

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1989-3

IN RE:)
PROTEST OF MILLER'S OF COLUMBIA, INC.) O R D E R
_____)

This case came before the South Carolina Procurement Review Panel for hearing on the protest by Miller's of Columbia, Inc. ("Miller's") of the award of a contract to furnish and install office furniture in a new facility at Midlands Technical College ("Midlands Tech").

Present at the hearing were the Division of General Services, represented by Helen Zeigler, Esq., and Miller's, represented by its Senior Vice President Don Eykyn. Also present but not participating was the intended recipient of the contract, Harper Brothers, Inc., represented by Robert Ashley, Esquire.

Based on the record before it and the evidence presented to it, the Panel makes the following findings of facts and conclusions of law.

FACTS

Miller's is an office supply company which bid on a contract to furnish, deliver and install various pieces of furniture in a new building at Midlands Technical College. Performance of the contract is scheduled for June, 1989.

The bid solicitation was divided into various lots by type of furniture. A contract was to be awarded on each lot

based on total lot price. In order to be responsive on a lot, a vendor had to bid on all items within the lot.

According to Mr. Don Eykyn, Senior Vice President of Miller's, on the morning that the bids were to be opened, he decided to lower the unit and total prices bid by Miller's for Lot D. In order to comply with the bid instructions (Record, p. 20, item 12), Mr. Eykyn crossed through and initialed the old bid prices and filled in the new bid prices above the crossed-out figures. Mr. Eykyn testified that he was interrupted by a telephone call and, when he returned to the bid, he lost his place and inadvertently failed to fill in a new unit price in four blanks. The result was that four required unit prices were missing from Miller's bid. (Record, p. 63). The total lot price was filled in as Miller's intended. (Record, p. 63).

Ms. Lynda Pittman, Procurement Specialist for General Services, testified that she was the person responsible for issuing the solicitation and awarding the contract. According to her, when the bids were opened, she noted that Miller's bid for Lot D was missing four unit prices. The bid documents required that a unit price be shown for each item (Record, p. 22, item 7) and that these unit prices be extended for a period of one year. (Record, p. 23, item 17).

As Ms. Pittman interpreted the Procurement Code and previous decisions of the Panel, she could neither supply the missing unit prices by using the old crossed-out information or call Miller's and allow it to supply the

missing information. Ms. Pittman stated that it was obvious to her on the face of the bid that a mistake had been made. She testified, however, that she was unable to correct the mistake by simply calculating the figures on the bid. Her ultimate decision was to declare Miller's bid on Lot D nonresponsive. (Record, Bid Tabulation Sheet, p. 85). As a result, the second low bidder, Harper Brothers, was awarded the contract.

Mr. Don Morris, Director of Operations for Midlands Tech, testified that the requirement that unit prices be extended for one year was necessary to ensure that Midlands Tech could purchase the same type of furniture at a good price after it moved into the building and reevaluated its needs. According to Mr. Morris, when one undertakes to furnish a new building, it is difficult to accurately predict how much and what type of furniture is required.

On February 3, 1989, Miller's filed a protest with the CPO alleging that it was the low bidder, that the missing unit prices was a minor error and that it should have been awarded the contract. The CPO in his decision dated March 6, 1989, found that the absence of unit prices was not a minor, waivable error and that the Procurement Code prohibited General Services from contacting Miller's after bid opening to obtain the missing information. Miller's appealed the CPO's decision to the Panel on March 14, 1989.

CONCLUSIONS OF LAW

The Procurement Code provides:

Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this Code.

After bid opening no changes in bid price or other provisions prejudicial to the interest of the State or fair competition shall be permitted.

S. C. Code Ann. 11-35-1520(7), (8) (1976).¹ The corresponding regulation states:

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake in the judgment of the procurement officer is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

Reg. 19-445.2085(B).

