

Contract Administration Issues

Tools of the Trade

- Applicable State Law
- Agreement for Construction
 - AIA B101
 - OSE Form 00811
- Manual for Planning & Execution of State Permanent Improvements, Part II
- Training & Experience

**What are the Most
Significant Factors For a
Successful Project?**

**What Factors Have Caused
Projects that You Have Been
Involved In To Fail?**

First Line of Defense

Reasonable Bid

Responsible Contractor

A Bid That Appears To Be Too Good To Be True

Probably Is

What if Contractor Claims a Mistake in Bid?

Contractor Responsibility

Procurement Code Provisions

- 11-35-1810
- 11-35-3020(c)(i)
- 11-35-1530(9)
- 11-35-2410
- 19-445.2125

Responsibility

a Closer Look at 19-445.2125

- Duty to determine Responsibility
- What is Responsibility
- Written Determination of Nonresponsibility
- Special Standards of Responsibility
- Subcontractor Responsibility

Resources for Making Determination

- Contractor Responsibility Questionnaire
- Your own agency personnel
- Other agencies
- Other customers of the contractor
- Check the internet for leads

Licensing & Responsibility

Protest



License Groups

LICENSEES' DOLLAR LIMITATION PER BID AND/OR PROJECT

GENERAL CONTRACTORS		MECHANICAL CONTRACTORS	
Group	\$ Limitation per project	Group	\$ Limitation per project
Group 1	\$30,000	Group 1	\$17,500
Group 2	\$100,000	Group 2	\$30,000
Group 3	\$350,000	Group 3	\$50,000
Group 4	\$750,000	Group 4	\$125,000
Group 5	Unlimited	Group 5	Unlimited

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What are License Classifications and Subclassifications?



General Contractors - Building

Has no subclassifications but can expressly perform work falling under certain subclassifications of the General Contractors – Specialty classification

General Contractors – Highway

Note: A License in this Classification Encompasses all Subclassification of this Classification

- Subclassifications:
 - Bridges
 - Asphalt Paving
 - Grading
 - Highway Incidental

General Contractors – Public Utility

Note: There is no all encompassing General Contractors – Public Utility License

- Subclassifications:
 - Pipe Lines
 - Water & Sewer Plants
 - Water & Sewer Lines

General Contractors – Specialty

Note: There is no all encompassing General Contractors – Specialty License

- Subclassifications
 - Boring & Tunneling
 - Concrete
 - Marine
 - **Masonry**
 - **Pre-Engineered Metal Buildings**
 - **Interior Renovation**
 - Railroad Lines
 - **General Roofing**
 - Specialty Roofing
 - Structural Framing
 - **Structural Shapes**
 - Swimming Pools
 - **Wood Frame Structures**
 - Public Electrical Utility
 - Boiler Installation
 - Glass & Glazing

Mechanical Contractors

Note: There is no all encompassing Mechanical Contractors

- Subclassifications:
 - Air Conditioning
 - Heating
 - Electrical
 - Packaged Equipment
 - Lightning Protection
 - Plumbing
 - Pressure & Process Piping
 - Refrigeration

Bidding Within License Classification and/or Subclassification

Case 1

- Asphalt Paving
- Concrete Curb & Gutter
- Concrete walkways
- Brick paver walkways with concrete base
- Masonry walls with concrete foundation
- Bus stop made of tubular steel and architectural fabric

Case 1 Continued

At issue in this solicitation is whether Bidder's license permits Bidder to bid and act as a sole prime contractor for this Project. Bidder possesses an unlimited contractor's license (Group 5) with a General Contractors-Building Classification (BD).

Examine Scope of License

SC Code Ann 40-11-410

S.C. Code Ann. § 40-11-340

Applying this language to the Project, the “awarding authority” must determine the cost of that regulated portion of the work within the BD classification and divide this amount by the total cost of the project (*i.e.*, the cost of both regulated and unregulated work). *See* S.C. Code Ann. § 40-11-200(B).

Case 1 Continued

After consulting with the Department of Labor, Licensing and Regulation, Agency determined that this license classification BD was not appropriate for this project and declared Bidder to be a nonresponsible bidder.

Case 1 Continued

- The project engineer's estimate of probable cost for the project was \$502,370, an amount consistent with the range of bids Agency received.
- The only work in this project expressly covered by the BD classification is masonry work and structural shapes.
- The engineer's estimate for the masonry retaining walls, pavers, and bus stop totaled \$99,000 or 20% of the total cost of construction

Case 2

On the Day of bidding, Bidder did not possess a contractor's license allowing it to offer to perform masonry work though it was issued such a license on April 1, 2011 (3 days later).

**What if this had been a
listed subcontractor?**

Can the Contractor Substitute?

Listed Subcontractors

If, at the time of bidding, a subcontractor listed on a bidder's bid does not possess the proper license for performing the work for which the subcontractor was listed, then neither the listed subcontractor nor the bidder are responsible bidders. S.C. Code Ann. § 40-11-200(B); *See also, Protest of Burkwood Construction Company, Inc.*, Case No. 1997-8 (affirming its prior decisions that the State cannot accept a bid where the low bidder listed a subcontractor who could not perform the work specified by the bid).

