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EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

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DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Written Determination

Matter of: Cancellation of Award to Johnson Controls, Inc.

Case No.: 2018-131

Posting Date: January 12, 2018

Contracting Entity: Clemson University

Solicitation No.: 94641830

Description: West Energy Plant Chiller

This matter is before the Chief Procurement Officer for Information Technology (CPO) pursuant to a request from Clemson University (CU) [Ex. 1] under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), and Regulation 19-445.2085(C) to cancel an award to Johnson Controls, Inc. (JC) for a water chiller due to an administrative error in determining the lowest responsive and responsible bidder discovered after award but prior to performance.

BASIS FOR THE REQUEST

CU issued Invitation For Bids number 94641830 on November 2, 2017 for the West Energy Plant Chiller project. Bids were received on December 4, 2017 and an Intent to Award to Johnson Controls was posted on December 12, 2017 [Exhibit 2] Trane Carolinas protested the award on December 19, 2017 alleging that the chiller Johnson Controls offered in its bid was not responsive to the solicitation. While reviewing the protest, CU discovered some issues with JC's bid and JC requested to withdraw its bid. [Exhibit 3]

CU requested cancellation of the award prior to performance in accordance with Regulation 19-445.2085(C)

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

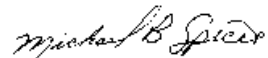
(7) Administrative error of the purchasing agency discovered prior to performance, or

(8) For other reasons, cancellation is clearly in the best interest of the State.

DETERMINATION

For the reasons stated above, the award to Johnson Controls, Inc. is cancelled under Regulation 19-445.2085(C). CU is directed to proceed in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Exhibit 1



Mr. Spicer,

An Intent-to-Award was issued as a result of Clemson University's Sealed Bid #94641830 for the West Energy Plant Chiller project.

The intent to award was issued to Johnson Controls, Inc. on December 12, 2017, with an effective date of December 22, 2017, 4:30 pm based on the fact that they were the lowest responsive and responsible bidder in the sealed bid event. During the protest period, a protest was received from Trane and the Intent to Award was suspended on December 21, 2017.

**Procurement and
Business Services**

Clemson University
ASB 108 Perimeter Road
Clemson SC
29634-5385

P 864-656-2390
F 864-656-2394

While working with Johnson Controls, Inc. to investigate the protest, Johnson Controls, Inc. discovered some issues with the information submitted in their original proposal. Johnson Controls requested permission to submit an updated proposal. This request was denied by Clemson University and the updated proposal was not accepted. After realizing the updated proposal could not be accepted, Johnson Controls, Inc. advised us that they wish to withdraw their bid as their original proposal would result in potential performance penalties as described in the scope of work.

Since the current intent to award has been suspended, performance has not yet begun with Johnson Controls, Inc. In accordance with Section 11-35-1520 (7) and Regulation 19-445.2085 (C), I am requesting approval to rescind the Intent-to-Award to Johnson Controls, Inc. prior to performance and re-award to the next lowest responsive and responsible bidder. Based on the email from Johnson Controls, Inc., we feel cancellation and re-award is clearly in the best interest of the State.

We will be glad to provide any additional information upon request.

A handwritten signature in black ink, appearing to read "Sam Young", written over a horizontal line.

Sam Young
Scientific & Laboratory Procurement Manager
Procurement and Business Services

Exhibit 2



Intent to Award

Posting Date: 12/12/2017

This is a statement of intent to award a contract and becomes the official statement of award effective 4:30 P.M. EST, 12/22/2017 unless otherwise suspended or canceled. Vendors are cautioned not to begin work on the contract or incur any costs associated with the contract prior to the effective date of the contract. Clemson University assumes no liability for the expenses incurred by vendors prior to the effective date of the contract.

Procurement and Business Services

Clemson University
ASB 185 Parklander Road
Clemson SC
29634-6386

P 864-696-2360
F 864-696-2364

Award inquiries should be addressed to the Contracting Officer at scd@clemson.edu. Bidder's right to protest as listed in section 11-35-4210(1)(b) in the South Carolina Consolidated Procurement Code applies to this award. "Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract."

