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CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Protest Decision

Matter of: MSI Construction Co.
File No.: 2025-005
Posting Date: September 18, 2024
Contracting Entity: University of South Carolina
Project No.: H27-Z482/50003520-3
Description: UMP41–East Energy Plant Cooling Tower #4 Replacement

DIGEST

Protest of Intent to Award on the grounds that University of South Carolina (USC) erred by finding protestant non-responsible due to lack of an appropriate South Carolina Contractors License is granted where USC's determination was clearly erroneous, arbitrary, capricious, or contrary to law.

AUTHORITY

Per S.C. Code Ann. §11-35-4210, the Chief Procurement Officer for Construction¹ (CPOC) conducted an administrative review of a protest filed by MSI Construction Co. (MSI). A copy of MSI's protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

The following are facts relevant to this protest:

¹ The Chief Procurement Officer for Construction delegated the administrative review of this protest to the Deputy State Engineer.

- On or about August 6, 2024, USC published a re-advertisement for construction services for replacement of the East Energy Plant Cooling Tower #4 (the Project). On or about August 6 and 16, 2024, USC published Addendum 1 and 2 (respectively) that extended the bid opening date and published a revised invitation for bids.
- The Project included the replacement of Cooling Tower 4 with a 2400-ton cooling tower with all associated mechanical, plumbing, and electrical work at the East Energy Plant.
- The solicitation documents required the bidder to list the subcontractors proposed to perform the Structural Framing and Electrical work of the project. [Exhibit B]
- By the deadline for receipt of bids, USC received six bids. [Exhibit C]
- MSI submitted a low bid of \$2,267,033. [Id.]
- MSI has a South Carolina commercial contractor’s license with a classification of General Contractor - Building (BD) [Exhibit D] and a South Carolina commercial contractor’s license with a classification of Mechanical Contractor – Electrical (EL). [Exhibit D]
- MSI listed itself on its bid for the performance of the work of Structural Framing and Electrical. USC determined MSI lacked an appropriate contractor’s license to list itself as the subcontractor for Structural Framing.
- On September 6, 2024, USC posted a notice of its intent to award a contract to the second low bidder Walker White, Inc., for the work of the base bid.² [Exhibit E] USC attached to this notice a copy of the bid tabulation with the following notation respecting MSI:

“Deemed Non-Responsible per SC Procurement Code 11-35-1810(2) Failure to provide licensed subcontractor properly licensed with the State.”
- On September 9, 2024, MSI notified the CPO of its intent to protest the intended award of the contract. MSI perfected its protest later that same day.

DISCUSSION

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

² Walker White listed itself for the work of Structural Framing also on the basis that it also possessed a commercial contractor’s license with a classification of General Contractor – Building (BD). However, unlike MSI, USC found Walker White to be properly licensed for this work.

procurement officer's determination of nonresponsibility is final and conclusive unless the protestor proves it is "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A); *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3.

A responsibility determination is a determination that the bidder has the ability to perform. *See* S.C. Code Ann. Regs. 19-445.2125(A)(1). Possession of the proper contractor license by the bidder and its listed subcontractors is an issue of responsibility. *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3 (where the State is investigating the bidder's ability to perform it is deciding an issue of responsibility); *Protest of Roofco, Inc.*, Panel Case No. 2000-14(I) ("[T]he lack of a proper license to do the work solicited in a state contract will always render a bidder nonresponsible."); *see also* S.C. Code Ann. § 40-11-200(B) ("It is a violation of this chapter for an awarding authority ... to consider a bid ... unless the bidder has first obtained the licenses required by this chapter. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority ... if the contractor was not properly licensed at the time the initial bid or contract was submitted.").

In this case, USC reviewed MSI's licenses on the SCLLR website and noted that MSI possesses a BD license but the General Contractor Specialty license of Structural Framing (SF) was not listed. From S.C. Code Ann. § 40-11-410(1), the scope of a BD License includes:

[C]ommercial, industrial, institutional, modular, and all other types of building construction, including residential structures. This license classification includes all work under the subclassifications of Wood Frame Structures, Nonstructural Renovation, Masonry, Pre-engineered Metal Buildings, Roofing, **Structural Framing**, and Miscellaneous Metals.
[emphasis supplied]

Thus, the possession of a BD license allows the licensee to perform the work of other subclassifications, including Structural Framing. Accordingly, MSI was properly licensed to perform the work of Structural Framing.

