

On November 30, 2007, Clemson posted a Notice of Intent to Award a contract to Yeargin. On December 7, 2007, Brantley sent a letter of protest via facsimile to Mr. John McEntire at Clemson with copies to Clemson's project manager, Paul Borick, and to the upstate office of the Office of the State Engineer (OSE). OSE only has one employee in the upstate office, Mr. Jim McVey. Mr. McVey was out of the office on December 7, 2007, and did not see Brantley's letter until the morning of December 10, 2007. That same morning, Mr. McVey sent a copy of the letter via facsimile to the CPOC who received the letter, in hand, by 8:30 that morning.

DISCUSSION

PROTESTANT'S POSITION

Brantley protest the Intent to Award to Yeargin on the grounds that Yeargin's bid is incomplete and non-responsive. [A copy of Yeargin's bid is attached as Exhibit "C"] Brantley specifically protest the listing of G-M for the HVAC work alleging that G-M's bid to Yeargin did not include controls work.

RESPONDENT'S POSITION

Yeargin maintains that G-M's bid to it did include a price for controls work and that it included that price in its bid to Clemson. Yeargin further maintains that its bid is complete and responsive. [Yeargin's response is attached as Exhibit "D"].

CPOC FINDINGS

Brantley argues that Yeargin's bid, by listing G-M for the HVAC was incomplete and non-responsive because (as alleged by Brantley) G-M did not bid the controls portion of the HCAC work. Brantley does not allege that Yeargin's bid is in any other way defective. SC Code § 11-35-3020(2)(b)(ii) states that a bidder's, "Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive." Thus, under the statute, as long as the bidder lists a subcontractor in each space for listing a subcontractor, his bid is responsive. Protest of Brantley Construction Co., Inc., Case No. 1999-3.

Yeargin listed G-M in the spaces on the bid form for listing the HVAC subcontractor. Therefore, Yeargin's bid was responsive under § 11-35-3020(2)(b)(ii).

The bid form did not require Yeargin to list its controls subcontractor or sub-subcontractor and whether G-M's bid to Yeargin included controls is not relevant to a determination of Yeargin's responsiveness. Responsiveness of a bid is always determined on the face of that bid, never on the bid of a subcontractor listed on the bid.

DECISION

It is the decision of the Chief Procurement Officer for Construction that the bid submitted by Yeargin is responsive.

For the foregoing reasons Protest denied.


John St. C. White
Chief Procurement Officer
For Construction

17 Dec 2007
Date

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

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: www.procurementlaw.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 66.1 of the 2007 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." 2007 S.C. Act No. 117, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal 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 Kardora Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



**Brantley
Construction
Company, LLC**

EXH. A

December 7, 2007

Clemson University
191 Old Greenville Highway
Gentry Hall
Clemson, SC 29634

Attn. John McEntire,

Re: Rhodes Hall Annex Rebid
State Project H12-9865-JM

Dear Mr. McEntire,

Please accept this letter as protest to the award of the Rhodes Hall Annex Rebid to Yeargin Potter Shackelford. Yeargin Potter Shackelford did not have a complete bid per the plans and specifications. They did not have the controls in their bid. GM Mechanical, the mechanical subcontractor Yeargin Potter Shackelford listed in his bid form did not have a complete bid per the plans and specifications. They did not include the controls. Therefore, Yeargin Potter Shackelford's bid is incomplete, non-responsive and should not be allowed to substitute the mechanical subcontractor based on case number 2008-003B "Bid Withdrawal and Cancellation of Award" for the Institute of Packaging Design & Graphics. The project should be awarded to the next responsive bidder, Brantley Construction Company.

