STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**BEFORE THE CHIEF PROCUREMENT OFFICER FOR CONSTRUCTION**
IN THE MATTER OF: BID PROTEST	**DECISION**
PC CONSTRUCTION OF GREENWOOD, INC. **v.** **UNIVERSITY OF SOUTH CAROLINA UPSTATE**	**CASE NO. 2009-001**
NEW RESIDENCE HALL STATE PROJECT H34-9537-JM	**POSTING DATE: JULY 30, 2008**

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from PC Construction of Greenwood, Inc., under the provisions of section 11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review on the New Residence Hall Bid ("the Project") for University of South Carolina Upstate. PC protests USC Upstate's posting of a Notice of Intent to Award a contract for construction of the project to Hunter Roberts Construction Group, LLC. (A copy of PC's protest is attached as Exhibit "A")

On July 24, 2008, pursuant to S.C. Code Ann. §11-35-4210(4), the CPOC conducted an administrative review by hearing. At the hearing, attorney E. Wade Mullins, III, represented PC, attorney Charles H. McDonald represented Hunter Roberts, and attorney George W. Lampl, III, represented USC Upstate. At the start of the hearing, the parties submitted into evidence Exhibits 1 through 12. During the hearing, the CPOC heard oral arguments and took testimony from all parties. This decision is based on the evidence and testimony presented at the hearing and applicable law.

NATURE OF THE PROTEST

On June 5, 2008, USC Upstate advertised for bids to construct the project. USC Upstate's solicitation required each bidder to list on their bids the subcontractor they would use for the mechanical, electrical, and plumbing work. On July 1, 2008, USC Upstate opened bids for construction of the Project. Hunter Roberts submitted the low bid and PC submitted the second low bid. [Exhibit 2].

Hunter Roberts listed Tri-Meck Mechanical, Inc., on the line in its bid for listing the mechanical subcontractor, Emory Electric for the electrical subcontractor, and Southern Piping for the plumbing subcontractor. On the same day as the bid opening, USC Upstate posted a Notice of Intent to Award a contract to Hunter Roberts. On July 9, 2008, PC submitted its protest of the award to the CPOC. PC protests USC Upstate's Notice of Intent to Award on the grounds that Hunter Robert's listed subcontractor for the mechanical work did not provide a bid or quote to Hunter Roberts for that work prior to the bid opening and that the listed subcontractor had no intention of performing the mechanical work.

Randy Piontek, PC Construction's President, testified in support of PC's contention that Tri-Meck did not bid and did not intend to perform the mechanical work. Mr. Piontek testified that after the bid opening, he contacted Tri-Meck to ask Tri-Meck why it did not submit a bid on the mechanical work to PC. Mr. Piontek stated that Tri-Meck advise him that it did not provide Hunter Roberts with a bid for the mechanical work and did not intend to perform the work.[1]

Hunter Roberts freely admits that Tri-Meck did not bid the mechanical work to it prior to the bid opening. Instead, Tri-Meck only bid the plumbing work. [see Exhibit 8, Tri-Meck's bid to Hunter Roberts]. Hunter Roberts Vice President, Allen Lindsey, testified that in the heat of last minute bid preparation, Hunter Roberts mistook Tri-Meck's plumbing bid to be a bid for the mechanical work. Mr. Lindsey testified that Hunter Roberts made this mistake because Tri-Meck normally performs mechanical work for Hunter Roberts. In support of this contention that it made a mistake, Hunter Roberts submitted a copy of the mechanical subcontractors bid tab that it used to prepare its bid to USC Upstate. The bid tab lists Tri-Meck as a mechanical bidder. [See Exhibit 9] Mr. Lindsey also testified that Hunter Roberts did not become aware of its mistake until it received a copy of PC Construction's protest.

Mr. Lindsey testified that after Hunter Roberts became aware of its mistake, it contacted Tri-Meck to determine if Tri-Meck would be willing to perform the mechanical work. Mr. Lindsey further testified that Tri-Meck had agreed to do so. In support of this contention, Hunter Roberts submitted into evidence a letter from Tri-Meck stating Tri-Meck's willingness to perform the

[1] At the hearing, both parties presented a significant amount of hearsay testimony, all without objection.

work.[2] [See Exhibit 10]. PC reserved the right to object to this letter but dropped any objections it may have had at the end of the hearing.

PROTESTANT'S POSITION

PC protests the award on the grounds that Hunter Roberts' bid is non-responsive for listing a subcontractor that did not bid the work. PC also protests the award on the grounds that Hunter Robert's is not responsible because it does not have the ability to perform the work as bid in that Tri-Meck did not bid and does not intend to perform the mechanical work. In its letter of protest, PC also protested the award on the grounds that Hunter Robert's is not responsible because it made a "material misrepresentation" by intentionally listing a subcontractor it did not intend to use to perform the work. At the hearing, PC dropped this material misrepresentation argument.

RESPONDENT'S POSITION

Hunter Roberts argues that since it listed Tri-Meck for the mechanical work, its bid was responsive. Hunter Roberts further asserts that Tri-Meck intends to perform the Mechanical work, that Hunter Roberts will use Tri-Meck for the mechanical work, and that the procurement officer's responsibility determination is final and conclusive unless "clearly erroneous, arbitrary, capricious, or contrary to law.

DISCUSSION

RESPONSIVENESS

PC, in support of its contention that Hunter Robert's bid was non-responsive relies on the Invitation for Bids, which requires each bidder to properly complete the Bid Form. PC Construction points to the bid form, page BF-3, which contains the following statements:

> "LISTING OF PROPOSED SUBCONTRACTORS
> 1. A Subcontractor is an entity who will perform work or render service to the prime contractor....
> 2. Bidder must list in its bid the name of only those Subcontractors that will perform the work ...
> 4. Bidder's failure to list a Subcontractor for each listed Specialty Subcontractor will

[2] According to Mr. Lindsey, Hunter Roberts and Tri-Meck are still negotiating price. Hunter Roberts expects the final price to be in the $1.5 to $1.6 million range but asserts this will not hurt their bottom line because they had overestimated other work.

render the BID non-responsive. ...

6. Bidder hereby states its commitment to use the below-listed Subcontractors in the performance of the Subcontractor Specialty work listed..."

PC argues that since Tri-Meck did not bid the mechanical work, Hunter Roberts did not list a subcontractor who will perform the work as required by note 2 and could not commit to use Tri-Meck for the mechanical work as required by note 6. PC argues these failures are issues of responsiveness. PC acknowledged that these failures were not apparent on the face of Hunter Roberts' bid but argued that a determination of responsiveness could not be based on the face of the prime contractor's bid alone but required an inquiry into the listed subcontractors' bids as well.[3]

Prior to 1993, the Procurement Review Panel (Panel) issued a number of orders stating that a failure to list subcontractors in the manner required by law rendered a bid unresponsive.[4] In doing so, the Panel relied on S.C. Code Ann. § 11-35-3020(2)(b)(ii) which stated that "failure to list subcontractors in accordance with this section ... shall render the prime contractor's bid unresponsive." The Panel ruled that since the law required certain specialty contractors to meet certain licensing requirements, the listing of an improperly licensed subcontractor rendered a bid unresponsive. These rulings meant that to determine responsiveness, a procurement officer could not rely on the face of the bid but had to conduct an investigation to determine if the listed subcontractors held the appropriate credentials.

In 1993, the General Assembly took action to remedy the requirement to look beyond the face of the bid in determining responsiveness and amended § 11-35-3020(2)(b)(ii) to state, "[f]ailure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive."[5] Thus, under the amended statute, as long as the bidder lists a name in each space for listing a subcontractor, his bid is responsive. *Protest of Brantley Construction Co., Inc., Case No. 1999-3.* Note 4 on page BF-3 of the Bid Form, quoted above reflects this change in the approach to

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[3] PC's attorney stated that to properly make a determination of responsiveness, a procurement officer must determine that each of the listed subcontractors actually provided an offer to do the work for which they were listed to the bidder.

[4] In Re. Protest of ECB Construction Co., Inc., Case No. 1989-7; In Re. Protest of Tricon Associates, Inc., Case No. 1991-11; In Re. Protest of Pizzagalli Construction Company, Case No. 1991-8; In Re. Protest of Delta Industrial Electric Co., Inc., Case No. 1992-8(I).

[5] The General Assembly recently amended Article 9 of the Consolidated Procurement Code and this provision, without change in the language, is now S.C. Code Ann. § 11-35-3020(b)(ii).

determining responsiveness with respect to subcontractor listing.

Based on the 1993 amendments to the Consolidated Procurement Code and the Panels decision in Brantley, the CPOC has taken the position that all a bidder has to do to be responsive with respect to the subcontractor listing requirements of the Procurement Code is to insert a name into each space provided on the bid form for listing subcontractors. Any investigation beyond the face of the bid is an investigation into responsibility. However, PC contends that the South Carolina Supreme Court's ruling in Ray Bell Construction Company, Inc. v. The School District of Greenville County 331 S.C. 19, 501 S.E.2d 725 (1998) requires more when determining responsiveness. Specifically, PC contends the Supreme Court's ruling requires the procurement officer to determine that the listed subcontractors actually provided prices to the bidder before the bid opening.

In Ray Bell, the School District of Greenville County (District) solicited bids for a new school. District required bidders to list on their bids, subcontractors for fifteen separate specialties. For five of those specialties, MB Kahn, the low bidder, listed multiple subcontractors in the alternative.[6] Ray Bell Construction protested arguing that because Kahn's bid listed alternative subcontractors, the bid was non-responsive. MB Kahn argued that such a listing met the requirements of S.C. Code Ann. § 11-35-3020(2)(b)(ii) that a subcontractor be listed in the blank and was responsive. The Court, however, held that section 11-35-3020(2)(b)(ii) had to be construed in a manner consistent with the overall purpose behind subcontractor listing requirements of S.C. Code Ann. § 11-35-3020(2)(b). The Court held that the purpose of this statute was to prevent bid shopping and bid peddling of subcontracts after bid opening. The Court further held that a bid that listed alternative subcontractors was non-responsive because such a bid would allow a bidder after the bid opening to shop bids among its listed subcontractors. Contrary to PC's contention, however, in so holding, the Court looked to the face of Kahn's bid rather than facts beyond the face of the bid stating "Because Khan's **bid form** gave it such an opportunity (that is the opportunity to shop bids), it ran afoul of section 11-35-3020(2)(b)." *Id at 731 (emphasis added).*

In its ruling in Ray Bell, the Court favorably cited the dissent of Judge Cureton in the underlying

[6] For example, for roofing, Kahn listed "Piper or Pickens."

decision of the Court Appeals. PC relies on Judge Cureton's dissent to support its argument that the Supreme Court's ruling requires the procurement officer to look at more than the face of the bid to determine responsiveness. PC maintains that Judge Cureton looked beyond the face of Kahn's bid and focused on whether there were "post-award arrangements" in determining responsiveness. PC argues that because Hunter Roberts made arrangements with Tri-Meck post award, Hunter Robert's bid was non-responsive. The CPOC disagrees. Judge Cureton stated that "Kahn's listing does not meet the statutory standard for responsiveness because the **listing necessarily** requires post-award arrangements... which in turn raises the potentiality of bid shopping and bid peddling." [emphasis added] In other words, one only needed to look at the face of Kahn's bid to determine Kahn's bid required post-award arrangements and permitted bid shopping and bid peddling.

