



## DETERMINATION

After bid opening but before award, a bidder may withdraw an inadvertently erroneous bid upon a written determination by the appropriate chief procurement officer (CPO) or head of the purchasing agency if the project is within the agency's procurement certification, that under the facts withdrawal is appropriate. SC Code Ann § 11-35-1520(7); SC Regulation 19-445.2085(A).

Section 11-35-1520(7) states in part that:

“After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids ... must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency..”

In accordance with Section 11-35-1520(7), the board adopted Regulation 19-445.2085. Regulation 19-445.2085(A) states that:

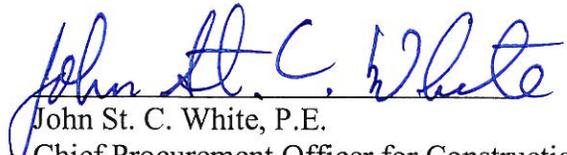
“A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the procurement officer. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss. All decisions to permit the correction or withdrawal of bids shall be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency, or the designee of either.”

FBI mistakenly keyed into its bid calculation sheet the wrong price for the tensile fabric structure. Moreover, FBI's mistake will cause it substantial loss.

In a bid mistake case, the United States District Court for the District of South Carolina held that “A contract may be rescinded for unilateral mistake... when the mistake is accompanied by circumstances which would make it a great wrong to enforce the agreement and the nonmistaken party may be returned to the *status quo ante*.” National Fire Insurance Company of Hartford v. Brown & Martin, 726 F. Supp 1036, 1039 (D.S.C. 1989), affirmed 907 F.2d 1139 (4<sup>th</sup> Cir. 1990). While the Court's holding was based on common law, not statutory and regulatory law, the Court relied on the fact that the contractor would suffer a substantial loss if it was not allowed to withdraw its bid after award but before performance. The Court in Brown & Martin also held that

under such circumstances, the contractor could withdraw its bid without forfeiting its bid bond. In this case, CJA has not detrimentally changed its position in reliance on FBI's bid. On the other hand, to require FBI to honor its mistaken bid will cause FBI substantial loss. Under the circumstances, it is appropriate to allow FBI to withdraw its bid without forfeiting its bid bond.

For the foregoing reasons, the CPOC hereby determines that it is appropriate to allow FBI to withdraw its bid as inadvertently erroneous without forfeiting its bid bond.

  
John St. C. White, P.E.  
Chief Procurement Officer for Construction

14 Jan 2010  
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).

**GENERAL CONTRACTORS**

01/11/10

John St. C. White, PE  
State Engineer and Chief Procurement Officer for Construction  
Office of State Engineer  
1201 Main St., Suite 600  
Columbia, SC 29201

Dear Mr. White,

FBI Construction is requesting permission to withdraw their bid in accordance with 11-35-1520 (7) and 19-445.2085 for N20-9607-DC CJA Village Construction submitted December 23, 2009 because of an inadvertent error preparing the bid that will cause substantial loss to our company if awarded the contract. The resulting error of \$635,582.00 represents slightly less than 6% of the amount bid by FBI, an amount that can not be absorbed by the company without risk to the financial health of this business.

While preparing the bid, the value of the line item Tension Building, \$1,573,912.00, was mistakenly keyed with the value of a trade unrelated to the Tension building, \$938,330.00. This error, discovered immediately after the bid opening, was reported immediately to the Architect. Copies of the quote from the Tension Building supplier and a copy of the pertinent estimate sheet are provided showing the relevant information.

Additionally, FBI Construction is requesting that the Criminal Justice Academy return the Bid Bond submitted with this bid in accordance with 11-35-3030(d).

If you have any questions, please do not hesitate to call me at 1-843-665-0408.

Sincerely,

A handwritten signature in black ink that reads 'Robert E. Adams'.

Robert E. Adams  
President

P.O. Box 4507  
Florence, SC 29502  
Ph. 843-665-0408  
Fax 843-665-7715

[www.fbiconstruction.com](http://www.fbiconstruction.com)

P.O. Box 3675  
Myrtle Beach, SC 29578  
Ph. 843-294-3242  
Fax 843-294-3241

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

AFFIDAVIT OF MISTAKE IN BID

Robert E. Adams, personally appears before me, the undersigned officer duly authorized by the laws of South Carolina to administer oaths, and now on the 13<sup>th</sup> day January, in the year 2010 at 3:30 pm of said day, being by me first duly sworn on his oath, deposes and says:

1. Affiant is the President of FBi Construction Inc. (FBi), duly organized under the laws of the State of South Carolina.
2. On the December 23, 2009, FBi submitted a bid on South Carolina Project No. N20-9607-DC.
3. Said bid was inadvertently erroneous and the mistake in bid is an error that will cause FBi substantial loss.
4. Said mistake was not one of judgment but one of fact in that in bid preparation, FBi used a quote supplied to it by another supplier in place of a quote supplied by Sprung Instant Structures of Salt Lake City, Utah.
5. Attached as Exhibit A is FBi's original bid work sheet used in the actual preparation of FBi's bid.
6. Attached as Exhibit B is a true and accurate copy of the Sprung Instant Structures quote FBi should have used in preparing its bid.
7. The copy of the quote that was mistakenly keyed in FBi's bid was discarded over the Christmas holidays, along with all other bid proposals that were not low on bid day.
8. A review of these documents along with the specifications will show the nature of FBi's mistake.

Further the deponent saith not.

*Robert E. Adams*  
(Signature of Affiant)

Robert E. Adams  
(Printed name of Affiant)

Sworn to and subscribed before me  
On this 13<sup>th</sup> day of Jan. 2010  
Personally known  or Produced identification [ ]  
Type of identification produced \_\_\_\_\_

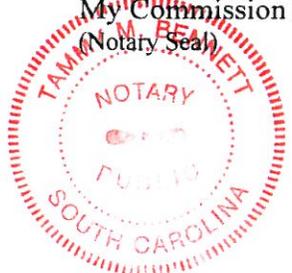
*Tammy M. Bennett*  
(Signature Notary Public)

Tammy M. Bennett  
(Printed name of Notary Public) Notary Public

Florence County, SC

My Commission expires 3/24, 2019

(Notary Seal)



**EXHIBIT A**

110 louvers & vents	1	LS	9550		9550	0	0	9550
180 toilet & bath access	1	LS	15050	1100	16050	1100	0	17150
200 canvas awning		LS			0	0	0	0
200 Operable Partition	1	LS			0	0	0	0
<b>DIV. 11 EQUIPMENT</b>								
C20 gymnasium equipment	1	LS		27579	0	0	27579	27579
022 automotive equipment		LS			0	0	0	0
060 projection screens	1	LS	7553		7553	0	0	7553
070 kitchen equipment	1	LS		360030	0	0	360030	360030
110 appliances		LS			0	0	0	0
<b>DIV. 12 FURNISHINGS</b>								
020 sun shade system	1	LS	28000		28000	0	0	28000
050 lockers	1	LS			0	0	0	0
070 seating		LS			0	0	0	0
080 special furnishings cubicle track		LS			0	0	0	0
<b>DIV. 13 SPECIAL CONSTRUCTION</b>								
020 Precast Buildg	1	LS		1100000	0	0	1100000	1100000
020 Tension Buildg	1	LS		938330	0	0	938330	938330
017 elevators	1	LS		59489	0	0	59489	59489
180 hoist,monorails & cranes		LS			0	0	0	0
230 fire protection system	1	LS		143810	0	0	143810	143810
<b>DIV. 14 PLUMBING</b>								
tap fees	1	LS		3616000	0	0	3616000	3616000
<b>DIV. 15 HVAC</b>								
above	1	LS			0	0	0	0
<b>DIV. 16 ELECTRICAL</b>								
Transient Voltage Suppression System	1	LS		1368000	0	0	1368000	1368000
Fire Alarm System	1				0	0	0	0
SALES TAX	1	LS	7.00%		43663	0	0	43663

Exhibit A

**EXHIBIT B**



Exhibit B

innovation | versatility | reliability

December 9, 2009

RE: State Project # N20-9607-DC-A  
South Carolina Criminal Justice Academy  
Phase 1

Dear Sir/Madam,

We are pleased to submit the following quotation for three Sprung Structures to be located at your site in Columbia, South Carolina. Sprung is the inventor of the stressed membrane structure which has been patented Worldwide. With over 117 years of experience, Sprung offers an innovative, cost effective building alternative which dramatically accelerates construction time lines while providing complete flexibility for the future.

