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## Protest Decision

**Matter of:** JF Contractors LLC

**File No.:** 2026-014

**Posting Date:** July 7, 2026

**Contracting Entity:** South Carolina Department of Agriculture

**Project No.:** P16-9526-CB

**Description:** Pee Dee State Farmers Market Upgrades & Improvements

### DIGEST

Protest of South Carolina Department of Agriculture's (the Department) intent to award a contract granted where the awardee failed to acknowledge an addendum and the facts and circumstances surrounding that failure and the addendum are insufficient to meet the requirements of the minor informality rule of the Procurement Code.

### AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer for Construction (CPOC) conducted an administrative review of a protest filed by JF Contractors LLC (JFC) protesting the Department's intention to award a contract to FBi Construction, Inc. (FBi) for upgrades and improvements at the Pee Dee State Farmers Market (the Project). JFC's protest is attached as Exhibit A. The Department's response is attached as Exhibit B. This decision is based on materials in the procurement file and applicable law and precedents.

## **BACKGROUND**

On April 27, 2026, the Department published an advertisement for construction services for the Project. [Exhibit C] The Department subsequently issued two addenda to the solicitation. [Exhibits D and E] On May 18, the project architect emailed the second addendum to all pre-bid meeting attendees and plan holders.<sup>1</sup> [Exhibit F] Within ten minutes, FBI acknowledged receipt of the addendum. [Id.]

Parts of Addendum 2 are essentially restatements of requirements appearing on the drawings that were included in the original solicitation. Addendum 2 also added approved equivalent equipment to equipment specified in the original solicitation. Addendum 2 also added some new information such as missing dimensions on pavement markings, a requirement to match the existing “epoxy floor where cabinetry is shifted.” Finally, Addendum 2 added two minor components of work, a 3’-6” x 4’-6” loft access door in the Red Barn breezeway and an additional row of five acoustical ceiling panels in the breezeway. The addition of the loft access door and the dimensions on ADA pavement markings was anticipated in Addendum 1, which stated, “Note: Several drawing sheets will be updated for Addendum 2 with details for the access panel to the Loft area from the Red Barn Breezeway and to address the missing ADA detail dimensions on Civil Drawing sheet C3.1.”<sup>2</sup>

By the deadline for receipt of bids, the Department received two bids, one from JFC and one from FBI. [Exhibit G] FBI submitted a bid price of \$804,423, which was \$126,937 lower than JFC’s bid. However, FBI failed to acknowledge Addendum 2 on its bid form.<sup>3</sup> [Id. and Exhibit H] That same day, March 26, the Department reviewed the requirements of Section 11-35-1520(13) for addressing minor informalities and determined the omission of the acknowledgement was a minor informality that could be cured.<sup>4</sup> Accordingly, the Department contacted FBI to obtain confirmation that it had received the addenda. [Exhibit B] FBI responded to the Department’s request with an email

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<sup>1</sup> FBI provided the CPO with this email exchange in response to the protest.

<sup>2</sup> Apparently, the access panel was discussed at the pre-bid conference on May 5, which explains this wording in Addendum 1.

<sup>3</sup> The bid tabulation, Exhibit D, indicates that FBI failed to acknowledge Addendum 1 as well as 2. However, FBI’s bid, Exhibit E, shows that FBI in fact acknowledged Addendum 1.

<sup>4</sup> The Department was apparently unaware that FBI had emailed the Project architect eight days before bid opening telling her that FBI had received Addendum 2. The Department was not copied on that email and does not reference it in its response to this protest.

acknowledging receipt of Addendum 2. [Exhibit I] On May 28, the Department posted a notice of intent to award a contract for the Project to FBi. On June 10, after timely filing a notice of intent to protest, JFC protested.

## DISCUSSION

JFC protests that FBi failed to acknowledge the addenda on its bid form and that under the terms of the solicitation it was error for the Department to award the contract to FBi. JFC points out that Section 3.4.4 of the Instructions to Bidders states that “each Bidder shall ascertain that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.” JFC argues that this was a mandatory requirement that FBi’s bid failed to comply with and, therefore, the Department should not have considered FBi’s bid. Furthermore, JFC states:

This second addendum was imperative to the ability to effectively price and plan this project. FBi's failure to acknowledge calls in to question their ability to complete this project as stated in the full project documents.

By making these arguments, JFC is asserting that FBi’s bid was not responsive to the material requirements of the solicitation. Under the Procurement Code, the State may only award a contract to a responsive bidder. SC Code Ann. §11-35-1520(10). A responsive bidder is one that “has submitted a bid or proposal which conforms in all **material** aspects to the invitation for bids or request for proposals.” SC Code Ann. §11-35-1410(9) [emphasis supplied].

