

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1982-3

IN RE:)
)
PROTEST BY DATA-TEC BUSINESS) O R D E R
FORMS)

)
) APPEALED

This matter is before the South Carolina Procurement Review Panel as a result of a controversy arising under and by virtue of a contract between Data-Tec Business Forms and the South Carolina Department of Highways and Public Transportation.

Following a Request for Bids by the South Carolina Department of Highways and Public Transportation, Bid No. 09563, for 100,000 multi-copy Oversize or Overweight Trip Permits, a quotation was submitted by Data-Tec Business Forms in the amount of \$1,914.00. A Purchase Order, No. 12036, was issued by the South Carolina Department of Highways and Public Transportation and the contract awarded to Data-Tec on June 28, 1982. By letter dated September 10, 1982, the forms were rejected as delivered due to reduced type size. By letter dated September 29, 1982, a written request for a hearing was made by Data-Tec to the Materials Management Office. A hearing was held before the Acting Materials Management Officer on October 19, 1982, to consider the South Carolina Department of Highways and Public Transportation's refusal to accept the forms supplied by Data-Tec. In attendance at the hearing were representatives of the Materials Management Office, the South Carolina Department of Highways and Public Transportation, and Data-Tec. Following the hearing, a Decision was rendered on or about October 25, 1982, finding that the South Carolina Department of

Highways and Public Transportation had not breached its contract with Data-Tec by refusing to accept the forms as delivered on the ground that Data-Tec had not complied with the requirements of the Bid Solicitation and Purchase Order. A Request for Review before the Review Panel was subsequently filed and a hearing was held on December 7, 1982. Testimony was taken and evidence was received from representatives of Data-Tec and the South Carolina Department of Highways and Public Transportation. Both parties were represented by counsel.

FINDINGS OF FACT

The Bid Documents and Purchase Order in this case call for 100,000 multi-copy Oversize or Overweight Trip Permits. The quotation notes that a "photo copy" of the form required was attached and that, before printing, the bidder must contact Mr. D. R. Cherry of the Oversize Permit Office "to determine proper wording and spacing, submit a finished set with carbons for proofreading, trial on typewriter, and checking quality of carbon copies". The Purchase Order contains the identical requirement.

The testimony on the record establishes that Mr. Gerald Sease, a representative of Data-Tec, following conversations and after meeting with Mr. Cherry, came to the offices of Mr. Cherry, who was on vacation, and submitted a form for "proofing" to Mrs. Nancy Temple, Mr. Cherry's Secretary who was in charge of the office during Mr. Cherry's absence. Mrs. Temple signed the proof, although it was stated that Mrs. Temple did comment that she felt the print on the proof was too small. Data-Tec was not contacted by the South Carolina Department of Highways and Public Transportation until several weeks later and, at that time, the forms had already been printed and shipped. The Panel, based on the evidence and testimony in the record, finds

that the proof signed by a representative of the South Carolina Department of Highways and Public Transportation without notation or restriction waived the requirement for a submission of a finished set of forms prior to printing, and that the Department may not now refuse to accept delivery of those forms based on reduced type size and a failure to satisfy contract specifications.

CONCLUSIONS OF LAW

1. The Panel finds that the South Carolina Department of Highways and Public Transportation, in its contract specifications, required that, prior to printing, the Contractor contact the Department for a determination of proper wording and spacing, submission of a finished set of carbons for proofreading, for trial on the typewriter, and for consideration of the quality of carbon copies.

2. The Panel further finds that the signature of an employee of the Department of Highways and Public Transportation, with apparent authority to act for the Department, on the "proof" form without any notation or restriction as to type size or submission of a finished set with carbons was a waiver of those requirements in the contract specifications.

3. The Panel further finds that the contractor relied on the signature and "proof" in proceeding to print the forms in issue based on industry custom.

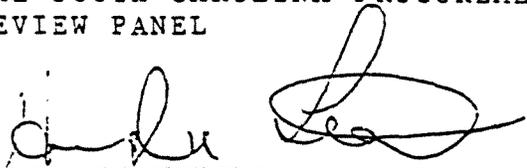
4. The Panel further finds that the South Carolina Department of Highways and Public Transportation may not now refuse to accept delivery of the forms in issue due to reduced type size and a failure to satisfy contract specifications.

5. The Panel further finds that the South Carolina Department of Highways and Public Transportation may not refuse to process payment to Data-Tec Business Forms for the amount stated in the contract due to reduced type size and a failure to satisfy contract specifications

IT IS THEREFORE ORDERED that the South Carolina Department of Highways and Public Transportation shall pay to Data-Tec the full amount of the contract price as stated on Purchase Order No. 12036, which is \$1,914.00.

IT IS SO ORDERED.

THE SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



Senator Hugh K. Leatherman
Chairman

December 13th, 1982.