



## THE PROTEST BY COX

The grounds of Cox's request for review of the Chief Engineer's decision are that the "bid complied with §11-35-3020 which is specifically referred to in the invitation for construction bids. We would further show that the specifications should be interpreted in compliance with the above mentioned statute and that if the specifications are found to exceed the requirements of the Statute, that the same is unlawful." Letter requesting review, 5/29/86 from attorney for Cox.

Cox used the bid documents in the invitation for bids but listed only those subcontractors whose work exceeded 2 1/2% of their bid. The invitation for bids provided a listing sheet for the bidder to fill in the blanks naming certain subcontractors on certain listed items. Cox left many of these blank. They did not list a subcontractor or supplier for each trade listed as the bid documents requested in Paragraphs 9.2.2 - (1) and 9.2.2 (6). (These sections are quoted in full on page 4 - 5, infra.)

Acceptance of Cox's argument would restrict the Chief Engineer's ability to protect the state's interests and insure the highest quality for the lowest price. Section 11-35-3020(a) says: "The invitation shall include, but not be limited to, all contractual terms and conditions applicable to the procurement." (Emphasis added) Section 11-35-3020(b) says: "The using agency's invitation for bids shall set forth

all requirements of the bid including but not limited to the following..." going on to recite the very language on which Cox relies:

(i) Any bidder or offeror in response to an invitation for bids shall set forth in his bid or offer the name and the location of the place of business of each subcontractor who will perform work or render service to the prime contractor to or about the construction, and who will specifically fabricate and install a portion of the work in an amount that exceeds the following percentages: Prime contractor's total bid up to three million dollars .... 2 1/2%

\* \* \*

(ii) Failure to list subcontractors in accordance with this section and any regulation which may be promulgated by the board shall render the prime contractor's bid unresponsive.

(iii) No prime contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except with the consent of the awarding authority, for good cause shown.  
(Emphasis added)

This section is intended to protect the subcontractors from bid shopping and to protect the state from the result of bid shopping. (See Logan v. Leatherman , 85-CP-40-3047 Order of Circuit Court at p.11) Nothing in the language of the statute limits the state to these and only these protections. The State, as any other owner going out for bids, may set any conditions in its invitation for bids. The protection for bidders is that the invitation is the same for all bidders. The statute does not set a limitation on the State's requirements in the invitation for bids. It sets a minimum level of protection for the State as owner and for the subcontractors.

The Panel therefore rules that because Cox did not comply with the listing requirements of Paragraphs 9.2.2(1) or 9.2.2(6) their bid is non-responsive.

#### THE PROTEST OF RUSCON

Ruscon requests review of the Chief Engineer's decision on the grounds that it, not Wise, was the lowest responsive bidder. Ruscon's bid is \$2,686,000, and Wise's bid is \$2,778,000, thus Ruscon is the lower bidder if it is responsive. The Chief Engineer found that Ruscon improperly listed itself in violation of Paragraph 9.2.2(2) on "miscellaneous and ornamental metal, carpentry and millwork, and steel doors and frames."

Paragraph 9.2.2(2) states: Any bidder or offerer (sic) in response to an Invitation for Bids shall set forth in his bid or offer the name, the location of the place of business and contractor's license number, where applicable, of each subcontractor or supplier listed by trade on the bid form; work or render service to the prime contractor to or about the construction, and who will specifically fabricate and install a portion of the work in an amount that exceeds the following percentages: Prime contractor's total bid up to three million dollars .... 2 1/2%

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(ii) Failure to list subcontractors in accordance with this section and any regulation which may be promulgated by the board shall render the prime contractor's bid unresponsive.

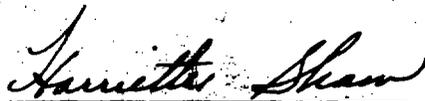
(iii) No prime contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except with the consent of the awarding authority, for good cause shown.

(Emphasis in original.)

The issue is whether Ruscon complied with the emphasized language and listed either a subcontractor or a supplier for each trade on the bid form. The language of the bid invitation is in the alternative and the bid form directs one to list: "subcontractors for the following trades as required by 9.2.2(1)." Further, Paragraph 9.2.2 (6) says: "Contractor performing work with his forces in lieu of a subcontractor - the contractor shall list the type of work to be performed with his name in lieu of that of a subcontractor." Ruscon listed a subcontractor or a supplier for each trade as required. On those trades listed in Wise's protest it listed itself as a subcontractor in compliance with 9.2.2 (6). The invitation did not require both the subcontractor and the supplier to be listed nor did the list provided for listing require both the subcontractor and the supplier to be listed. There has been no allegation and no proof that Ruscon cannot perform these trades as listed.

Therefore the Panel holds that Ruscon is the lowest responsive, responsible bidder on State Project No. 8615-H59.

IT IS SO ORDERED.



Harriette Shaw,

Vice-Chairman

May 30, 1986