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September 18, 2024

DECISION

Based on the foregoing, the CPOC grants MSI's protest. The award the Walker White is vacated and the matter is remanded to USC with instructions to proceed in accordance with the Consolidated Procurement Code.

A handwritten signature in blue ink that reads "Phil C. Gerald". The signature is fluid and cursive, with a large initial "P" and "G".

Phil C Gerald, PE
Deputy State Engineer

Columbia, South Carolina

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

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STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2024)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2024 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. [The Request for Filing Fee Waiver form is attached to this Decision.] If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. Protest of Lighting Services, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and Protest of The Kardon Corporation, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and Protest of PC&C Enterprises,

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September 18, 2024

LLC, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

-
1. What is your/your company's monthly income? _____
 2. What are your/your company's monthly expenses? _____
 3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

From: mattsugarman.msiconst.com
To: [Protest-OSE](#)
Cc: [Grant Hunter](#)
Subject: [External] University of South Carolina, UMP41-East Energy Plant Cooling Tower #4 Replacement, H27-Z482/50003520-3
Date: Monday, September 9, 2024 11:46:45 AM
Attachments: [image001.png](#)
[Justification for Determination of NonResponsibility.pdf](#)
[Code of Laws.pdf](#)
[Licensing.pdf](#)

Chief Procurement Officer for Construction, Office of State Engineer,

MSI Construction Co. protest the intent to award - University of South Carolina, UMP41-East Energy Plant Cooling Tower #4 Replacement, H27-Z482/50003520-3. MSI Construction Co. is the low bidder but determined non-responsible due to not having a licensure listing of GC-Structural Framing (SF). The classification definitions per the South Carolina Legislature, Title 40, Chapter 11, Section 40-11-410 (1) "General Contractors-Building" License classification includes the subclassification in question, of Structural Framing and Miscellaneous Metals, per this definition and confirmation by the LLR, MSI is licensed to perform this work. Please review the attached documentation and advise on how to proceed.

SECTION 40-11-410. License classifications and subclassifications.

The following license classifications are in effect:

(1) "General Contractors-Building" which includes commercial, industrial, institutional, modular, and all other types of building construction, including residential structures. This license classification includes all work under the subclassifications of Wood Frame Structures, Nonstructural Renovation, Masonry, Pre-engineered Metal Buildings, Roofing, Structural Framing, and Miscellaneous Metals.

Thank you for your consideration!

Matt Sugarman

Estimator / Business Development

MSI CONSTRUCTION COMPANY, INC.

745 Greenwood Rd.

West Columbia, SC 29169

803-796-3324 (office)

803-609-5681 (cell)

mattsugarman@msiconst.com (email)

Please visit our website: www.msiconst.com



SE-330 LUMP SUM BID FORM

Bidders shall submit bids on only Bid Form SE-330.

BID SUBMITTED BY: _____
(Bidder's Name)

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

FOR: PROJECT NAME: East Energy Plant Cooling Tower 4 Replacement
PROJECT NUMBER: UMP-041

OFFER

§ 1. In response to the Invitation for Construction Services 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 on the terms 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 SC Code § 11-35-3030(1), Bidder has submitted Bid Security in the amount and form required by the Bidding Documents.

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid:

(Bidder, check all that apply. Note, there may be more boxes than actual addenda. Do not check boxes that do not apply)

ADDENDA: #1 #2 #3 #4 #5

§ 4. Bidder accepts all terms and conditions of the Invitation for 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.

§ 5. Bidder herewith offers to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6.1 **BASE BID WORK** *(as indicated in the Bidding Documents and generally described as follows):* The work includes the replacement of Cooling Tower 4 at the USC East Energy Plant with a 2400-ton cooling tower on the plant roof with all associated mechanical, plumbing and electrical work.

\$ _____, which sum is hereafter called the Base Bid.