Bidding Within License Group

Case 1

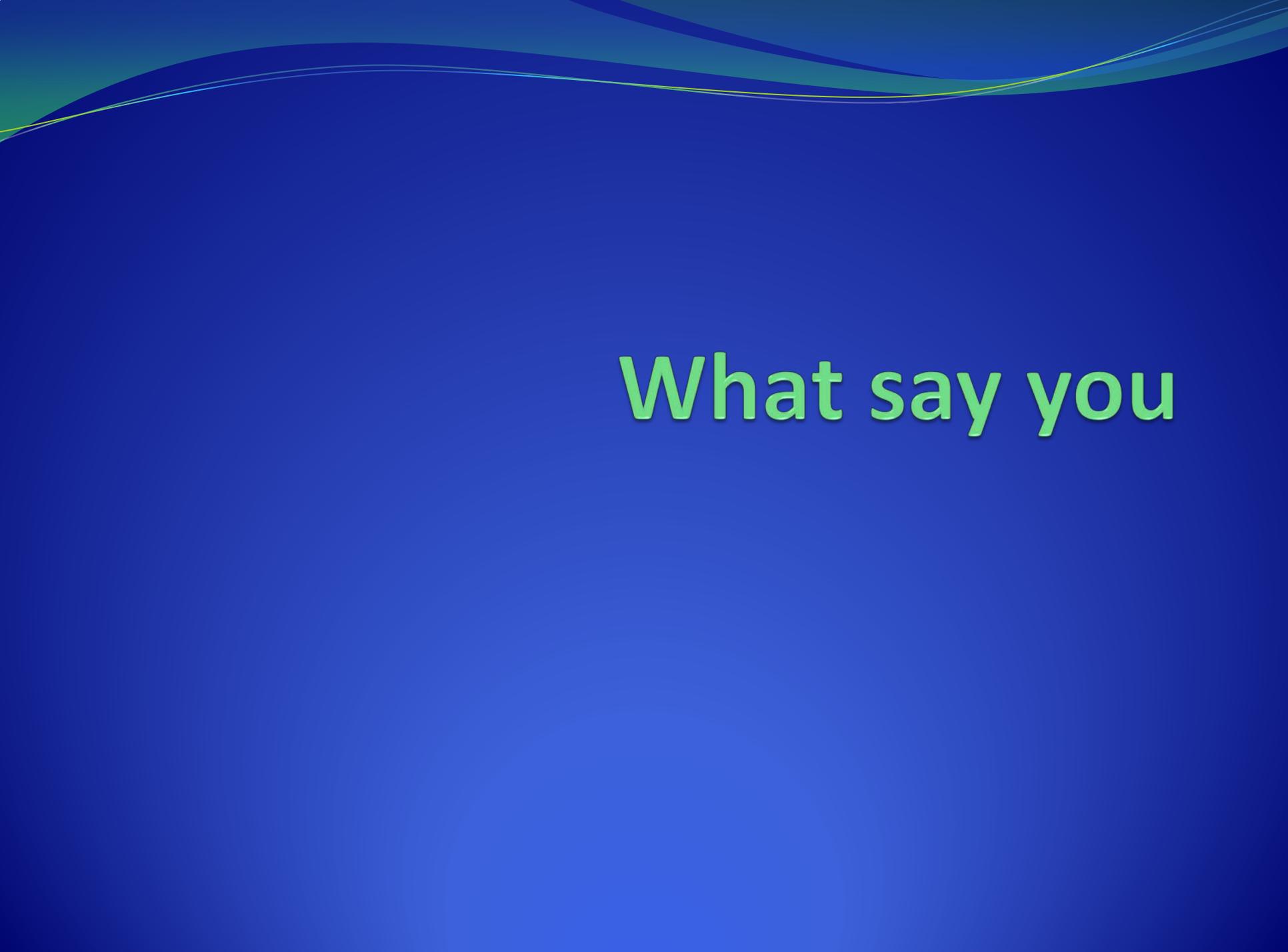
At issue in this case is the responsibility of the subcontractor that low Bidder listed on its bid form for HVAC work. It appears that shortly after bid opening, the second low bidder on base bid two, contacted the Agency to question the Subcontractor's ability under the Contractor Licensing Act to perform the HVAC work, and provided the Agency with a copy of Subcontractor's sub-bid. **The Agency reviewed Subcontractor's sub-bid and determined it exceeded the license group limitation of Subcontractor's mechanical contractor's license.**

What say you

- Did the agency have to consider the sub-bid?
- Consider that the subcontractor's license group was sufficient under the Architect's estimate. Does this change anything.

Case 2

- 2d Low Bidder argues that the HT/AC work significantly exceeds \$125,000, precluding Low Bidder's listed Subcontractor from bidding or performing the work.
- Subcontractor's license was a Group 4 Mechanical License.
- 2d Low Bidder presented evidence that the two HT/AC subcontractors that submitted bids to it for the HT/AC work submitted bids substantially in excess of the Group 4 limitations of a Mechanical License.

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What say you

Case 2 Continued

Matrix questioned the Project architect concerning a pre-bid estimate the architect commissioned. The estimate includes a line item for “HVAC” nearly double Metal Works’ license limitation.



Case 2 Continued

This kind of estimate is precisely what the state normally uses to determine if a listed subcontractor is working within the group limitations of his license.

Construction Phase Issues

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- Implied Warranty of Plans & Specifications
 - Implied Warranty of Suitability – Specified Subcontractors/Suppliers
 - Time
 - Schedule
 - Handling Requests for Time Extensions
 - Assessment of Damages
 - Changes
 - Constructive
 - Documentation, Documentation, Documentation

Stump the Chump(s)

Your Contract Administration Questions