**STRUCTURE  
DESCRIPTIONS:**

**STRUCTURE #1 - Dining Hall:** 60 feet wide by 150 feet long, measured by maximum width by maximum length, including the following accessories:

- 1 - complimentary graphic logo at entrance
- 1 - insulated double personnel door(s) c/w hood, high traffic panic, closers & top lite (6'0"x7'0")
- 1 - insulated single personnel door(s) c/w hood, high traffic panic & closer (3'0"x7'0")
- 2 - double glass door(s) c/w hood, high traffic panic & closers (6'0"x7'0"), low E, argon filled, double pane, thermally broken frames
- 2 - exhaust fan framed opening(s) -insulated c/w curb and flashings
- 2 - framed opening(s) for insulated structure - size 4' 0" wide x 4' 0" high and smaller
- 3 - penthouse louver framed opening(s) insulated c/w curb & flashings maximum load 200 LBS
- 6 - penetration kit(s) for insulated structures (medium) 3" to 6"
- 44 - interior suspension eyenut(s) maximum load 75 LBS
  - conduit holes as per diagram provided by Sprung
  - engineered stamped drawings
  - fiberglass insulation to the skylight (8 inch) c/w white interior membrane
  - perimeter aluminum flat bar
  - Tedlar coated exterior membrane with translucent skylight

**STRUCTURE #2 - Classroom Facility,** 70 feet wide by 157 feet long, measured by maximum width by maximum length, including the following accessories:

- 1 - complimentary graphic logo at entrance
- 1 - insulated single personnel door(s) XL c/w hood, high traffic panic & closer (4'0"x7'0")
- 2 - penthouse louver framed opening(s) insulated c/w curb & flashings maximum load 200 LBS
- 4 - double glass door(s) c/w hood, high traffic panic & closers (6'0"x7'0"), low E, argon filled, double pane, thermally broken frames
- 6 - penetration kit(s) for insulated structures (medium) 3" to 6"
- 52 - interior suspension eyenut(s) maximum load 75 LBS
  - conduit holes as per diagram provided by Sprung
  - engineered stamped drawings
  - fiberglass insulation to the skylight (8 inch) c/w interior membrane

SPRUNG INSTANT STRUCTURES, INC.

1355 Terrell Mill Road Bldg 1472 #200 Marietta Georgia 30067 Tel: (770) 933.1950 Fax: (770) 933.1966 Toll Free: 1 800 528.9899 www.sprung.com

Exhibit B

- perimeter aluminum flat bar
- Tedlar coated exterior membrane with translucent skylight

**STRUCTURE #3 - Gymnasium:** 90 feet wide by 177 feet long, measured by maximum width by maximum length, including the following accessories:

- 1 - complimentary graphic logo at entrance
- 1 - penthouse louver framed opening(s) insulated c/w curb & flashing maximum load 200 LBS
- 3 - framed opening(s) for insulated structure - size 4' 0" wide x 4' 0" high and smaller
- 4 - double glass door(s) c/w hood, high traffic panic & closers (6'0"x7'0"), low E, argon filled, double pane, thermally broken frames
- 6 - penetration kit(s) for insulated structures (medium) 3" to 6"
- 64 - interior suspension eye nut(s) maximum load 75 LBS
  - conduit holes as per diagram provided by Sprung
  - engineered stamped drawings
  - fiberglass insulation to the skylight (8 inch) c/w white interior membrane
  - perimeter aluminum flat bar
  - Tedlar coated exterior membrane with translucent skylight

**PURCHASE PRICE:**

Structures and accessories as above:

PURCHASE:

Total Purchase Price, for all three structures, F.O.B. Salt Lake City, Utah; Sales and/or use taxes extra: \$1,323,777.00  
(One Million, three hundred twenty-three thousand, seven hundred and seventy-seven dollars.)

92665  
+7% + Del

Erection 130,000.00

\$1,453,777.00

\$1,373,912

TERMS, O.A.C.:

50% with order; balance upon delivery of the structure.

DELIVERY:

Normally from inventory. At your request we can arrange, on your behalf, for delivery of these structure by commercial carrier to your site in Columbia, South Carolina at a fixed cost of \$27,470.00, sales and/or use taxes extra.

INTERIOR HANGING DETAILS:

Sprung Instant Structures offers a large selection of brackets and hangers which can be utilized for the hanging of lighting, HVAC and any other items that may need to be suspended from the interior of the structure. The type and size in each case will depend on weight and proposed position. Please contact your Sprung representative for diagrams and further details.

ERECTION:

We will supply two Technical Consultants on site to provide information about structure assembly and erection and will supply hand tools for your use, at no charge. The Technical Consultants are not authorized to perform any other services. Customer is responsible for supervision of and safety compliance in structure location, assembly and erection.

Recommended equipment and manpower:

# Exhibit B

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South Carolina Criminal Justice Academy  
December 9, 2009  
60' x 150', 70' x 157' & 90' x 177'

- a) Scaffolding and manlifts.
- b) Electrical power to site.
- c) 20 workmen for approximately 40, 8 hour working days.
- d) Two supervisors with construction experience.

