

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND	)	
	)	
	)	ORDER
IN RE: Protest of Appraise Sell, LLC;	)	
Appeal of Appraise Sell, LLC	)	Case No. 2010-8
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This matter came before the South Carolina Procurement Review Panel (the Panel) for a motion hearing on December 13, 2010. On October 26, 2010, the Chief Procurement Officer (the CPO) issued a decision in which he found that he lacked jurisdiction to hear a protest filed by Appraise Sell, LLC, in connection with a solicitation to procure online auction services on behalf of the State Treasurer’s Office. Appraise Sell timely appealed the CPO’s decision to the Panel on November 5, 2010. On December 3, 2010, the CPO filed a motion to dismiss Appraise Sell’s appeal based on lack of jurisdiction. On December 10, 2010, Appraise Sell filed a legal memorandum in opposition to the CPO’s motion to dismiss.

In the hearing before the Panel, John J. Pringle, Jr., Esquire, represented Appraise Sell. Molly R. Crum, Esquire represented the CPO.

**Findings of Fact**

On September 2, 2010, the Materials Management Office (MMO) issued an invitation for bids through which the State Treasurer’s Office sought “to enter into an agreement with a firm to perform a one-time, online auction to sell the contents of unclaimed safe deposit boxes.” The IFB indicated that the successful bidder’s sole compensation would be the auctioneer’s commission. The IFB also stated that the State did not know the value of the unclaimed

property, but that a list of the contents could be acquired from MMO at the bidder's request. The IFB was amended once, on September 13, 2010, but that amendment only answered vendor questions and did not change the terms of the IFB. In the amendment, the State confirmed that it had never required auction services before and that bidders were responsible for valuations and appraisals of the property.

On September 28, 2010, MMO posted a statement of award to Lone Star Auctioneers, Inc. (Lone Star). The statement of award listed the contract amount as \$4,200.00, but noted that the amount was an "[e]stimated amount – amount may be more or less depending on the sale price of items to be auctioned." The award also noted that Lone Star's fee, the estimated amount of \$4,200.00, represented thirty-five percent of the gross sales.

In support of his motion to dismiss, the CPO submitted the sworn affidavit of Daniel W. Covey, the MMO procurement manager who handled this particular IFB. In his affidavit, Mr. Covey stated that Lone Star and five other vendors requested a copy of the list of items to be sold, but that Appraise Sell did not request a copy of the list. Prior to posting the statement of award, Mr. Covey contacted Lone Star, who was the low bidder, and asked if it could provide a "sight unseen" valuation of the property to be sold. Ms. Anne Dalton, Lone Star's Business Development Manager, replied in an e-mail that Lone Star's "sight unseen" estimated value of the property would be in the range of \$10,000.00 to \$12,000.00. Because the State had never solicited auction services before and had no historical data or appraisal upon which to base a valuation, Mr. Covey relied on the information provided by Lone Star to determine a potential contract value of \$4,200.00, the amount listed in the statement of award. Mr. Covey reached this amount by figuring a thirty-five percent commission on \$12,000.00. Mr. Covey also stated that because the potential value of the contract was less than \$50,000.00 he issued a statement of

award rather than an intent to award. He also authorized the State Treasurer's Office to proceed with the contract.

In addition to Mr. Covey's affidavit, the CPO submitted the sworn affidavit of a Lone Star representative, Randal J. Cook. After performing an actual appraisal of the property to be sold, Lone Star estimated that the total potential value of that property to be \$48,196.33. In contrast, Appraise Sell submitted the sworn affidavit of Philip David Staples, Jr., an accredited appraiser from Virginia. Based on his examination of the list of the unclaimed property, Mr. Staples estimated the potential value of that property to be in the range of \$75,000.00 to \$250,000.00. Mr. Staples also pointed out that a legitimate appraisal "requires first hand property inspection and analysis be performed."

#### **Conclusions of Law**

Before the Panel, Appraise Sell argued that the CPO erred in determining that he did not have jurisdiction to hear its protest. Specifically, Appraise Sell argued that the award amount was only an estimated amount and that the estimated amount could not be relied upon as a basis for finding the contract award to be below \$50,000.00. Appraise Sell also claimed that it had been denied due process because it was not consulted regarding the potential value of the unclaimed property and was not permitted an opportunity to be heard before the CPO.

The Procurement Code provides protest rights to bidders who are aggrieved by the award of a contract in section 11-35-4210(1)(b). However, the right to protest is limited by the following language: "The rights and remedies granted by subsection (1) and Section 11-35-4210(1)(b) *are not available* for contracts with an *actual or potential value of up to fifty thousand dollars.*" S.C. Code Ann. § 11-35-4210(1)(d) (2010) (emphasis added). Because the State had never procured online auction services before and could not value the property itself,

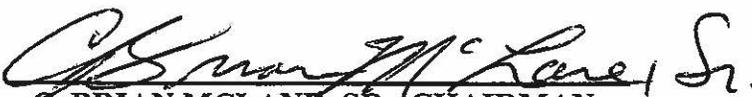
the Panel finds that it was reasonable for Mr. Covey to base the contract award amount on the estimate provided by Lone Star and to authorize the State Treasurer's Office to proceed with the contract. Moreover, the Panel also finds it was reasonable for the State to rely on a potential value amount where the actual value of the contract could not be determined until after the auction is completed. Therefore, the Panel agrees with the CPO that he did not have jurisdiction to hear Appraise Sell's protest because the potential value of the contract was less than \$50,000.00.<sup>1</sup>

The Panel also notes that its *de novo* hearing in the instant case "renders harmless a procedural due process violation based on the insufficiency of the lower administrative body." *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Services Information Technology Management Office*, 346 S.C. 158, 174, 551 S.E. 2d 263, 272 (2001) (citing *Ross v. Med. Univ. of South Carolina*, 328 S.C. 51, 492 S.E.2d 62 (1997)). The Panel afforded Appraise Sell the opportunity to brief the issue of jurisdiction with supporting documents and heard the arguments of its counsel. Accordingly, due process has been satisfied in this case.

Therefore, based on the reasons discussed above, the Panel grants the CPO's motion to dismiss Appraise Sell's appeal for lack of jurisdiction.

**IT IS SO ORDERED.**

**SOUTH CAROLINA PROCUREMENT REVIEW PANEL**

BY:   
C. BRIAN MCLANE, SR., CHAIRMAN

This 20<sup>th</sup> day of December, 2010.

Columbia, South Carolina

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<sup>1</sup> The Panel notes that Lone Star's actual appraisal, which was based on a first hand physical inspection, found the potential value of the unclaimed property to be \$48,196.33, which would yield a commission of \$16,868.71. Both of these amounts are below the required jurisdictional amount of \$50,000.00.