

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
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)  
)  
IN THE MATTER OF: )  
)  
SOUTH CAROLINA DEPARTMENT )  
OF JUVENILE JUSTICE )  
)  
DEMOLITION & RECYCLE PROJECT )  
RFQ10-2000051164 )  
)  
)  
\_\_\_\_\_ )

BEFORE THE CHIEF PROCUREMENT  
OFFICER FOR CONSTRUCTION

DETERMINATION

CASE NO. 2010-016

POSTING DATE:  
APRIL 28, 2010

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from the South Carolina Department of Juvenile Justice (DJJ) to cancel award of a contract to JC Wilkie Construction for demolition and recycling of the Hickory Dormitory (the Project) because DJJ inappropriately applied the resident vendor preference in determining the low bidder. [A copy of DJJ’s request is attached as Ex. A]

**CPOC FINDINGS**

On January 28, 2010, DJJ advertised for bids on the project. By the time for opening bids, DJJ received bids from seven contractors including Wilkie. [DJJ’s bid tabulation is attached as Ex. B] Wilkie’s bid was the second low bid. However, Wilkie claimed the South Carolina Vendor Preference in its bid. [Ex. C] It appears only one other bidder claimed a preference. After crediting Wilkie with a South Carolina Vendor Preference, DJJ determined Wilkie to be the low bidder. On March 10, 2010, DJJ posted a notice of award to Wilkie. Subsequent to award, Corley Construction contacted DJJ to question the application of a resident vendor preference to a construction acquisition.

The resident vendor preference does not apply to “the acquisition of services related to construction.” *SC Code Ann § 11-35-1524(5)*. The definition of construction found in the Consolidated Procurement Code includes demolition of a “public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real

property.” *SC Code Ann § 11-35-310(7)*. This project falls squarely within the definition of construction and it was error to apply the resident vendor preference for purposes of making an award.

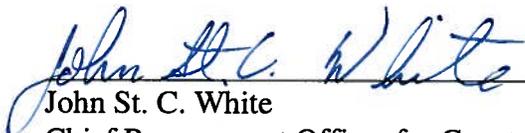
### **DETERMINATION**

#### **CANCELLATION OF AWARD PRIOR TO PERFORMANCE**

The S.C. Code Ann. § 11-35-1520(7) authorizes the cancellation of awards or contracts after award but before performance in accordance with regulations promulgated by the Board. Regulation 19-445.2085(C) allows the cancellation of an award prior to performance only upon written determination of the chief procurement officer 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.

While the authority to cancel awards and solicitations should be exercised carefully and sparingly, cancellation is warranted where, as here, the award was not made to the lowest responsive and responsible bidder due to DJJ erroneously applying the resident vendor preference statute to an acquisition of construction in violation of the explicit language of that statute. Because Wilkie was not the low bidder, it was administrative error for DJJ to offer a contract to Wilkie for construction services. Moreover, this error was discovered before performance by Wilkie.

For the foregoing reasons the South Carolina Department of Juvenile Justice’s Notice of Award to Wilkie is hereby cancelled.

  
\_\_\_\_\_  
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.

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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](http://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).



**South Carolina  
Department of  
Juvenile Justice**

Bill Byars, Director

P.O. Box 21069  
Columbia, SC 29221-1069  
[www.state.sc.us/djj](http://www.state.sc.us/djj)



Mark Sanford  
Governor  
State of South Carolina

EX. A

March 18, 2010

R. Voight Shealy  
Materials Management Officer  
1201 Main Street, Suite 600  
Columbia, SC 29201

Mr. Shealy,

The SC Department of Juvenile Justice (SCDJJ) attempted to purchase demolition services with RFQ DJJ10-2000051164. This solicitation closed on March 4, 2010 at 2:00 P. M. and the award was posted to J. C. Wilkie Construction on March 10, 2010. Soon thereafter the buyer, Dennis Looby, received a call from Corley Construction questioning the application of preference in this award. SCDJJ processed this award by use of the Resident Contractor Preference as it was considered a service. This call prompted us to take another look at our award. After a conversation with State Audit Manager, Jimmy Aycock; I have concluded that SCDJJ incorrectly applied preference to a construction solicitation which is contrary to the guidelines of the SC Consolidated Procurement Code (11-35-1524). This RFQ should have been awarded to the lowest responsive bidder on the total bid price which was CST Environmental Acquisition who bid a total of \$23,800.

SCDJJ asks that you overturn this award prior to performance as allowed under 11-35-1520(7) as this was an administrative error on the part of our Agency. There is some urgency as to the demolition of this building. Please contact me at 896-5643 if there is any information I can provide that will help you in your determination. Attached please find: bid package to include amendments one and two, responses, award statement, stay of award statement, and bid tab sheets.

