

John E. Schmidt, III
803.348.2984
John@SchmidtCopeland.com

**SCHMIDT
&
COPELAND**
ATTORNEYS AND COUNSELORS AT LAW

Melissa J. Copeland
803.309.4686
Missy@SchmidtCopeland.com

March 11, 2024

Via email to barness@gwd50.org

Procurement Officer
Greenwood School District 50
1855 Calhoun Road
Greenwood, SC 29649

Re: Protest of RFP and Amendments regarding Solicitation # 2324-009 Request for Property and Casualty Insurance including Workers Compensation ("RFP") Issued February 7, 2024, As Amended

Dear Procurement Officer:

Our Firm represents HUB International Midwest Limited ("HUB"). Pursuant to Article 17, Section 4210.1.2 of the District's Procurement Code and the terms of the RFP, HUB submits this protest ("protest") of RFP, as amended by Addendum 1 issued February 23, 2024 and Addendum 2 issued February 27, 2024. HUB requests a hearing and/or administrative review. The protest is based upon the following factual and legal basis.

Background

On February 7, 2024, Greenwood School District 50 (the "District") issued RFP #2324-009. The solicitation sought competitive proposals from vendors to assist the District in obtaining Property and Casualty Insurance including Workers Compensation coverage. Under the RFP, Questions and Answers were provided in Addendums 1 and 2, issued February 23 and February 27 of 2024. These addendums did not resolve the issues raised in the Questions and therefore, this protest is timely.

Mandatory Stay under Law

The Procurement Code of Greenwood School District 50 as approved by the State Procurement Office provides for protest, and automatic stay:

SECTION 4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement. (S.C. Code § 11-35-4210)
(1) Right to Protest.
(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation shall protest to the chief business

official in the manner stated in subsection (2) ***within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue.*** An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

*

*

*

(7) Automatic Stay of Procurement During Protests. In the event of a timely protest pursuant to subsection (1), the District shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the chief business official, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the chief business official, after written approval of the Superintendent, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the interest of the District.

We note that the RFP makes provision that is in violation of the approved Code, indicating that there is no stay. This RFP provision is in violation of the Code and of State law that provides that any School District Code must be in substantial conformity to the State Procurement Code. The failure to afford a remedy that includes the automatic stay are integral to the Code. As such, the RFP provision withdrawing the legally provided stay is in violation of law.

HUB reluctantly makes this protest in order to aid the District in avoiding the uncertainties and complications that would result from any award based on the defects currently in the RFP which can easily be remedied to the great advantage of the District and to competition, which the Code endorses. It would be greatly to the District's interests to exclude viable competition from competitors who would be improperly excluded by the RFP as it is now written. And it is undesirable for vendors to submit pricing in response to a defective RFP as this may result in improperly exposed bid pricing.

Protest Details

After a review of the addendums to the RFP, HUB protests the following:

On February 21, 2024, HUB asked the following questions:

Per the instructions in the RFP, here are the questions/requests we have regarding information needed for providing a proposal:

- Please complete the attached Abuse & Molestation, School Board Legal Liability questionnaires **or provide equivalent completed questionnaires.**

HUB issue: District did not provide information or acknowledge in the addendum.

- Please complete the attached Property Update Details Questionnaire for these schools: Emerald High, Frank Russell Career Center, Greenwood High, Hodges Elementary, Lakeview Elementary, Rice Elementary, Pinecrest Elementary and Mays Elementary.

HUB issue: District did not provide information or acknowledge in the addendum.

- Please provide more details on the large claims dated:
 - GL – 7/22/22 - \$25K – open – no details provided, need location as well.
 - GL - 5/13/22 – \$40K – open - child fell and broke arm – any other details – location?
 - GL - 3/10/20 - \$55K – closed – student carried off bus – any other details? Any changes made as a result?
 - GL/A&M – 2/13/20 - \$505K – abuse of students – need more specific details of the incident – how many students? What location? Any changes made as a result? Was this a GL claim or abuse/molestation claim?
 - SBLL – 6/9/23 - \$30K – open – wrongful termination – provide more details of claim.

HUB issue: District did not provide information or acknowledge in the addendum.

- Do any locations have rooftop HVAC systems? If so, which have some type of hail guards?
- HUB Issue: District only addressed this partially in the addendum.
- Any locations on the National Historical Registry?

No issue: District answered.

- Can you provide a current drivers list with name, date of birth, state of license and driver's license number?

HUB issue: District did not provide information and gave a legally inadequate reason in the addendum.

- Please provide the NCCI Experience Modification Worksheet.

No issue – District provided.

- Please provide current premiums by line for calculating loss ratios.

No issue – District provided.

- Do you have a transitional return to work program?

No issue – District provided.

- Can we schedule a 20-30 minute virtual call for one of our workers compensation insurers with your workers compensation coordinator? They require a loss control call before quoting.
- HUB issue: District denied this and by this denial severely and needlessly restricts competition. For the District to obtain significant added competition District only needs to permit a 20-30 minute virtual call as is standard in the industry.
- Will there be any extension granted? Some insurers have indicated they cannot quote before April 1st so an extension of the proposal due date by 30 days would be advantageous for The District.

HUB issue: District needlessly denied this brief extension and as a consequence needlessly restricts competition. It is greatly to the advantage of the District to conform to purchasing laws and obligations to maximize competition.

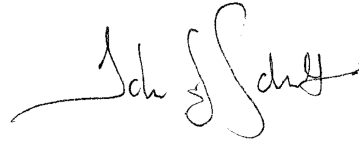
HUB has clearly indicated to the District that many viable competitive companies cannot offer firm coverage options to the District due to the time and other constraints of the RFP and Addendums. Insurers require an industry standard loss control interview prior to offering a quote. These interviews are a normal and customary part of the insurance proposal process. The 20-30 minute loss control call requested for the workers compensation options would answer many more questions than those that were addressed during the Feb. 22nd site visit. As of this date, the District has not allowed that, and as a result is needlessly excluding viable competition. Additionally, many insurers will not quote coverages demanded by the RFP until 60 days or even 90 days before RFP submission. As written, the RFP improperly forecloses all competition that is constrained by these industry standard requirements. If the RFP and its schedule is simply revised to allow these insurers to provide competitive quotes, it will greatly advantage the District and allow for full competition. No purpose is served by precluding such competition.

HUB request that the District refrain from taking any further action relating to RFP and that the stay is implemented pending the outcome of this protest as provided by the Code pursuant to Article 17 Section 4210, until such time as an administrative review can be completed and a determination made regarding the protest. HUB asks for a hearing on these protest issues. If the District is willing to make the minimal modifications to the RFP needed to maximize competition as is required by law, HUB would be in a position to withdraw its protest. HUB is happy to collaborate as needed in the protest process to expedite a resolution.

Chief Procurement Officer
Greenwood School District 50
Page 5 of 5

Thank you for your assistance in this process.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Schmidt, III". The signature is fluid and cursive, with the first name "John" and last name "Schmidt" being the most legible parts.

John E. Schmidt, III