In Ray Bell, the Supreme Court did not change the rule that responsiveness is determined on the face of the bid, rather, the Supreme Court itself relied on the face of Kahn's bid to determine responsiveness. Likewise, the procurement officer determines responsiveness based on the face of the bid. Hunter Robert's listed only one subcontractor for the mechanical work. Such a listing does not necessarily require post-award arrangements. On its face, Hunter Robert's bid required no more in the way of post-award arrangements than did PC's bid or the bid of any other responsive bidder that listed only one subcontractor for the mechanical work. In deed, on its face, Hunter Robert's listing is no different from PC's other than the fact that it listed a different subcontractor.

PC argues that if, in this case or cases like it, the CPOC adheres to the rule that responsiveness is determined on the face of the bid, the CPOC's decision will promote bid shopping, bid peddling, and unethical behavior contrary to the intent of the subcontractor listing provisions of the Procurement Code. The CPOC disagrees.

PC first argues that if, after the bid opening and award, the contractor must negotiate a price with its listed subcontractor, the contractor is engaging in bid shopping. Bid shopping occurs when after bid opening or award, the contractor uses the low bid submitted by one subcontractor to pressure other subcontractors into lowering their bids. *Ray Bell, at 730 (footnote 7)* The pressure that the contractor brings to bear to obtain such concessions is the threat that if the subcontractor does not lower its price, the contractor will award the subcontract to another subcontractor. Here,

however, the Hunter Roberts does not have the option of awarding the mechanical work to another subcontractor and therefore Hunter Roberts cannot shop bids.[7] Hunter Roberts must use Tri-Meck to perform the mechanical work and if Hunter Roberts does not want to lose the contract, it must negotiate a subcontract with Tri-Meck. Rather than Hunter Roberts being in a position of strength putting pressure on Tri-Meck to lower its price or risk loosing the subcontract to another subcontractor, Tri-Meck is in the position of strength. Tri-Meck can pressure Hunter Roberts to meet its price or risk losing the contract.

Secondly, PC argues that if the CPOC does not find Hunter Roberts' bid to be non-responsive, the CPOC will encourage contractors in the future to engage in unethical behavior. PC's theory is that contractors will attempt to obtain the work by submitting artificially low bids that intentionally list subcontractors that did not bid the work. Moreover, PC contends that after bid opening, such a contractor (if he is low) will try to force its listed subcontractors to agree to perform the work at cost or even at a loss and that if the contractor fails to negotiate or force acceptable prices with its listed subcontractors it will simply withdraw its bid with no ramifications. In essence, PC is arguing that contractors will attempt to buy the work at the expense of the listed subcontractors with no risk to themselves of having to perform if they cannot negotiate the desired subcontracts with the listed subcontractors. Contrary to PC's argument, however, the Consolidated Procurement Code provides protections against the hypothetical abuses PC raises without the need to covert an issue that is not an issue of responsiveness to one that is.

The problem with PC's theory is that a bidder is not free to withdraw his bid after bid opening. S.C. Code Ann. § 11-35-1520(7) ("After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it.") Rather, a bidder must make a written request to withdraw, document that the bidder's bid includes a mistake, and that the mistake will clearly cause the bidder a substantial loss. R. 19-445.2085(A). A conscious and intentional decision by a bidder to list on its bid subcontractors that did not bid the work is not a mistake.[8] Such a bidder only has two options, either perform the

[7] The parties did not raise the possibility of subcontractor substitution, acknowledging that based on prior decisions of the Panel, this remedy is not available to Hunter Roberts.

[8] S.C. Code Ann. § 11-35-1520(7) uses the term "inadvertently erroneous bid" to refer to a bid that may be withdrawn for "mistake" under this regulation. The word "inadvertent" means: "1. Not duly attentive, 2. Accidental;

contract as bid (including using all its listed subcontractors without substitution) or default by refusing to enter into a contract.

A low bidder that defaults by refusing to execute a contract stands to lose much. The law requires bidders to submit bid security in the amount of 5% of their bid price with their bids. *S.C. Code Ann. § 11-35-3030(1).* If the low bidder defaults by failing to enter into the contract for the work when tendered, the state agency's first recourse is to recover its losses from the security. [9] If the security is not adequate to cover the losses, the agency may recover the remainder from the contractor. *See, generally*, Philip L. Bruner and Patrick J. O'Conner, Jr., *Bruner & O'Conner on Construction Law* § 2:69, at 173 (West 2002) (outlining bid security damage measures). Moreover, such conduct could be grounds for suspension or debarment. *See S.C. Code Ann. § 11-35-4220.*

RESPONSIBILITY

PC argues that Hunter Roberts was not responsible because at the time of bidding and award, Tri-Meck allegedly did not intend to perform the mechanical work for Hunter Roberts. In other words, PC argues that Hunter Roberts does not possess the necessary personnel resources and expertise to perform the mechanical work and does not have the ability to obtain them. *See S.C. Code Ann. Regs. 19-445.2125(A)(1).*

A determination of responsibility is required by S.C. Code Ann. § 11-35-1810, which states "[r]esponsibility of the bidder or offeror shall be ascertained for each contract let by the State..." A procurement officer's determination of responsibility is final and conclusive unless it is "clearly erroneous, arbitrary, capricious, or contrary to law." *See S.C. Code Ann. § 11-35-2410(A).* The protestant has the burden of proving that the procurement officer's determination is "clearly erroneous, arbitrary, capricious, or contrary to law." *See Brantley.*

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unintentional." *The American Heritage Dictionary, Second College Edition (1985).* An intentional act is not an inadvertent act.

[9] The ramifications to a low bidder who withdraws its bid for reasons other than inadvertent error go well beyond loss of all or part of its bid security. Usually, this security is in the form of a bid bond issued by the bidder's performance and payment bond surety. Such a surety will not look on a default kindly and a default may jeopardize the bidder's bonding capacity, which will in turn jeopardize its ability to obtain work.

PC argues that Hunter Roberts is not responsible because it does not have the ability to perform the work without Tri-Meck and PC further asserts that Tri-Meck does not intend to perform the mechanical work. On the other hand, Hunter Roberts contends Tri-Meck intends to perform the mechanical work and submitted a letter from Tri-Meck to that effect. [See Exhibit 10] Tri-Meck was not present at the hearing to affirm or deny the assertions of either PC or Hunter Roberts and PC presented no other evidence regarding Hunter Roberts' responsibility.

At the time that USC Upstate made its determination of responsibility, Tri-Meck possessed the required contractor's licenses and was fully qualified to perform the mechanical work and PC does not argue otherwise. At the time of its determination, USC Upstate had no reason to believe that Tri-Meck might decline to perform the mechanical work for Hunter Roberts and no reason to enquire. There was no apparent mistake in Hunter Roberts' bid that would put USC Upstate on notice that Tri-Meck did not bid the mechanical work to Hunter Roberts. There was no apparent mistake in Hunter Roberts' bid that would put USC Upstate on notice to enquire about Tri-Mecks intent to perform or not perform the mechanical work. To discover Hunter Roberts' mistake, USC Upstate would have had to either review the documentation that Hunter Roberts used to prepare its bid to USC Upstate or contact each of the listed subcontractors and query them about their bids and there intent. The standards for determination of responsibility do not impose a duty on the procurement officer to search a contractor's bid preparation records for latent mistakes in the contractor's bid nor do they impose a duty to contact each listed subcontractor to confirm their bid and/or their intent.

At the time that Hunter Roberts bid the project, Hunter Roberts provided a bid bond guaranteeing that Hunter Roberts would honor its bid and, if it was determined to be the lowest responsive and responsible bidder, that Hunter Roberts would enter into a contract to perform in accordance with that bid. As a part of its bid, Hunter Roberts promised to use Tri-Meck to perform the mechanical work and the bid bond guaranteed this promise. As discussed above, absent being excused for mistake in bid, Hunter Roberts must either enter into a contract to perform the work to include using Tri-Meck to perform the mechanical work or default on its bid.[10] If Hunter Roberts defaults on its bid, USC Upstate has recourse against Hunter Roberts' bid bond. Therefore, USC Upstate

[10] A condition of the bid bond is that the bidder must provide a performance bond guaranteeing its performance in accordance with the terms and conditions of the contract documents, which includes using the listed subcontractors.

was entitled to rely on this bid bond as an adequate guarantee that Hunter Roberts would use Tri-Meck to perform the mechanical work without further investigation.

Based on the foregoing, the CPOC finds that it was reasonable for USC Upstate to assume that by listing Tri-Meck on its bid, Hunter Roberts had a commitment from Tri-Meck to perform the work. The CPOC also finds that it was reasonable for USC Upstate to rely on Hunter Roberts; bid bond as a guarantee that Hunter Roberts would use Tri-Meck to perform the mechanical work. The CPOC further finds that PC has failed to prove that USC Upstate's responsibility determination was "clearly erroneous, arbitrary, capricious, or contrary to law."

DECISION

It is the decision of the Chief Procurement Officer for Construction that the bid submitted by Hunter Roberts is responsive and that USC Upstate's determination of responsibility was not "clearly erroneous, arbitrary, capricious, or contrary to law."

For the foregoing reasons Protest denied.

John St. C. White
Chief Procurement Officer for Construction

30 July 08
Date

Columbia, South Carolina

STATEMENT OF THE RIGHT TO APPEAL

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 under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(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.

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 2005 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." 2005 S.C. Act No. 115, 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 Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm

EXH. # A

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AUTHOR'S E-MAIL: WMULLINS@bprwm.com

July 9, 2008

RECEIVED

JUL 09 2008

OFFICE OF STATE ENGINEER

Mr. John St. C. White, P.E.
State Engineer and Chief Procurement Officer for Construction
Materials Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: Protest of Notice of Intent to Award USC-Upstate New Residence Hall
Project No.: H34-9537-JM
Our File No.: 7-931-100

Dear Mr. White:

This firm has been retained to represent PC Construction of Greenwood, Inc. ("PC Construction") in connection with the solicitation of the above referenced Project. Pursuant to S.C. Code Ann. §11-35-4210, PC Construction hereby protests the Notice of Intent to Award a construction contract to Hunter Roberts Construction Group, LLC ("Hunter Roberts") that was issued by the University of South Carolina – Upstate ("USC-Upstate") for the USC-Upstate New Residence Hall Project designated as Project No.: H34-9537-JM (the "Project"). The grounds for the protest of the Notice of Intent to Award are set forth below.