Sincerely,
BRANTLEY CONSTRUCTION COMPANY, LLC

Sidney A. Brantley,
President

cc. Paul Borick, Clemson University, Project Manager
Michael Keeshen, Michael Keeshen & Associates
Upstate OSE Office

8300 Dorchester Road • Charleston, S.C. 29418 • (843) 552-0150 • Fax (843) 552-9072
brantley@brantleyconstruction.com

Brantley Construction Company, LLC is a trade name of Brantley Construction Services, LLC

Clemson University, Rhodes Hall Annex -- REBID

MKA

101 East Washington Street, Suite 320
Greenville, SC 29601
864.233.2804

LORD · AECK · SARGENT

1201 Peachtree Street NE, Suite 300
Atlanta, GA 30361-3500
404.253.1400

BID TABULATION SHEET

Project: Rhodes Hall Annex
Project Location: Clemson University, Clemson, South Carolina
Owner: Clemson University, Clemson, South Carolina
State Project No: H12-9865-JM
Bid Date: November 29, 2007
Bid Time: 3:00 PM

LAS Project No.: 25097-00
MKA Project No.: 06021

General Contractor	Non Respon.	Bid Security	Pwr. Atty.	Addenda Rec'd	Base Bid Amount	Listed Sub-Contractors	
Brantley Construction	X		X	No. 1	\$8,555,000.00	Plumbing	Waldrop
				No. 2		HVAC	Waldrop
				No. 3		Electrical	Emory
DPR Construction	X		X	No. 1	\$9,575,000.00	Fire Protection	Gwinnett
				No. 2		Plumbing	Waldrop
				No. 3		HVAC	Waldrop
Manhattan Construction	X		X	No. 1	\$8,660,000.00	Electrical	HR Allen
				No. 2		Fire Protection	Gwinnett
				No. 3		Plumbing	Waldrop
Melloul-Blamey	X		X	No. 1	\$9,314,000.00	HVAC	Waldrop
				No. 2		Electrical	Emory
				No. 3		Fire Protection	Gwinnett
Tyler Construction	X		X	No. 1	\$9,049,000.00	Plumbing	GM
				No. 2		HVAC	GM
				No. 3		Electrical	Clements
Yeargin Potter Shackelford	X		X	No. 1	\$8,294,000.00	Fire Protection	Gwinnett
				No. 2		Plumbing	Waldrop
				No. 3		HVAC	GM

Bids Read By: Paul Borick
Certified By: Michael Keeshen
Witnessed By: Marx Favors

Date: 29-Nov-07
Date: 29-Nov-07
Date: 29-Nov-07



SE-330 Bid Form

Bids shall be submitted only on SE-330

BID SUBMITTED BY: Yeargin Potter Shackelford Construction, Inc.
(Bidder's Name)

BID SUBMITTED TO: Clemson University
(Agency Name)

FOR PROJECT: H12 - 9865 - JM - Rhodes Hall Annex Construction -- REBID
(Number) (Name)

OFFER

1. In response to the Form SE-310, *Invitation for Construction Bids*, and in compliance with the *Instructions to Bidders* for the above-named Project, the undersigned **BIDDER** proposes and agrees, if this Bid is accepted, to enter into a Contract with the **AGENCY** in the form included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2. Pursuant to Section 11-32-3030(1) of the SC Code of Laws, as amended, **BIDDER** has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

Bid Bond with Power of Attorney Electronic Bid Bond Cashier's Check

(**BIDDER** check one)

3. **BIDDER**, by submitting this Bid, affirms that it has carefully examined the Bidding Documents and the other related data identified in the Bidding Documents, has visited the actual location of the Work, has satisfied itself as to all conditions and understands that, in signing this Bid Form, it waives all rights to plead any misunderstanding regarding same and agrees to be bound by the provisions of said Bidding Documents and all statements made therein.

4. **BIDDER** acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into its Bid:

ADDENDUM No: 01 - 11/09/07, 02 - 11/12/07, 03 - 11/21/07

5. **BIDDER** accepts all terms and conditions of the *Invitation for Construction Bids*, including, without limitation, those dealing with the disposition of Bid Security. **BIDDER** agrees that this Bid, including all Bid Alternates, if any, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of 60 Days following the Bid Date, or for such longer period of time that **BIDDER** may agree to in writing upon request of the **AGENCY**. **BIDDER** understands that Bid Alternates that are not accepted in an initial award shall remain open for acceptance for the entire period set above and for such longer period as requested by **AGENCY** and agreed to by **BIDDER**.

