

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1984-2

IN RE:)
)
PROTEST BY PADDOCK CONSTRUCTION)
COMPANY, INC.)

O R D E R

APPEALED

This matter is before the South Carolina Procurement Review Panel for administrative review pursuant to Sections 11-35-4210(5) and 11-35-4410(6), South Carolina Code of Laws of 1976 as amended, as a result of a Determination issued by the Chief Procurement Officer for Construction and a Request for Review of that Determination.

Paddock Construction Company, alleging several grievances, contends that the procedure used in bidding the above project was erroneous and that Paddock should be awarded the swimming pool subcontract or another remedy.

The Panel does not reach the merits of Paddock's contentions because, as set forth below, Paddock's protest is untimely.

FINDINGS OF FACT

1. The above-captioned project was first advertised on December 28, 1983.
2. As originally advertised, the swimming pool portion of the contract called for a type of pool equipment which

Paddock Pool Co. does not manufacture, but which is manufactured by at least one other pool equipment company (Whitten Corporation) and perhaps others as well.

3. On January 13, 1984, Paddock's representative met with the architect, Mr. Usry, asking that Paddock equipment be considered equal to the equipment specified. A letter dated January 17, 1984, was to the same effect, namely, that Paddock be considered "an acceptable manufacturer to the plans and specifications."

4. On January 19, 1984, the Architect issued Addendum No. 1, which among other things changed the bid date to February 7, 1984, and set forth "Alternate No. 2." Alternate 2 was largely the same as the base bid specifications except to the extent that it called for the use of Paddock equipment instead of Whitten equipment. Paddock equipment was not listed as an approved substitution on the base bid, as Paddock had requested, but instead was listed only as an "alternate."

5. Paddock became aware of the Architect's issuance of Addendum No. 1, incorporating Alternate 2, at least as early as January 23, 1984 (See copy of Paddock's January 17 letter with Usry's handwritten reference to enclosure of Addendum 1, stamped "received" by Paddock on January 23). Paddock did not protest the issuance of this Addendum to the

Chief Procurement Officer until it filed the present protest nearly two months later, on March 16, 1984.

6. Instead, Paddock bid on Alternate No. 2. This was done first by a letter to all bidding contractors dated February 3, 1984; Paddock amended or attempted to amend its bid on Alternate 2 on several additional occasions after February 3.

7. On February 7, 1984, bids were received and taken under advisement, with the notification of award to come after all bids had been reviewed.

8. On February 16, 1984, during the review process, the architect notified Wise Construction Co. that its swimming pool subcontractor on the base bid, Hucks Pool Company, did not meet the experience qualification required by the specifications.

9. As a result, Wise proposed to substitute Price Aquatech as the base-bid swimming pool contractor. The architect accepted this proposal.

10. Although the substitution of Price for Hicks increased the amount of Wise's bid by \$8600, Wise was still the low bidder among the general contractors, and was awarded the bid.

11. Hucks Pool Company never formally protested its rejection as a subcontractor, and is not a party to this proceeding.

12. The only protest filed by Paddock was filed on March 16, 1984.

CONCLUSIONS OF LAW

1. Section 11-35-4210(1) provides as follows:
 - (1) Right to protest. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the appropriate chief procurement officer. The protest, setting forth the grievance, shall be submitted in writing within ten days after such aggrieved persons know or should have known of the facts giving rise thereto, but in no circumstances after thirty days of notification of award of contract. (emphasis added)

The emphasized portions of this sentence make it clear that the right to protest can arise before a contract is let, and while the bid specifications are still being reviewed by prospective bidders. The 10-day time limit specifically does not run from the award of the contract but from the time the aggrieved person know or should have known of the facts giving rise to the grievance.^{1/}

2. In this case Paddock knew of the architect's decision to list Paddock's equipment as an alternate at least as early as January 23, 1984. Since Paddock did not protest within 10 days of that time, § 11-35-4210(1) bars the protest that Paddock's equipment should have been given "or equal" status in the bid specifications.

^{1/} The ten-day period is the only one the Panel need consider. See In Re Request of A.T.&T., Procurement Review Panel, November 18, 1983, p. 4 (attached).

3. The remainder of Paddock's protests are inextricably tied to its failure to protest the listing of its equipment as an alternate. Once the time for protest had passed without a protest by Paddock, Paddock could no longer claim that its equipment should have been listed as part of the base bid. The rejection of Hucks as a subcontractor on the base bid, which occurred after Paddock's time to protest had expired, was unrelated to any claim Paddock may have raised, because by the time Hucks was rejected on the base bid, Paddock's failure to protest foreclosed it from seeking to have the base bid changed. Since Paddock could not have sought to change the terms of the base bid specifications by that time, and since Paddock could not have bid on the base bid specifications unless they were changed, the general contractor could not have accepted a bid from Paddock on the base bid when Hucks was rejected.

4. The Panel therefore concludes that Paddock's protest was not timely filed pursuant to § 11-35-4210(1), and the protest is accordingly dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



SENATOR HUGH K. LEATHERMAN,
Chairman

June 14, 1984