The construction contract for the project was required to be awarded by competitive sealed bidding pursuant to S.C. Code Ann. §11-35-1520, as modified by S.C. Code Ann. §11-35-3020. Pursuant to the Instruction to Bidders, the bids were submitted on July 1, 2008, using the prescribed Bid Form (SE-330). Competitive sealed bids were received from a number of bidders, including PC Construction and Hunter Roberts. The Bid Form required that bidders specifically list the specialty contractors for the mechanical, electrical and plumbing scope of work that they are intending to use on the Project. At the bid opening, Hunter Roberts was the apparent low bidder, submitting a bid of $14,248,000.00. Hunter Roberts listed the following specialty subcontractors: Mechanical - Tri/Meck Mechanical; Electrical - Emory Electric; Plumbing - Southern Piping Company. PC Construction submitted the apparent second low bid in the amount of $14,291,000.00. PC Construction's bid form listed the following specialty sub-contractors: Mechanical - Phoenix Mechanical; Electrical - Hayes & Lunsford; Plumbing - Southern Piping Company. A copy of a bid tabulation reflecting the listed subcontractors prepared by PC Construction is attached hereto as **Exhibit "A"**.

Tri/Meck, who Hunter Roberts listed as their mechanical subcontractor, did not provide a bid to Hunter Roberts for the mechanical work. Rather, Tri/Meck only provided a bid for the plumbing work on the Project. A copy of Tri/Meck's bid is attached hereto as **Exhibit "B"**. Subsequent to the bid opening, PC Construction contacted Tri/Meck and confirmed that Tri/Meck did not bid the mechanical work on the Project nor does it intend to perform the mechanical work on the Project. Hunter Roberts' listing of a mechanical subcontractor that did not bid the job and which has no intention of performing the work reflects a misrepresentation of a material term of its bid in violation of S.C. Code Ann. §11-35-30 and is in violation of the bid listing requirements of S.C. Code Ann. §11-35-3020(2)(b)(ii). The failure to properly and in good faith complete this list in accordance with the Invitation for Bids reflects a non-responsive bid. Furthermore, Hunter Roberts failure to properly and in good faith complete the list as provided in the Invitation for Bids must result in a determination of non-responsibility. As such, Hunter Roberts bid must be rejected and a Notice of Intent to Award issued to PC Construction.

The Invitation for Bids required each bidder to properly complete the Bid Form in submitting its bid. The Bid Form contained the following requirements regarding the listing of subcontractors:

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…
2. Bidder **must** list in its bid the name of only those subcontractors that will perform the work so identified in the Invitation…
4. Bidders failure to list a Subcontractor for each listed Specialty Subcontractor will render the Bid nonresponsive…
6. Bidder hereby states its commitment to use the below listed Subcontractors in the performance of the Subcontractors specialty work listed…

The above language set forth in the Bid Form reflects requirements that the bidder must comply with as set forth in the Invitation for Bids. S.C. Code Ann. §11-35-3020(2)(c) states that notice of an intended award of a contract to the lowest responsive and responsible bidder **whose bid meets the requirements set forth in the Invitation for Bids** must be given by posting a notice. Furthermore, S.C. Code Ann. §11-35-3020(2)(b)(ii), states that failure to complete the subcontractor list provided in the Invitation for Bids renders the bid unresponsive. There is no question that Hunter Roberts failed to comply with the requirements of the Bid Form which were required by the Invitation for Bids. Hunter Roberts listed a subcontractor who will not perform the work, in violation of requirement No. 2 above. Furthermore, Hunter Roberts did not comply with requirement No. 6 above in that it knew that it could not commit because it knew that the subcontractor was not going to perform the work.

PC Construction is aware of the recent CPO decisions concerning subcontractor bid listing. However, PC Construction believes that S.C. Code Ann. §11-35-3020(2)(c) must be read together with S.C. Code Ann. §11-35-3020(2)(b)(ii). S.C. Code Ann. §11-35-3020(2)(c) necessarily requires a determination of whether a bidder is responsive and responsible through consideration as to whether the bidder has met the requirements set forth in the Invitation for Bids, which would include those requirements set forth above. Hunter Roberts' bid is nonresponsive because it listed a mechanical subcontractor that did not bid the job and has no

intention of performing the work. To suggest that a determination of responsiveness is limited to whether a blank is filled in on the Bid Form completely undermines the purpose of the bid listing requirement and renders it meaningless.

While completion of the subcontractor bid list may avoid the standard notion of bid shopping among other subcontractors, allowing a bidder to complete the bid list with subcontractors that have not bid the job allows for a limited type of bid shopping or bid manipulation. The State's procurement policy relies on a competitive bid system in which the lowest responsible responsive bidder prevails and is awarded the bid for construction. The lowest bid submitted by a general contractor also reflects the lowest bid submitted to them by specialty contractors. In today's construction market, general contractors subcontract almost all work to specialty contractors. The subcontractors' bid price therefore ultimately determines the cost of the construction project. Obviously, it is the State's goal to obtain the lowest price from a responsive bidder. If a general contractor is allowed to submit a bid for the Project with no bid from a subcontractor and receives a Notice of Intent to Award, it provides that general contractor with the opportunity to go back to the subcontractor it listed and obtain a price which could be lower than the price the general contractor factored in for that particular trade in its bid to the owner. In other words, the general contractor would be able to pocket a larger profit and that savings would not be passed on to the State. Although PC Construction believes that Tri/Meck in this case has no intention of performing this work, the potential for Hunter Roberts to pocket a larger profit exists. Interpreting the statute to require a determination of responsiveness based on compliance with the entire bid listing requirements in the Bid Form would eliminate the potential evil of this bid manipulation and result in a process that is fair to the owners, general contractors and subcontractors alike. Hunter Roberts has failed to comply with the requirements in the Invitation for Bids because it cannot commit to using Tri/Meck as its mechanical subcontractor; and therefore, its bid should be deemed nonresponsive.

To the extent Hunter Roberts' bid is found to be responsive, the CPO can only conclude that Hunter Roberts is a nonresponsible bidder because its bid contained a material misrepresentation with regards to its commitment to use Tri/Meck as the mechanical subcontractor on the Project. The Bid Form required Hunter Roberts to commit or certify that it intended to use Tri/Meck its mechanical subcontractor. Hunter Roberts submitted a bid with knowledge that Tri/Meck did not bid the Project and had no intention of performing the work. The most recent CPO decisions concerning the propriety of bid listing was limited to a review of whether the bid should be deemed responsive. However, the propriety of a bidders compliance with the bid listing requirements also has a bearing on the responsibility of the bidder. In Protest of Brantley Construction Co., Inc. Case No. 1999-3, the Panel examined the propriety of a bidder's completion of its bid listing requirements and whether the subcontractor work could or would be performed as indicated:

> Because the State is investigating the bidder's ability to perform, the State is no longer determining responsiveness of the bid, but deciding the responsibility of the bidder. S.C. Code Ann. §11-35-1410(6) defines a responsible bidder as "a person who has the capability and all respects to perform fully the contracted requirements and the integrity and reliability which will assure good faith performance which may be substantiated by a past performance." The bidder's ability to perform the contract requirements is at the center of the State's determination of responsibility.

Hunter Roberts does not have the capability to perform the work as indicated in its bid in that Tri/Meck did not bid the work and has no intention of performing the mechanical work on the Project. Therefore, its misrepresentation necessarily requires the CPO to determine that Hunter Roberts is a nonresponsible bidder.

PC Construction also maintains that Hunter Roberts bid violated the obligations of good faith set forth in S.C. Code Ann. §11-35-30, which provides that:

> Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good Faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

Hunter Roberts was clearly aware that Tri/Meck did not bid the mechanical work and had no intention of performing the work. Tri/Meck has indicated to PC Construction that it does not intend to perform the work. The misrepresentations contained in Hunter Roberts' Bid Form violate the obligations of good faith and therefore the bid must be rejected.

For the reasons set forth above, Hunter Roberts misrepresentation and failure to comply with the requirements of the Invitation for Bid requires a determination that Hunter Roberts bid is nonresponsive. Furthermore, the misrepresentations set forth in the bid require a determination that Hunter Roberts be determined a nonresponsive bidder and that the bid be rejected for Hunter Roberts breach of its obligations of good faith. As such, a Notice of Intent to Award should be issued to PC Construction. To the extent the CPO determines that it is not appropriate to reject Hunter Roberts' bid, PC Construction requests that the CPO direct that Hunter Roberts be prohibited from any effort to substitute its proposed mechanical subcontractor. Hunter Roberts cannot satisfy any of the conditions set forth in S.C. Code Ann. §11-35-3020(2)(b)(iii) for substitution of subcontractors. Clearly, allowing a substitution under these circumstances would present an opportunity to intentionally violate the intent of the law and shop bids without any ramifications. It is important to note in this consideration that had Hunter Roberts used any of the other bids submitted by mechanical subcontractors it would not have been the low bid on this Project.

For the reasons set forth above, Hunter Roberts' bid must be rejected and a Notice of Intent to Award issued to PC Construction. Should you have any questions concerning the basis of the protest of the positions asserted by PC Construction, please do not hesitate to contact me.

With my best regards,

Sincerely yours,

E. Wade Mullins, III

EWM/rdd
Enclosures (Exhibit A and Exhibit B)
cc: Randy Piontek
Keith C. McCook, Esquire

Single Prime $ 14,248,000.00 Winning base

		#	%Diff / Base	Base Bid		Mech	Elec	Plumb
1	Hunter Roberts		0.00%	$ 14,248,000.00		Trimedic	Emory	SPC
2	PC Construction		0.30%	$ 14,291,000.00	$ 43,000.00	Phoenix	Hayes & Lunsford	SPC
3	Edison Ford		1.82%	$ 14,507,000.00	$ 259,000.00	SPC	Emory	SPC
4	Yeargin		2.39%	$ 14,589,000.00	$ 341,000.00	SPC	Emory	SPC
5	Melloul Blamey		2.42%	$ 14,593,000.00	$ 345,000.00	SPC	Emory	Upstate
6	Tyler		5.00%	$ 14,961,000.00	$ 713,000.00	Phoenix	Emory	Upstate
7	Beam		5.56%	$ 15,040,000.00	$ 792,000.00	SPC	Emory	SPC

14291000
14248000
43000 Difference

A

B

Tri/Meck Mechanical, Inc.