Sincerely,

Steve Pullie, CPPB  
SCDJJ Procurement Director





State of South Carolina  
Department of Juvenile Justice  
REQUEST FOR QUOTE  
Amendment #2

Solicitation Number RFO10-2000051164  
Date Printed February 22, 2010  
Date Issued February 22, 2010  
Procurement Officer Dennis Looby  
Phone 803-896-5657  
E-Mail Address dlloob@scdjj.net

DESCRIPTION: Demolition & Recycle Project  
USING GOVERNMENTAL UNIT: SC Department of Juvenile Justice

*The Term "Offer" Means Your "Bid" or "Proposal".*

SUBMIT OFFER BY (Opening Date/Time): March 4, 2010 @ 2:00PM See "Deadline For Submission of Offer" provision

NUMBER OF COPIES TO BE SUBMITTED: One (1) original

Offers must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS:

SC Dept. of Juvenile Justice  
Procurement Office  
PO Box 21069  
Columbia, SC 29221

PHYSICAL ADDRESS:

SC Dept. of Juvenile Justice  
Procurement Office  
100 Executive Center Drive  
Santee Bldg., Ste. 210  
Columbia, SC 29210

Submitting "Your Offer" provision.

CONFERENCE TYPE: N/A DATE & TIME:	LOCATION:
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As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions

AWARD & AMENDMENTS	Award will be posted at the Physical Address stated above on 3/11/10. This solicitation and any amendments will be posted at the following web address: <a href="http://www.state.sc.us/djj/purchasing_opportunities.php">http://www.state.sc.us/djj/purchasing_opportunities.php</a> . It is the bidders responsibility to check this website for amendments until the point the bid closes.
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You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal. You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date.

NAME OF OFFEROR <i>J.C. Wilkie Construction, LLC</i> <small>(Full legal name of business submitting the offer)</small>		OFFEROR'S TYPE OF ENTITY: <small>(Check one)</small> <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local) <input checked="" type="checkbox"/> Other <u>LLC</u> <small>(See "Signing Your Offer" provision.)</small>
AUTHORIZED SIGNATURE <i>[Signature]</i> <small>(Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)</small>		
TITLE <i>President</i> <small>(Business title of person signing above)</small>		
PRINTED NAME <i>Jason C. Wilkie</i> <small>(Printed name of person signing above)</small>	DATE SIGNED <i>3/4/2010</i>	

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the offeror above. An offer may be submitted by only one legal entity. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

STATE OF INCORPORATION <i>South Carolina</i> <small>(If offeror is a corporation, identify the state of incorporation.)</small>	
TAXPAYER IDENTIFICATION NO. <i>57-1123508</i> <small>(See "Taxpayer Identification Number" provision)</small>	

**PAGE TWO**

(Return Page Two with Your Offer)

<p><b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)</p> <p>349 Buck Corley Court Lexington, SC 29073</p>	<p><b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)</p> <p>P.O. Box 1350 Lexington, SC 29071</p> <p>803-808-3220      803-808-3242 Area Code Number - Extension      Facsimile</p> <p>Jason@jcwilkiellc.com      E-mail Address</p>
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<p><b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)</p> <p>P.O. Box 1350 Lexington, SC 29071</p> <p><input type="checkbox"/> Payment Address same as Home Office Address <input checked="" type="checkbox"/> Payment Address same as Notice Address (check only one)</p>	<p><b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)</p> <p><input type="checkbox"/> Order Address same as Home Office Address <input checked="" type="checkbox"/> Order Address same as Notice Address (check only one)</p>
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**ACKNOWLEDGMENT OF AMENDMENTS**  
Offerors acknowledge receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date						
1							
2	2/22/2010						

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	____ Calendar Days (%)
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**PREFERENCES - A NOTICE TO VENDORS (SEP. 2009):** On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at [www.procurement.sc.gov/preferences](http://www.procurement.sc.gov/preferences). **ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES. [11-35-1524(E)(4)&(6)]**

**PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE:** Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)).

In-State Office Address same as Home Office Address  
 In-State Office Address same as Notice Address (check only one)



**South Carolina  
Department of  
Juvenile Justice**

Bill Byars, Director

P.O. Box 21069  
Columbia, SC 29221-1069  
[www.state.sc.us/djj](http://www.state.sc.us/djj)



**Mark Sanford  
Governor  
State of South Carolina**

**AMENDMENT NO. 1**

**SOLICITATION RFQ10-2000051164**

**DEMOLITION AND RECYCLE PROJECT**

The referenced solicitation has some pending questions. Do to the fact that some of the answers have not been obtained, the closing date will be amended to read "February 26, 2010 @ 2:00 PM ". Amendment No. 2 will respond to all questions and possibly further amend the closing date.

## NOTICE

### AMENDMENT NO. 2

The RFQ10-2000051164 for the Demolition & Recycle Project has been amended to incorporate the following questions and answers.

