

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1991-20

In re:)
)
Protest of United Testing Systems, Inc.) O R D E R
)
)

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on September 26, 1991, on the appeal of United Testing Systems, Inc. ("United") from a decision by the Chief Procurement Officer ("CPO") declaring United's bid on a contract to supply laboratory equipment to South Carolina State College (the "College") nonresponsive.

Present at the hearing before the Panel were United, represented by its Vice President, Mark Shaffer; Applied Test Systems ("Applied"), represented by its Sales Representative, Ken Zillmer; and the Division of General Services, represented by Helen T. Zeigler, Esquire. The College was present but did not participate as a party.

FINDINGS OF FACT

On May 3, 1991, State Procurement issued an Invitation for Bids ("IFB") for equipment to be used by the College's engineering students in laboratory classes (Record, p. 20). Bids were opened on June 14.

On Item 3, which was a computer controlled universal testing machine, Applied bid two machines at \$35,310 and \$39,205, respectively. United's bid on Item 3 was \$37,284.25. (Record, pp. 58-59). Because the College found that neither United nor Applied's lowest-priced machine met specifications (Record, pp. 69-70), on July 24, 1991, the

State issued an Intent to Award Item 3 to Applied Test Systems for \$39,205.

Bid specifications for Item 3 required, among other things, the provision of a computer which was the brand name or equal of an IBM PS/2 model 70-20 MHz (with 80386 processor and 80387 math coprocessor) and 2 MB RAM. (Record, p. 44). In addition, bidders were required to provide system installation (machine and data acquisition), test, and customer training. (Record, p. 44).

United completed the bid form for Item 3 as follows:

00003 C/S Code: 049080100107 1 EA \$37,284.25
SCIENTIFIC LAB EQUIPMENT & ACCESSORIES
UNIVERSAL TESTING MACHINE WITH DATA
ACQUISITION, PER SPECIFICATIONS ON THE
FOLLOWING PAGES.

(Record, p. 39).

In an attachment to its bid, United itemized its quote on Item 3, including the following information:

<u>Item</u>	<u>Qty</u>	<u>Model No.</u>	<u>Description</u>	<u>Price</u>
18	1	SFM-14-2RAM	United Extended RAM 2MB	\$200.00
				Subtotal: <u>\$38,415.00</u>
				Less 5% Educational Discount: -\$ 1,920.75
				F.O.B. Orangeburg, SC 29211: \$ 790.00
				Grand Total: \$37,284.25

UNITED Installation, Operator Training, Preliminary Approval and Delivery Policies: Installation, operator training and maintenance instruction are included as part of this quotation at no extra charge to our customers in the Continental United States only. (Not included with the DH, LCH and special systems.) Travel expenses will be additional depending on geographic location.

(Emphasis added). (Record, p. 57).

The original reason for rejection of United's bid was its alleged failure to offer a computer which was equivalent to that specified in the IFB. (Record, p. 70). United protested its rejection on July 31, 1991. (Record, p. 17-18). At the hearing before the CPO, United's bid was challenged for its alleged failure to meet the 2MB RAM memory requirement and for the inclusion of unspecified additional travel charges.

The CPO found against United on both grounds and upheld the award to Applied Test Systems on September 3, 1991. On September 5, United appealed to the Panel. (Record, p. 3-4).

ISSUES

The issues before the Panel are whether United's bid on Item 3 is responsive to the requirement of the IFB that the computer offered have a 2MB RAM memory and whether the inclusion of additional travel expenses renders United's bid nonresponsive.

On the first issue, neither Applied nor the State produced any evidence that United's computer did not meet the requirement of a 2MB RAM memory. To the contrary, United demonstrated that Item 18 of its attachment to its bid is a charge of \$200.00 of the total bid amount for upgrading its computer to 2MB RAM memory. (Record, p. 57).

The Panel finds that United is clearly responsive to this requirement.

On the second issue, United argues that the statement at the end of its bid that "Travel expenses will be

additional depending on geographic location" is just boiler plate from United's standard quotation form. According to Mark Shaffer, United's Vice President, United did not intend for the additional charges to apply to this particular bid.

United points to its response on the State bid form which indicates that United will charge \$37,284.25 for the equipment "per specifications on the following pages." (Record, p. 39). United argues any additional charges would have been itemized in its attachment and no travel expenses are so itemized. (Record, pp. 53-57).

General Services contends that the statement that travel expenses are additional must be taken at face value and any unspecified additional charges to the amount bid renders the bid not responsive.

The Panel agrees with General Services. Read plainly United's attachment indicates that United bids a "Grand Total" of \$37,284.25. The paragraph directly under the "Grand Total" figure states that installation, operator training and maintenance instruction are "included as part of this quotation at no extra charge." (Record, p. 57, Emphasis added). Following this statement is the warning that, "Travel expenses will be additional depending on geographical location." (Record, p. 57, Emphasis added).

The inclusion of such unspecified additional charges is a modification of the IFB requirements which goes to the substance of the transaction and which mandates rejection of United's bid. Reg. 19-445.2070(D).

The Panel does not doubt United's explanation of why the statement is included in its bid, however, when the substance of the IFB is affected, the State must take bids at face value, as written, and may not, after opening but prior to award, seek clarification from bidders. See S. C. Ann. §11-35-1520(7) and (8) (1986) and Reg. 19-445.2085(B).

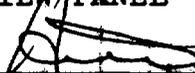
As noted in In re: Protest of Miller's of Columbia, Case No. 1989-3, and the cases cited therein, contacting a bidder to seek clarification or correction of substantive portions of his bid injects the potential for abuse into the procurement process. Once bids are opened and it becomes clear that a certain bidder is the winner but for an ambiguous provision in his bid, clarification would allow that bidder to manipulate his bid to insure that he receives award of the contract.

In other words, although the Panel has no reason to believe that it did so in this case, United could have originally intended to charge additional for travel but changed its mind when it became clear that doing so would cost it the contract. Allowing United to change its bid in this manner after bid opening would be patently unfair to the other bidders who bid higher because they included the travel costs in their bids.

For the reasons stated above, the Panel finds the bid of United Testing Systems is not responsive on Item 3. United's protest is hereby dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 

Hugh K. Leatherman, Sr.
Chairman

Columbia, S.C.
October 3, 1991