Stephan Wolfver
Estimator/Project Manager
P.O. Box 26601
3400 North Graham Street (28206)
Charlotte, NC 28221-6601
NC License #21451
SC License #M-2334 Class 5
www.TriMeck.com

7-3-08
ATTN: KIMY THURSTON
AS PER YOUR REQUEST

Telephone (704) 376-9924
Fax (704) 343-9489

July 1, 2008 Via Fax: Page 1 of 1

To: **Bidding Contractors**
Attn: **Estimating Departments**

Re: **USC New Residence Hall**
Su: **Mechanical Proposal**

Gentlemen,
We are pleased to offer our services to perform the plumbing & HVAC on this project. Our proposal is based on drawings P-1.1 to P-1.11 dated May 20, 2008, specification division 15, and addendums 1 and 2. We include in our proposal:

1) Plumbing piping, including sanitary waste, vent, storm, and water all to ± 5'-0" outside of the building as shown on the plumbing drawings.
2) Plumbing fixtures & trim.
3) Excavation & backfill for our work.
4) Plumbing equipment pads, coredrilling as needed for our scope of work.
5) Trash removal to a jobsite dumpster provided by others.
6) Plumbing equipment, including water heaters, expansion tank, recirculation pumps.
7) Floor drains, roof drains, carriers, and cleanouts.
8) Insulation of new water piping and horizontal storm piping.
9) Firesafing for our penetrations.
10) Start up and checkout of plumbing systems.
11) One-year parts and labor warranty.

We do not include the following:
1) Cost of permits.
2) Performance and payment bonds.
3) Builders risk/property insurance.
4) Umbrella and/or Excess Liability Insurance over $5,000,000.00.
5) Fire protection and fire alarm wiring.
6) Electrical work.
7) Gas piping.
8) Allowances.
9) Rock excavation and removal.
10) Coordination drawings.
11) Removal/Replacement of ceilings, floors, walls, etc. in order for us to perform our work.
12) Concrete work, including, sawcutting, etc. (Unless noted in the inclusions above).
13) Temporary water, sewer, sanitary facilities, and HVAC.
14) Site work/ roof work.

Our pricing for the Scope of Work above is:
Plumbing.....**$ 1,395,000.00.**
If a performance & payment bond is required, you must add $ 28,000.00.
Note: We will not be bidding on the HVAC on this project.

Should you have any questions on the plumbing they can be directed to me (Cell phone number 704.564.9578) or at the office number above at extension # 17. This proposal is valid for 30 days.

Sincerely,
Tri/Meck Mechanical, Inc.
Stephan Wolfver
Estimator/Project Manager

00201-OSE

STANDARD SUPPLEMENTAL INSTRUCTIONS TO BIDDERS

1 STANDARD SUPPLEMENTAL INSTRUCTIONS TO BIDDERS

1.1 These Standard Supplemental Instructions To Bidders amend or supplement Instructions To Bidders (AIA Document A701-1997) and other provisions of Bidding and Contract Documents as indicated below.

1.2 Compliance with these Standard Supplemental Instructions is required by the Office of State Engineer (OSE) for all State projects when competitive sealed bidding is used as the method of procurement.

1.3 All provisions of A701-1997, which are not so amended or supplemented, remain in full force and effect.

1.4 Bidders are cautioned to carefully examine the Bidding and Contract Documents for additional instructions or requirements.

2 RELATED DOCUMENTS

2.1 AIA Document A701-1997, hereby incorporated by reference.

2.2 Document SE-310, *Invitation For Construction Bids*

2.3 Document SE-330, *Bid Form*

2.4 Document 00811-OSE, *Standard Supplementary Conditions*

2.5 Other documents that may be identified in the Bidding and Contract

3 MODIFICATIONS TO A701-1997

3.1 *Delete Paragraph 1.1 and insert the following:*

1.1 **BIDDING DOCUMENTS** include the Bid Requirements and the proposed Contract Documents.

1.1.1 **Bid Requirements** consist of the SE-310, *Invitation for Construction Bid,* AIA Document A701-1997, *Instructions to Bidders*, this Section 00201-OSE, *Standard Supplemental Instructions to Bidders*, the SE-330, *Bid Form* and any supplemental Instructions to Bidders included in the Bidding Documents, and all Addenda issued prior to the receipt of Bids.

1.1.2 **Contract Documents** consist of the AIA Document A101-1997, *Standard Form of Agreement Between Owner and* Contractor, AIA Document A201-1997, *General Conditions of the Contract for Construction,* 00811-OSE, *Standard Supplementary Conditions*, Additional Supplementary Conditions, the Scope of Work as indicated on the Plans and the Specifications, the Contractor's Bid and Contract Modifications issued after execution of the Contract. All forms shall be referenced hereafter by the form number only. The Contract Documents shall govern the Work under all Divisions and Sections the same as if incorporated therein.

1.1.3 **Contract Modifications** may be one of the following:

1.1.3.1 A written amendment to the Contract signed by both parties;

1.1.3.2 A Change Order.

1.1.3.3 A Construction Change Directive;

1.1.3.4 A written order for a minor change in the Work issued by the A/E.

3.2 *Delete Paragraph 1.8 and insert the following:*

1.8 BIDDER is a person or entity who submits a Bid to the Agency.

3.3 *Add the following subparagraph:*

1.10 ARCHITECT/ENGINEER (A/E) - A person or firm who performs professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the SC Code of Laws, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services. In the absence of an A/E, the Agency assumes the role of the A/E.

3.4 *Add the following subparagraph:*

1.12 Wherever the word "Architect" or "A/E" appears in the INSTRUCTIONS TO BIDDERS and herein, the intent is the design professional with whom the Agency has a contractual agreement.

3.5 *Add the following subparagraph:*

1.13 Wherever the word "Owner" or "Agency" appears in the INSTRUCTIONS TO BIDDERS and herein, the intent is the Agency with whom the successful Bidder will have a contractual agreement

3.6 *Add the following subparagraph:*

1.14 Wherever the phrase "in the form of" or similar appears in the Contract Documents, that phrase shall be taken to permit the use of alternative forms, provided all information required by the referenced form is submitted in a format acceptable, in their sole discretion, to the Agency and the OSE. Where the Bidder or Contractor is directed to use a specific form, that form shall be used without exception.

3.7 *Delete Subparagraph 2.1.3 and insert the following:*

2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents and has accepted full responsibility for any pre-bid existing conditions that would affect the Bid that were obvious and could have been ascertained by a site visit.

3.8 *Add the following subparagraph:*

2.1.5 The workplace will be maintained drug-free in accordance with Title 44, Chapter 107 of the SC Code of Laws, as amended.

3.9 *Add the following paragraph:*

2.2 If a Mandatory Pre-Bid Conference is specified in the SE-310, then:

2.2.1 Prospective Bidders are required to be represented at a Mandatory Pre-Bid Conference, at the specified time, date and place;

2.2.2 Only those prospective Bidders that are represented and are listed on the sign-in sheet will be allowed to submit Bids on the Work;

2.2.3 When it is in the best interest of the Agency, the Agency shall have the right to schedule more than one Mandatory Pre-Bid Conference. All prospective Bidders shall be represented and listed on the sign-in sheet of at least one Mandatory Pre-Bid Conference to be eligible to bid the Work.

3.10 *Add the following paragraph:*

2.3 If the Agency has scheduled only one Mandatory Pre-Bid Conference and only one prospective Bidder is represented at the Conference, then either:

2.3.1 The Pre-Bid Conference will be canceled and rescheduled for a later date to be advertised in the *South Carolina Business Opportunities (SCBO);* or,

2.3.2 An additional Mandatory Pre-Bid Conference will be scheduled at a later date to be advertised in *SCBO* and which must be attended by at least one additional prospective Bidder; or,

2.3.3 A non-mandatory Pre-Bid Conference will be scheduled at a later date as advertised in *SCBO;* or,

2.3.4 The project will be re-advertised in *SCBO* for open bidding under the conditions specified in the new advertisement.

3.11 *Add the following paragraph:*

2.4 The A/E will publish, prior to the Bid opening, an Addendum to the Contract Documents listing, the prospective Bidders that were represented and signed-in at the Mandatory Pre-Bid Conference(s).

3.12 *Delete paragraph 3.1 and substitute the following:*

3.1 COPIES OF BIDDING DOCUMENTS

3.1.1 Bidders and Sub-bidders may obtain complete sets of the Bidding Documents from the office designated in the SE-310 for the sum stated therein.

3.1.2 If the deposit is listed as refundable on the SE-310, then:

3.1.2.1 The deposit will be refunded to all plan holders that return the Bidding Documents in good condition within ten (10) days; or

3.1.2.2 The cost of replacement of missing or damaged documents will be deducted from the deposit; and,

3.1.2.3 A Bidder receiving a Contract Award may retain the Bidding Documents and the Bidder's deposit will be refunded.

3.1.3 Bidders and sub-bidders shall use complete sets of Bidding Documents in preparing Bids or sub-Bids; neither the Agency nor A/E assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. Partial sets of Bidding Documents will not be issued.

3.1.4 The Agency and A/E have made copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

3.13 *Delete subparagraph 3.2.1 and substitute the following:*

3.2.1 The Bidder and each sub-Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid or sub-Bid is submitted. The Bidder and each sub-Bidder shall examine the site and local conditions, such as, but not limited to, location, accessibility, general character of the site or building and the extent of existing work within or adjacent to the site, and shall incorporate the impact, if any, of such conditions into the Bid submitted.

3.14 *Delete subparagraph 3.2.2 and substitute the following:*

3.2.2 Bidders and sub-Bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the A/E at least ten (10) days prior to the date for receipt of Bids. No oral interpretations in regard to the meaning of Plans and Specifications will be made and no oral instructions will be given prior to the award of the Contract.

3.15 *Delete subparagraph 3.3.1 and substitute the following:*

3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. Reference in the Bidding Documents to the words "or equal" and "or approved equal" shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition.

3.16 *Delete subparagraph 3.3.4 and substitute the following:*

3.3.4 No substitutions during construction for specified items shall be allowed unless they are recommended by the A/E and approved by the Agency.

3.17 *Delete subparagraph 3.4.3 and substitute the following:*

3.4.3 No Addenda will be issued later than the fifth (5th) calendar day prior to the date set for receipt of Bids, except to:

3.4.3.1 withdraw the request for Bids; or,

3.4.3.2 postpone the date for receipt of Bids.

3.18 Add the following subparagraph:

3.4.5 When the date for receipt of Bids is to be postponed and there is insufficient time to issue a written Addendum prior to the original Bid Date, prospective Bidders shall be notified by telephone, fax or other appropriate means with immediate follow up with a written Addendum. This Addendum shall verify the postponement of the original Bid Date and establish a new Bid Date. The new Bid Date shall be no earlier than the fifth (5th) calendar day after the date of issuance of the Addendum postponing the original Bid Date.

