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## Protest Decision

**Matter of:** Palmetto Construction & Services of Upstate, LLC

**File No.:** 2027-001

**Posting Date:** July 31, 2026

**Contracting Entity:** South Carolina Department of Natural Resources

**Project No.:** P24-6080-PD

**Description:** Pickens County Range Improvements

### DIGEST

Protest of South Carolina Department of Natural Resources' (the Department) intent to award a contract on grounds that the awardee's bid for Bid Alternate 2 was non-responsive denied where the Department did not award Alternate 2 and the awardee's bid was unequivocally responsive to the scope of work which was awarded.

### 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 Palmetto Construction & Services of Upstate, LLC (PCSU) protesting the Department's intention to award a contract to CMC Building, Inc. (CMC) for improvements at the Pickens County Shooting Range (the Project). PCSU's protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

## **BACKGROUND**

On June 3, 2026, the Department published an advertisement for construction services for the Project. [Exhibit B] The solicitation documents provided for a base bid and two alternates. [Exhibits C and D]<sup>1</sup> The general description for the base bid work was:

Reconstruction [sic] of the rifle range, pistol range, skeet shooting field, improvements to the existing asphalt access road and parking areas; construction of a stormwater detention pond and installation of a water service line and septic tank system, and construction of office/class building. See drawing for locations and details.

Alternate #1 provided for the removal and replacement of the existing asphalt driveway. Alternate #2 provided for a sporting clays shed and sidewalk from classroom to the sporting clays shed. On the bid form, bidders were asked to identify the electrical subcontractor they would use for the electrical work of Alternate # 2

By the deadline for receipt of bids, the Department received four bids, including one from PCSU and one from CMC. [Exhibit E] CMC submitted the low bid price for the base bid as well as for any possible combination of the base bid plus alternates. [Exhibit F] However, CMC failed to list its intended subcontractor for the electrical work of Addendum 2 on its bid form. [Id.]

On July 9, the Department posted notice of its intent to award a contract to CMC for only the base bid work. On July 23, after timely filing a notice of intent to protest, PCSU protested arguing that CMC was nonresponsive to a material requirement of the solicitation.

## **DISCUSSION**

Under the Procurement Code, the State may only award a contract to a responsive bidder. SC Code Ann. §11-35-3020(c)(i). 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).

The Instructions to bidders set forth a distinction between the base bid and alternates stating:

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<sup>1</sup> Due to the volume of the Project Manual (Exhibit C) and the Drawings (Exhibit D), the CPOC has only included relevant portions in the Exhibits.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents, to which Work may be added or deleted by sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is *an amount* stated in the Bid *to be added to or deducted from, or that does not change, the Base Bid if the corresponding change in the Work*, as described in the Bidding Documents, *is accepted*.

[italics and highlighting supplied]

The Instructions further state:

**§ 5.3 Acceptance of Bid (Award)**

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest responsive and responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed available funds. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's best interests.

§ 5.3.2 *The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the lowest responsive and responsible Bidder on the basis of the sum of the Base Bid and Alternates accepted.*

[italics supplied]

Per this language, there was no guarantee the state would award any alternates. Moreover, the Instructions made clear that award would be made to the lowest responsive and responsible bidder for the combination of base bid and alternates accepted. In this case, neither alternate was accepted. Therefore, per these instructions, the State was to make the award to the lowest responsive and responsible bidder for the base bid work only. In other words, since the Department only awarded the base bid work, it only needed to consider whether CMC was responsive to the requirements for the base bid work. *Matter of: The Povolny Group*, B-407570 (Comp. Gen.), 2013 CPD P 26, 2013 WL 121162 ("Where a solicitation includes a base bid and alternatives, bids must be evaluated on the basis of work actually awarded. *Niemela Constr. Co.*, B-237616, Feb. 7, 1990, 90-1 CPD P 161 at 2; *The Haskins Co.*, B-227898, Sept. 21, 1987, 87-2 CPD P 285 at 2; *recon. denied*, *Cree Constr. Co., Inc.*, B-227898.3, Oct. 26, 1987, 87-2 CPD P 394 at 2. As a result, we have held that the failure of a bidder to provide a price for all alternates constitutes no basis, sufficient in itself, to require rejection of the bid. *Casson Constr. Co., Inc.*, B-198746, Oct. 24, 1980, 80-2 CPD P 318 at 5. Failure of a bidder to offer a price for all alternates will constitute a basis for rejection only

if evaluation and award includes the items not bid, and this is true even where the IFB states that failure to bid on every item will cause rejection of the bid as nonresponsive. *The Haskins Co., supra.*”).

