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CHAIRMAN, SENATE FINANCE COMMITTEE

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CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
GRANT GILLESPIE
EXECUTIVE DIRECTOR

Protest Decision

Matter of: Farmer Construction, LLC

File No.: 2026-002

Posting Date: November 3, 2025

Contracting Entity: South Carolina Department of Behavioral Health and Developmental Disabilities – Office of Mental Health

Project No.: J12-9868-LC.

Description: Polly Best Mental Health Center HVAC Replacement

DIGEST

Protest of Intent to Award on the grounds that the South Carolina Department of Behavioral Health and Developmental Disabilities – Office of Mental Health (Department) erred by finding protestant non-responsible denied where the Department's determination was not clearly erroneous, arbitrary, capricious, or contrary to law.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer for Construction (CPOC) conducted an administrative review of a protest filed by Farmer Construction, LLC (Farmer) protesting the Department's intention to award a contract to Triad Mechanical Contractors, Inc. (Triad) for replacement of an HVAC system at Polly Best Mental Health Center (the Project). Farmer's protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

On August 6, 2025, the Department published an advertisement for construction services for the Project. [Exhibit B] By the deadline for receipt of bids, the Department received two bids. [Exhibit C] Farmer submitted a low bid of \$123,362, and Triad submitted a bid for \$168,000. [Id.]

Farmer has a South Carolina contractor's license with the classifications of General Contractor Specialty – Nonstructural Renovations (NR License) and Mechanical Contractors – Electrical (EL License). [Exhibit D] Farmer does not have any other South Carolina contractor's license classification or subclassification.

After reviewing the scope of work for the Project in the plans and specifications and the Project Architect-Engineer's (A/E) estimate of probable cost, the Department determined that Farmer lacks an appropriate contractor's license to bid the Project as a sole prime contractor.¹ [Exhibit E] The Department determined that Triad has an appropriate contractor's license to bid the project as a sole prime contractor.

On September 24, 2025, the Department posted a notice of its intent to award a contract to Triad for the work of the Project. [Exhibit F] That same day, Farmer protested the Department's intent to award a contract asserting that with an NR License they can bid any work provided it subcontracts with properly licensed subcontractors. For the reasons explained below, Farmer is in error.

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 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 is an issue of

¹ A contractor is limited to the scope of his license group and classification both in bidding and performing work. S.C. Code Ann. § 40-11-270; *see also* §§ 40-11-30 and 260(A).

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 nonresponsive.”); *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.”).

A procurement officer's determination of nonresponsibility is final and conclusive unless it is “clearly erroneous, arbitrary, capricious, or contrary to law.” S.C. Code Ann. § 11-35-2410(A). To prevail, the protestant must prove the nonresponsibility determination is clearly erroneous, arbitrary, capricious, or contrary to law. *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3. Where the Department's decision has a rational basis in law and fact, the CPOC will not, indeed cannot, substitute his opinion for that of the Department's.

The Department structured the solicitation and bid documents to seek bids for a sole prime contractor to construct the Project. A prime contractor “is an entity which contracts directly with an owner to perform general or mechanical construction.” S.C. Code Ann. § 40-11-20(20). A sole prime contractor is “the prime contractor for a project on which there is only one prime contractor.” S.C. Code Ann. § 40-11-20(24). A prime contractor may only bid and perform work within the scope of its license(s). S.C. Code Ann. § 40-11-270. However, a sole prime contractor may offer to perform work outside the scope of its license provided a certain percentage of the work falls within the scope of its license.² In this regard, S.C. Code Ann. § 40-11-340 states:

An entity licensed under the classifications or subclassifications in Sections 40-11-410(1), (2), or (3) may act as a sole prime contractor on a project if forty percent or more of the work as measured by the total cost of construction falls under one or more of the licensee's license classifications or subclassifications. An entity licensed under the classifications or subclassifications in Section 40-11-

² A sole prime contractor must subcontract any work outside the scope of its license(s).

410(4) and (5) may act as sole prime contractor if fifty-one percent or more of the work falls under one or more of the licensee's license classifications or subclassifications.

