

STATE OF SOUTH CAROLINA) BEFORE THE DULY APPOINTED
) HEARING OFFICER
COUNTY OF RICHLAND) CASE NO. 1982-2

IN RE:)
)
PROTEST OF AIR CONDITIONING) RECOMMENDATION
CONSULTING AND SERVICING, INC.)
_____)

This matter is before me, pursuant to my appointment as Hearing Officer by the Chairman of the South Carolina Procurement Review Panel under the Provisions of Act 538 of 1982, on the Request for Review of the Decision of the Materials Management Officer issued July 2, 1982. The Decision being reviewed is from a Bid Protest filed on June 3, 1982, based on a contract award by the Department of General Services to Suggs Sales and Service, Inc. A hearing was held on that protest in the office of the Materials Management Officer on June 25, 1982. The Decision being reviewed upheld the contract award and found the Protest of Air Conditioning Consulting and Servicing, Inc. to be without merit. A hearing before me was held on September 24, 1982, at which time Air Conditioning Consulting and Servicing, Inc. appeared, represented by counsel. The Department of General Services appeared, together with the University of South Carolina with their counsel, and Suggs Sales and Service, Inc., the contract recipient, was interviewed.

FINDINGS OF FACT

Pursuant to the requirements of Section 11-35-1520, South Carolina Code of Laws (1976), as amended, the Division of General Services for the State of South Carolina mailed out an "Invitation for Bids" for preventative maintenance inspection service on six (6)

chiller units at the University of South Carolina for the years 1982 and 1983. Service was to include one (1) "during operation" inspection and one (1) "shutdown" inspection for each unit. Bids were received on April 19, 1982, and evaluated pursuant to Section 11-35-1520(7) and Consolidated Procurement Code Regulation 19-445.2070 of the 1976 Code, as amended.

The Bid of Air Conditioning Consulting and Servicing, Inc. was found to contain two (2) notations on its bid response. The first notation was found to be inconsequential under General Service's Evaluation. The second notation, however, stated that on Unit Four (4), the bid "does not include anything on turbine". This notation was found by General Services to be a modification of the bid requirements requiring rejection of the Bid. The maintenance and servicing contract was subsequently awarded to Suggs Sales and Service, Inc.

Counsel for Air Conditioning Consulting and Servicing, Inc. alleged during the hearing before me that the bid of Air Conditioning Consulting and Servicing, Inc. should not have been rejected on the grounds that the Bid Invitation did not reflect that maintenance and service on the turbine was to be performed. The additional argument was made that the Bid Invitation was ambiguous in that the turbine was merely an associated piece of equipment and not an integral component part of the Number Four (4) chiller unit.

During the hearing, the President of Air Conditioning Consulting and Servicing, Inc. stated his familiarity with the equipment listed in the Bid Invitation and stated that he intended to inspect the electric motors on the other units at least to some extent. The turbine in issue is the energy source for Unit Four (4) and that unit is incapable of operation without the use of the turbine. The Bid Invitation solicited maintenance inspection services including one

(1) "during operation" inspection and one (1) "while shutdown" inspection of each unit. The Unit Four (4) chiller requires the use of the turbine for operation in order to be inspected "during operation"

I find that there is substantial evidence on the whole record showing that a turbine is an integral part of the chiller in issue and that the combination of chiller and turbine comprise the unit listed for inspection service. I further find that under industry custom an inspection of the unit would include inspection of both turbine and chiller and that, therefore, the Bid Invitation was not ambiguous. If it was not customary, the Protestant would not have thought it necessary to state that the turbine was not included.

CONCLUSIONS OF LAW

1. The Hearing Officer accordingly finds that the Protestant failed to conform to the essential requirements of the Invitation for Bids issued March 29, 1982, for preventative maintenance inspection service on six (6) chillers at the University of South Carolina for the years 1982 and 1983, thereby requiring rejection of the Protestant's Bid pursuant to Regulation 19-445.2070, Subsection A, of the Consolidated Procurement Code Regulations.

2. The Hearing Officer accordingly finds that the modification of the Protestant's Bid to the effect that the Bid "did not include anything on turbine" was such a modification as to require rejection of the Protestant's Bid pursuant to Regulation 19-445.2070, Subsection D, of the Consolidated Procurement Code Regulations.

3. The Hearing Officer further finds that the modification of the Bid by the Protestant went to the substance of the Bid further requiring rejection.

THEREFORE, IT IS THE RECOMMENDATION OF THE HEARING OFFICER
THAT:

1. The Protest of Air Conditioning Consulting and Servicing,
Inc. be dismissed.
2. The Award of the contract to Suggs Sales and Service,
Inc. be upheld.

IT IS SO RECOMMENDED.

FOR THE PROCUREMENT REVIEW PANEL

BY:


Hearing Officer

October 1, 1982.

ADOPTED BY THE PANEL 10-19-82