

"The three (3) lowest bidders will be selected based on the lowest aggregate hourly cost for each location. From this the primary, first alternate and second alternate contractors will be selected for each classification."

4. Under "Conditions," the I.F.B. included the following:

"5. Prices bid must be based upon payment in thirty days after delivery and acceptance. Discount for payment in less than thirty days will not be considered in making award."
[Emphasis added]

5. The first page of the I.F.B. contains the following:

"DISCOUNT: Discount will be allowed as follows:
30 calendar days _____ per cent."

6. The I.F.B., under "Special Provisions", instructs bidders to:

"12. ... Enter on the Bidding Schedule your short term hourly rates and show any discounts for long term and the minimum length to qualify; for long term. The State reserves the right to use or not to use the long term rates in the evaluation of bids...."

7. After identifying the three lowest responsive and responsible bidders based on total hourly aggregate bid in each geographic area, the lowest hourly rate for each job classification, including any discount for payment in thirty days, was used to determine the primary vendor and the first and second alternate vendors. State agencies would call the primary vendor first to seek temporary employees. If this vendor was not able to provide the temporary help when needed, the state agency would then look to the first alternate and the second alternate, if necessary, to obtain the required

services. Long term discounts were not considered in the evaluation of the bids.

DISCUSSION AND CONCLUSIONS OF LAW

Handyman asserts that the bid document is inconsistent and that discounts were improperly used to choose the lowest responsive and responsible bidder. Handyman argues in its letter of protest that the I.F.B. is not inconsistent and, therefore, the "Order of Precedence" found under "Services General Provisions" as #2 should not be employed.

The bidding schedule provides for the listing of long term discounts but in no way indicates that this discount will be considered in making the award. The state clearly reserved the right to use or not use this discount in evaluating the bids. (Findings of Fact, 6). The Panel concludes the long term discounts were properly disregarded due to the inability to quantify the impact that these discounts may have on the total cost to the State for the job classifications enumerated in the I.F.B. The Panel further concludes that the I.F.B. is consistent and, therefore, it is unnecessary to consider the provision relating to the "Order of Precedence".

Handyman further asserts that basing prices bids on "delivery and acceptance" is ambiguous and inconsistent when applied to the temporary help industry.

2. "Special Provisions" #10 provides that "Invoicing shall be accomplished in accordance with the requirements of the individual agencies." Mr. Andre Woods, President of Handyman,

testified that he had bid this contract in the past and that he was accustomed to billing particular agencies as their policies dictated. Consequently, the Panel concludes that Handyman was not prejudiced in arriving at competitive prices for the services solicited because the term "delivery and acceptance" was used in the I.F.B.

The remaining matters in Handyman's protest relate to the consideration of discounts for payment in thirty days. The provisions of the I.F.B. that relate to discounts are incorporated in this order under Findings of Fact.

3. The language under Findings of Fact #4 and #5 is contained in virtually all I.F.B.'s issued by the state under the Consolidated Procurement Code. Charleston Temporary Services, Inc., the primary vendor for several of the job classifications in the Charleston area, also offered a discount of one percent (1%) in last year's solicitation for this contract. Discounts for payments made in thirty days are proper while basing a discount for payment in less than thirty days will not be considered. Although the language relating to the payment of discount could have been more artfully drafted, the Panel concludes that I.F.B. was not inconsistent or unfair. Any other interpretation of the language under Findings of Facts #4 and #5 would be illogical.

4. The Panel expressly rejects the conclusion of the Materials Management Officer in his determination of September 8, 1986, that Handyman's protest was groundless and "[does] not

address matters germane to the solicitation or award provisions of the South Carolina Procurement Code." The Panel, however, for the reasons cited above, concludes that Handyman failed to meet its burden of proof in asserting that the I.F.B. was unfair or that the contract was awarded based on criteria not set forth in the I.F.B.

The Panel, therefore, rules that Charleston Temporary Services was properly selected as the prime vendor in the Charleston area for those job classifications indicated in the Statement of Award for bid #1-794-08/06/86-p.

IT IS SO ORDERED.



Hugh Leatherman
Chairman, Procurement
Review Panel

November 13th, 1986

Columbia, South Carolina