3.19 *Add the following subparagraph:*

3.4.6 Bid Forms wherein the Bidder fails to acknowledge all issued Addenda by number shall be rejected as non-responsive, except for the following:

3.4.6.1 The Addendum only gives clarifications or lists attendees at a Mandatory Pre-Bid Conference; or,

3.4.6.2 The Bid received clearly indicates that the Bidder received the Addendum, such as where the Addendum added another item to the Invitation for Construction Bids and the Bidder submitted a Bid thereon; or,

3.4.6.3 The Addendum clearly would have had no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery, and does not affect the relative standing of the Bidders. Under no circumstances can the Bid Amount be changed or modified.

(1) Trivial Or Negligible Effect shall be defined as an increase in the Base Bid amount of the apparent low bidder, not to exceed one percent (1%) of the Base Bid amount. There shall be no percentage limitation if the Addendum decreases the cost of the Work. The cost of the Addendum shall be determined by the A/E or by the Agency's procurement officer.

(2) Relative Standing Of The Bidders shall mean that the order of the Bidders would be the same regardless of the Addendum. If the estimated cost of the Addendum (regardless of the percent of increase) exceeds the difference between the Bids of the apparent low bidder and the second-low bidder, then the Bid of the apparent low bidder shall be rejected as non- responsive.

3.20 *Delete subparagraph 4.1.1 and substitute the following:*

4.1.1 Bids shall be submitted on the SE-330 included in the Bidding Documents, or on true copies thereof, and signed in ink or other indelible media. The Bidder shall make no stipulations or qualify its Bid in any manner not permitted on the Bid Form.

3.21 *Delete subparagraph 4.1.4.*

3.22 *Delete subparagraph 4.1.5 and substitute the following:*

4.1.5 All requested Alternates must be bid.
4.1.5.1 Indicate either a dollar amount or the words "zero" or "No Change"

4.1.5.2 Indicate "ADD TO" or "DEDUCT FROM" for each Alternate,

3.23 *Delete subparagraph 4.1.6.*

3.24 *Delete subparagraph 4.1.7.*

3.25 *Add the following subparagraph:*

4.1.8 Unsigned Bids shall be rejected; provided however, that an unsigned Bid shall not be rejected when it is accompanied by a properly prepared Bid Security or by other material indicating the Bidder's intention to be bound by the unsigned document, such as the submission of a Bid Guarantee with the Bid or a letter with the Bid signed by the Bidder, referring to and identifying the Bid itself.

3.26 *Add the following subparagraph:*

4.1.9 Subcontractor(s) listed on page BF-2 of the SE-330 to perform Alternate Work may be used for both the Alternate and Base Bid Work, if the Alternate is accepted.

3.27 *Delete paragraph 4.2 and substitute the following:*

4.2 BID SECURITY

4.2.1 If required as stated in the SE-310, each Bid shall be accompanied by Bid Security in the dollar amount, if any, listed on the SE-330, or in an amount of not less than five percent (5%) of the Base Bid. The Bid Security shall be:

4.2.1.1 Written on SE-335, *Bid Bond,* made payable to the Agency; or,

4.2.1.2 An electronic Bid Bond authorization number issued by a firm or organization authorized by the surety to receive, authenticate and issue binding electronic Bid Bonds on behalf the surety; or,

4.2.1.3 In the form of a certified cashier's check.

4.2.2 By providing an electronic bid bond authorization code and signing the Bid Form, the Bidder is certifying that an electronic bid bond has been executed by a Surety meeting the standards required by the Bidding Documents and the Bidder and Surety are firmly bound unto the State of South Carolina under the conditions of the SE-335 provided in the Bidding Documents.

4.2.3 To be acceptable, a Bid Bond shall:

4.2.3.1 Be issued by a surety company licensed to do business in South Carolina;

4.2.3.2 Be issued by a surety company having, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty'. In addition, the surety shall have a minimum "Best Financial Strength Category" of "Class V, and in no case less than five (5) times the contract amount.

4.2.3.3 Be accompanied by a certified and current power of attorney by the attorney-in-fact who executes the bond on the behalf of the surety company; and,

4.2.3.4 Be enclosed in the bid envelope at the time of Bid Opening, either in paper copy or as a Bid Bond authorization number provided on the Bid Form.

4.2.4 By providing Bid Security, the Bidder pledges to enter into a Contract with the Agency on the terms stated in the Bidding Documents and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. The Bidder shall forfeit to the Agency as liquidated damages the amount of the Bid Security if the Bidder fails to:

4.2.4.1 Correct any Bid deficiency as required by the Bidding Documents and allowed by law; or,

4.2.4.2 Enter into such Contract; and,

4.2.4.3 Furnish such bonds, if required.

4.2.5 The Agency shall have the right to retain the Bid Security of any or all Bidders until such time as one of the three conditions listed below has been met.

4.2.5.1 The Contract for Construction has been executed and both Labor and Material Payment and Performance Bonds, if required, have been furnished; or,

4.2.5.2 The specified time has elapsed so that Bids may be withdrawn; or,

4.2.5.3 The Agency has rejected all Bids.

4.2.6 Bidders submitting a Bid Security not meeting the required amount, surety rating or financial strength rating shall have one working day from the Bid Opening to cure the deficiency or the Bid shall be considered non-responsive. The Bid Security amount submitted with the Bid must be at least 80% of the required amount to be eligible for correction.

3.28 *Delete Subparagraph 4.3.1 and substitute the following:*

4.3.1 All copies of the Bid, the Bid Security, if any, and all other documents required to be submitted with the Bid should be enclosed in a sealed opaque envelope. The Bid Envelope should be addressed to the party receiving the Bids and shall be identified with the Project Name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted.

3.29 *Delete subparagraph 4.3.3 and substitute the following:*

4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

4.3.3.1 Bidders attending the Bid Opening should bring Bids to the place of the Bid Opening as shown in the SE-310. The Bids should be given to the procurement officer of the Agency or his designee (includes the A/E) prior to the time of the Bid Opening.

4.3.3.2 Bids sent by mail or special delivery service (UPS, Federal Express, etc.) should be labeled "SEALED BID ENCLOSED", and shall be addressed to the Agency designated purchasing office as shown in the SE-310. Delivery of Bids to the above location shall be prior to the time of Bid Opening. Bids not received at the above location or Agency's mail room, prior to the time of Bid Opening, will be rejected.

3.30 *Add the following subparagraph:*

4.3.5 Any other or special documents requested of the Bidder in these Bidding Documents shall be included in the Bid Envelope. If they are not included with the Bid Envelope, the Bidder shall have twenty- four (24) hours from the time of the Bid Opening to provide these documents or its Bid shall be considered non-responsive.

3.31 *Add the following subparagraph:*

4.3.6 The official time for receipt of Bids shall be determined by reference to the clock designated by the Agency procurement officer or his designee. The procurement officer conducting the Bid Opening shall determine and announce that the deadline has arrived and no further Bids or bid modifications will be accepted. All Bids and bid modifications in the possession of the procurement officer at the time the announcement is completed shall be considered timely, whether or not the bid envelope has been date/time stamped or otherwise marked by the procurement officer.

3.32 *Delete subparagraph 4.4.2 and insert the following:*

4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such modification shall be in writing on the Bid Form contained in the Bidding Documents or a true copy thereof, and over the signature of the Bidder.

3.33 *Delete Article 5 in its entirety and substitute the following:*

ARTICLE 5 CONSIDERATION OF BIDS

5.1 COMPLIANCE WITH REQUIREMENTS. To be considered, Bids shall be made in accordance with these Instructions to Bidders. Failure to comply with these bidding requirements may cause a bid to be rejected.

5.2 OPENING OF BIDS

5.2.1 Bids received on time will be opened publicly and read aloud. Bids that are determined, as the time of opening, to be non-responsive shall not be read. If all Bids are to be rejected, the Agency shall announce the reason(s) therefore.

5.2.2 The date and location of the posting of the SE-370, *Notice of Intent to Award* as listed in Article 9 of this 00201-OSE will be announced.

5.2.3 The Agency shall send a copy of the final Bid Tabulation to all Bidders within ten (10) working days of the Bid Opening.

5.2.4 If the Project is to be awarded, the Agency shall send a copy of the SE-370 to all Bidders after posting.

5.2.5 If only one Bid is received, the Bid shall be opened and considered.

5.3 REJECTION OF BIDS

5.3.1 The Agency shall have the right to reject any or all Bids, reject a Bid not accompanied by a required Bid Security or by other data required by the Bidding Documents, or reject a Bid which is in any way incomplete or irregular.

5.3.2 Bids shall be rejected for any of the following reasons, which include, but are not limited to:

5.3.2.1 Failure by a Bidder to be represented at a Mandatory Pre-Bid Conference or site visit; or,

5.3.2.2 Failure to deliver the Bid on time; or,

5.3.2.3 Failure to comply with Bid Security requirements, except as allowed herein; or,

5.3.2.4 Listing an invalid electronic Bid Bond authorization number on the bid form; or,

5.3.2.5 Failure to Bid an Alternate; or,

5.3.2.6 Failure to list qualified Subcontractors as required by law, or,

5.3.2.7 Showing any modification(s) or exception(s) qualifying the Bid; or,

5.3.2.8 Faxing a Bid directly to the Agency or their representative; or,

5.3.2.9 Failure to include in the Bid Envelope all items required by the Bidding Documents; or,

5.3.2.10 Failure to include a properly executed Power-of-Attorney with the bid bond.

5.3.3 Bids shall not be rejected for the following reasons, which include, but are not limited to:

5.3.3.1 Failure to write "Sealed Bid Enclosed" on the outside of the mailing envelope; or,

5.3.3.2 Failure to seal the Bid envelope; or,

5.3.3.3 Listing a modification to the Bid on the outside of the Bid envelope, provided however that such modifications will not be considered; or,

5.3.3.4 Failure to list any information on the envelope other than that which may be required by law; or,

5.3.3.5 Providing a fax copy or other reproduction of any or all Bidding Documents in the Bid envelope: or,

5.3.3.6 Failure to indicate "ADD TO" or "DEDUCT FROM" on an Alternate, but only when the adjustment is obvious; or,

5.3.3.7 Failure to provide an Incremental Price or a Unit Price when requested on the SE-330; or,

5.3.3.8 Providing additional listings of "Subcontractor Specialty" beyond those listed on the SE-330; or,

5.3.3.9 Failure of the Bidder to sign the Bid, provided it is accompanied by a properly prepared Bid Security, or other information, as required by this Section; or,

5.3.3.10 Providing a reproduction of a signature on any or all Bidding Documents; or,

5.3.3.11 Failure of the corporation to include its seal on the Bid; or,

5.3.3.12 Bid Bond not signed by the bidder but only if the bond has been properly executed and signed by the bonding company or agent.