**CRANE:**

We request that you supply a crane, with operator, for approximately 30 hours to assist in raising the free span aluminum beams during the erection sequence.

**HAND TOOLS:**

Although specialized hand tools are supplied for your use at no charge, you are responsible for the tools while they are at your site and until picked up by Sprung following completion of the erection of the structure.

**TECHNICAL**

**CONSULTANT:**

Although the Technical Consultants are supplied, their travel, accommodation and meals will be charged to you at a fixed cost of **\$28,580.00**, sales and/or use taxes extra.

**ANCHORAGE:**

Concrete Footing. Base reactions will be provided when required.

**PERMITS,  
LICENSES AND  
TAXES:**

It will be your responsibility to obtain all permits and licenses and pay all applicable taxes. This structure is designed to meet 100 mph, Exposure C, 3 second gust as per ASCE-7-2005 and IBC-2006.

*This quotation is valid for 60 days.*

*Thank you for the opportunity to submit this quotation. To demonstrate our confidence in the quality and longevity of the Sprung Structure, our product comes with a 30 year pro-rata guarantee on the aluminum substructure and a 20 year guarantee on the architectural membrane, all in accordance with the attached Guarantee Certificate No: F-0100. We look forward to being of service to you.*

*Yours very truly,*

**SPRUNG INSTANT STRUCTURES, INC.**

*Nathan Addesa  
Sales Manager*



Bid Tabulation Form

McCreary/Snow Architects, PA



Project: CJA Village Construction - PHASE 1 & Phase 2  
 Location: 5400 Broad River Road, Columbia, SC 29212  
 Owner: SC Criminal Justice Academy  
 State Project No.: N20-9607-DC

MSA Project No.: 280813  
 Bid Date: December 23, 2009  
 Bid Time: 2:00pm

Bidder	H.G. Reynolds Company, Inc.	Sheico, Inc.	Southside Constructors, Inc.	Thompson Turner Construction	Tyler Construction Group, Inc.
5% Bid Bond: SE-333	Yes	Yes	Yes	Yes	Yes
Addenda Acknowledged	1 - 2 - 3	1 - 2 - 3	1 - 2 - 3	1 - 2 - 3	1 - 2 - 3
GC License No.:	G10731	G10737	103534	G104408	G113603
Base Bid No. 1:	\$12,195,300	\$11,800,000	\$12,289,000	\$12,999,000	\$13,294,970
SE-330 Attachment A	Yes	Yes	Yes	Yes	Yes

Unit Price No. 1 Mass Rock Excavation Per Cubic Yard	Add \$75	Add \$70	Add \$65	Add \$70	Add \$110
Unit Price No. 2 French Rock Excavation Per Cubic Yard	Add \$105	Add \$135	Add \$110	Deduct \$55	Deduct \$55
Unit Price No. 3 Top Soil Per Cubic Yard	Add \$15	Deduct \$126	Add \$22	Deduct \$90	Deduct \$80
		Deduct \$12		Deduct \$8	Deduct \$15

Sub-Contractor Listing:

License No.:	Coogler Construction	Taylor Brothers	Taylor Grading	Coogler	Coogler Construction
Mechanical (HVAC)	W.B. Guimarin M1923	W.B. Guimarin M1923	W.B. Guimarin M1923	G88568 Tried Mechanical M2377	W.B. Guimarin M1923
Plumbing	Hill Plumbing M1409	Hill Plumbing M1409	Hill Plumbing M1409	Hill Plumbing M51434	Hill Plumbing M1409
Electrical	Burkett Systems M3385	Burris Electrical M3536	Burris Electrical M3536	Burris Electrical M3536	Burris M3536
Precast Concrete	Metromont	Metromont	Atlantic Precast	ASC	Atlanta Struct. Conc.
License No.:		G87904			

This document is a record of bids received for this project.

Read by: Delias C. Clerk / 1/14/10  
 Date: 1/14/10  
 Witnessed by: Delias C. Clerk / 1/14/10  
 Date: 1/14/10



## GENERAL CONTRACTORS

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December 23, 2009

Dear Delisa,

FBI Construction respectfully requests to withdraw our bid, dated December 23, 2009, on the Criminal Justice Academy. After calling in our bid, we discovered a data entry error. An incorrect dollar amount was keyed in on the line item for the Sprung Building, which resulted in a \$635,582 mathematical error. We regret any inconvenience this may have caused and thank you for your understanding.

If you have any questions, please contact me directly at (843) 665-0408.

Kindest regards,

A handwritten signature in blue ink that reads 'Mike Tyler'.

Mike Tyler  
Estimator

MT/sn