Protest to be filed with:
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Facsimile: 803-737-0639
E-mail: protest@mco@mms.state.sc.us

Solicitation #: 94641830
Issue Date: 11/02/2017
Closing Date: 12/04/2017
Description: West Energy Plant Chiller

Awarded To:	Johnson Controls, Inc. PO Box 2012, Milwaukee, WI 53201
Estimated Contract Amount:	\$398,000.00 (Chiller #1 w/ 5 year service agreement) \$398,000.00 (Optional Chiller #2 w/ 5 year service agreement)
Evaluated Amount:	\$3,111,290.09 (Total Present Value Chiller #1)

Initial Contract Period: 12/27/2017 thru 12/26/2018
Maximum Contract Period: 12/27/2017 thru 12/26/2022

A handwritten signature in black ink, appearing to read "Michael J. Nebesky".

Michael J. Nebesky
Director, Procurement & Business Services

Exhibit 3

From: Allison A Knox
To: Sam Young
Cc: Wayne L Vafiadis
Subject: RE: Solicitation 94641830 Protest Intent to Award
Date: Thursday, January 4, 2018 1:52:34 PM
Attachments: Invoice007.png
Invoice008.png

Sam,

JCI can't accept the terms as listed below due to the associate potential penalties. If Clemson would consider our offer to cure we are certain that the best Total present value and chiller would be provided by JCI and would not change the bid results.

We appreciate the opportunity to review and apologize for any inconvenience this may have caused.

Regards,
Allison

Allison Knox
Account Executive
(864) 234-3812
Johnson Controls
4301 River Mountain Road
Greenville, SC 29615
Cell: 864-420-0568
Fax: 864-676-1174
Email: allison.knox@jci.com
URL: <http://www.johnsoncontrols.com>

From: Sam Young Jr [mailto:scy@clermson.edu]
Sent: Thursday, January 04, 2018 12:55 PM
To: Allison A Knox <Allison.A.Knox@jci.com>
Cc: Wayne L Vafiadis <Wayne.Vafiadis@jci.com>
Subject: RE: Solicitation 94641830 Protest Intent to Award

Allison:

See my questions/comments below..

Regards,

Sam Young [CLEMSON UNIVERSITY](http://www.clemson.edu)
Procurement Manager - Scientific & Laboratory
Procurement and Business Services
108 Penimeter Road, Clemson, SC 29634
864-656-2830 Office
[Procurement and Business Services website](http://www.clemson.edu/procurement)
[Current Bid Opportunities](http://www.clemson.edu/procurement)

From: Allison A Knox [mailto:Allison.A.Knox@jci.com]
Sent: Thursday, January 4, 2018 10:00 AM
To: Sam Young Jr <scy@clermson.edu>
Cc: Wayne L Vafiadis <Wayne.Vafiadis@jci.com>
Subject: RE: Solicitation 94641830 Protest Intent to Award

Sam,

There were some inconsistencies in the Bid documents:

1. Bid instructions specifically state that a hard copy was required to be turned in, JCI was the only one that was compliant. **Can you point where specifically this was mentioned in the bid instruction? Vendor tab data**

The bid shall be awarded to the vendor demonstrating the lowest 20 year life cycle cost as calculated in the Chiller Evaluation Sheet. The initial chiller cost and discounted 20 year electric cost are added together. The electric cost assumes a 2% average rate of electrical power increase and a 5% discount rate.	
Vendor Instructions	
1) The vendor shall provide all information requested (gray boxes) on the Chiller & Vendor Data Sheet.	
2) The vendor shall provide all information requested (gray boxes) on the Chiller Evaluation Sheet. The information shall be generated by an ARI certified program with all machine components remaining constant for each condition.	
3) The vendor shall submit both a printed copy of the Chiller & Vendor Data Sheet as well as the Chiller Evaluation Sheet and shall upload final IES Excel file and provide electronic copies of these worksheets with the information requested as well. Failure to provide a value in each gray box could result in your bid being considered Non-Responsive.	
4) The low bidder will be determined by the lowest Total Present Value calculated in row 10.	

2. The excerpt from the RFP specifically says the life cycle values need to be in accordance with AHRI standard and there is no reference to zero tolerance in the scope of work section. JCI provide our Life cycle cost performance based on AHRI standards. See section c of Scope of work: **Submitted chiller performance is subject to zero-tolerance factory performance testing per the specifications.**

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.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 111.1 of the 2016 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...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 financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by 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); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.