

STATE OF SOUTH CAROLINA ) BEFORE THE SOUTH CAROLINA  
 ) PROCUREMENT REVIEW PANEL  
COUNTY OF RICHLAND ) CASE NO. 1992-1

IN RE: )  
PROTEST OF WEAVER CONSTRUCTION )  
COMPANY, INC. ) O R D E R  
\_\_\_\_\_ )

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on March 5, 1992 on the appeal by Weaver Construction Company of a decision by the Chief Procurement Officer ("CPO") declaring Weaver not responsive on a bid to construct a student parking lot for Horry-Georgetown Technical College.

Present at the hearing before the Panel were Weaver Construction, represented by its President, Marlon Weaver; and the Division of General Services, represented by Helen T. Zeigler, Esquire. Also present but not participating were Ocean Lakes Construction and Horry Georgetown Tech.

FINDINGS OF FACT

On November 6, 1991, the State Engineer's Officer issued an Invitation for Bids ("IFB") on a contract to construct a student parking lot for Horry-Georgetown Tech. In addition to the base bid, bidders were required to bid on Alternate #1 as follows:

ALTERNATE #1 - Brief Description: Add on approximately 395 LF of 18" concrete curb and gutter at the eastern edge of the property from the parking lot to 67th Ave N (Add to) (Deduct from) base bid \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

(Record, p. 11).

When bids were turned in on December 3, 1991, the three low bidders were Stevens Construction Company with a base bid of \$128,078.15; the protestant Weaver Construction Company with a base bid of \$128,852.00; and Ocean Lakes Construction with a base bid of \$130,197.00.

The lowest base bidder, Stevens Construction, failed to bid on Alternate #1 and was rejected at bid opening on that basis. The next low base bidder, Weaver, bid as follows on Alternate #1:

ALTERNATE #1 - Brief Description: Add on approximately 395 LF of 18" concrete curb and gutter at the eastern edge of the property from the parking lot to 67th Ave N (Add to) ~~(Deduct/Exp)~~ base bid Six dollars per foot Dollars (\$ 6.00 ).

(Record, p. 11).

As a result of questions raised at bid opening, Weaver's bid was subsequently declared not responsive for failure to bid a lump sum amount on Alternate #1.

On December 5, 1991, a Notice of Intent to Award was issued to Ocean Lakes Construction as the lowest responsive and responsible bidder. By letter dated December 4, 1991 Weaver protested the rejection of its bid. After a hearing on the matter, the Chief Procurement Officer affirmed the decision to reject Weaver.

#### CONCLUSIONS OF LAW

Section 11-35-3020(2)(b) of the Consolidated Procurement Code requires bids to be accepted unconditionally, without alteration, except as permitted

elsewhere in the Code. Regulation 19-445.2085(B) allows a bid to be corrected after bid opening only if "the mistake in the judgment of the procurement officer is clearly evident from examining the bid document . . . ." As an example, the regulation lists the failure to extend unit prices or errors in math as correctable mistakes.

Weaver admits that its bid on Alternate #1 is confusing in that by written words it bids "Six dollars per foot" while its numerical bid is "\$6.00". (Record, p. 11). Weaver further admits that, technically, the State could ask Weaver to perform the work for \$6.00 or to forfeit its bid bond.

The State, however, does not seek to hold Weaver to a total bid of \$6.00 on Alternate #1 because it is obvious that such a low bid is a mistake. Rather, the State rejected Weaver's bid because the State could not determine the exact amount bid because Weaver chose to state its bid as a unit price, rather than fixed price, sum.

Weaver argues that the IFB is ambiguous on whether the price for Alternate #1 must be stated as a lump sum. Weaver points to the base bid which states:

The undersigned having examined all the Bidding Documents and acknowledging all Addendum . . . shall execute the entire Work in the Bidding Documents described as base bid for the lump sum of: \_\_\_\_\_ Dollars (\$\_\_\_\_), which sum is hereafter called the BASE BID.

(Record, p. 10).

Weaver contends that, while the base bid specifically asks for a lump sum, Alternate #1 does not but rather describes the work in terms of adding on an approximate amount of concrete curb. Weaver concludes that the difference in language between the base bid and Alternate #1 allowed Weaver to reasonably conclude that it could bid a unit price rather than a lump sum price for Alternate #1.

The Panel does not agree. Alternate #1 requires a contractor to select whether it will "(Add to)" or "(Deduct from)" the lump sum base bid and to indicate the amount of the addition or deduction by filling in a blank ending with "Dollars" and "(\$\_\_\_\_)." Because the base bid is stated as a lump sum, the Alternate #1 amount must be stated that way in order to allow one to "add to" or "deduct from" the base bid. Further the use of "Dollars" at the end of the blank and "(\$\_\_\_\_)" makes the quotation of a per foot unit price awkward and confusing, as was the case here. The Panel finds that Weaver was required to state a lump sum price for Alternate #1.

Weaver next argues that, even if the IFB required it to state a lump sum price for Alternate #1, its failure to do so can be corrected because the State can figure the correct lump sum amount from the per foot quotation by simply multiplying \$6.00 per linear foot by the 395 linear foot figure mentioned in Alternate #1. Weaver also notes that the plans in this case scale the Alternate #1 curb at 395 feet.

General Services argues that Weaver cannot correct its failure to bid a lump sum in this case because the mistake is not simply a matter of extending unit prices. The IFB states "Add on approximately 395 LF of 18" concrete curb" (Emphasis added)(Record, p. 11). General Services contends that a lump sum price cannot be determined from a unit price quote until the exact amount of concrete is poured.

The Panel agrees with General Services. Alternate #1 indicates that the 395 LF figure is approximate. Therefore, Weaver's bid is for approximately 395 linear feet of concrete at \$6.00 per linear foot. The State cannot arrive at a fixed figure as long as the exact amount of concrete needed is unknown. Further it is not fair to the other bidders to allow Weaver to convert its bid now using a firm 395 LF number, after bid opening when Weaver is sure that it will receive the contract, when the other bidders were required to figure the risk that the approximate 395 LF figure would change into their lump sum quotes at the time of bidding.

The Procurement Code does not allow corrections in bid prices after bid opening which are not obvious on the face of the bid or which prejudice other bidders. The Panel holds that allowing Weaver to correct its bid on Alternate #1 in this case would violate the Procurement Code.

For the reasons stated above the Procurement Review Panel affirms the January 15, 1992 decision of the Chief Procurement Officer and hereby dismisses the protest of Weaver Construction Company.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

By: 

Gus J. Roberts

Chairman

March 17, 1992

Columbia, S.C.