



Office. Will Materials Management Office use the same method in Proposal Notice Number B700802?

ANSWER: Yes. Please enclose one copy of the Schedule of Collection Fees (Part VII, Proposal Contents, item F.) in a separate, sealed envelope attached to your proposal.

MMO received nine proposals. Of these nine proposals, two of the offerors provided their fee schedule in a separate sealed envelope, two provided their fee schedule in their proposal and a separate sealed envelope, and five provided their fee schedule exclusively in their proposals. Consequently, MMO waived the deviation as a minor informality or irregularity for all offerors. MMO opened the proposals and posted the Statement of Intent to Award to W&F on July 10, 1997. TB&L protested the Statement of Intent to Award to W&F claiming W&F's proposal was nonresponsive because their fee schedule was not submitted in a separate sealed envelope. The CPO dismissed the protest, finding that the failure to provide the fee schedule in a separate envelope is a minor informality or irregularity which was properly waived by MMO as allowed under §11-35-1520(13) of the Consolidated Procurement Code (Procurement Code).

## **CONCLUSIONS OF LAW**

The Procurement Code provides for the waiver of minor informalities or irregularities in responses under certain circumstances and defines these minor irregularities as follows:

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. The procurement officer shall either give the bidder an opportunity to cure any

deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State.  
S.C. Code Ann. §11-35-1520(13).

As provided by the statute, MMO may allow the offeror to cure any deficiency or may waive the deficiency when it is to the State's advantage to do so. Because the majority of offerors failed to submit their fee schedules in separate envelopes, the Panel finds that it was to the State's advantage for MMO to waive this requirement as a minor informality or irregularity under 11-35-1520(13). The waiver of this requirement does not have an effect on the price requirements of the RFP and this variation has no effect on the quality, quantity, or performance of the contract. The Panel therefore finds that the failure of W&F to submit their fee schedule in a separate sealed envelope was a minor informality that was properly waived by MMO.

For the foregoing reasons, the Panel upholds the decision of the CPO and hereby dismisses TB&L's protest.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

BY: Gus J. Roberts (by Eric C. Anderson)  
Gus J. Roberts, Chairman

Columbia, South Carolina

November 26, 1997