6. **BIDDER** herewith submits its offer to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

6.1 **BASE BID WORK** (as indicated in the Bidding Documents and generally described as follows):

The project consists of a three-story annex to the existing three-story Rhodes Hall. The annex has approximately 28,400 SF, including research laboratories, classrooms, offices, toilets, mechanical room, and electrical rooms. The work for the new facility includes site preparation, landscaping, concrete framing and floors, masonry construction, millwork, doors, frames, hardware, aluminum storefronts and curtain wall systems, casework, elevator, and fire protection.

\$ 294,000.00
(enter BASE BID in figures only)

which sum is hereafter called the **BASE BID**.

SE-330 Bid Form

LISTING OF PROPOSED SUBCONTRACTORS

1. A **SUBCONTRACTOR** is an entity who will perform work or render service to the prime contractor to or about the construction site. Material suppliers, manufacturers and fabricators are not **SUBCONTRACTORS** and are not to be listed.
2. Any **BIDDER** responding to an *Invitation for Construction Bids* shall list in its bid the name of only those **SUBCONTRACTOR(S)** that will perform the work so identified in the *Invitation*.
3. If **BIDDER** determines to use its own employees to perform any portion of the work listed below, and if **BIDDER** is qualified to perform such work under the terms of the Bidding Documents, **BIDDER** shall list itself in the appropriate place in its bid and not subcontract any of that work except with the approval of the Agency for good cause shown.
4. **BIDDER** hereby acknowledges and agrees that any failure by **BIDDER** to list **SUBCONTRACTORS** in accordance with the requirements of the SC Code of Laws shall render the BID non-responsive.
5. A **SUBCONTRACTOR** listed for a **BID ALTERNATE** may be used for all work, including the Base Bid work, if the **BID ALTERNATE** is accepted.
6. **BIDDER** hereby states its commitment to use the below-listed **SUBCONTRACTORS** in the performance of the Subcontractor Speciality work listed:

SUBCONTRACTOR SPECIALTY (COMPLETED BY A/E)	SUBCONTRACTOR'S NAME or PRIME BIDDER'S NAME (MUST BE COMPLETED BY BIDDER)	SUBCONTRACTOR'S SC LICENSE NUMBER (FOR INFORMATION)
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BASE BID WORK

Plumbing	Waldrop Mech. Services	M 2077
HVAC	GM Mechanical	M 1907
Electrical	Emory Electric	M 2475
Fire Protection	Quinnett Sprinklers	

ALTERNATE BID WORK

BID ALTERNATE NO. 1

BID ALTERNATE NO. 2

BID ALTERNATE NO. 3

BID ALTERNATE NO. 4

SE-330 Bid Form

6.2 ALTERNATE BID WORK (as indicated in the Bidding Documents and generally described as follows):

(BIDDER shall STRIKE THROUGH "ADD" or "DEDUCT" so as to clearly indicate the price adjustment offered for each Alternate)

ALTERNATE NONE ADD/DEDUCT _____
 NO. 1: _____ (to or from BASE BID)

ALTERNATE NONE ADD/DEDUCT _____
 NO. 2: _____ (to or from BASE BID)

ALTERNATE NONE ADD/DEDUCT _____
 NO. 3: _____ (to or from BASE BID)

ALTERNATE NONE ADD/DEDUCT _____
 NO. 4: _____ (to or from BASE BID)

6.3 UNIT PRICE WORK

BIDDER offers for the Agency's consideration and use the following UNIT PRICES. The UNIT PRICES offered by BIDDER indicate the amount to be added to or deducted from the Contract Sum for each item-unit combination. UNIT PRICES include all costs to the Agency, including those for materials, labor, equipment, tools of trades and labor, fees, taxes, insurance, bonding, overhead, profit, etc. The Agency reserves the right to include or not to include any of the following UNIT PRICES in the Contract and to negotiate the UNIT PRICES with BIDDER.

