

April 8, 2025

Maynard Nexsen
Attn: John W. Davidson, Esq.
1230 Main Street
Suite 700
Columbia, SC 29201

Financial Services

Anita W. Huggins, M.Ed.
Superintendent of Schools

Daniel T. Prentice
Chief Financial Officer

Jessica D. Carraher
Associate of Financial Services

**Re: Response to Protest of Intent to Award Statement, 24-BCG-B-003,
February 21, 2025**

Dear Mr. Davidson,

Pursuant to Section 4210(4) of the Charleston County School District's ("CCSD's") Consolidated Procurement Code, (the "CCSD Code"), the District hereby responds to your "Protest of Intent to Award Statement" of March 6, 2025 (the "Bid Protest") submitted to Charleston County School District ("CCSD or the "District") on behalf of Samet Corporation ("Samet") regarding Solicitation 24-BCG-003 (AD-010 New District Ten Middle School), Charleston County School District, Charleston, SC (the "Solicitation"). As required by Section 4210(4) of the CCSD Code, an administrative review has been held and this decision memorializes the decision of the District.

There has been prior communication with Samet concerning the determination whereby Samet was determined to be a non-responsible bidder on the Solicitation including the Written Determination of Non-Responsibility of Same Corporation for Solicitation 24-BCG-B-003 (AD-01) – New D10 Middle School – School Building NO. 0151 dated February 5, 2025 and a letter from the Law Office of A. Bright Ariail, LLC, counsel for CCSD, forwarded to Mr. Carson Knizevski of Samet on February 26, 2025 in response to his letter of February 24, 2025 to the District. These two documents are hereby incorporated herein by reference.

Be advised that the District's position remains that Samet was a non-responsible bidder for the Solicitation. The reasons for this decision are contained in the prior communications identified above and incorporated herein by reference and as further discussed below.

In the Bid Protest, Samet alleges that "[t]he sole reason for the finding of non-responsibility was that Samet listed Gates Construction rather than Samet itself as the masonry subcontractor". This is incorrect. The reason that Samet was deemed a non-responsible bidder was that it listed an unlicensed subcontractor as its masonry

subcontractor, contrary to the express language of the Solicitation and the requirements of the CCSD Consolidated Procurement Code and applicable law.

Attachment B to the Solicitation expressly provides that 1) “[a] SUBCONTRACTOR is an entity who is properly licensed pursuant to SC law that will perform work or render service to the prime contractor”, 2) “[B]idders should insure that listed subcontractors hold the proper license (both subcategory and financial level required) for the entire scope of work in their category”, and 3) “failure by the respondent to list the name(s) of subcontractors in accordance with this request may render the proposal nonresponsive and/or nonresponsible (caps omitted)”. Subcontractor listing requirements were also addressed by the District at the Pre-Bid Conference. If Samet needed guidance on the subcontractor listing requirements, it had an opportunity to inquire at the Pre-Bid Conference and/or during the written question period allowed by the Solicitation.

In the Bid Protest, you cite a decision of the South Carolina Chief Procurement Officer for Construction (“CPOC”), specifically, [In] The Matter of Protest of M.A.R. Construction Company, Inc. and T&Q (sic) Constructors, Inc. v. S.C. Department of Mental Health, Case No. 2013-010A.B (April 8, 2013) which you allege “addressed a similar situation”. However, the facts of that case are not similar to those that were considered here to make a determination that Samet is a non-responsible bidder for the Solicitation. Rather, the M.A.R. decision 1) discussed whether both M.A.R. and TQ Constructors were non-responsible due to an ambiguity concerning the subcontractor’s name as listed in the subcontractor listing and whether the listed subcontractor had the proper Specialty Roofing license, and 2) made a determination of responsiveness when TQ failed to list the name of its electrical subcontractor on its bid but did list the electrical subcontractor’s S.C. license number (which was subsequently overturned).

You then state that “[i]n addressing the issue of the licensing of the subcontractors, the CPOC found that because the prime bidders possessed the required license, ‘the listed subcontractor was not required to possess any contractor’s license’ and cited to the predecessor to S.C. Code §40-11-270(E).” That is also not correct. The CPOC did not issue any findings on this issue. Rather, the agency (DMH) abandoned their claim of non-responsibility based on listing a subcontractor that did not possess a Specialty Roofing license. Accordingly, licensure was not an issue in the aggregated protests before the CPOC.

In fact, the M.A.R. CPOC decision and the subsequent decision of the S.C. Procurement Review Panel (PRP) on same, did not involve an unlicensed listed subcontractor. The ambiguity concerning the subcontractor’s name as listed in the subcontractor listing was cleared up and the listed subcontractor was determined to hold a license. Both the CPOC and the PRP found that the error made by the agency concerning MAR and TQ’s responsibility was its failure to contact the bidders for additional information when determining responsibility.

In the MAR case, the CPOC stated:

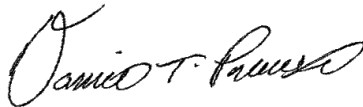
In determining responsibility, the agency is free to contact bidders and others to obtain any information necessary to determine responsibility. This includes obtaining information to confirm that the listed subcontractors are real and are capable of performing the work for which they are listed. If the listed subcontractors are real and capable of performing the work for which they are listed (and the bidder is responsible in his own right) the bidder is a responsible bidder. If the listed subcontractors are not real or are not capable of performing the work for which they are listed (*for example, if they lack a necessary license (emphasis added)*), the bidder is not responsible.

Here, as Samet concedes, the District contacted Samet after bid opening for information regarding the licensure of Samet's listed masonry subcontractor, Gates Construction. At that time, Samet informed the District that Gates Construction was not a licensed contractor in South Carolina.

Samet also turns to the purpose of the subcontractor listing requirements i.e., to prevent bid shopping and bid peddling, as justification for its bid protest. Here, the bid protest cites as justification, a partial quotation from M.A.R. at 5, stating "the underlying policy goal of the statute is satisfied when the bidder provides sufficient information on its bid listing form to prevent anyone other than the listed entity from performing the work. . .". Samet has misapplied this citation. This portion of M.A.R. is discussing responsiveness, not responsibility. Therefore, Samet's reliance on this citation to address responsibility is unfounded.

Pursuant to Section 4210(6) of the CCSD Code, this decision is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the chief business official, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the chief business official. The person also may request a hearing before the Procurement Review Panel.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel T. Prentice". The signature is fluid and cursive, with a large initial "D".

Daniel Prentice
Chief Financial Officer

Cc: Jessica Carraher, Associate of Financial Services
Ramona Brown, Director of Procurement
Lawrence Lutario, Construction Procurement Supervisor
A. Bright Ariail, Counsel for CCSD

4.08.25 Response to Bid Protest

Final Audit Report

2025-04-08

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-  Document created by Tenecia Tolbert (tenecia_tolbert@charleston.k12.sc.us)
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