

STATE OF SOUTH CAROLINA ) BEFORE THE SOUTH CAROLINA  
 ) PROCUREMENT REVIEW PANEL  
COUNTY OF RICHLAND ) CASE NO. 1992-8

IN RE: )  
 )  
PROTEST OF DELTA INDUSTRIAL ELECTRIC ) O R D E R  
COMPANY, INC.; )  
APPEAL BY GREGORY ELECTRIC COMPANY, )  
INC., and the MEDICAL UNIVERSITY OF )  
SOUTH CAROLINA )  
 )

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on May 13, 1992, on the appeals of Gregory Electric Company, Inc. ("Gregory") and the Medical University of South Carolina ("MUSC") from a decision by the Chief Procurement Officer ("CPO") upholding the award of a contract to Delta Industrial Electric Company, Inc. ("Delta").

Present and participating in the hearing before the Panel were Gregory, represented by M. Elizabeth Crum, Esq., and Elizabeth A. Holderman, Esq.; MUSC, represented by Thomas Hesse, Esq.; Delta, represented by Claron A. Robertson, III, Esq.; and the Division of General Services, represented by Helen Zeigler, Esquire.

FINDINGS OF FACT

On January 15, 1992, MUSC solicited bids for electrical upfitting work on the Student Wellness Center. On February 20, MUSC received and opened bids from fifteen vendors, including Delta, which was the apparent low bidder, and Gregory, which was the apparent second low bidder.

A portion of the upfitting work required the provision and installation of a security system. Pursuant to the requirements of S.C. Code Ann. § 11-35-3020(2)(b)(i)(1986), Delta listed R & E Electronics as its security system subcontractor.

R & E Electronics is a security alarm company which has a Columbia branch and a North Charleston branch. The Columbia branch is licensed to install burglar alarms by the South Carolina Licensing Board for Contractors under S.C. Code Ann. §§ 40-79-10, et seq., (1986). (Record, pp. 21-22). The North Charleston branch of R & E Electronics is not so licensed and may not legally perform security system installation work.

Prior to bid opening day, R & E's Charleston representative made a phone bid for the fire alarm, sound, clock and security system installation work to Delta and other prime contractors. R & E's representative indicated that, as required by law, the Columbia branch would be performing the security work. The Columbia branch performed the estimating work in preparing the quote on the security portion of the job.

Delta, which accepted R & E's subcontractor bid, understood that R & E's Columbia office would be performing the security portion of the work. Nevertheless, on its bid, Delta indicated R & E's Charleston address in the security section of the subcontractor listing form. (Gregory's Exhibit # 2).

At bid opening, R & E's Charleston representative talked with a representative of Gregory Electric and indicated that R & E had tried in vain to bid this job to Gregory. Gregory inquired what R & E's quote was and asked the Charleston representative to write it down. R & E's representative complied by writing on the back of his business card - "\$40,200 Installed minus conduit includes taxes". On the front of the card was the representative's name and the North Charleston branch's address. (Record, p. 30). Gregory did not change its bid as a result of R & E's information.

Because R & E's North Charleston representative gave pricing information on security work, both Gregory and its security subcontractor, L & S Electronics, complained to the Licensing Board for Contractors that R & E was bidding security work without a license. In response the Board wrote to R & E on March 10, 1992, telling R & E that, because its North Charleston office was not licensed to perform security work and could not lawfully bid, "Your bid for the security portion of your bid must be withdrawn immediately." (Record, p. 29).

R & E, as a result, wrote a letter to Delta Electronics on March 17 and withdrew the security portion of its bid. (Record, p. 27).

MUSC, which received a copy of the letter from the Licensing Board, determined that Delta had not listed a licensed security contractor and was not responsive. MUSC,

therefore, issued a Notice of Intent to Award to Gregory on March 16.

On March 19, Delta filed a protest with the CPO seeking to prevent award of this contract to any party other than Delta. Delta contends that its bid is responsive. (Record, p. 32).

On April 13, the CPO heard Delta's protest. At the time of that hearing, the Licensing Board for Contractors had not rendered a decision on R & E's case. The CPO undertook to review the facts of R & E's case and determined that R & E did not hold itself out as a licensed burglar alarm contractor nor did it hold itself out to perform burglar alarm services for which it was not licensed.

At the CPO's hearing, R & E testified that it stood ready and willing to perform the work. As a result of this testimony, the Licensing Board wrote another letter to R & E demanding that it withdraw its bid on this project. (Gregory Ex. #3). R & E again complied by letter dated April 16, 1992. (Gregory Ex. #1).

MUSC and Gregory appeal the decision of the CPO and allege that the bid of Delta is not responsive because Delta initially failed to list a licensed subcontractor and because Delta no longer has any subcontractor in light of R & E's withdrawal of its bid.

