

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE SOUTH CAROLINA  
PROCUREMENT REVIEW PANEL  
CASE NO. 1996-1

In re:

Protest of Handi-House of Newberry  
Appeal by Handi-House of Newberry

ORDER

This case came before the South Carolina Procurement Review Panel (Panel) on January 23, 1996, on the appeal of Handi-House of Newberry, who filed an appeal of the decision by the Chief Procurement Officer (CPO) denying Handi-House of Newberry's protest.

Present and participating in the hearing before the Panel were Carl Rayhorn representing Handi-House of Newberry, and Office of General Services of the Budget and Control Board represented by Delbert Singleton, Jr., Esq.

#### FINDINGS OF FACT

The Materials Management Office (MMO) of the Office of General Services issued an Invitation For Bids (IFB) soliciting portable buildings on October 13, 1995. (Record p. 15). Three bids were opened on October 27, 1995. Handi-House of Newberry submitted the lowest bid. (Record p. 39). It is undisputed that Handi-House of Newberry did not provide warranty information required by the bid documents with its bid. Handi-House of Newberry understood a warranty is required, and in fact has a warranty, but did not understand that the warranty must be provided with the bid documents. On November 8, 1995, MMO issued a Statement of Award to Lexington Aluminum Utility Buildings, after Handi-House of Newberry and the next lowest bidder, Handi-House of Lexington, were found to be nonresponsive. (Record p. 13). The CPO received Handi-House of Newberry's protest on November 13, 1995. (Record p. 11). The CPO conducted a review and, on December 11, 1995, issued a decision, denying Handi-House of Newberry's protest. (Record p. 4).

## **CONCLUSIONS OF LAW**

### **Motion to Dismiss**

General Services made a Motion to Dismiss Handi-House of Newberry's protest based on the law, which does not allow for correction of the bid in this case. The Panel granted the Motion to Dismiss for the following reasons.

A bid must be responsive to the solicitation documents to receive award of the contract. The IFB provides, both under Special Contract Clauses and in the specifications, that "warranty must be stated and should be a minimum warranty of 15 years on aluminum and treated wood runners." (Record p. 19 and p. 22). The IFB mandates that the warranty be "stated". The warranty would have to be provided with the bid for MMO to determine compliance. Handi-House of Newberry admits it did not provide the warranty with its bid. Clearly, Handi-House of Newberry's failure to provide the warranty is nonresponsive to the mandatory requirement of the IFB.

S. C. Code Ann. Regs. 19-445.2070 provides that "any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." Nonessential requirements of an IFB may be waived under certain circumstances. S. C. Code Ann. section 11-35-1520(13) provides for the correction of minor or immaterial irregularities in a bid. The statute states, in pertinent part:

a minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders.

General Services contends that the requirement of providing the warranty information is mandatory and cannot be waived, and the State is forced to reject Handi-House of Newberry's bid due to its failure to conform its bid to the essential requirements of the IFB. General Services further argues that the warranty information directly affects the price of the portable buildings so it cannot be waived as a minor informality or irregularity under S. C. Code Ann. section 11-35-1520(13).

The Panel finds that the warranty is essential and the failure to provide the required warranty cannot be waived as a minor informality. The warranty is a mechanism to protect the State, and is an essential requirement of the IFB. Also, the warranty has more than a trivial or negligible effect on the bid price as well as the performance of the contract, so failure to provide it cannot be waived. Although it is unfortunate that Handi-House of Newberry, the lowest bidder, will not receive the contract in this case, the State must adhere to the Consolidated Procurement Code.

Handi-House of Newberry contends that MMO should have contacted Handi-House of Newberry and allowed it to provide the missing warranty. Although this appears to be a simple solution to the problem of failing to provide the warranty with the bid, the South Carolina Consolidated Procurement Code does not allow for MMO to contact a bidder to seek missing information on a bid. S. C. Code Ann. section 11-35-1520(7) states that "bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this code." Previous Panel decisions also clearly find that contact with a bidder prior to award of the contract is improper. The Panel determined in Case No. 1988-5, In re: Protest of CNC Company, that General Services "could not contact CNC after the bids were opened for clarification. To do so would have been patently unfair to the other bidders and in violation of 11-35-1520(7) and (8). See

been patently unfair to the other bidders and in violation of 11-35-1520(7) and (8). See also, In Re: Protest of Ohmeda Company, Case No. 1987-5."

Mr. Rayhorn, owner of Handi-House Newberry, acknowledges he has not previously placed a bid with the state. The Panel would suggest that all vendors contemplating doing business with the state obtain and become familiar with the South Carolina Consolidated Procurement Code, which governs purchases made by the State. Although the law may have harsh results, the underlying policy is "to ensure the fair and equitable treatment of all persons who deal with the procurement system." See, S. C. Code Ann. section 11-35-20(f).

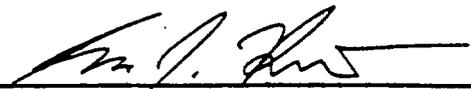
Further, Handi-House of Newberry's appeal letter to the Panel raises new issues concerning Lexington Aluminum Utility Buildings' bid. (Record p. 1). Such challenges are untimely raised under the fifteen day time limit of S. C. Code Ann. section 11-35-4210, and cannot be considered. General Services' motion to dismiss the new issues is granted.

For the foregoing reasons, the Panel grants the motion of General Services to dismiss the protest of Handi-House of Newberry. The CPO's decision is upheld in as much as it is consistent with the Panel's findings.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

BY:

  
Gus J. Roberts, Chairman

Columbia, SC

February 14, 1996.