No.	ITEM	Base Bid Qty	Unit of Measure	ADD	DEDUCT
1	Rock Removal (trenching)	per 1	Cubic Yd	175.00	
2	Rock Removal (excavation)	per 1	Cubic Yd	105.00	
3	Undercutting (unsuitable material)	per 1	Cubic Yd	26.00	
4	Off-site Fill Material (engineering fill material)	per 1	Cubic Yd	18.00	
5	On-site Fill Material	per 1	Cubic Yd	9.00	
6	Off-site Fill Material (satisfactory soil)	per 1	Cubic Yd	8.00	

SE-330 Bid Form

TIME OF CONTRACT PERFORMANCE

BIDDER hereby agrees to complete the construction work in accordance with the following schedule:

1. The **DATE OF COMMENCEMENT** shall be established in Form SE-390, *Notice to Proceed*. The **BIDDER** shall not incur any expense chargeable to this Project until the Contract has been executed by both the Agency and the Contractor, and a Notice to Proceed has been issued.
2. The **DATE OF SUBSTANTIAL COMPLETION**, to be documented on Form SE-550A, *Certificate of Substantial Completion*, shall be (425) **CALENDAR DAYS** from the **DATE OF COMMENCEMENT** set forth in the SE-390, subject to adjustments as provided in the Contract Documents.
3. The **DATE OF FINAL COMPLETION**, to be documented on Form SE-560C, *Certificate of Final Completion*, shall be (30) **CALENDAR DAYS** from the **DATE OF SUBSTANTIAL COMPLETION**, subject to adjustments as provided in the Contract Documents.

LIQUIDATED DAMAGES AND EARLY COMPLETION AWARD

1. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as **Step One Liquidated Damages** the amount of \$1,000.00 for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** exceeds the specified or adjusted Contract time for **SUBSTANTIAL COMPLETION**, as provided in the Contract Documents.
2. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as **Step Two Liquidated Damages** the amount of \$500.00 for each calendar day the actual construction time required to achieve **FINAL COMPLETION** exceeds the specified or adjusted Contract Time for **FINAL COMPLETION**, as provided in the Contract Documents.
3. The undersigned further agrees that in full and complete satisfaction for the best efforts of the undersigned to achieve **SUBSTANTIAL COMPLETION** before the date established above, the Agency shall pay the undersigned an **Early Completion Award** in the amount of N/A for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** is less than the originally specified Contract Time for **SUBSTANTIAL COMPLETION**, as provided in the Contract Documents.

AGREEMENTS

By submitting this Bid, **BIDDER** hereby agrees to the following terms and conditions:

1. An incomplete Bid, or information not requested that is written on or attached to this Bid Form that could be considered a qualification of the Bid, may be cause for rejection of the Bid.
2. The failure of the **BIDDER** to indicate a price for a **BID ALTERNATE** shall render the Bid non-responsive. A **BID ALTERNATE** shall be bid by indicating either a dollar amount or the words "No Change", "Zero", or "0.00". A typed or printed "No Bid", or words of similar meaning, shall render the Bid non-responsive. **BIDDER** must indicate whether the amount of the **BID ALTERNATE** is an "ADD" to or a "DEDUCT" from the amount of the Base Bid. The Bid may be determined non-responsive for failure of the **BIDDER** to indicate the appropriate "ADD" or "DEDUCT" for each **BID ALTERNATE**, unless the adjustment is obvious to the Agency.
3. If any **BID ALTERNATES** should be accepted by the **AGENCY**, they shall be incorporated into the executed Contract. **BID ALTERNATES** may be accepted in any combination or order, at the sole discretion of the **AGENCY**.
4. The **BIDDER** shall list only **SUBCONTRACTORS** (as defined in the Bidding Documents) who are qualified to perform items of work as specified in the Bidding Documents or as required by any material or equipment substitutions approved at the time of bidding. No **BIDDER** whose Bid is accepted shall substitute another entity as **SUBCONTRACTOR** in place of the **SUBCONTRACTOR** listed in the original Bid, except for one or more of the reasons allowed by the SC Code of Laws.
5. The failure of the **BIDDER** to provide the name(s) of listed **SUBCONTRACTORS** in accordance with the SC Code of Laws shall render the Bid non-responsive.
6. Unless otherwise provided in the Bidding Documents, **BIDDER** will provide Performance and Labor and Material Payment Bonds, each in the amount equal to 100% of the Contract Award, as a condition of execution of the Contract. Failure to supply such bonds as required by the Contract Documents shall result in cancellation of the Notice of Intent to Award and forfeiture of the Bid Bond.

