

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE CHIEF PROCUREMENT )  
OFFICER FOR CONSTRUCTION )

IN THE MATTER OF: BID PROTEST )  
EAST ENERGY FACILITY BOILERS )  
STATE PROJECT H27-9871-JA )  
B&D MARINE AND INDUSTRIAL )  
BOILERS, INC. )

DECISION

POSTING DATE: AUGUST 2, 2001

vs. )  
UNIVERSITY OF SOUTH CAROLINA )

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from B&D Marine and Industrial Boilers, Inc. (B&D) under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code (Code), for an administrative review on East Energy Facility Boilers (Project) for the University of South Carolina (USC). Pursuant to §11-35-4210(3) of the Code, the CPOC evaluated the issues for potential resolution by mutual agreement and determined that mediation was appropriate. This decision is issued to affirm the results of that mediation.

#### **NATURE OF THE PROTEST**

B&D protests the bid specifications for the Project, alleging that the boiler specification is a sole source specification without meeting the requirements of Board Regulation 19-445.2105 and limits competition in violation of §11-35-1510, §11-35-2730 and §11-35-2720 of the Code and Board Regulation 19-445.2140. More specifically, B&D asserts that the boilers specified may be manufactured by several manufacturers, the allowed times for delivery and installation is so short that only one manufacturer can meet the requirements.

#### **FINDINGS OF FACT**

1. On June 28, 2001 USC advertised for construction bids for the Project in *South Carolina Business Opportunities (SCBO)*. The Bid Form contained in the solicitation documents allowed 120 days for installation of Boiler No. 1 and 150 days for the installation of Boiler No. 2.

2. On July 13, 2001 B&D filed a protest with the Materials Management Officer. The protest was transferred to the CPOC, as the solicitation falls under the jurisdiction of the State Engineer.
3. On July 30, 2001 USC submitted information from the three listed boiler manufacturers that current delivery times for boilers of this size and type are 12-15 weeks from the engineer's approval of shop drawings.
4. On July 31, 2001 USC issued Addendum No. 5 to the solicitation documents establishing a new bid date and allowing 365 days for installation of all three boilers.

### **CPOC FINDINGS**

B&D's protest is founded on the alleged inability of more than one manufacturer to meet the delivery requirements of the specification. USC submitted persuasive documentation that each of the listed manufacturers could supply the specified boilers in 12-15 weeks. USC voluntarily chose to allow 365 days for delivery and installation of the boilers instead of the original time of 120 to 150 days. The CPOC finds that, without passing on the merits of B&D's protest, USC has granted effective relief. The CPOC finds that B&D has no further grounds for protest on this issue and the protest is dismissed.

### **DECISION**

It is the decision of the Chief Procurement Officer for Construction that the protest of B&D Marine and Industrial Boilers, Inc. is dismissed and that USC may proceed with this procurement, consistent with its programmatic needs.



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Michael M. Thomas  
Chief Procurement Officer  
for Construction

August 2, 2001  
Date

### **STATEMENT OF THE RIGHT TO APPEAL**

The South Carolina Procurement Code, under Section 11-35-4230, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review shall be directed to the appropriate chief procurement officer who shall forward the request to the Panel or to the Procurement Review Panel and shall be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.