1. The opening date has been amended to read:

**March 4, 2010 @ 2:00PM**

2. How thick is the floor 4" or 6"?

**To the best of our knowledge it is a 4" pour.**

3. What is the construction of the ceiling?

**The majority of the ceilings are plaster.**

4. Are there any septic tanks?

**None.**

5. Do we need to haul in dirt to re-grade after removal of the sidewalk?

**No.**

6. Are the exterior walls hollow or filled?

**Hollow.**

7. Is there any lead paint in the building?

**No. the paint has been tested.**

**. INSTRUCTIONS TO QUOTER**

\*Please quote lowest prices, exclusive of State and Federal Tax, on the below listed items, delivered F.O.B. destination.

\*All deliveries shall be F.O.B. destination, freight pre-paid. The term F.O.B. shall mean delivered and unloaded onto the receiving dock of the address listed on page one of the Quotation with all charges for transportation and unloading prepaid by the contractor.

\*S.C. Federal excise tax exemption certificates are available upon request.

\*Quote only as specified. NO SUBSTITUTES.

\*Award will be made to the lowest responsive and responsible bidder for the entire quantity.

\*Where appropriate, provide manufacturer, model number and descriptive literature.

\*Quotation documents must be clearly marked with this "Quotation Number and Closing Date".

\*Prices shall be firm for thirty (30) calendar days from Closing Date.

\*Payment terms will not be a factor in award.

\*The Department of Juvenile Justice reserves the right to reject any and all quotations, and to waive any and all formalities and technicalities, and also reserves the right to reject any quotation where delivery time indicated by vendor will result in delay deemed unsatisfactory to the Department.

\*Note to Vendor: By signing and submitting a quote, you are certifying under penalties of perjury that you have complied with Section 12-54-1020(B) of the S.C. Code of Laws 1976 as amended, relating to payment of taxes.

\*The South Carolina Department of Juvenile Justice is an equal opportunity employer. Contractors doing business with SCDJJ must also practice affirmative action and EEO employment practices.

### BIDDING SCHEDULE /PRICE-BUSINESS PROPOSAL

Agency Req: 2000051164					
Item	Commodity / Service	Quantity	Unit Of Measure	Total Price**	
1	Demolition & Recycle Hickory Dorm	1	LOT	23,500 <sup>00</sup> ✓	
Description: The Department of Juvenile Justice is seeking bids for the demolition and partial recycling of the Hickory Dormitory. The "Total Price" above must be an all inclusive price based on the specifications listed in Appendix A.					

SC Resident Contractor Preference	Are you requesting the SC Resident Contractor Preference? See the SC Procurement Code, Section 11-35-1524(C) (1) (ii) and Section IIB of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a>	Must be Answered Either Yes or No <b>Yes</b>	Must be answered in order to receive Preference Credit	N/A
Resident Subcontractor Preference-2%	Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and Section IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a>	Must be Answered Either Yes or No <b>No</b>	Must complete detailed Subcontractor/Work percentage Schedule in order to receive Preference Credit	See Detailed Schedule at the end of VIII Bid Schedule
Resident Subcontractor Preference-4%	Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and Section IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a>	Must be Answered Either Yes or No <b>No</b>	Must complete detailed Subcontractor/Work percentage Schedule in order to receive Preference Credit	See Detailed Schedule at the end of VIII Bid Schedule

### LISTING OF SUBCONTRACTORS (If any)

(See "PREFERENCES" on page 2)

Name	Address & Phone #	% of Work

**BIDDING SCHEDULE /PRICE-BUSINESS PROPOSAL**

Agency Req: 2000051164					
Item	Commodity / Service	Quantity	Unit Of Measure	Price per Ton	Total for 100 Tons**
Lot 2	Crusher Run	100	TONS	8.00	800.00 ✓
Description. The Department of Juvenile Justice may supply up to 100 tons of concrete debris to be crushed into crusher run by the successful vendor. The quantity may be less than 100 tons, but the evaluated price will be based on the total of 100 tons. See specifications in Appendix A.					

SC Resident Contractor Preference	Are you requesting the SC Resident Contractor Preference? See the SC Procurement Code, Section 11-35-1524(C) (1) (ii) and Section IIB of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a>	Must be Answered Either Yes or No <i>Yes</i>	Must be answered in order to receive Preference Credit	N/A
Resident Subcontractor Preference-2%	Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and Section IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a>	Must be Answered Either Yes or No <i>No</i>	Must complete detailed Subcontractor/Work percentage Schedule in order to receive Preference Credit	See Detailed Schedule at the end of VIII Bid Schedule
Resident Subcontractor Preference-4%	Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and Section IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a>	Must be Answered Either Yes or No <i>No</i>	Must complete detailed Subcontractor/Work percentage Schedule in order to receive Preference Credit	See Detailed Schedule at the end of VIII Bid Schedule

**LISTING OF SUBCONTRACTORS (If any)**

(See "PREFERENCES" on page 2)

Name	Address & Phone #	% of Work

**\*\*EVALUATION WILL BE BASED ON THE ON THE TOTAL OF LOTS 1 & 2**

TOTAL LOT 1 & 2: \$ 24,300.00