PCSU does not argue and the record does not reflect that CMC’s bid in any way took exception to or otherwise deviated from the material requirements for the base-bid work. CMC provided a bid price for the base bid work with no exceptions to the terms and conditions or plans and specifications. CMC fully complied with the subcontractor listing requirements for the base bid work. CMC provided a valid bid bond in the required amount with its bid. Therefore, since the Department only awarded the base bid work it was proper for the Department to award the work to CMC, the lowest responsive and responsible bidder for the base bid work.

PCSU argues that ignoring a mandatory subcontractor listing requirement for an alternate prejudices other bidders. To the contrary, other bidders are not prejudiced. CMC in fact disadvantaged itself since CMC thereby eliminated itself from competition with the other bidders insofar as the alternate work is concerned. *Casson Constr. Co., Inc.*, B–198746, Oct. 24, 1980, 80–2 CPD P 318, 1980 WL 15771. In other words, had the Department chose to award the base bid plus Alternate # 2, CMC would not be the lowest responsive and responsible bidder. To the advantage of the other bidders, CMC eliminated itself from consideration for any award that included Alternate #2.

PCSU asserts that the bid form included the following instruction regarding subcontractor listing:

Bidder’s failure to identify an entity (subcontractor or itself) to perform the work of a subcontractor listed in Column A will render the Bid non-responsive.

PCSU argues this requirement cannot be waived and since CMC did not list a subcontractor listed in Column A for Alternate # 2, CMC is nonresponsive even in the case where the state awards only the base bid. However, failure of a bidder to list a subcontractor for all alternates will constitute a basis for rejection only if evaluation and award includes the alternates for which subcontractors were not listed and this is true even when the invitation for bids

contains instructions stating that failure to list a subcontractor for an alternate will be cause for rejection of the bid. See *The Haskins Co.*, *supra*.

PCSU next argues that awarding a contract to Contract will defeat the purpose of subcontractor listing requirements of Section 11-35-3020(b)(i). As noted by PCSU, the purpose of the subcontractor listing requirements is to prevent prime contractors from shopping subcontractor bids after bid opening. PCSU suggests that failure to declare CMC's bid nonresponsive will allow CMC to shop bids. However, CMC listed subcontractors for all the required subcontractor categories identified on the bid form for the base bid work. The Department only awarded CMC the base bid work and must use the subcontractors it listed without substitution. The purpose of the law is fulfilled: CMC is prohibited from shopping the bids of the subcontractors it listed for the base bid work. While PCSU cites *Ray Bell Construction Co. v. School District of Greenville County*, 331 S.C. 19, 501 S.E.2d 725 (1998) as authority for its position, in that case the bidder listed alternate subcontractors for several categories of work for which it was required to list subcontractors:

*ROOFING*: "Piper or Pickens"

*STRUCTURAL STEEL*: "G.C. [general contractor, i.e. Kahn] and or McAbee or Falcon"

*MASONRY*: "GC and/or Pettit and/or Brickmaster and/or Marion and/or Byers and/or New Carolina and/or Cherokee and/or Goucher"

*TERRAZZO/HARD TILE*: "Campbell Tile or Capital/Adams"

*HVAC CONTROLS*: "Barber Coleman or ACTS."

This approach violated the purpose of the law since it would allow the bidder to shop bids among subcontractors listed in the alternative. However, in this case, CMC only listed one subcontractor for each category of work and is effectively precluded from shopping bids.

§ 7. LISTING OF PROPOSED SUBCONTRACTORS PURSUANT TO SECTION 3020(b)(i), CHAPTER 35, TITLE 11 OF THE SOUTH CAROLINA CODE OF LAWS, AS AMENDED  
(See Instructions on page BF-2A)

Bidder shall use the below-listed Subcontractors in the performance of the Subcontractor Classification work listed:

| (A)<br>LICENSE<br>CLASSIFICATION or<br>SUBCLASSIFICATION<br>ABBREVIATION per<br>SCLLR<br>(Completed by Agency) | (B)<br>NAME of SUBCONTRACTOR and/or<br>PRIME CONTRACTOR<br>(Completed by Bidder) | (C)<br>SUBCONTRACTOR'S and/or<br>PRIME CONTRACTOR'S<br>SC LICENSE NUMBER<br>(Completed by Bidder) |
|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| BASE BID                                                                                                       |                                                                                  |                                                                                                   |
| AC                                                                                                             | MCB                                                                              | 105323                                                                                            |
| EL                                                                                                             | TIMCO                                                                            | 118799                                                                                            |
| PB                                                                                                             | DYNAMIC PIPE & POWER                                                             | 117867                                                                                            |
|                                                                                                                |                                                                                  |                                                                                                   |

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**DECISION**

Based on the foregoing, the CPOC denies PCSU's protest.

A handwritten signature in blue ink, reading "John St. C. White", is positioned above a horizontal line.

John St. C. White  
Chief Procurement Officer for Construction

Columbia, South Carolina

## 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

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

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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.**