

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1983-7

IN RE:)
)
PROTEST BY STANDARD CONSTRUCTION)
COMPANY, INC.) O R D E R
_____)

This matter is before the South Carolina Procurement Review Panel (hereinafter "Review Panel") for administrative review pursuant to Section 11-35-4210(5) and Section 11-35-4410(5), South Carolina Code of Laws (1976), as amended, as a result of a Determination issued by the Chief Procurement Officer for Construction and a Request for the administrative review of that Determination.

FINDINGS OF FACT

On May 19, 1983, bids were received by the South Carolina Criminal Justice Academy for the construction of a Maintenance Support Facility, State Project No. 8091-N20-016. The apparent low bidder was Standard Construction Company, Inc., of Columbia, South Carolina. The apparent low bidder did

not list the manufacturer of the pre-engineered steel building which was to be provided under the contract in its bid form. The second apparent low bidder, Grunsky Construction Company, Inc., of Columbia, South Carolina, protested the bid on the ground that Standard's bid had not listed the supplier of this pre-engineered metal building and that this was a failure to comply with the Instructions to Bidders, thereby requiring the rejection of that bid.

The State Chief Procurement Officer for Construction in a decision dated June 14, 1983, determined that the bid submitted by Standard Construction Company, Inc., was unresponsive due to a failure by Standard to list the supplier of the pre-engineered metal building. The Chief Procurement Officer so advised all concerned parties by letter dated June 14, 1983, and further confirmed that decision by letter dated July 21, 1983. Standard Construction Company, Inc., timely filed a protest of that decision as was stipulated by all parties present at the hearing. The protest was heard by this Panel on July 28, 1983.

The Instructions to Bidders purports to set forth the requirements of Section 11-35-3020(2)(b)(i)

of the South Carolina Consolidated Procurement Code in two separate places. The Supplemental Instructions to Bidders state that the bidder must list subcontractors who "specifically fabricate and/or install a portion of the work" However, the bid form proposal, also contained in the Instructions to Bidders, states that the bidder must only list subcontractors who "specifically fabricate and install a portion of the work." Five of the ten bidders on the project similarly did not list the manufacturer of the steel building.

As the evidence and testimony before the Panel indicate, the supplier intended to be used by Standard Construction Company, Inc., is Inryco, Inc., a subsidiary of Inland Steel. No question was raised by the State Engineer or any other party as to the capability of Inryco to provide the specified building.

Under the facts presented by the present case, the Panel finds that the Instructions to Bidders were ambiguous. If Suppliers were also to be listed, then that requirement should have been clearly and specifically set out. If a failure to list suppliers was to render a bid unresponsive, then that language should have been definitely set forth in the Instructions to Bidders. The bid of the

Protestant may not be held unresponsive under the present facts for failing to list a supplier.

CONCLUSIONS OF LAW

1. The Instructions to Bidders and related bid documents were ambiguous in that Section 11-35-3020(2)(b)(i) of the South Carolina Consolidated Procurement Code was incorrectly quoted in one place and correctly quoted in another, leading to confusion as to whether the name of the supplier of the pre-engineered metal building must be listed in the bid.

2. As the Instructions to Bidders purports to quote the South Carolina Consolidated Procurement Code in two separate places, it would be inappropriate here to expand the listing requirement of the bidders. If listing requirements more stringent than the Code are required, this should be clearly stated in the Bid Documents.

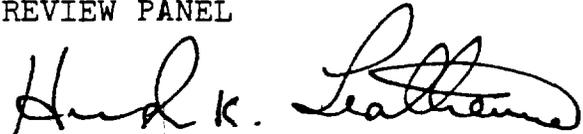
3. As the Instructions to Bidders brought before the Panel in the present case are ambiguous, the bid of Standard Construction Company, Inc., may not be rejected as unresponsive.

It is the decision of the South Carolina Procurement Review Panel that the bid of Standard Construction

Company, Inc., shall be reinstated and tabulated for consideration of the award of the contract on the above cited State project.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

A handwritten signature in cursive script, appearing to read "Hugh K. Leatherman".

SENATOR HUGH K. LEATHERMAN,
CHAIRMAN

August 9th, 1983.