(Bidder to insert Base Bid Amount on line above)

SE-330
LUMP SUM BID FORM

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

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

(A) SUBCONTRACTOR LICENSE CLASSIFICATION or SUBCLASSIFICATION NAME <i>(Completed by Agency)</i>	(B) LICENSE CLASSIFICATION or SUBCLASSIFICATION ABBREVIATION <i>(Completed by Agency)</i>	(C) SUBCONTRACTOR and/or PRIME CONTRACTOR <i>(Required - must be completed by Bidder)</i>	(D) SUBCONTRACTOR'S and/or PRIME CONTRACTOR'S SC LICENSE NUMBER <i>(Requested, but not Required)</i>
BASE BID			
Structural Framing	SF		
Electrical	EL		
ALTERNATE #1			
ALTERNATE #2			
ALTERNATE #3			

If a Bid Alternate is accepted, Subcontractors listed for the Bid Alternate shall be used for the work of both the Alternate and the Base Bid work.

SE-330 LUMP SUM BID FORM

§ 8. LIST OF MANUFACTURERS, MATERIAL SUPPLIERS, AND SUBCONTRACTORS OTHER THAN SUBCONTRACTORS LISTED IN SECTION 7 ABOVE (*FOR INFORMATION ONLY*):

Pursuant to instructions in the Invitation for Construction Services, if any, Bidder will provide to Agency upon the Agency's request and within 24 hours of such request, a listing of manufacturers, material suppliers, and subcontractors, other than those listed in Section 7 above, that Bidder intends to use on the project. Bidder acknowledges and agrees that this list is provided for purposes of determining responsibility and not pursuant to the subcontractor listing requirements of SC Code § 11-35-3020(b)(i).

§ 9. TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES

a) CONTRACT TIME

Bidder agrees that the Date of Commencement of the Work shall be established in a Notice to Proceed to be issued by the Agency. Bidder agrees to substantially complete the Work within 140 Calendar Days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.

b) LIQUIDATED DAMAGES

Bidder further agrees that from the compensation to be paid, the Agency shall retain as Liquidated Damages the amount of \$ 500.00 for each Calendar Day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. This amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty for nonperformance.

§ 10. AGREEMENTS

- a) Bidder agrees that this bid is subject to the requirements of the laws of the State of South Carolina.
- b) Bidder agrees that at any time prior to the issuance of the Notice to Proceed for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
- c) Bidder agrees that 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.

§ 11. 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 AIA Document A310, Bid Bond, referenced in the Bidding Documents.

ELECTRONIC BID BOND NUMBER: _____

SIGNATURE AND TITLE: _____

**SE-330
LUMP SUM BID FORM**

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION

SC Contractor's License Number(s): _____

Classification(s) & Limits: _____

Subclassification(s) & Limits: _____

By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the SCOSE Version of the AIA Document A701, Instructions to Bidders, is expressly incorporated by reference.

BIDDER'S LEGAL NAME: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

SIGNATURE: _____ **DATE:** _____

PRINT NAME: _____

TITLE: _____



Project Name: UMP41 East Enegy Plant Cooling Tower#4 Replacement

Project Number: H27-Z482/50003520-3

Bid Opening Date & Time: September 4, 2024@2:30PM

EVENT#250006-01

Contractor	Bid Bond	Addendum One	Addendum Two	Addendum Three	Addendum Four	Base Bid	Subcontractor	Subcontractor
							BB-SF	BB-EL
Walker White Inc.	X	X	X	X	X	\$2,293,483.00	Walker White, Inc.	Dennis Electric, LLC
MSS Solutions, LLC	X	X	X	X	X	\$2,992,859.00	Branks General Contractors	Powell Electrical of Columbia, Inc.
Contract Management(CMI) Inc.	X	X	X	X	X	\$2,894,092.00	CMI Inc.	CMI Inc.
Triad Mechanical	X	X	X	X	X	\$2,550,000.00	The Metal Works	DNB Electric
MSI Construction Company*	X	X	X	X	X	\$2,267,033.00	MSI*	MSI
McCarter Mechancial	X	X	X	X	X	\$2,368,655.00	McCarter Mechanical	DNB Electric