[emphasis supplied]

The Contractor's Licensing Laws define the total cost of construction as:

[T]he actual cost incurred by the owner, all contractors, subcontractors, and other parties for labor, material, equipment, profit, and incidental expenses for the entire project. This does not include the cost of design services unless those services are included in a construction contract.

S.C. Code Ann. §40-11-20(23)

Farmer's NR License falls under Section 40-11-410(4), and its EL License Section 40-11-410(5). Therefore, Farmer can bid and perform as a sole prime contractor only on a project where "fifty-one percent or more of the work falls under one or more of the licensee's license classifications or subclassifications."

The Project was for replacement of heating and air conditioning equipment and associated refrigerant lines. The Project also includes electrical connections for the new equipment. In determining the license necessary to bid this project as a sole prime contractor, the Department rationally relied on an estimate of probable cost prepared by the A/E. The A/E estimated the probable cost for construction less contingency and demolition at \$146,450.³ [Exhibit G] Fifty-one percent of this amount is \$74,689.50. The A/E further estimated the probable cost of the electrical portion of the work at \$4,000. There is no work in the Project requiring a NR License.⁴ Even if one generously assigned demolition, which does not require a license, to Farmer's license, this does not help Farmer. The A-E estimated demolition at \$10,800. Adding this amount

³ The opinion included amounts for design services and third-party inspections which are not included in the total for construction shown here. The opinion also lumped demolition and HVAC equipment installation into one price of \$90,000. Upon further clarification, the A/E estimated the probable cost of demolition at \$10,800 and HVAC equipment installation at \$79,200.

⁴ Per Section 40-11-410(4)(c), the work of the NR license is "interior and exterior installing, remodeling, renovations, and finishes of acoustical ceiling systems and panels, load bearing and nonload bearing drywall partitions, lathing and plastering, flooring (excluding carpet) and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets, and millwork; and which also includes fireproofing, insulation, lining, painting, partitions, sandblasting, interior and exterior wall covering, and waterproofing."

to the EL work only yields an amount of \$14,800, well short of the 51% of the total cost of construction.⁵ Based on the foregoing, the Department's conclusion that Farmer was not properly licensed to bid the Project as a sole prime contractor had a rational basis and was not clearly erroneous, arbitrary, capricious, or contrary to law.

DECISION

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



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

⁵ Including demolition in the analysis raises the cost of construction to \$157,250 and raises the 51% threshold to \$80,197.50.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2025)

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

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

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

FILING FEE: Pursuant to Proviso 111.1 of the 2025 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C J&Hs, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 366, Columbia, SC 29201**

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.

Exhibit A

To: State Engineer

1201 Main Street. Suite 600

Columbia, SC 29201

On Thursday September 18th 2025 we, Farmer Construction L.L.C., submitted a bid for the Polly Best MHC HVAC Replacement, project #J12-9868-LC. We, Farmer Construction L.L.C. was the apparent low bidder.

On Tuesday September 23, 2025, we were notified by the Project Coordinator, Mr. Terry Crone that we were found to be non-responsive as a NR – Nonstructural Renovations License Holder.

We called Mr. Lyth Clark, Project Manager, and explained that we disagreed with Mr. Crone's decision and asked if he would award us the project, since we were the low bidder. Mr. Clark felt that a NR License Holder can't General Contract the job with that amount of HVAC in it. We explained that a NR License Holder can do everything with a properly licensed subcontractor, except structural repairs or adding to the original square footprint of a commercial building. He disagreed and told me my only other option was to write a protest.

We ask that the State Engineer's Office will look into this, and award this contract to Farmer Construction L.L.C., because we were found to be the lowest bidder, and we are properly licensed by the state to oversee the work in the contract as a NR License Holder.

Thank you for your time,

Willie Farmer

Farmer Construction

From: [Victor Lazo Del Sol](#)
To: [Protest-OSE](#)
Cc: [Farmer Construction](#); [Victor Lazo Del Sol](#); [Greg Drayton](#)
Subject: [External] Polly Best MHC HVAC replacement Protest
Date: Wednesday, September 24, 2025 12:05:27 PM
Attachments: [Polly Best Protest Letter.pdf](#)

Good Afternoon,

My name is Victor, and I am with Farmer Construction L.L.C.. We are writing in protest to the Polly Best MHC HVAC Replacement, project #J12-9868-LC.