5.3.3.13 Immaterial variation from the exact requirements of the Bidding Documents.

5.3.4 Bidders shall have one (1) working day from the time of Bid opening to correct the following deficiencies:

5.3.4.1 Failure to provide five percent (5%) Bid Security when required, provided that the Bidder did furnish Bid Security in the proper form equal to at least eighty (80) percent of that required in the SE-310; and,

5.3.4.2 Failure to provide a Bid Bond with the proper surety rating and financial strength, provided that the Bidder did furnish Bid Security in the proper form equal to at least eighty (80) percent of that required in the SE-310.

5.4 ACCEPTANCE OF BID (AWARD)

5.4.1 INTENT TO AWARD. It is the intent of the Agency to award a Contract to the lowest evaluated responsive bid submitted by a responsible Bidder. The Agency reserves the right to conduct discussions with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the Invitation for Bid.

5.4.2 ALTERNATE BASE BIDS. When the bid documents solicit alternate base bids, it is the intent of the Agency to award a Contract to the responsible Bidder submitting the lowest responsive bid on the accepted alternate base bid. For an example of this procedure, see Paragraph see Chapter 5.2. Part 5.2.13 of the Manual for Planning and Executing State Permanent Improvement Projects – Part II [see OSE Web Site http://www.mmo.sc.gov/MMO/ose/MMO-ose-manual.phtm]

5.4.3 REJECTION OF BIDS. The Agency shall have the right to reject all Bids; to reject Unit Prices proposed in a Bid without invalidating other portions of the Bid; to waive informalities or irregularities in a Bid received and to accept that Bid which, in the Agency's judgment, is in the Agency's own best interests. Failure by the Bidder to correct any deficiency as requested may cause the Bid to be rejected as non-responsive.

5.4.4 CONTRACT EXECUTION. The Agency shall not enter into a Contract in excess of $50,000 to the lowest responsible and responsive Bidder before the eleventh (11th) day after the SE-370, *Notice of Intent to Award* is posted. If only one bid is received and determined to be both responsive and responsible, award may be made and the contract executed after posting the SE-370 without the ten-day waiting period.

3.34 *Delete Article 6 in its entirety and substitute the following:*

ARTICLE 6 CONTRACTOR'S QUALIFICATIONS

6.1 STANDARDS OF RESPONSIBILITY. A prospective Contractor shall be considered as meeting the State's standards of responsibility when the firm has:

6.1.1 Appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements; and,

6.1.2 A satisfactory record of performance; and,

6.1.3 A satisfactory record of integrity; and,

6.1.4 Is qualified legally to contract with the State; and,

6.1.5 Has supplied all necessary information in connection with the inquiry concerning responsibility.

6.2 ADDITIONAL INFORMATION. Each Bidder submitting a Bid shall, upon request, submit a Contractor's Statement of Qualifications in the form specified by the Agency and all additional information as required by the Agency to support the Agency's evaluation of the responsibility of the Bidder.

6.2.1 Each Bidder, by submitting a Bid, agrees to waive any claim it has or may have against the State, the Agency, the A/E and their respective employees arising out of or in connection with the administration, evaluation or recommendation of any bid.

3.35 *Delete Article 7 in its entirety and substitute the following:*

ARTICLE 7 PERFORMANCE AND PAYMENT BONDS

7.1 BOND REQUIREMENTS

7.1.1 When required by the SE-310, the Contractor shall provide and pay the cost of Performance and Labor and Material Payment Bonds as described and defined in Paragraph 11.5 of 00811-OSE, *Standard Supplementary Conditions*.

7.2 TIME OF DELIVERY

7.2.1 When bonds are required by the SE-310, the Contractor shall have a maximum of twenty-one (21) days from the date of posting of the SE-370, to deliver the Performance and Labor and Material Payment Bonds, Certificate of Insurance and the Contract (signed by Contractor only). Failure to deliver these documents as required shall entitle the Agency to consider the Bidder non-responsible and to declare the Bid Security forfeited.

00201-OSE

STANDARD SUPPLEMENTAL INSTRUCTIONS TO BIDDERS

3.36 *Insert Article 9 as follows:*

ARTICLE 9 PROJECT INFORMATION

9.1 PROJECT NAME: USC Upstate New Residence Hall

PROJECT NUMBER: H34-9537-JM

PROJECT LOCATION: Spartanburg, SC

9.2 Bids sent by mail or special delivery service (UPS, FedEx, etc.) should be labeled "SEALED BID ENCLOSED", and shall be addressed to the Agency's designated purchasing office as follows:

Name of Agency: University of South Carolina Upstate

Designated Purchasing Office: Facilities Management Center

Office Address: 800 University Way, Spartanburg, SC 29303

(Include building and room number)

Agency Representative: Rick Puncke
(Name and Title) Director, Facilities Management

Contact Information: 864-503-5500 *Telephone* 864-503-5542 *Fax* rpuncke@uscupstate.edu *E-Mail*

Special Documents Required for this Project are as follows: *(list or reference attachments)*
None

9.3 The SE-370, *Notice of Intent to Award, will* be posted at the following time and location:

Room or Area of Posting: USC - Lobby

Building Where Posted: Department of Facilities

Address of Building: 743 Green St., Columbia, SC

Date of Posting: TBD

9.4 Other Special Conditions of the Work, are listed below, or attached as referenced. *(if none, so state)*

1. See Article 3.104 and 3.105 of 00811-OSE Standard Supplemental Conditions Modifying Article 11.4 of AIA Document A201, 1997 Edition, requiring the contractor to provide the builder's risk insurance on the project.

END OF DOCUMENT

THIS IS CERTIFIED TO BE A TRUE COPY

EXH. 2

USC Upstate

Upstate New Residence Hall

STATE PROJECT NO. H34-9537-JM

BIDS DUE JULY 1, 2008 @2:00PM USC UPSTATE SPARTY'S DEN

BIDDER	BID BOND	ADD.	SUBS		Base Bid
BEAM CONSTRUCTION	✓	1,2	MECH	SOUTHERN PIPING	15,040,000
			ELEC	EMORY	
			PLBG	SOUTHERN	
EDISON FOARD	✓	1,2	MECH	SOUTHERN	14,507,000
			ELEC	EMORY	
			PLBG	SOUTHERN	
HUNTER, ROBERTS	✓	1,2	MECH	TRI MECK	14,248,000
			ELEC	EMORY	
			PLBG	SOUTHERN	
MELLOUL-BLAMEY	✓	1,2	MECH	SOUTHERN	14,593,000
			ELEC	EMORY	
			PLBG	UPSTATE	
PC CONSTRUCTION	✓	1,2	MECH	PHOENIX	14,291,000
			ELEC	HAYES LANGFORD	
			PLBG	SPC.	

BIDS OPENED BY: Glen Jackson

Glen Jackson

THIS IS CERTIFIED TO BE A TRUE COPY

USC Upstate

Upstate New Residence Hall

STATE PROJECT NO. H34-9537-JM

BIDS DUE JULY 1, 2008 @2:00PM USC UPSTATE SPARTY'S DEN

BIDDER	BID BOND	ADD.	SUBS		Base Bid	
TYLER CONST.	✓	1,2	MECH	PHOENIX	14961,000	
			ELEC	EMORY		
			PLBG	UPSTATE		
YEARGIN POTTER	✓	1	MECH	SOUTHERN	14,589,000	
			ELEC	EMORY		
			PLBG	SOUTHERN		
			MECH			
			ELEC			
			PLBG			
			MECH			
			ELEC			
			PLBG			
			MECH			
			ELEC			
			PLBG			

BIDS OPENED BY: Linda Jackson

Glen Jackson

per Addendum 1

EXH. 3

COM

SE-330
Bid Form

2008 Edition
Revised by Addendum No. 1

Bids shall be submitted only on SE-330

BID SUBMITTED BY: PC Construction of Greenwood Inc
(Bidder's Name)

BID SUBMITTED TO: University of South Carolina Upstate
(Agency Name)

FOR PROJECT: H34-9537-JM New Residence Hall
(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: 1 and 2

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 (BASE BID NO. 1) ***(as indicated in the Bidding Documents and generally described as follows)***:

USC Upstate New Residence Hall is a 96,000 SF residence hall that contains 350 beds arranged in 87 suites, an entrance lobby, and an unfinished basement for future offices.

14 Million 291

_____, which sum is hereafter called the **BASE BID No. 1**.
(enter BASE BID in figures only)

2008 Edition

SE-330 - Bid Form

Revised by Addendum No. 1

6.2 ALTERNATE BASE BIDS *(as indicated in the Bidding Documents and generally described as follows)*:

	DESCRIPTION	AMOUNT
BASE BID NO. 2	N/A	
BASE BID NO. 3		

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	Obtaining suitable borrow fill from off-site and spreading	5570	CY	11.75	
2	Obtaining suitable borrow fill from on-site and spreading	0	CY	9.75	

SE-330 Bid Form

2008 Edition
Revised by Addendum No. 1

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. Bidder must list in its bid the name of only those Subcontractors 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 must 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's failure to list a Subcontractor for each listed Specialty Subcontractor will 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 Specialty work listed:

SUBCONTRACTOR SPECIALTY *(COMPLETED BY A/E)*	SUBCONTRACTOR OR PRIME CONTRACTOR'S NAME *(MUST BE COMPLETED BY BIDDER)*	SUBCONTRACTOR'S SC LICENSE NUMBER *(FOR INFORMATION)*
BASE BID 1		
Mechanical	Phoenix	
Electrical	Hayes + Luis Power	
Plumbing	SPC	
BASE BID 2		
BASE BID 3		

SE-330 Bid Form

2008 Edition

Revised by Addendum No. 1

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 (365) **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 $2,500.00 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 $1,000.00 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

2008 Edition
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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: 57-1121767
OR
SOCIAL SECURITY NUMBER: _____

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

B	D	5
(Classification)	*(Subclassification)*	*(Limitations)*

6104914
(SC Contractor's License Number)

SIGNATURE

PC Construction of Greenwood Inc
(Legal Name of Person, Firm or Corporation Submitting Bid)

108 Enterprise Ct Greenwood, SC 29649
(Mailing Address for the above)

BY: _____ 7/1/08
(Signature) *(Date)*

President 864-223-6274
(Title) *(Phone)*

State of incorporation
SC

SE-330
Bid Form

2008 Edition
Revised by Addendum No. 1

Bids shall be submitted only on SE-330

BID SUBMITTED BY: Hunter Roberts Construction Group, LLC
(Bidder's Name)

BID SUBMITTED TO: University of South Carolina Upstate
(Agency Name)

FOR PROJECT: H34-9537-JM New Residence Hall
(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: 1, June 23, 2008 Addendum No 2-June 26, 2008

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 (BASE BID NO. 1) *(as indicated in the Bidding Documents and generally described as follows)*:

USC Upstate New Residence Hall is a 96,000 SF residence hall that contains 350 beds arranged in 87 suites, an entrance lobby, and an unfinished basement for future offices.