SE-330 Bid Form

7. **BIDDER** agrees to provide all information requested by the **AGENCY** to support the **AGENCY'S** evaluation and determination of the **BIDDER'S** responsibility, including completion of Form SE-350, *Questionnaire for Contractors*. The Questionnaire shall be completed fully and returned to the **AGENCY** within SEVEN (7) DAYS from date of receipt by the **BIDDER** by certified mail. The completed Form SE-350 must be received by the Agency no later than the close of business on the seventh day. Failure by **BIDDER** to supply requested information with respect to responsibility may be grounds for a determination of non-responsibility.

8. The **BIDDER** certifies that it will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the SC Code of Laws, and shall comply with the requirements set forth in Title 44, Chapter 107.

9. At any time prior to the issuance of the Notice to Proceed for this Project, this Contract may be canceled for the convenience of the State.

10. Neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to the issuance of the Notice to Proceed.

ELECTRONIC BID BOND

By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the Form SE-335 included in the Bidding Documents.

(Electronic Bid Bond Number)

(Signature and Title)

BIDDER'S TAXPAYER IDENTIFICATION

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 57-0772995_____

OR

SOCIAL SECURITY NUMBER: _____

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

General Contractor _____ Unlimited _____
(Classification) (Subclassification) (Limitations)

GC# 13011 _____
(SC Contractor's License Number)

SIGNATURE

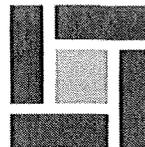
Yeargin Potter Shackelford Construction, Inc. _____
(Legal Name of Person, Firm or Corporation Submitting Bid)

121 Edinburgh Court Greenville, SC 29607 _____
(Mailing Address for the above)

Ron Farley _____ 11/29/07 _____
BY Ron Farley (Signature) (Date)

Senior Vice President _____ (864) 232-1491 _____
(Title) (Phone)

**YEARGIN POTTER
SHACKELFORD**
CONSTRUCTION



121 Edinburgh Court
Greenville, SC 29607
phone (864) 232.1491
fax (864) 242.9054

December 11, 2007

Attn: Jim McVey Jr.
USC – Upstate/OSE
800 University Way
Spartanburg, SC 29303

EXH. D

RE: Rhodes Hall Annex

Dear Mr. McVey:

This letter is in response to Brantley Construction's protest dated 12/07/07 claiming that our bid was non-responsive. Mr. Brantley is incorrect as will be evident from reviewing the attached documents. GM Mechanical's quotation dated 11/29/07 clearly includes the controls as an add to his price. Sheet 12 from our estimate includes the HVAC price of \$1,563,640.00 which consists of GM's base bid plus the controls. Please note that our base bid is carried at the top of the page. The difference between our bid and the number is a round off at the time of the bid. It was never our intention to use a mechanical contractor other than GM as per our proposal.

I trust this information will suffice to disallow Brantley's protest. Please do not hesitate to contact me if you require additional information.

Respectfully Yours:

Ron Farley
Senior Vice President

Cc: Paul Borick – Clemson University
Michael Keeshen – Michael Keeshen & Associates

G-M**MECHANICAL****CORPORATION**

P.O. BOX 5047 Greenville, S.C. 29606

(864) 277-1161

Main Office Fax (864) 277-9647

Estimating Fax (864) 299-0396

November 29, 2007

To Bidding Contractor

Ref: Clemson Rhodes Hall (rebid)
HVAC & Plumbing

Dear Sir

We offer the following price for the above referenced project as it applies to HVAC and Plumbing drawings and division 15000 specifications Plumbing price includes Air Compressor, Vacuum Pumps, Acid Neutralization tank. We acknowledge 3 Addendum

Total price: HVAC \$ 1,198,640.00 - 1,565,640
Total Price: Plumbing \$ 827,000.00

Exclusions:

Cutting and patching Wall roof or floor openings

Painting and power wiring

Rock excavation

Housekeeping Pads

Sewer/ Water 5' beyond building

Acid Waste beyond Neutralization tank

Water purification System Equipment

Controls By Owner, If by GM add \$365,000.00

Sincerely

GM Mechanical

David Chappell -HVAC

James Gillespie- Plumbing