We received the notice of being non-responsive Tuesday September 23rd 2025. Attached is our formal written protest letter from the owner Willie Farmer.

Please let me know if you need anything else for this protest to be reviewed, or if you have any questions.

Have a nice day,

Victor Lazo
Assistant Estimator
Farmer Construction Electrical LLC
(803)-979-6249 – Mobile

South Carolina Business Opportunities

Published by Division of Procurement Services - Delbert H. Singleton, Jr., Division Director

Ad Category: Construction

Ad Start Date: August 6, 2025

Agency/Owner: Department of Mental Health

Project Name: Polly Best MHC HVAC Replacement

Project Number: J12-9868-LC

Construction Cost Range: \$145,000 to \$155,000

Project Location: Barnwell Clinic/Polly Best

Description of Project/Services:

Replace of split system heat pumps, refrigerant lines, and exhaust fans.

Bid/Submittal Due Date & Time: September 18, 2025 - 2:00pm

Number of Bid/Submittal Copies: 1

Project Delivery Method: Design-Bid-Build

Agency Project Coordinator: Terry Crone

Email: terry.crone@scdmh.org

Telephone: (803) 543-5246

Documents May Be Obtained From: meca@mecainc.com

Project Details: https://scbo.sc.gov/files/scbo/J12-9868-LC_SE-310_lc080625.pdf

South Carolina Business Opportunities • SCBO Team • 1201 Main Street, Suite 600 • Columbia, SC 29201
803-737-0600 • scbo@mmo.sc.gov • <https://scbo.sc.gov> • <https://procurement.sc.gov>



Exhibit C

TABULATION OF BIDS

MECA JOB NUMBER: 24219.000 PROJECT: Polly Best MHC HVAC Replacement PROJECT NUMBER: J12-9868-LC		DATE: September 18, 2025 TIME: 2:00PM OPENED BY: TERRY CRONB WITNESSED BY: GONZ WILSON	
CONTRACTOR TRIAD MECHANICAL		BID BOND: ☒	
BASE BID AMOUNT: \$ 168,000		Addendum No #1: ☒	
		Electrical Sub: KEVIN L. JUDY CLM 11823	
CONTRACTOR FARMER (FARMER?) CONSTRUCTION CLM-109549		BID BOND: ☒	
BASE BID AMOUNT: \$ 123,862 BOW \$ 123,362		Addendum No #1: ☒	
		Electrical Sub: W.J. MILTON CLM-2422	
CONTRACTOR		BID BOND: ____	
BASE BID AMOUNT: ____		Addendum No #1: ____	
		Electrical Sub: ____	
CONTRACTOR		BID BOND: ____	
BASE BID AMOUNT: ____		Addendum No #1: ____	
		Electrical Sub: ____	
CONTRACTOR		BID BOND: ____	
BASE BID AMOUNT: ____		Addendum No #1: ____	
		Electrical Sub: ____	

BID - REJECTED
 AS NON-RESPONSIBLE
 NOT PROPER
 LICENSE

[Print this page](#)**Board: Commercial Contractors**

FARMER CONSTRUCTION LLC
3041-F MCNAUGHTON DRIVE
COLUMBIA, SC 29223
(803)728-0964

License number: 117264

License type: GENERAL CONTRACTOR

Status: ACTIVE

Expiration: 10/31/2026

First Issuance Date: 05/16/2012

Classification:

Nonstructural Renovation-NR5

Qualified By: Financial Statement

President / Owner: WILLIE FARMER

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

Supervised By
FARMER WILLIE (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

FARMER CONSTRUCTION LLC

3041-F MCNAUGHTON DRIVE
COLUMBIA, SC 29223
(803)728-0964

License number: 109549

License type: MECHANICAL CONTRACTOR

Status: ACTIVE

Expiration: 10/31/2027

First Issuance Date: 04/12/2007

Classification:

Electrical-EL5

Qualified By: Financial Statement

President / Owner: WILLIE E FARMER

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

Supervised By

FARMER WILLIE (COM)

