

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1984-1

IN RE:)
)
PROTEST BY MCKENZIE TRACTOR) O R D E R
COMPANY, INC.)
)
_____)

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

FINDINGS OF FACT

South Carolina Wildlife and Marine Resources Department (hereinafter "Wildlife") determined that it needed a tractor at its Webb Wildlife Center in Garnett, South Carolina. The District Game Biologist filed a Purchasing Requisition requesting a "New John Deere Tractor, model 2950." Thereafter, this request flowed through the appropriate Wildlife Officials and to State Procurements (hereinafter "Procurement"). On or about January 11, 1984, Procurements solicited competitive bids, using a "Brand Name or Equal" specification, from approximately thirty (30) vendors. The bid specifications listed eleven (11) "approximate" features and product requirements to identify the salient characteristics of the equipment sought.

Ten vendors responded to Procurement's bid invitation -- nine (9) bidders offered the John Deere tractor, model #2950 and one (1) bidder, McKenzie Tractor Company, Inc. (hereinafter "McKenzie"), offered an Allis-Chalmers tractor, model #6080 as "equal" (for the purposes of the bid) to the John Deere #2950. McKenzie bid the Allis-Chalmers tractor at a price of \$18,408.00 including tax. Payne and Williams, Inc. (hereinafter "Payne") was the lowest of the John Deere bidders at \$20,549.36 including tax. Thus, McKenzie was the low bidder.

Wildlife and Procurement determined that the McKenzie bid was not responsive in that, among other factors, the Allis-Chalmers tractor, model #6080 was a four (4) cylinder tractor rather than a six (6) cylinder tractor. Payne was awarded the contract and Wildlife received a John Deere tractor, model #2950.

By letter dated March 1, 1984, to the Materials Management Officer, McKenzie timely protested the contract award to Payne on the grounds (1) that the Allis-Chalmers tractor #6080 was "equal" to the John Deere tractor #2950 within the meaning of that designation as defined by the Bid Invitation and (2) that McKenzie's bid was most advantageous to the State of South Carolina in that McKenzie's bid on the Allis-Chalmers tractor was over two thousand (\$2,000.00) dollars less than Payne's bid on the John Deere tractor.

A hearing was held on March 13, 1984 before the Materials Management Officer. The Materials Management Officer issued his decision dated March 21, 1984, upholding McKenzie's protest finding that McKenzie's bid was responsive in that the Allis-Chalmers tractor #6080 was "substantially similar and equivalent" to the John Deere tractor #2950 and further finding that Procurement "failed to award the bid to the lowest responsible bidder."

Wildlife, by letter dated March 29, 1984, received by the Materials Management Officer and forwarded for filing with the Review Panel, requested a hearing before the Review Panel to overturn the decision of the Materials Management Officer. The Review Panel held a hearing in this matter on April 13, 1984.

The Bid Invitation must include the specifications for the product sought and all contractual terms and conditions applicable to the procurement. South Carolina Code §11-34-1520(2) (1976, as amended). Only the evaluation criteria set forth in the Bid Invitation may be used in the evaluation of the bid. South Carolina Code §11-35-1520(7) (1976, as amended). The contract is required to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Bid Invitation. South Carolina Code §11-35-1520(10) (1976, as amended).

The term "specifications" is defined under South Carolina Consolidated Procurement Code Regulation 19-445.2140(4) as follows:

Specification means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout the Regulations.

The purpose of specifications is to serve as the basis for procuring a product or service which is both adequate and suitable for the State's needs in a cost effective manner taking into account:

- (1) Initial acquisition costs;
- (2) The cost of ownership; and
- (3) The cost of operation.

Specifications must clearly describe the State's requirements without being restrictive in nature. South Carolina Procurement Code Regulation 19-445.2140, Subsection B.

A "Brand-Name or Equal" Specification is a specification which uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet the State's requirements and which provides for the submission of equivalent products, South Carolina Procurement Code Regulation 19-445.2140, Subsection A, Item 2.

The Bid Invitation at page 10 described "Brand Name or Equal" as follows:

Contract Clause: Brand Name or Equal

A. The items called for in this bid have been identified by a "Brand Name or Equal" description. Such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bid response and are determined by the State to:

1. Fully meet the salient characteristics requirements referenced in the bid, or
2. Meet materially all characteristics of the specified item in the bid.

The approximate dimensions and features are set on page 5 of the Bid Invitation. The 4-cylinder feature is essentially equivalent to the 6-cylinder feature with respect to performance requirements. It is not necessary to set out a detailed analysis comparing the relevant features of the Allis-Chalmers #6080 versus the John Deere #2950. In sum, in the matter under consideration, the alternative

product, the Allis-Chalmer tractor, Model #6080 is substantially similar and equivalent to the John Deere tractor, Model #2950 in all of the relevant characteristics and requirements as set out in the Bid Invitation.

Therefore, it is the finding of the Review Panel that Procurement and Wildlife erroneously declared the McKenzie bid non-responsive.

CONCLUSIONS OF LAW

1. The Review Panel affirms the Decision of the Materials Management Officer dated March 21, 1984.

2. The Allis-Chalmers tractor, Model #6080 is substantially similar and equivalent to the John Deere tractor, Model #2950 in all relevant characteristics and requirements as set out in the Bid Invitation.

3. Procurement and Wildlife erred in declaring the McKenzie bid (the Allis-Chalmers #6080) to be ^{Non-} ^{A.K.L} responsive.

4. The McKenzie bid was more than \$2,000.00 lower than the next lowest bid.

5. McKenzie should have been awarded the contract under solicitation.

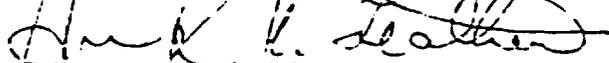
6. Pursuant to the authority of South Carolina Code §11-35-4210(7) (1976, as amended), the Review Panel recommends that the Budget and Control Board reimburse McKenzie the sum of \$435.00, such sum having been found by the Review Panel to be an equitable and reasonable reimbursement for costs.

IT IS SO ORDERED.

May 8th, 1984

SOUTH CAROLINA PROCUREMENT

REVIEW PANEL



SENATOR HUGH K. LEATHERMAN,
CHAIRMAN