Read By: Andreia Johnson, Bid Clerk

Recorded By: Aimee B. Rish, Procurement Manager

***Deemed Non-Responsible per SC
Procurement Code 11-35-1810(2)
Failure to provide licensed
subcontractor properly licensed
with the State**

Print this page

Board: Commercial Contractors

MSI CONSTRUCTION CO INC

745 GREENWOOD RD
W COLUMBIA, SC 29169
(803) 796-3324

License number: 13641

License type: GENERAL CONTRACTOR

Status: ACTIVE

Expiration: 10/31/2026

First Issuance Date: 01/14/1992

Classification:

Building-BD5

Boiler Installation-BL5

Nonstructural Renovation-NR5

Public Electrical Utility-2U5

Qualified By: Financial Statement

President / Owner: CEJAR PALACIO

[Click here for Classification definitions and licensee's contract dollar limit](#)

Supervised By

[WELLS, III WOODROW \(CQG\)](#)

[HUNTER GEORGE \(CQG\)](#)

[WALKER DAMON \(CQG\)](#)

[File a Complaint against this licensee](#)

Board Public Action History:

View Orders

View Other License for this Person

No Orders Found

Print this page

Board: Commercial Contractors

MSI CONSTRUCTION CO INC

745 GREENWOOD RD
W COLUMBIA, SC 29169
(803) 796-3324

License number: 2684

License type: MECHANICAL CONTRACTOR

Status: ACTIVE

Expiration: 10/31/2025

First Issuance Date: 01/14/1992

Classification:

Pressure & Process Piping-1P5

Electrical-EL5

Plumbing-PB5

Heating-HT5

Air Conditioning-AC5

Qualified By: Financial Statement

President / Owner: CESAR PALARIO - COO

[Click here for Classification definitions and licensee's contract dollar limit](#)

Supervised By

[MCCARTHA JOHN \(CQM\)](#)

[WELLS, III WOODROW \(CQM\)](#)

[WALKER DAMON \(CQM\)](#)

[HUNTER GEORGE \(CQM\)](#)

[File a Complaint against this licensee](#)

Board Public Action History:

View Orders

View Other License for this Person

No Orders Found

SE-370

NOTICE OF INTENT TO AWARD - DESIGN-BID-BUILD CONTRACT

AGENCY: University of South Carolina

PROJECT NAME: UMP41-East Energy Plant Cooling Tower#4 Replacement

PROJECT NUMBER: H27-Z482/50003520-3

POSTING DATE: 9/6/2024

TO ALL BIDDERS:

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below. The successful bid will be accepted, and the contract formed by execution of the contract documents. All bid bonds remain in effect for the bid acceptance period as provided in Section 4 of the Bid Form, except as otherwise provided in the Instructions to Bidders.

NAME OF BIDDER: Walker-White Inc.

DATE BIDS WERE OPENED: 09/04/2024

BID INFORMATION:

BASE BID AMOUNT: \$ 2,293,483.00

ALTERNATES: #1 ACCEPTED \$ _____

#2 ACCEPTED \$ _____

#3 ACCEPTED \$ _____

TOTAL BID AMOUNT: \$ 2,293,483.00

TOTAL CONTRACT AWARD: \$ 2,293,483.00

(If the Total Contract Award is different from the Total Bid Amount, explain any negotiations that resulted in the change.) _____

REMARKS: *(If "No Contract to Be Awarded" was entered above, indicate the reason.)* _____

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work before receipt of the Agency's written Notice to Proceed.

RIGHT TO PROTEST (SC Code § 11-35-4210)

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may be entitled to protest. To protest an award, you must (i) submit notice of your intent to protest within seven (7) business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen (15) days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: protest-ose@mmo.sc.gov, or (b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the email address from which you sent your protest.



(Agency Procurement Officer Signature)

Aimee B. Rish, Procurement Manager

(Print or Type Name)

INSTRUCTIONS TO THE AGENCY:

1. Post a copy of the SE-370 at the location specified by the Instructions to Bidders and announced at the Bid Opening.
2. Send the SE-370 and the final Bid Tabulation electronically to all Bidders and OSE (if required) the same day it is posted.