

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
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IN THE MATTER OF: BID PROTEST)
CHESTERFIELD-CHERAW FISH)
HATCHERY IMPROVEMENTS -)
WATER WELLS PROJECT)
STATE PROJECT P24-9607-MP-B)
RUSHMOORE CONSTRUCTION, INC.)
vs.)
SOUTH CAROLINA DEPARTMENT OF)
NATURAL RESOURCES)
_____)

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

DECISION

POSTING DATE: May 11, 1999

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Rushmoore Construction, Inc., (Rushmoore) for an administrative review on the Chesterfield-Cheraw Fish Hatchery Improvements - Water Wells Project (Project) for the South Carolina Department of Natural Resources (DNR).

NATURE OF THE PROTEST

DNR posted a Notice of Intent to Award the Project to Professional Pump and Well, Inc. (PPW). Rushmoore protests this action, contending that PPW's bid should be declared non-responsive for failure to possess the required contractors' licenses at the time of bid. An attempt to resolve this protest by mediation failed. A hearing was held on May 4, 1999. All parties were present and represented by company or Agency employees. Due to the nature of the protest, the CPOC requested the attendance of Mr. Ron Galloway, Executive Director of the Contractors' Licensing Board (Board).

FINDINGS OF FACT

1. On December 22, 1998 DNR opened bids on the Project. Three bids were received.
2. On January 8, 1999 DNR posted the Notice of Intent to Award the Project to PPW.
3. On January 18, 1999 Rushmoore protested DNR's posting to the CPOC.

DISCUSSION

CLAIMANT'S POSITION

Rushmoore contends the Project, as bid, requires a South Carolina Contractor's License to bid. Furthermore, Rushmoore contends that PPW's bid was based on an artificial distribution of costs, with the intent of minimizing the apparent cost of the work typically performed by licensed contractors. Rushmoore argues that well drilling firms such as PPW are exempt from the Contractors' licensing law for the drilling of wells only. Based on the distribution of costs given in the two other bids, Rushmoore argues that, when combined, the three elements of work which are typically performed by licensed contractors are greater than 50% of the total work and are also greater than \$30,000 in value. In this Project, the wells were drilled earlier and this work should be considered process piping.

RESPONDENT'S POSITION

PPW contends that it submitted a responsive bid in conformance with State Law.

CONTRACTORS' LICENSING BOARD POSITION

Mr. Galloway testified that the SC Department of Labor, Licensing and Regulation has reviewed the bid and does not feel that PPW's bid, as submitted, violates the Contractors' Licensing Act. Mr. Galloway testified that the Board's position is overall nature of the project determines the type of license required, if any. In this case, the overall project was related to well drilling, which does not require a contractor's license to bid. He further testified that the 50% rule cited by Rushmoore is a Board rule of thumb, not a regulatory limit. The Board's position is that if approximately 50% of the total work is within the limits of a particular license classification, then holders of that license should be allowed to bid the total project.

With respect to Rushmoore's contention that the total value of the bid items falling outside the scope of a well driller exceeds the \$30,000 limit for a General Contractor's license, Mr. Galloway testified that it is the Board's long-held position that it is the value of the individual line items, not their aggregate cost, that determines whether or not a license is required. In this case, none of the bid items reached the level that would require a licensed subcontractor to perform.

CPOC FINDINGS

The CPOC finds that Rushmoore failed to meet its burden of proof by the greater weight and preponderance of the evidence.

DECISION

It is the decision of the Chief Procurement Officer for Construction that the protest of Rushmoore Construction, Inc. is denied and the South Carolina Department of Natural Resources is authorized to proceed with the award to the lowest responsive and responsible bidder, consistent with the agency's programmatic needs.



Michael M. Thomas
Chief Procurement Officer
for Construction

May 11, 1999
Date

STATEMENT OF THE RIGHT TO APPEAL

The South Carolina Procurement Code, under Section 11-35-4230, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review shall be directed to the appropriate chief procurement officer who shall forward the request to the Panel or to the Procurement Review Panel and shall be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.