Miller's concedes that an incomplete bid cannot be supplemented after opening if the bid is changed or lowered to the prejudice of the State or bidders. However, Miller's argues that because clarification would have resulted in it being allowed to fill in the inadvertently omitted unit

¹ The Panel has interpreted these sections to prohibit the State in most instances from calling a bidder after bid opening to clarify a bid. See In re: Protest of Xerox Corporation, Case No. 1988-19; In re: Protest of Praetorcare, Case No. 1988-17; In re: Protest of CNC Company, Case No. 1988-5; In re: Protest of Ohmeda Company, Case No. 1987-5; and In re: Protest of J & T Technology, Case No. 1983-4.

prices only, its total price for Lot D would not have changed. Therefore, no prejudice would have resulted. Miller's contends that sound business practice would have required General Services to call and give it the opportunity to correct an inadvertent error, thus allowing the State to obtain the lowest price.

While Miller's argument has appeal in the private sector, this case arises in the public forum. Of equal, if not more, concern to getting the lowest price is promoting public confidence in the procurement process, ensuring fair and equitable treatment of all bidders, fostering effective broad-based competition and providing safeguards for maintaining a procurement system of quality and integrity with clearly defined rules of ethical behavior for all parties to the procurement process. S. C. Code Ann. 11-35-20(d), (e), (g), and (h) (1976). The stated goals of the Procurement Code are served by consistently enforcing the rules. Neither the cost differential nor sympathy for a vendor in one case can shape rules that must apply to all cases.

Miller's bid as submitted was nonresponsive. Although it was evident on the face of the bid that a mistake had been made, that mistake could not be corrected from the information available.² Miller's could have quoted any

²The Procurement Code contemplates correction of
(Footnote Continued)

price it desired on the four items without regard to what it originally intended provided the total lot price remained the same. Though the Panel has no reason to imply that Miller's would, conceivably it could have allocated its costs to each item depending on what it predicted Midlands Tech was likely to purchase in the future under the one year extension.

The Panel does not doubt that Miller's error was inadvertent. That does not alter the effect of correction. Contacting Miller's and allowing it to supply required but missing information after bid opening would have created the potential for abuse, would have made Miller's responsive, would have been prejudicial to fair competition and, was therefore forbidden by the Procurement Code.

Miller's also argues that its failure to include the four unit prices was a minor error which could be corrected or waived by the State.

Reg. 19-445.2080 allows the procurement officer to waive or correct a minor error when it is advantageous to the State. Minor irregularity is defined as "a matter of form" or "some immaterial variation from the exact

(Footnote Continued)
mistakes evident on the face of a bid such as unit price extensions or arithmetic errors. For example, if Miller's had filled in either the unit or total unit prices for each of the four items in question, the procurement officer would have been able to supply what was missing by performing a simple calculation. The nature of the mistake would have been obvious on looking at the bid and there would have been no need to contact Miller's to supply missing information.

requirements of the invitation for bids having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured." No correction or waiver is allowed if it affects the relative standing of, or is otherwise prejudicial to, bidders.

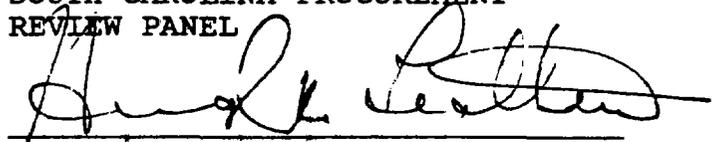
Both Ms. Pittman and Mr. Morris testified that unit prices were specifically required by the bid and were essential because the contract bound a bidder to its unit prices for one year if the need for reordering arose. The bid solicitation itself plainly states this requirement ("2. Bid only as specified." and "7. Unit price to be shown for each item." and "17. PRICE EXTENSION: Unit price on each item stated on bid will be honored by successful vendor for 1 year after date of installation to enable owner to reorder quantities." (Record, pp. 22-23)).

In light of the importance placed on unit prices by both the using and purchasing agencies and the plain manifestation of this importance in the bid documents, the Panel cannot find that Miller's failure to include four unit prices is a minor or trivial error which may be waived.

For the above reasons, the decision of the Chief Procurement Officer dated March 6, 1989, is affirmed and the protest of Miller's of Columbia, Inc., is hereby dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



Hugh K. Leatherman, Sr.
Chairman

Columbia, South Carolina
APRIL 24th, 1989