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September 15, 2015

Willie L. Jett II, Superintendent
St. Cloud Area School District 742
Independent School District 742
1000 N. 44th Avenue, Suite 100
St. Cloud, Minnesota 56303

**TRANSMITTED VIA EMAIL &
U.S. MAIL**

Dear Superintendent Jett,

The Office of the State Auditor (OSA) received concerns regarding the bidding procedure used by the St. Cloud Area School District (District) for roofing repair projects on Apollo, Roosevelt, Discovery, Oak Hill, Talahi schools and District Service Building. In response, we obtained certain documents and had a telephone conversation with Kevin Januszewski, the District's Executive Director of Business Services. The purpose of this letter is to inform you of our review and provide recommendations for the District going forward.

The February 11, 2015 Board Minutes authorized a Call for Bids for Roofing Projects at Apollo, Roosevelt, Discovery, Oak Hill, Talahi schools, and District Services Building to be opened on Monday, March 16, 2015 at 10:00 a.m. Central Time. The specifications, prepared by Design-Build Solutions, Inc. (DBS), a subsidiary of Garland Industries, were issued on February 26, 2015. The District received one (1) bid from a local contractor that the Board rejected because, according to the April 8, 2015 Board Minutes, the bid price was \$189,297.00 higher than for roofing products that could be obtained through U.S. Communities, the leading national government purchasing cooperative. According to Januszewski, competitive priced Garland Company, Inc. roofing products were available through U.S. Communities. The District subsequently contracted with U.S. Communities for Garland Company, Inc. roofing products. The District also awarded the roofing installation contract to the local contractor who was the sole bidder because he was a Garland certified installer.

The District provided an electronic version of the specifications prepared by DBS entitled "General Instructions to Contractors and Specification for the 2015 Roof Repair Projects – Apollo, Roosevelt, Discovery, Oak Hill, Talahi and District Services Building." It does not appear that these specifications include an architect's signature or certification as required by Minn. Stat. §

326.12, subd. 3.¹ With certain exceptions, Minnesota Rules part 1800.5200, subpart 1, requires a licensed architect or engineer to prepare and certify specifications for building alterations or renovations.² If the District doesn't have requisite signed specifications, the OSA recommends that the District comply with Minnesota law and obtain any required signature on specifications for future roofing projects.

The April 8, 2015 Board Minutes indicate there was a discussion about the specifications being proprietary to Garland products. Proprietary specifications effectively eliminate competitive bidders. Minnesota law forbids this practice: "When any county, city, town, or school district calls for bids for the purchase of supplies or equipment, specifications shall not be so prepared as to exclude all but one type or kind but shall include competitive supplies and equipment."³

The Garland Company, Inc. was involved in every aspect of the District's roofing project. The specifications were prepared by DBS, a subsidiary of the Garland Industries, the District purchased Garland Company, Inc. roofing product under a U.S. Communities contract, and the local contractor who installed the roof product was a certified Garland roof installer.

Item 29 of the Manufacturer's Checklist states: "*Failure to comply with all particulars as outlined herein, shall be considered as reason for rejection of bid." In this way, the District gave notice to all potential bidders that certain information was required and failure to provide it would be a reason to reject the entire bid.

The Manufacturer's Checklist requires potential bidders to provide responses to 30 requests for information. Certain additional information was requested if the bidder was proposing an alternative to the specifications. Several of these requests appear onerous, including requirements that the bidder:

- Identify at least 5 hot asphalt applied modified applications and 5 standing seam applications, within a 75-mile radius which have been installed for at least five years;⁴ and

¹ The subdivision provides in relevant part: "Each plan, drawing, *specification*, plat, report, or other document which under sections 326.02 to 326.15 is prepared by a licensed architect, licensed engineer, licensed land surveyor, licensed landscape architect, licensed geoscientist, or certified interior designer *must bear the signature of the licensed or certified person preparing it, or the signature of the licensed or certified person under whose direct supervision it was prepared.* . . . The required signature and certification must appear on all pages of plans and drawings that must be signed, but only on the first page of specifications, plats, reports, or other documents that must be signed." Minn. Stat. § 326.12, subd. 3 (emphases added).

² Minn. Rules part 1800.5200, subpart 1, provides: "Plans and specifications for the erection, enlargement, alteration, or remodeling or renovation of any building, structure, or other work shall be prepared and certified by an architect or engineer licensed and practicing pursuant to Minnesota Statutes, sections 326.02 to 326.15, except as set forth in subparts 2 to 4." It is our understanding that the exceptions do not apply in this situation.

³ Minn. Stat. § 471.35.

⁴ See Manufacturer's Checklist item 18.

- Submit an “Ultra-violet microscopy analysis photograph showing a sample . . . used in the ‘**exact**’ specified membrane for this particular roofing project.”⁵

The information requested and the timeframe in which a bidder had to produce the documentation may have had an anticompetitive effect as no bidders proposed alternative specifications.

Mr. Januszewski informed me that the District intends to use an independent, third party to prepare specifications and review the bids for future roofing projects. To encourage competition and increase the number of bids submitted for any future building project, the District should consider implementing one or more of the following recommendations:

- Do not permit manufacturers to draft the District’s bid specifications
- Use a manufacturer’s bid specification to establish a standard by which equivalency can be measured.
- Forbid any entity that has a financial stake in the outcome of the process from reviewing the bids with or on behalf of the District.
- Permit the use of any material or product that is certified by an engineer to be equivalent to that identified in the specifications.

If you have any questions, or if we can provide the District with further assistance, please feel free to contact me at (651) 297-5853 or by email at jeff.reed@osa.state.mn.us.

Sincerely,

/s/ Jeff Reed

Jeff Reed, Attorney
Office of the State Auditor

cc: Kevin Januszewski

⁵ Emphasis in original. See Manufacturer’s Checklist item 24.