

STATE OF SOUTH CAROLINA)
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COUNTY OF RICHLAND)
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In re:)
Protest of Roofco, Inc.)
)
Appeal by Moore Construction of York)
County, Inc.)
)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

CASE NO. 2000-14 (I)

ORDER

This case came before the South Carolina Procurement Review Panel (Panel) by way of appeal letter on December 6, 2000 from Moore Construction of York County, Inc. (Moore) requesting review of a decision by the Chief Procurement Officer for Construction (CPOC) granting the protest of Roofco, Inc. (Roofco). Prior to the scheduling of a hearing before the Panel, a hearing was scheduled for April 26, 2001 before the Contractor's Licensing Board (Board) addressing whether Moore had the license required to submit a bid on the solicitation at issue. On March 23, 2001, the Panel issued an Order of Continuance in Moore's appeal awaiting the Board's decision. On September 5, 2001, the Panel requested that the parties submit briefs in this case so that the Panel could review this case without a hearing. The parties consented. Moore submitted a brief on October 8, 2001 and General Services submitted a brief on October 11, 2001. After reviewing the record and the briefs in this case, the Panel made a decision on November 14, 2001. Therefore, this order is issued without a formal hearing.

FINDINGS OF FACT

On September 29, 2000 the Medical University of South Carolina (MUSC) solicited bids for the Miscellaneous Roof Replacement, Phase II Project (Project). On November 2, 2000 MUSC received and opened bids from five prospective contractors. On November 3, 2000 MUSC posted a Notice of Intent to Award the Project to Moore Construction Company of York County (Moore).

On November 9, 2000 Roofco, Inc., (Roofco) submitted a protest to the Chief Procurement Officer for Construction (CPOC). On November 28, 2000 the Executive Director of the South Carolina Contractor's Licensing Board rendered an advisory opinion to the CPOC with respect to the contractor's licensing requirements for the Project. That opinion stated that the nature of the work requires a Specialty Roofing license and further, that Moore does not possess such a license and is therefore ineligible to bid this work.

On November 29, 2000 the CPOC issued a decision, consistent with the Contractor's Licensing Board findings, without a formal hearing finding Moore ineligible to bid the work on the Project without the proper license and therefore non-responsive (Technically this is an issue of non-responsibility). The protest of Roofco was upheld, the award was rescinded, and MUSC was directed to award the Project to the lowest responsive and responsible bidder. On December 6, 2000 Moore appealed the CPOC's decision to the Panel. On March 23, 2001, the Panel issued an Order of Continuance on Moore's appeal. On April 26, 2001, the Contractor's Licensing Board ruled that Moore violated the Contractor's Licensing Act by offering to contract for construction work outside the classification or sub-classification of his license. Thereafter, Moore expressed it's desire to pursue it's appeal before the Panel.

CONCLUSIONS OF LAW

ISSUE: WHETHER MOORE HELD THE PROPER LICENSE TO BID ON THE MUSC PROJECT

On May 4, 2001, the Contractor's Licensing Board issued a Final Order in the matter of Moore Construction of York County, Inc. The Board found the following in that order:

... The roofing project on which the Respondent bid is described as the "removal of existing and replacement with approximately 5,000 sq. ft. of 4 ply built up w/ gravel surface." Built-up roofing is not included in the General Roofing classification, and therefore, would require that the Respondent be licensed under the license sub-classification of "Specialty Roofing" to perform the work ... [Moore] testified that on

November 1, 2000 he did not hold a Specialty Roofing license, and through counsel, stipulated to the fact that at the time of the bid he was not licensed to install built-up roofing ... [Subsequently Moore] has since taken the examination and become licensed under the sub-classification of Specialty Roofing... [Moore] violated S.C. Code Ann. § 40-11-110 (Supp. 1999) in that [Moore], as evidenced by the conduct described above, offered to contract for construction work outside the classification or sub-classification of his license. [Record p. 76]

South Carolina Consolidated Procurement Code Section 11-35-1410 (6) provides in part the following: *"Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.*

Moore's brief begins with an argument that the Procurement Code permits the procurement officer to waive a minor irregularity when it is in the best interest of the State. Moore's request for review [Record p. 1] contains only one issue pertaining to whether Moore held the proper license to bid on this project. Therefore, the Panel finds that the minor irregularity issue is untimely. [See *Protest of Vorec Corporation*, Case No. 1994-9]

Giving great deference to the order of the Contractor's Licensing Board, the Panel finds that Moore was not responsible to bid on the MUSC project because they lacked the proper license to do the work at the time the bid was made. Further, the Panel will take this opportunity to state that the lack of a proper license to do the work solicited in a state contract will always render a bidder non-responsible. Moore did acquire a Specialty Roofing License sometime after the bid opening, however, the Panel finds that to allow a bidder to become responsible after the bid opening is not only in direct violation of the Procurement Code, but would also undermine the purpose of the Code to *"ensure the fair and equitable treatment of all persons who deal with procurement system which will promote increased public confidence in the procedures followed in public procurement."*

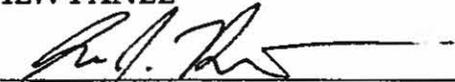
[See S.C. Consolidated Procurement Code § 11-35-20]

CONCLUSION

For the foregoing reasons the appeal of Moore is hereby dismissed, and the decision of the CPOC is upheld so far as it consistent with this order.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 
Gus J. Roberts, Chairman

Columbia, SC

December 5 ,2001