$ 14,248,000.00, which sum is hereafter called the BASE BID No. 1.
(enter BASE BID in figures only)

DEFENDANT'S EXHIBIT 1 ALL-STATE LEGAL®

SE-330 - Bid Form

Revised by Addendum No. 1

6.2 ALTERNATE BASE BIDS *(as indicated in the Bidding Documents and generally described as follows)*:

	DESCRIPTION	AMOUNT
BASE BID NO. 2	N/A	
BASE BID NO. 3		

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	Obtaining suitable borrow fill from off-site and spreading	5570	CY	$13.00	($13.00)
2	Obtaining suitable borrow fill from on-site and spreading	0	CY	$ 8.00	($ 8.00)

SE-330 Bid Form

2008 Edition
Revised by Addendum No. 1

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. Bidder must list in its bid the name of only those Subcontractors 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 must 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's failure to list a Subcontractor for each listed Specialty Subcontractor will 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 Specialty work listed:

SUBCONTRACTOR SPECIALTY *(COMPLETED BY A/E)*	SUBCONTRACTOR OR PRIME CONTRACTOR'S NAME *(MUST BE COMPLETED BY BIDDER)*	SUBCONTRACTOR'S SC LICENSE NUMBER *(FOR INFORMATION)*
BASE BID 1		
Mechanical	Tri Mech.	M-2334
Electrical	Emory Electric.	M-2475
Plumbing	Southern Piping	M-1107
BASE BID 2		
BASE BID 3		

SE-330 Bid Form

2008 Edition

Revised by Addendum No. 1

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 (_365____) **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 __$2,500.00_____ 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 __$1,000.00_____ 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

2008 Edition
Revised by Addendum No. 1

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: 20-2303474
OR
SOCIAL SECURITY NUMBER: _____

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

Building	Group 5	Unlimited
(Classification)	*(Subclassification)*	*(Limitations)*

G112665
(SC Contractor's License Number)

SIGNATURE

Hunter Roberts Construction Group, LLC
(Legal Name of Person, Firm or Corporation Submitting Bid)

227 West Trade St., Suite 650, Charlotte, NC 28202
(Mailing Address for the above)

BY: *(Signature)* July 1, 2008 *(Date)*

Executive Vice President *(Title)* 980-233-6800 *(Phone)*

EXH. 5

Tri/Meck Mechanical, Inc.

Stephan Wolfver
Estimator/Project Manager
P.O. Box 26601
3400 North Graham Street (28206)
Charlotte, NC 28221-6601
NC License #21451
SC License #M-2334 Class 5
www.TriMeck.com

7-3-08
ATTN: KATHY THURSTON
AS PER YOUR REQUEST

Telephone (704) 376-9924
Fax (704) 343-9489

July 1, 2008 Via Fax: Page 1 of 1

To: **Bidding Contractors**
Attn: **Estimating Departments**

Re: **USC New Residence Hall**
Su: **Mechanical Proposal**

Gentlemen,
We are pleased to offer our services to perform the plumbing & HVAC on this project. Our proposal is based on drawings P-1.1 to P-1.11 dated May 20, 2008, specification division 15, and addendums 1 and 2. We include in our proposal:

1) Plumbing piping, including sanitary waste, vent, storm, and water all to ± 5'-0" outside of the building as shown on the plumbing drawings.
2) Plumbing fixtures & trim.
3) Excavation & backfill for our work.
4) Plumbing equipment pads, coredrilling as needed for our scope of work.
5) Trash removal to a jobsite dumpster provided by others.
6) Plumbing equipment, including water heaters, expansion tank, recirculation pumps.
7) Floor drains, roof drains, carriers, and cleanouts.
8) Insulation of new water piping and horizontal storm piping.
9) Firesafing for our penetrations.
10) Start up and checkout of plumbing systems.
11) One-year parts and labor warranty.

We do not include the following:
1) Cost of permits.
2) Performance and payment bonds.
3) Builders risk/property insurance.
4) Umbrella and/or Excess Liability Insurance over $5,000,000.00.
5) Fire protection and fire alarm wiring.
6) Electrical work.
7) Gas piping.
8) Allowances.
9) Rock excavation and removal.
10) Coordination drawings.
11) Removal/Replacement of ceilings, floors, walls, etc. in order for us to perform our work.
12) Concrete work, including, sawcutting, etc. (Unless noted in the inclusions above).
13) Temporary water, sewer, sanitary facilities, and HVAC.
14) Site work/ roof work.

Our pricing for the Scope of Work above is:
Plumbing.....$ 1,395,000.00.
If a performance & payment bond is required, you must <u>add</u> $ 28,000.00.
Note: We will not be bidding on the HVAC on this project.

Should you have any questions on the plumbing they can be directed to me (Cell phone number 704.564.9578) or at the office number above at extension # 17. This proposal is valid for 30 days.

Sincerely,
Tri/Meck Mechanical, Inc.
Stephan Wolfver
Estimator/Project Manager

5

Wilson Division
1908 Baldree Road • PO Box 3006
Wilson, NC 27895
252.291.1561
License #2108

Raleigh Division
7500 Precision Drive • PO Box 90455
Raleigh, NC 27675
919.957.7228
License #7422

SOUTHERN PIPING COMPANY
MECHANICAL CONTRACTORS

Blanton Division
2016 Capital Drive • PO Box 12228
Wilmington, NC 28405
910.790.0320
License #16002

South Carolina Division
1523 Antioch Church Rd
Greenville, SC 29605
864.770.0206
SC License#M1107/NC License #2108

PROPOSAL SUBMITTED TO: All Bidding Contractors	DATE: 7-1-08
COMPANY NAME	JOB NAME: USC Upstate New Residence Hall
FAX NUMBER	JOB LOCATION: Spartanburg, SC

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATES FOR:

SOUTHERN PIPING COMPANY **SOUTH CAROLINA DIVISION** PROPOSES TO FURNISH LABOR AND MATERIALS TO INSTALL THE **HVAC** SYSTEM FOR THE ABOVE REFERENCED PROJECT ACCORDING TO PLAN SHEETS **M1.1** THRU **MP1.8** DATED **5-20-08** AND SPECIFICATIONS DATED **5-19-08**. WE ACKNOWLEDGE THE RECEIPT OF **2** BID SUPPLEMENTS.

We Propose to furnish material and labor in accordance with above specifications, for the sum of:

BASE -	**$1,639,545.00**	ONE MILLION, SIX HUNDRED AND THIRTY-NINE THOUSAND, FIVE HUNDRED AND FORTY FIVE DOLLARS
Bond Add -	**$12,381.00**	TWELVE THOUSAND, THREE HUNDRED AND EIGHTY-ONE DOLLARS
Alt. -	**$**	(Number Written)
Alt. -	**$**	(Number Written)

Our proposal specifically excludes the following:

- Security Services
- Cleaning Services
- Dumpster
- Cost to provide a minimum of (7) complete sets of plans and specifications
- Painting
- Utilities
- Patching
- Cost for copies of computer disc of building drawings
- Bond
- Division Specific Exclusions
- Division Specific Exclusions
- Division Specific Exclusions
- Division Specific Exclusions
- Division Specific Exclusions
- Division Specific Exclusions

PAYMENT TO BE MADE AS FOLLOWS:

MONTHLY PROGRESS PAYMENTS PER NCGS §22C.

ALL MATERIAL TO BE AS SPECIFIED. WORK TO BE COMPLETED IN A WORKMANLIKE MANNER ACCORDING TO STANDARD PRACTICES. ALTERATIONS OR DEVIATIONS FROM ABOVE SPECIFICATIONS INVOLVING EXTRA COST WILL BE EXECUTED ONLY UPON WRITTEN ORDER, AND WILL BE AN EXTRA CHARGE IN EXCESS OF THIS PROPOSAL. SPC SHALL NOT BE LIABLE FOR DELAYS BEYOND ITS CONTROL. SPC SHALL MAINTAIN APPROPRIATE PROPERTY AND CASUALTY INSURANCE FOR THE PROJECT. CUSTOMER SHALL INSURE ITS OWN PROPERTY FOR FIRE, THEFT, AND OTHER HAZARDS. PROPOSAL IS CONDITIONED UPON USE OF THE RELEVANT CONSENSUSDOCS® CONTRACT DOCUMENT OR ITS EQUAL. IF AN INCONSISTENCY EXISTS BETWEEN A CONTRACT DOCUMENT AND THIS PROPOSAL, THIS PROPOSAL SHALL CONTROL. PROPOSAL IS SUBJECT TO OUR SATISFACTORY REVIEW OF DOCUMENTATION TO ENSURE PAYMENT FOR WORK PERFORMED. THIS WILL INCLUDE PROJECT FINANCING AND OWNER/GENERAL CONTRACTOR PAYMENT HISTORY. THE TERMS HEREIN MAY NOT BE CHANGED EXCEPT IN WRITING.

Dennis Goodwin – Project Estimator

Dan Bryant – Division Manager

NOTE: PROPOSAL MUST BE ACCEPTED AND RECEIVED IN OUR OFFICE WITHIN 30 DAYS OF PROPOSAL DATE. AFTER 30 DAYS, PROJECT SHALL BE REQUOTED AND PRICING UPDATED.

EXH. 6

KS

QUOTE # 16478

Phoenix Mechanical
Post Office Box 508
Reidville, SC 29675
Telephone No.: (864) 370-1268
Facsimile No.: (864) 271-5400
E-mail: phnxmchncl@bellsouth.net

July 1, 2008

TO: All General Contractors

Phoenix Mechanical is pleased to quote the 96,000 sq.ft. USC Upstate Residence Hall. Drawings M1.1 thru M1.9 and MP1.1 thru MP1.8 as per Plan, Spec and 2 addendums. We have the chillers boilers fan coils, air distribution, allotment of ductwork, four pipe hydronic system, hydronic specialty systems, 1 heat exchanger, electric heaters, cooling towers, exhaust fans, makeup air handling units, duct and pipe hangers and misc steel supports, duct sealants, duct work and pipe insulation, louvers, dampers and fire dampers, seismic controls, test and balance, crane rentals, rental equipment, labor, license, permits and a safe and a professional job.

Base Bid .....$ 1,545,000

Signature: Allen Harrison
Phoenix Mechanical

The above price quote does not include any electrical, plumbing, concrete, bond rate As metal studs or walls are being put up, duct work and fire damper openings will be marked and laid out on the walls. Phoenix Mechanical will not perform the cutting or any roof penetrations.

Note: controls by owner.* NOT INCLUDED IN THIS PRICE* Only the coordination of the controls with equipment.

