover, PC asserts that it is willing, able, and ready to perform the contract regardless of the final determination on its protest of the award price.

If the CPOC allowed the upward correction sought by PC, PC would still be the low bidder. Therefore, PC requests in its letter of protest a lifting of the automatic stay of the procurement imposed by the Consolidated Procurement Code. On May 17, 2010, the last day to protest the award, CCU also requested a lifting of the automatic stay.

¹ PC submitted to CCU a request to make a correction to its bid due to mistake prior to award and CCU denied this request.

The project includes an arena to accommodate home basketball games, convocations, and other events. CCU has already scheduled events in this Project including a basketball game with Louisiana State University (LSU) on November 15, 2011. The construction schedule provides for 550 calendar days after the date of commencement for substantial completion. By the CPOC's calculations, CCU's schedule is already in trouble and further delay will exacerbate the situation.

The current basketball arena seats only 1,000 people, the new arena will seat 3,400 people. If CCU cannot hold the LSU game in the new facility, CCU will have to decline to hold the game at home. Though the anticipated loss in revenue is relatively small, there is significant prestige and excitement in playing a school such as LSU at home. The value of the loss of this opportunity cannot be calculated. Theoretically, there will also be some loss of revenue for the remaining home games that will have to be held in the smaller existing facility.

Normally, the loss revenue anticipated by CCU would not be sufficient to justify a lifting of the stay. However, in this case, PC will be the low bidder regardless of the outcome of the protest and the stay does not serve to protect the interest of any of the other bidders. In this case, the stay serves no purpose but merely delays the start of the project to the detriment of CCU.

Based on the foregoing, the CPOC finds that the award of the contact without further delay is necessary to protect the best interest of the State.



John St. C. White
Chief Procurement Officer for Construction


Date

Columbia, South Carolina

STATEMENT OF RIGHT TO 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: Requests 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 2008 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." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an action 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).



Office of Facilities Planning and Management

OFFICE OF STATE ENGINEER
MAY 10 2010
MAY 10 2010

May 17, 2010

VIA US POSTAL SERVICE
AND EMAIL JWhite@mmo.sc.gov

Mr. John St. C. White
Office of the State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

**Re: Protest of Intent to Award to PC Construction of Greenwood, Inc.
Project: Student Recreation / Convocation Center Construction
Coastal Carolina University
State Project Number: H17-9557-MJ**

Dear Mr. White,

Coastal Carolina University request that you lift the stay on the above stated action and allow us to prepare and sign the necessary contracts for the original Base Bid Three amount of \$23,224,000. It is very necessary to have this project underway as soon as possible, given the very short construction time period and the limited number of construction days to complete the project. Event scheduling has already begun, specifically a home NCAA, Division I, basketball game with LSU on Nov. 15, 2011, which is driving the need to start this project right away.

Respectfully,

Philip T. Massey, Sr.
Project Manager
Coastal Carolina University
Student Recreation and Convocation Center