

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	CASE NO. 2000-9
)	
)	
In re:)	ORDER
Protest of Steen Enterprises, Inc.;)	
Appeal by Steen Enterprises, Inc.)	
)	
)	
)	

This case came before the South Carolina Procurement Review Panel (Panel) for a hearing on August 15, 2000, on appeal by Steen Enterprises, Inc. (Steen) of a decision by the Chief Procurement Officer (CPO) upholding the rejection of Steen's bid on statewide term contracts for lawn maintenance equipment as nonresponsive. Present at the hearing were Steen, represented by Michael T. Bolus, Esquire, Affordable Equipment Company (Affordable), represented by John Beach, Esquire and the Office of General Services of the Budget and Control Board (General Services), represented by Keith McCook, Esquire.

FINDINGS OF FACT

On December 8, 1999 the Materials Management Office (MMO) issued an invitation for bids (IFB) to procure statewide term contracts for lawn maintenance equipment. On December 22, 1999, MMO issued Amendment No. 1. On January 4, 2000, MMO issued Amendment No. 2. On February 18, 2000 MMO posted a notice of intent to award several vendors of which Steen Enterprises, Inc. (Steen) was awarded Item 33 - Woods Commercial Lawn Mowing Equipment, Item 38 - Cub Cadet Tractors, and Item 89 - Case Utility Tractors.

On March 13, 2000 the CPO received a protest from Affordable Equipment Company in regards to Item 89 of the IFB. On March 16, 2000, after studying the issues raised in Affordable's protest letter, MMO asked the CPO to exercise his authority under South Carolina Consolidated Procurement Code Regulation 19-445.2085 (C) to cancel prior to performance the awards to Steen for Item Nos. 38 and 89, the awards to Husqvarna for item Nos. 34 and 67, and the award to Fourman's Repair Shop for Item No. 64 of the IFB. The CPO granted that request due to an administrative error on the part of the MMO staff in determining the lowest responsive and responsible bidder for these items. On March 28, 2000, MMO issued a rescinded/revised intent to award to announce the CPO's decision and reaward item No. 89 to Affordable. MMO announced that no award would be issued for Item No. 38. On March 30, 2000, the CPO received Steen's protest letter. On April 5, 2000, MMO suspended the revised intent to award. On April 7, 2000, Affordable withdrew its protest. On June 2, 2000, the CPO's decision on the protest was posted. On June 8, 2000, the CPO received Steen's request for administrative review pursuant to 11-35-4410(1)(b).

CONCLUSIONS OF LAW

MOTION TO DISMISS NEW ISSUES

General Services moves to dismiss two issues raised by Steen on August 2, 2000 which did not appear in Steen's initial protest letter dated June 8, 2000 and were raised more than fifteen days after the written decision of the CPO. The CPO's written decision in this case was posted on June 2, 2000.

S. C. Code of Laws § 11-35-4410(1) states in part the following: “...*The South Carolina Procurement Review Panel shall be charged with the responsibility to review and determine de novo: (b) requests for review of other written determination, decisions, policies, and procedures as arise from or concern the procurement of supplies, services ... provided that any matter which could have been brought before the chief procurement officers in a timely and appropriate manner ... but was not, shall not be the subject of review under this paragraph. Requests for review under this paragraph shall be submitted to the Procurement Review Panel ...within fifteen days of the date of such written determinations, decisions, policies, and procedures.*”

Therefore, the Panel is without jurisdiction to hear the two new issues raised by Steen on August 2, 2000 because they were not raised before the CPO and they were not submitted within fifteen days pursuant to S. C. Code § 11-35-4410(1)(b). The motion to dismiss is hereby granted.

ISSUE: WAS STEEN RESPONSIVE TO THE IFB FOR ITEMS 38 & 89

S. C. Code of Laws § 11-35-1410 provides in part, “...*(7) Responsive bidder or offeror means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.*” The relevant portions of the IFB state the following:

Bidding Instructions - Bids are requested in the form of a **single discount** to apply as a discount to a catalog, price sheet, or price schedule as described. [Record p. 13]

Evaluation/Award - Evaluation will be made to determine the responsive and responsible bidder offering the best discount from the manufacturer’s latest published price list..[Record p. 14]

Delivery Instructions - All items shall be **FOB destination** meaning delivered and unloaded onto receiving dock of any state agency...with **all charges for transportation and unloading prepaid by the contractor**. All Four (4) Cycle Equipment shall be delivered FOB-Destination, Assembled, Serviced, Oiled and ready for immediate use.[Record p. 14]

Maintenance/Operational Instructions - **The contractor(s) shall furnish one (1) copy of the instructions for maintenance and operation and one (1) copy of a complete replacement parts list for each piece of equipment delivered.** [Record p. 15]

In regards to bidding instructions, Steen did not offer a single discount on Item 89 as instructed but instead offered several different discounts by attaching a sheet listing six different discounts and tractor types. [Record pp. 114-115]

In regards to evaluation of the award, delivery instructions, and maintenance and operation instructions Steen added a note to Item 38 and an attached sheet to Item 89 stating the following: "*Our inbound freight to us, dealer prep & setup, parts & service manuals, & extended warranties will be at net prices. Tractor discounts do not apply.*" This statement added additional costs to Steen's bid for the manufacturer's freight charges to deliver the equipment to Steen, Steen's dealer preparation, service manuals, and extended warranties which is in direct conflict with the relevant portions of the IFB listed above. [Record pp. 113-115] Steen's bids on Items 38 and 89 do not conform in all material aspects to the IFB because Steen's actions effectively modified the requirements of the IFB.

At the hearing before the Panel William Steen testified that the manufacturer gives the dealer a discount on tractor itself and not on the manuals or on the freight from the manufacturer to dealer. William Steen further testified that the buyers would have to call Steen to get the inbound freight costs which change over time. Mr. Steen acknowledged that the IFB asked for a single discount, but testified that some vendors were instructed at the Pre-bid conference held by Jeff Patterson, from the Office of the Budget and Control Board, that the submission of bids such as his would be acceptable. However, changes, questions, and answers from the Pre-bid conference were included in Amendment # 1 to the IFB (See Record pp. 119, 120). No question regarding the adding of inbound freight costs or any additional costs to bid documents was recorded in that Amendment. It should be noted that Mr. Patterson was present at the hearing before the Panel, but was not called as a witness.

S. C. Consolidated Procurement Code Regulation 19-445.2070 (D) **Rejection of Individual Bids** provides in part the following: *“Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the State, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder:*

- 1) *attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the State cannot be determined;*

- 2) *fails to state a price and in lieu thereof states that price shall be price in effect at time of delivery;*
- 3) *states a price but qualified such price as being subject to "price in effect at time of delivery..."*

Steen's bid, by including the additional costs for inbound freight, dealer prep & setup, parts & service manuals, & extended warranties, clearly qualified such price as being subject to "price in effect at time of delivery." The price of the equipment to the State could not be determined by simply reading the written bid submitted by Steen. The Panel finds Steen's bid nonresponsive.

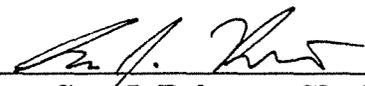
At the close of Steen's case in chief, General Services made a motion for a directed verdict. The Panel grants that motion and treats it as a motion to dismiss for failure to meet the burden of proof.

CONCLUSION

For the foregoing reasons, the decision of the CPO is upheld and Steen's appeal is dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 
Gus J. Roberts, Chairman

Columbia, SC

September 14, 2000