CONCLUSIONS OF LAW

The South Carolina Regulation of Burglar Alarm System Businesses Act, S. C. Code Ann. §§ 40-79-10, et seq. (1991 Cum. Supp.) provides in part:

Section 40-79-10 - No private person, firm, association, partnership, or corporation may engage in, perform any services as, or in any way represent or hold itself out as engaging in an alarm system business or activity in this State without having first complied with the provisions of this chapter, including obtaining a valid license to engage in, perform any services as, or in any way represent or hold itself out as engaging in an alarm system business or activity. The license must be obtained from the South Carolina State Licensing Board for Contractors. . . .

Section 40-79-60 - (C) No licensee may conduct an alarm system business under a name other than the name under which his license was obtained or the name of the business entity under which the licensee is doing business and which name and address of the business entity must have been registered with the Board. (D) The operator or manager of any branch office must be licensed, and his license must be posted at all times in a conspicuous place in the branch office . . . .

Section 40-79-120 - It is unlawful for anyone not licensed or registered to: (a) advertise or hold himself out to be a licensee; (b) advertise or hold himself out to perform services for which a license is required; or (c) perform or aid or abet any other individual to perform services for which a license or registration is required, when, in fact, the individual is not licensed or registered.

The CPO determined that R & E's North Charleston branch did not unlawfully hold itself out to be a licensed contractor capable of performing burglar alarm services in violation of

the above law. The CPO found that R & E always represented that its Columbia office would perform the work and that, therefore, Delta had listed a licensed subcontractor.

In their appeal to the Panel, MUSC and Gregory contend that the CPO cannot ignore the decision of the Contractor's Licensing Board that R & E's North Charleston office unlawfully bid on this project and that its bid must be withdrawn. General Services and Delta contend that the issue of whether R & E's conduct violated the applicable licensing law is for the Licensing Board for Contractors and not the Procurement Review Panel to determine. They urge that the Panel can address only whether, at the time of bidding, Delta listed a security subcontractor in accordance with the Procurement Code. They argue that any subsequent determinations by the Licensing Board and R & E's withdrawal are not relevant to the Panel's inquiry.

The Panel agrees with General Services and Delta to a point. The Panel has no jurisdiction to determine or punish violations of the burglar alarm contractor licensing law. The Panel is charged with determining whether any violations of the Procurement Code, specifically §11-35-3020((2)(b)(i) occurred. To that extent, the Panel finds the conduct of R & E's North Charleston branch irrelevant to this case. Rather it is the actions of Delta which must be examined.

Section 11-35-3020(2)(b)(i) provides:

Any bidder or offeror in response to an invitation for bids shall set forth in his bid or offer the name and the location of the place of business of

each subcontractor who will perform work or render service to the prime contractor to or about the construction and who will specifically fabricate and install a portion of the work . . . .

The Code further provides that failure to list a subcontractor as required renders the prime contractor's bid not responsive.

In In re: Protests of Pizzagalli, et al., Case No. 1991-8 and 9, the Panel held that failure to list a licensed subcontractor is the same as not listing any subcontractor and renders the prime contractor's bid not responsive. Furthermore, an unresponsive bidder cannot cure its failure to list by substituting a licensed subcontractor. See also, In re: Protest of ECB Construction Company, Case No. 1989-7.

Delta's bid in this case lists as subcontractor:

FOR BASE BID B10

<u>Name of Trade</u>	<u>Subcontractor's Name and Location</u>
Fire Alarm	R & E Electronics, North Chas SC
Sound	" " 5524 Dutton Avenue
Clock	" "
Security	" "

(Gregory, Exhibit #2).

The CPO may be correct that R & E North Charleston made clear to everyone concerned that only the Columbia office could perform the security work. Nevertheless, Delta identified its security contractor as R & E Electronics, North Charleston.

General Services argues that location is not significant for purposes of §11-35-3020 and that any correct

R & E Electronics address serves the purpose of providing a contact point for the State and preventing bid shopping.

The Panel does not agree that location is not important in this case. Section 11-35-3020 does not ask for the name of the subcontractor and a means of contacting it, such as mailing address, etc. The requirement is to identify the name and location of the place of business of the subcontractor who will perform the work. South Carolina law recognizes branch offices as separate and distinct for purposes of being licensed to perform security system work.

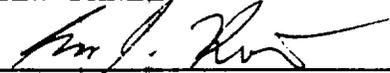
R & E's North Charleston branch is not licensed and, therefore, cannot legally perform the security work on this project. This was true at the time Delta listed R & E North Charleston as its security subcontractor. As in Pizzagalli, Delta, by listing an unlicensed subcontractor, has failed to list any subcontractor who will perform the security work. Therefore, Delta's bid is not responsive.

In arriving at this decision, the Panel makes no determinations regarding R & E's conduct, including the withdrawal of its bid.

For the reasons stated above, the Panel reverses the April 13, 1992 decision of the Chief Procurement Officer and declares the bid of Delta Electric Company not responsive for failure to list a licensed subcontractor. Award should be made to the next lowest responsive and responsible bidder, if financially feasible.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

By:   
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Gus J. Roberts  
Chairman

May 18, 1992  
Columbia, S.C.