

B. CHANGES TO BIDDING REQUIREMENTS:

None

C. CHANGES TO THE CONDITIONS OF THE CONTRACT:

None

D. CHANGES TO THE SPECIFICATION:

None

(Record p. 20)

Margaret Jordan, Project Manager with the State Engineers Office, testified that she reviewed Addendum No. One and it was issued, as Addenda are always issued after a prebid conference, to clarify issues discussed at the prebid conference and list the prebid conference attendees.

Addendum No. One to the Invitation for Bids is dated July 1, 1993, and was transmitted to the prebid conference participants by facsimile. The facsimile transmittal sheet contains the following instructions:

Please call 803 748-4410 and confirm that fax was received. Acknowledgment of Addendum #1 will be noted on SE-330. (Record p. 29)

JG&W verbally acknowledged receipt of Addendum No. One on July 6, 1993. JG&W's bid was already sealed and mailed. After receipt of Addendum No. One on July 1, 1993, JG&W made no changes to its bid. JG&W did not acknowledge Addendum No. One on its bid. (Record p. 23).

Supplementary instructions to bidders, titled "ARTICLE 9 SUPPLEMENTARY INSTRUCTIONS", state in part:

AIA Document A701 1987 Edition - Instructions to Bidders is hereby modified by addition to, change of and/or deletion from existing (sub)paragraphs and/or insertion of additional (sub)paragraphs as follows: ...
3.4.5 Bids on which all addenda are not acknowledged shall be rejected as unresponsive, except for the following: ...
.3 The addendum only gives clarifications and/or lists attendees at a mandatory prebid conference.

The AGO opened bids on July 7, 1993, from nine (9) bidders including JG&W and ViroGroup. JG&W submitted a base bid price of \$28,736.00 and ViroGroup submitted a base bid price of \$30,500.00. (Record p. 27) The AGO issued a Notice of Intent to Award dated July 13, 1993, indicating its intent to award the contract to JG&W. (Record p. 28)

ViroGroup protested the intent to award to JG&W based on JG&W's failure to acknowledge the addendum on its bid, which it claimed gave JG&W a financial advantage. (Record p. 19) The CPO held a hearing on August 10, 1993, and issued a decision on August 17, 1993, finding JG&W's bid nonresponsive for failure to acknowledge Addendum No. One. JG&W protests the CPO's determination.

CONCLUSIONS OF LAW

The Panel finds that although JG&W did not acknowledge Addendum No. One on its bid, section 3.4.5.3 of the AIA Document A701 1987 Edition - Instructions to Bidders clearly states an exception to acknowledging addenda which is applicable in this case. Section 3.4.5 provides that "bids on which all addenda are not acknowledged shall be rejected as unresponsive, except for the following: [...] .3 The addendum only gives clarifications and/or lists attendees at a mandatory prebid conference."

Addendum No. One states on the face of the document that it does not change the terms of the contract. The testimony of Ms. Jordan corroborates that the addendum makes no changes. Mr. Weinnig, President of JG&W, testified that JG&W made no changes to its bid after receipt and consideration of Addendum No. One. While the Panel feels that it is mandatory to acknowledge in writing a bid document addendum or amendment, this case presents evidence that the failure to acknowledge the addendum is an exception under the bid documents. Because Addendum No. One does not change the terms of the

contract, the failure to acknowledge the addendum in writing is an exception under the facts of this case. The Panel finds that JG&W is responsive. Because the Panel makes its determination on the above grounds, other issues raised and argued are not addressed.

CONCLUSION

For the foregoing reasons, the Panel reverses the August 17, 1993 decision of the CPO and orders the award of the contract to the lowest responsive and responsible bidder.

IT IS SO ORDERED.

**SOUTH CAROLINA PROCUREMENT
REVIEW PANEL**


By: Gus J. Roberts, Chairman

Columbia, SC

Sept. 10, 1993.