Not every mandatory requirement in a solicitation is material. *Appeal by PS Energy*, Panel Case No. 2002-9. The Procurement Code gives guidance on when failure to comply with requirements of a solicitation is immaterial stating:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

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(d) **failure of a bidder to acknowledge receipt of an amendment** to a solicitation, **but only if:**

(i) **the bid received indicates** in some way that **the bidder received the amendment**, such as where the amendment added another item to the solicitation and the bidder submitted a bid, on it, if the bidder states under oath that it received the amendment before bidding and that the bidder will stand by its bid price;<sup>5</sup> **or**

(ii) the amendment has **no effect on price** or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;<sup>6</sup>

S.C. Code Ann. §11-35-1520(13) [emphasis supplied]

The first ground for considering failure to acknowledge an amendment as immaterial consists of two requirements, both of which must be met. The first requirement is the existence of evidence in the bid that the bidder in fact received the amendment before bidding. This requirement is intended to prevent bidders from fabricating facts post bid opening and to prevent them from having “‘two bites at the apple’ by contending, after seeing the competing bids, that their bids conformed to the solicitation (or did not conform), depending on the interpretation that is most beneficial to them.” CIBINIC & NASH, FORMATION OF GOVERNMENT CONTRACTS 538 (3d ed. 1998). This provision achieves this by requiring the evidence to be present on the face of the bid. While, in this case there is clear evidence predating the date of the bid that FBI in fact received Addendum 2, this evidence is not on the face of FBI’s bid. The “only if” language in Section 11-35-1520(13)(d) constrains the CPOC from considering evidence outside the bid no matter how advantageous that may be to the State. Since FBI’s bid does not meet the first requirement of the first ground, the State cannot treat FBI’s failure to acknowledge Addendum 2 on its bid as a minor informality under this ground.

The second ground for considering failure to acknowledge an amendment as immaterial is if the amendment had “no effect on price.” This language is different from the language for other types of minor informalities which allows for “merely a trivial or negligible effect on total bid price.” Therefore, per Section 11-35-1520(13)(d)(ii), if Addendum 2 had *any* effect on price no matter how trivial, FBI’s failure to acknowledge the addendum is material.

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<sup>5</sup> This provision was first implemented via Regulation in 1982 before email became a standard means of communication. This provisions current form is virtually unchanged from 1982.

<sup>6</sup> An addendum to a solicitation is the same as an amendment to a solicitation.

Among other things that may have a trivial effect on price, Amendment 2 added a loft access door and five acoustical ceiling panels to the Red Barn. These items necessarily have some effect on price, albeit trivial.<sup>7</sup> The effect on price is especially trivial when one considers the fact that the difference between the two bids is over \$100,000. Nonetheless, the law requires that the amendment must have no effect on price.

Under the circumstances, the CPOC understands the Department's efforts and desire to treat FBI's failure to acknowledge Addendum 2 as an immaterial deviation from the requirements of the solicitation. Indeed, under Federal law, the Department would be right<sup>8</sup>. However, no matter how much the CPOC may agree with the Department, the CPOC's hands are tied. He is constrained by the language of Section 11-35-1520(13)(d).

## DECISION

Based on the foregoing, the CPOC grants JFC's protest and remands this matter to the Department to proceed in accordance with the Procurement Code.

  
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John St. C. White  
Chief Procurement Officer for Construction

Columbia, South Carolina

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<sup>7</sup> The additional material costs for the acoustical tiles may be a wash. For example, if the original design required 14 cartons of eight panels and the five additional panels did not require an additional carton, there is no added material cost for the five panels. Similarly, there may or may not have been additional material cost for the ceiling hangers, edge moldings, and suspension-system runners. Nonetheless, there was some level of additional labor associated with the installation of the material. On the other hand, the loft access door necessarily includes the material cost for the door and labor to install. Interestingly, the Architect's pre-bid estimate includes an estimate for "Partition Wall behind Mezzanine Railing + Access Panel" anticipating some cost associated with providing and installing an access panel.

<sup>8</sup> Section 11-35-1520(13) is similar to the Federal Acquisition Regulations (FAR) provision regarding minor informalities or irregularities in bids. FAR 14.405. However, regarding acknowledgement of amendments they differ. Under Section 11-35-1520(13)(d)(ii), South Carolina treats a failure to acknowledge an amendment as immaterial only if it has *no* effect on price, whereas the FAR treats such a failure as immaterial if it has "no effect or merely a negligible effect on price." Thus, under the FAR, the result in this matter would be different.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised July 2025)*

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.

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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>

FILING FEE: Pursuant to Proviso 111.1 of the 2025 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 J&Hs, 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 366, Columbia, SC 29201**

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Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

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Business Phone

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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:  
\_\_\_\_\_  
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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: \_\_\_\_\_

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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.**