

of Laws (1976), as amended, with the Chief Procurement Officer for Construction. Following a review of the facts, the Chief Procurement Officer for Construction issued a written Decision dated March 8, 1983, pursuant to Section 11-35-4210(3), South Carolina Code of Laws (1976), as amended. This Decision rejected and denied the Protest and Petition for a rebid of the contract filed by MCC Powers-Transitube. The Chief Procurement Officer ruled that the failure to include an Affidavit of Non-Collusion by the Protestant was a material failure to conform to the essential requirements of the Invitation for Bids requiring rejection under Budget and Control Board Regulation 19-445.2070, Section A, and that an insufficient showing had been made to recommend rebidding the Pneumatic Tube Contract. Following receipt of the Decision of the Chief Procurement Officer for Construction rejecting the Bid Protest and Petition of MCC Powers-Transitube, the Protestant filed an Appeal and Request for Review with the Procurement Review Panel. A hearing in this matter was held on March 31, 1983. The Protestant, MCC Powers-Transitube, the intervenor, Lamson Corporation, Inc., and the Chief Procurement Officer for Construction were present and represented by counsel. The intervenor, Lamson Corporation, Inc., in addition to its Petition for Intervention in support of the Decision of the Chief Procurement Officer for Construction, has also filed a Petition for Award of Contract. Section 11-35-1520(10) requires that a contract shall be awarded to the lowest responsive and responsible Bidder whose Bid meets the requirements and criteria set forth in the Invitation for Bids unless there is reason to reject one or all Bids. The question of a failure to submit an Affidavit goes to the issue of responsiveness of a Bid. That is the only issue which will be determined by this Panel. The issue as to responsibility must be determined by the Owner, the Medical University of South Carolina, upon its review of the individual qualifications of each Bidder. Therefore, the Panel will not consider the intervenor's Petition for Award of Contract.

The facts, as presented to the Panel, were that MCC Powers-Transitube failed to receive contract addenda No. 8, No. 9, and No. 10 four (4) days prior to Bid opening as required under the Invitation for Bids. The architect for the project

contacted MCC Powers-Transitube concerning these addenda. The representative for MCC Powers-Transitube flew from Charlotte, North Carolina to Charleston and, with the assistance of an agent of the architect, took his Bid apart in order to insert information required by the contract addenda. At time of submission, the Bid was opened and found to lack the Affidavit of Non-Collusion required of all contractors submitting Bids. MCC Powers-Transitube's Bid was rejected following the examination of its Bidder's Qualification envelope which also failed to contain the Affidavit. The representative of MCC Powers-Transitube, Mr. Jasper Gray, Branch Manager, then picked up his Bid and left the room. After locating the Affidavit in his hotel room, Mr. Gray returned to the Bid opening. Mr. Gray testified that he received the impression that the MCC Powers-Transitube Bid would not be accepted. The Protestant's agent and representative was in sole custody of the Bid.

The Protestant, MCC Powers-Transitube, has, in its Appeal and Request for Review, petitioned the Panel to either consider the Bid of MCC Powers-Transitube or, in the alternative, that the Pneumatic Contract be rebid. Regulation 19-445.2065, Subsection A and Subsection B, govern the criteria or circumstances under which Invitations for Bids may be cancelled after opening and contracts rebid. None of these criteria as set out are before the Panel. Therefore, the Panel shall not at this time rule that this contract should be rebid. That question is remanded to the Owner for the Owner's determination.

As to the Petition of MCC Powers-Transitube that its Bid be considered for tabulation and evaluation in the above-cited contract, it is the determination of this Panel that under the circumstances of this case, no Bid in fact exists for consideration. The Bidder, upon rejection, took its Bid and left the room. No request was made at the time of rejection that the contracting officer hold the Bid of MCC Powers-Transitube so as to preserve the integrity of that Bid. Therefore, it is the decision of this Panel that this Bid of the Protestant may not be considered for the award of the contract before us.

CONCLUSIONS OF LAW

I hereby find as a matter of law that:

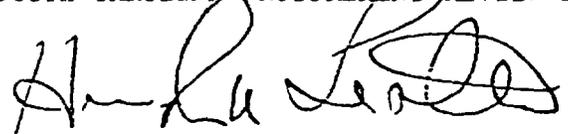
1. A failure to submit a rejected Bid for retention by the contracting officer requires rejection of that Bid, irrespective of the facts and circumstances surrounding the failure where the Bidder has retrieved his Bid and exited the room where Bids are being received.

2. That the South Carolina Procurement Code Regulation 19-445.2065, Subsections A and B, define the criteria necessary for the rejection of all Bids prior to rebidding a contract and that there is before this Panel insufficient data to suggest that a rebid of the contract is required. This is a question for the Owner and, as such, is remanded to the Medical University of South Carolina.

3. The issue of the responsibility of an apparent low Bidder is for the decision of the Owner, the Medical University of South Carolina, and the Petition for Award of Contract cannot be considered by the Panel at this time.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL



SENATOR HUGH K. LEATHERMAN, CHAIRMAN

April 12, 1982.