[File a Complaint against this licensee](#)

Board Public Action History:

View Orders

View Other License for this Person

	Order Date	Name	License Type	License Number
View	8/6/2014	FARMER CONSTRUCTION LLC	CLM	109549
View	12/27/2013	FARMER CONSTRUCTION LLC	CLM	109549

DETERMINATION OF NON-RESPONSIBILITY

DATE: September 23, 2025

PROJECT: Polly Best MHC HVAC Replacement

PROJECT #: J12-9868-LC

Mr. Willie Farmer,

South Carolina Department of Mental Health (Agency) has made the determination of non-responsible for Farmer Construction LLC (Contractor) in the above-referenced project. The Agency has determined the Bidder or one of its listed Subcontractors does not have the proper license and license limitations requested of the Contractor to satisfy itself that the prospective contractor meets the State's Standards of Responsibility. The Contractor failed to provide the requested proper license and license limitations in the time allowed.

Please contact the agency representative below if you have any questions.

Thank you,

Terry Crone
Project Coordinator
Physical Plant Services Engineering

SC Department of Behavioral Health & Developmental Disabilities-Office of Mental Health
7901 Farrow Rd., BLDG. 4, PPSE
Columbia, SC 29203
(803) 543-5246
terry.crone@scdmh.org

Exhibit F

SE-370

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

AGENCY: Department of Mental Health

PROJECT NAME: Polly Best MHC HVAC Replacement

PROJECT NUMBER: J12-9868-LC

POSTING DATE: 09/24/2025

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: Triad Mechanical Contractors, Inc.

DATE BIDS WERE OPENED: 09/18/2025

BID INFORMATION:

BASE BID AMOUNT: \$168,000.00

ALTERNATES: #1 ACCEPTED ☐ \$0.00

#2 ACCEPTED ☐ \$0.00

#3 ACCEPTED ☐ \$0.00

TOTAL BID AMOUNT: \$168,000.00

TOTAL CONTRACT AWARD: \$168,000.00

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

N/A

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

N/A

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.

Pursuant to Section 11-35-410, documents directly connected to a procurement activity may be available within five days after request. All document requests should be directed to the procuring agency project coordinator. If a protest is pending, the protestant's lawyer may access otherwise unavailable information by applying to the CPO for the issuance of a protective order. Additional information is available at www.procurement.sc.gov/legal.

BY: Terry Crone TITLE: Project Coordinator DATE: 09/23/2025

ACKNOWLEDGED BY OSE PROJECT MANAGER: Lyth Clark DATE: 09/23/2025

DMH Polly Best MHC HVAC Replacement

MECA Project # 24219

Thursday, September 5, 2024

Opinion of Cost

Equipment (split heat pumps in kind)	\$42,000.00
Equipment demolition and installation with new ref'g lines	\$90,000.00
T & B (units)	\$5,000.00
Electrical	\$4,000.00
Controls (SSHP only)	\$6,250.00
Ionization modules	\$7,500.00
Exhaust Fan Replacement (2)	\$2,500.00
Contingency (15%)	\$23,587.50
3rd Party Inspection	\$3,750.00
<u>Approximate</u> M&E design fees for complete design and CA	\$24,600.00
Base OPC	\$209,187.50

From: Gene Wilson <genewilson@mecainc.com>

Sent: Thursday, October 23, 2025 10:18 PM

To: Terry Crone <terry.crone@scdmh.org>

Subject: [EXTERNAL] 24219 - Polly Best Updated Demo and Reno # OPC

CAUTION: This email originated from outside the South Carolina Department of Behavioral Health and Developmental Disabilities Office of Mental Health. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Terry

My laptop is locked up. I had an update in word but it crashed when trying to print a PDF.

I had separated Demolition @ \$10,800 and
Installation and new ref'g lines @ \$79,200.

Those are the only changes. I'll be at home tomorrow battling whatever I have. Phone may be off depending how I feel.

Gene

B. Gene Wilson

Vice President



2330 Main Street
Columbia, SC 29201
T 803.765.9421 C 803.606.5976
genewilson@mecainc.com
www.mecainc.com

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