

FINDINGS OF FACT

The uncontroverted testimony reveals the following facts on which the Panel bases its conclusions and order.

1. The bid submitted by Metze contained a noncollusion affidavit that was signed by James B. Metze, but the affidavit was not notarized.
2. The I.F.B., page 3, under "LISTING OF SUBCONTRACTORS", required the following:

"List subcontractor(s) as indicated by trade. Also, list by trade any other subcontractor whose costs exceed the percentages in Paragraph 9.2.2(1) of the Instructions to Bidders.

If the prime contractor is to perform work with his forces for a listed trade, he shall list his name in lieu of a subcontractor."

3. The bid by Metze also failed to list who would perform the work for the following trades: concrete work; roofing (shingles) installation; rough carpentry; masonry work; drywall, furring and metal stud work; carpet installation.
4. James O. Metze, Vice President of Metze, testified that all subcontractors providing work totalling

more than two and one-half percent of the total amount bid were designated in Metze's bid. The I.F.B. stated the prime contractor must list his name in lieu of a subcontractor if the prime contractor is to perform work with his employees for a listed trade. Mr. Metze testified that he read this requirement but that he concentrated on the subcontractors providing more than 2 1/2% and simply failed to list Metze as providing the work for the trades listed in #2 above. He further testified that he understood that this information was required by the I.F.B.

5. Metze was determined to be the lowest responsive and responsible bidder after General Services, in consultation with the owner, decided to waive the requirements relative to the listing of subcontractors.

DISCUSSION AND CONCLUSIONS OF LAW

MACCO asserts that, due to the omissions found to be fact by the Panel in Items 1 and 3 above, the bid of Metze should be declared nonresponsive. Section 11-35-1410(7) of the S. C. Code of Laws (1976, as amended) defines a responsive bidder as "a person who has submitted a bid which conforms in all

material aspects to the Invitation for Bids." [Emphasis added]. Consequently, minor flaws or omissions are not grounds for a bid to be rejected. Only a "bid which fails to conform to the essential requirements of the Invitation for Bids shall be rejected." (Reg. 19-445.2070(A))

1. The Panel concludes that the omission of six subcontractors or the failure by Metze to list itself as performing the work in six of the sixteen trades listed on the bid fails to conform to the essential requirements of the invitation for bids, as required by Reg. 19-445.2070(A). The requirement to list subcontractors is designed to prevent bid shopping, and the failure to list who is to perform the work in these trades is prejudicial to the other bidders. It is prejudicial because under §11-35-3020(b) the listing of the subcontractors acts as an enforceable contract between subcontractors and general contractors. The failure to list subcontractors thus frees the general contractor to contract after receiving the award with any subcontractors. Therefore, the omission of this information in Metze's bid is material and warrants a determination that its bid is nonresponsive. The Panel so rules.

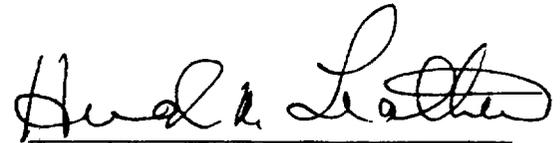
2. Having determined that Metze's bid is nonresponsive for the reasons cited above, it is unnecessary for the Panel to

decide whether the failure to notarize the affidavit of noncollusion is sufficient grounds for a bidder to be deemed nonresponsive.

3. The Portion of the CPO's determination declaring MACCO's bid responsive is upheld by the Panel. The remaining portions of the CPO's determination are hereby overruled.

Consequently, since Metze's bid is nonresponsive, MACCO is the lowest responsive and responsible bidder for project No.8824-H73.

IT IS SO ORDERED.



Hugh K. Leatherman
Chairman, Procurement
Review Panel

Columbia, South Carolina

November 6th, 1986