This Quote is based on current market prices and is good for thirty (30) days from the date of this quote.

Thank you for the opportunity to submit this Quote and we look forward to working with you on this project.

EXH. 7

Tri/Meck Mechanical, Inc.

Stephan Wollver
Estimator/Project Manager
P.O. Box 26601
3400 North Graham Street (28206)
Charlotte, NC 28221-6601
NC License #21451
SC License #M-2334 Class 5
www.TriMeck.com

Telephone (704) 376-9924
Fax (704) 343-9489

#13

July 1, 2008 Via Fax: Page 1 of 1

To: **Bidding Contractors**
Attn: **Estimating Departments**

Re: **USC New Residence Hall**
Su: **Mechanical Proposal**

Gentlemen,
We are pleased to offer our services to perform the plumbing & HVAC on this project. Our proposal is based on drawings P-1.1 to P-1.11 dated May 20, 2008, specification division 15, and addendums 1 and 2. We include in our proposal:

1) Plumbing piping, including sanitary waste, vent, storm, and water all to ± 5'-0" outside of the building as shown on the plumbing drawings.
2) Plumbing fixtures & trim.
3) Excavation & backfill for our work.
4) Plumbing equipment pads, coredrilling as needed for our scope of work.
5) Trash removal to a jobsite dumpster provided by others.
6) Plumbing equipment, including water heaters, expansion tank, recirculation pumps.
7) Floor drains, roof drains, carriers, and cleanouts.
8) Insulation of new water piping and horizontal storm piping.
9) Firesafing for our penetrations.
10) Start up and checkout of plumbing systems.
11) One-year parts and labor warranty.

We do not include the following:
1) Cost of permits.
2) Performance and payment bonds.
3) Builders risk/property insurance.
4) Umbrella and/or Excess Liability Insurance over $5,000,000.00.
5) Fire protection and fire alarm wiring.
6) Electrical work.
7) Gas piping.
8) Allowances.
9) Rock excavation and removal.
10) Coordination drawings.
11) Removal/Replacement of ceilings, floors, walls, etc. in order for us to perform our work.
12) Concrete work, including, sawcutting, etc. (Unless noted in the inclusions above).
13) Temporary water, sewer, sanitary facilities, and HVAC.
14) Site work/ roof work.

Our pricing for the Scope of Work above is:
Plumbing.....$ 1,395,000.00.
If a performance & payment bond is required, you must **add** $ 28,000.00.
Note: We will not be bidding on the HVAC on this project.

Should you have any questions on the plumbing they can be directed to me (Cell phone number 704.564.9578) or at the office number above at extension # 17. This proposal is valid for 30 days.

Sincerely,
Tri/Meck Mechanical, Inc.
Stephan Wollver
Estimator/Project Manager

EXH. 8

ALL-STATE LEGAL®
DEFENDANT'S EXHIBIT
2

EXH. 9

HVAC

USC NEW RESIDENCE HALL
SPARTANBURG, SC

HVAC

BID DATE: 07/01/08
BID TIME: 02:00 PM

SPEC SECTION	SUB/VENDOR PHONE/CONTACT / ITEM DESCRIPTION	QTY	PRICE	SOUTHERN PLAN QTY	SOUTHERN PLAN PRICE	PHOENIX MECH QTY	PHOENIX MECH PRICE	JENNINGS & DILL QTY	JENNINGS & DILL PRICE	TRI/MECK QTY	TRI/MECK PRICE	WALDROP QTY	WALDROP PRICE	QTY	PRICE	QTY	PRICE
142100	BASE BID				1,639,545		1,521,000		1,929,011		1,395,000		1,819,925				
	HEAT TRACING TO COOLING TOWER																
	CORE DRILLING/SAWCUTTING AS REQUIRED																
	SYSTEM TYPE: 4 PIPE & AHU																
	COOLING TOWER																
	CHILLERS/BOILERS																
	ELECTRIC WALL HEATERS																
	PUMPS																
	CONTROLS & WIRING						[illegible]										
	LOUVERS/VENTS/DRYER VENTS																
	EQUIPMENT AS SPECIFIED																
	METAL DUCTWORK w/INSULATION/ DIFFUSERS/ GRILLES																
	INSTALL DUCT SMOKE DETECTORS																
	VAV																
	HEAT EXCHANGERS																
	PIPE SUPPORT																
	FIRESTOPPING IN PENETRATIONS																
	TESTING & BALANCING																
	CHECK SPECS FOR WARRANTY/MAINTENANCE REQUIREMENTS																
	Viewed Addendum #2																
	MWBE																
	SALES TAX																
	INSTALLED																
	PLANS & SPECS																
	ADDENDA 1, 2																
	TOTAL BID				1,639,545		1,521,000		1,929,011		1,395,000		1,819,925				

BOND + 16,176 M-2334

DEFENDANT'S EXHIBIT 3

ALL-STATE LEGAL®

Tri/Meck Mechanical, Inc.
P.O. Box 26601
Charlotte, NC 28221-6601
3400 N. Graham St. 28206
www.trimeck.com
NC License # 21451—SC License M 2334

Daniel A. Ranson
HVAC President
_704/376-9924 x 15_
704/343-9489 fax

dan@trimeck.com

July 23, 2008

Allen Lindsey
Vice President
Hunter Roberts Construction Group
227 West Trade Street
Suite 650
Charlotte, NC 28202

Re: USC Upstate New Residence Hall

Mr. Lindsey:

We understand that Hunter Roberts mistakenly analyzed our plumbing bid as an HVAC bid on the USC Upstate New Residence Hall project and listed Tri/Meck Mechanical, Inc. as the intended mechanical contractor on Hunter Roberts bid form. Notwithstanding this mistake, we are willing to perform the HVAC work for the project and we understand that Hunter Roberts intends to issue a subcontract to us for this scope of work on the project. We look forward to working with you on this project.

Sincerely,
Tri/Meck Mechanical, Inc.
Daniel A. Ranson
Daniel A. Ranson
HVAC President

EXH. 10

EXH. 11 07/01 Edition

SE-310
Invitation for Construction Bids

SCBO NOTES 2, 4 and 5 APPLY TO THIS INVITATION FOR BIDS

PROJECT NAME: USC Upstate New Residence Hall

PROJECT NUMBER: H34 - 9537 - JM - PROJECT LOCATION: Spartanburg, SC

BID SECURITY REQUIRED? Yes ☒ No ☐ The Contractor will ☒ will not ☐ be subject to a performance appraisal as defined in the Manual for Planning and Execution of State Permanent Improvements, Part II. *(Agency MUST check one)*

PERFORMANCE BOND REQUIRED? Yes ☒ No ☐

PAYMENT BOND REQUIRED? Yes ☒ No ☐ CONSTRUCTION COST RANGE: $10,000,000-$20,000,000

DESCRIPTION OF PROJECT: USC Upstate New Residence Hall is a 96,000 sq. ft. residence hall that contains 350 beds arranged in 87 suites, an entrance lobby, and an unfinished basement for future offices.

A/E NAME: McMillan Smith & Partners Architects, PLLC A/E CONTACT: Kurt Ludwick

ADDRESS: 127 Dunbar Street PHONE: 864-585-5678 Fax: 864-542-9451

CITY: Spartanburg STATE:SC ZIP: 29306 E-MAIL: kludwick@mcmillansmith.com

PLANS ON FILE AT:

AGC:	Charlotte	Greenville	Columbia
DODGE:	Charlotte	Greenville	Columbia
OTHER:			

PLANS MAY BE OBTAINED FROM: McMillan Smith & Partners Architects, PLLC

PLAN DEPOSIT AMOUNT: $400.00 IS DEPOSIT REFUNDABLE? Yes ☒ No ☐

PRE-BID CONFERENCE? ☒ Yes ☐ No MANDATORY ATTENDANCE? ☐ Yes ☒ No

DATE: 6/17/08 TIME: 11:00 PLACE: 155 AMERICAN WAY, SPARTANBURG, SC 29303 CONF. ROOM

AGENCY: University of South Carolina Upstate

NAME AND TITLE OF AGENCY COORDINATOR: Rick Puncke

ADDRESS: 800 University Way PHONE: 864-503-5500 Fax: 864-503-5542

CITY: Spartanburg STATE:SC ZIP: 29303 E-MAIL: rpuncke@uscupstate.edu

BID CLOSING DATE: JULY 1,08 TIME: 11:00 LOCATION: 155 AMERICAN WAY CONF RM SPARTANBURG SC 29303

BID DELIVERY ADDRESSES:

HAND-DELIVERY: USC Upstate Facilities Mgmt Center
155 American Way
Spartanburg, SC 29303

MAIL SERVICE:
800 University Way
Spartanburg, SC 29303

IS PROJECT WITHIN AGENCY CONSTRUCTION CERTIFICATION? *(Agency MUST check one)* ☐ YES ☒ NO

RECEIVED BY
JUN 09 2008
CAMPUS PLANNING & CONSTRUCTION

APPROVED BY: _____ *(State Engineer)* 6/4/08 *(Date)*

EXH. 12

2008 Edition

SE-370
Notice of Intent to Award

AGENCY: University of South Carolina
(Agency Name)

PROJECT: H34-9537 Upstate New Residence Hall
(Project Number) *(Project Name)*

TO ALL BIDDERS:

The Agency has determined that the below-named Bidder is responsible in accordance with the requirements of the Bidding Documents and has submitted the lowest responsive Bid. The Agency hereby announces its intent to enter into a contract with this Bidder for the construction of the above-named Project, subject to the provisions of SC law.

NAME OF BIDDER(S): Hunter Roberts Construction Group, LLC

DATE BIDS WERE RECEIVED: July 1, 2008

AMOUNT OF BASE BID: $ 14,248,000.00

ALTERNATE(S) ACCEPTED: # _____ **Total: $** N/A

TOTAL AMOUNT OF BASE BID WITH ALTERNATE(S): $ 14,248,000.00

Remarks: ***(In accordance with Chapter 6 of the OSE Manual, explain any negotiations that resulted in a change in either the Base Bid or the accepted Bid Alternates)***

RIGHT TO PROTEST:

Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of this Contract may protest to the State Engineer in accordance with Section 11-35-4210 of the SC Code of Laws at: CPO, Office of State Engineer, 1201 Main Street, Suite 600, Columbia, SC 29201, EMAIL: protest-ose@mmo.sc.gov

Nicholas C. Thomas for
(Signature of Awarding Authority)

July 3, 2008
(Date Posted)

Glen Jackson
(Print or Type Name of Awarding Authority)

Project Manager
(Awarding Authority Title)

INSTRUCTIONS TO THE AGENCY:

1. **Post a copy of this form on the Date and at the Location announced at the Bid Opening.**
2. **Mail a copy of this Form and the final Bid Tabulation to all responsive Bidders and OSE.**