

STATE OF SOUTH CAROLINA)
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COUNTY OF RICHLAND)
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In re:)
)
Protest of Spherix, Inc.)
)
Appeal of Spherix, Inc.)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 2004-5

ORDER

This case came before the South Carolina Procurement Review Panel (Panel) on appeal from a May 28, 2004, order of the Chief Procurement Officer (CPO) in which he dismissed a protest of Spherix Inc., finding a late bid by Spherix had been properly rejected. The matter came before the Panel for a hearing on July 20, 2004. At the hearing before the Panel, Spherix was represented by James Cooper, Esquire, and Eric Marcotte, Esquire. Keith McCook, Esquire, represented the CPO.

Findings of Fact

This case involved a bid for a contract to provide a central reservation system and point of sale for state parks. The bids were due at or before 2:30 p.m. on May 4, 2004. According to the Request for Proposal, they were to be delivered to the Division of the State CIO on Broad River Road. Sam Hanvey was the person responsible for the procurement. Spherix submitted a bid on the project and had it delivered by Fed Ex. It was addressed to Sam Hanvey at the address specified. Fed Ex delivered the Spherix bid at 8:55 a.m. on May 4, but delivered it to the wrong location. It was delivered to another state office (SLED) next door to the designated address. The employee of SLED, Mr. Stewart, signed for the package. Realizing the mistake, Mr. Stewart testified that he immediately called Mr. Hanvey. He did not get him at that time, but stated that he spoke with him later in the day and that he said he would come to get the package. Mr. Stewart did not recall if he talked with him before or after the time of the bid opening. Mr.

Hanvey testified that he did not receive a call about the Spherix bid until 2:55 p.m. and that call came from Spherix. At that time Spherix did not know its bid had not reached the correct office.

Conclusions of Law

The Request for Proposal in this case clearly set out that “[a]ny proposals received after the scheduled opening date and time will be immediately disqualified”

S.C. Code of Reg. 19-445-2070 (H) provides,

Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid has been delivered to the **designated purchasing office or the governmental bodies’ mail room which services that purchasing office** prior to the bid opening. (emphasis added)

Spherix contends that this regulation saves its bid from rejection for two reasons:

(1) Mr. Stewart at SLED became the purchasing agent for Mr. Hanvey when he took the package. FedEx was prevented from properly delivering the package because Mr. Stewart took control of it; and (2) Mr. Stewart chose to service the purchasing office by accepting receipt of the package. While we sympathize with the position of Spherix since its bid was delivered to the State of South Carolina on time, we do not agree it meets the requirements of the regulation in order to avoid rejection.

This Panel has always strictly interpreted the delivery requirements of the Code. To do otherwise could wreak havoc with State business by leaving the State in a position of not knowing where any other bids might be. There is no question that Mr. Stewart was not an employee of the purchasing office and was not choosing to act as the mail room to service the purchasing office. It was delivered to him by mistake.

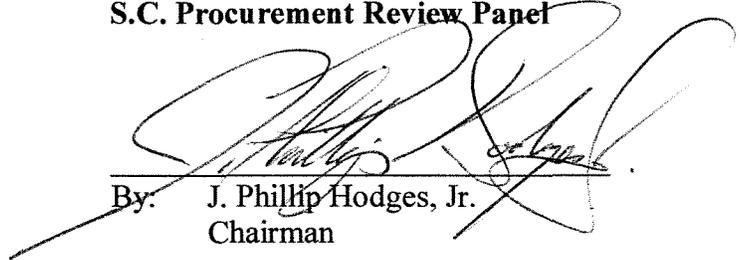
We recognize the case of Protest by M.L. Clapp Construction Company, Case No. 1987-9, which has been cited to us by Spherix. In that case we ordered that a bid, which was not in the hands of the opener at the designated time of opening, should have been allowed when it was discovered later. However, Clapp is distinguishable. In Clapp the bid had been delivered to the correct office and was sitting on the desk of the secretary to the person opening the bids. It was in the correct office, but as we ruled, had been misplaced by an office employee. The bid of Spherix did not get to the correct office or even the mail room that services that office.

Order

IT IS HEREBY ORDERED THAT the order of the CPO in which he found that the bid of Spherix was not received by the bid opening and therefore was properly rejected

IS AFFIRMED.

S.C. Procurement Review Panel



By: J. Phillip Hodges, Jr.
Chairman

This 9th day of August, 2004