

Three bids were received and opened on December 22, 1999. [Record p.12] On January 8, 1999, DNR posted the Notice of Intent to Award the project to (Professional). [Record p. 18] On January 18, 1999, Rushmoore protested the award to Professional based on the contention that Professional is nonresponsive for failure to have the required contractor's license to perform the work on the project. [Record p. 7-8] The Chief Procurement Officer for Construction (CPOC) issued a decision denying Rushmoore's protest on May 11, 1999. [Record p. 3-6]

CONCLUSIONS OF LAW

The issue to be determined is the responsiveness of Professional, in light of the fact Professional does not have a contractor's license. It is undisputed that Professional has a well driller certification from the Department of Health and Environmental Control, but does not have a contractor's license. A general contractor is defined in S. C. Code Ann. Section 40-11-10 as anyone who undertakes construction that costs thirty thousand dollars or more, and a general contractor is required to have a general contractor's license. Rushmoore has the burden to prove that Professional is nonresponsive for failure to have a contractor's license.

Rushmoore contends the project requires a general contractor's license to bid because the cost of the project is over thirty thousand dollars. Rushmoore argues that the majority of the scope of work of the project is general construction. The water wells were bid separately, and have been completed, leaving installation of the pumps and pipes necessary to transport the water from

the wells. The project description to “furnish and install two submersible well pumps with controls, building enclosure and appurtenances. Furnish and install distribution piping and appurtenances”, is further detailed in line items in the base bid schedule. The base bid schedule lists the following line items:

- (1) 4" Class 160, ASTM D2241 PVC Water Line, Including Valves, Fittings and Appurtenances, Installed and Tested
- (2) Well Pumps and Controls, Including All Electrical Work, Wiring, Conduit, and Start-Up Services, Installed, Complete
- (3) Well Houses, Including Concrete Slab, Pump Discharge Piping, Valves, Fittings and Accessories, and Pump Shelter, Installed, Complete
- (4) Grassing

Rushmoore argues that the scope of work of the project, specifically the piping, well houses and grassing in line items 1, 3, and 4, contain more than thirty thousand dollars worth of general construction, which mandates a general contractor's license to bid on the project. Rushmoore takes the total cost of line items 1, 3, and 4 from its bid, which total \$36,500.00, to show that the value of the general construction on the project is over thirty thousand dollars, and represents over fifty percent (50%) of the total base bid. [Record p. 25, 8, 9 & 11] Rushmoore points out the total of line items 1, 3, and 4 of the third bidder, totaling \$39,465.00, also representing over fifty percent (50%) of the total base bid, to validate Rushmoore's view of the bid, and show that the three general construction line items also exceeds thirty thousand dollars on the third bid. Mr.

Duncan Moore testified on behalf of Rushmoore, to explain why Rushmoore believes the project is a general construction project that requires a contractor's license.

The South Carolina Department of Labor, Licensing & Regulation (DLLR) is the agency that oversees the Contractors' Licensing Board (CLB), which issues licenses and regulates contractors. Ronald Galloway of the Contractors' Licensing Board states that "the majority of the work to be performed is unregulated work and does not fall under a license regulated by this board." [Record p. 15] Mr. Galloway testified at the hearing as an expert witness. Mr. Galloway explained that in determining that the project was not regulated by the CLB, he looked at the overall project, which is primarily a well project. Mr. Galloway testified that the electrical and well houses are the only work that is regulated by the CLB. All parties agree that the electrical work is less than \$17,500.00, and no mechanical contractor's license is required. Mr. Galloway also testified that the well houses are not more than half of the project so it is not considered a building project. Further, since the well houses are under thirty thousand dollars, a contractor's license is not required by the CLB.

Rushmoore further argues that Professional's bid is based on an artificial distribution of costs, with the intent of avoiding the contractor licensing dollar limits for requiring a contractor's license. Rushmoore argues that Professional applied too much of their total bid amount to line item 2, pumps and controls, which is not regulated by the CLB, in an effort to qualify to bid the project. [Record p. 10] Mr. Duncan Moore acknowledges that all of the bidders bid less

than thirty thousand dollars for line item three, the well houses, which Mr. Galloway and Mr. Moore agree would come under the building classification of the general contractor's license. Mr. Moore contends that line item one, PVC water line, should also be included in the total to determine if the thirty thousand dollar threshold is met and a license is required. However, as Mr. Moore testified, the water lines are regulated under the specialty classification, not the building classification, of the general contractor's license. Mr. Galloway testified that the water lines do not go to a building, so he does not consider them process piping that would be regulated. However, even if considered process piping, a license is not required in this case because the piping is not more than half of the project. Further, the piping is less than the threshold thirty thousand dollars. Neither is line item four, grassing, considered regulated by the CLB.

The CLB looks at the total cost of the classification for each classification. Thus, line item one, possibly a specialty classification, and line item three, a building classification, would not be aggregated as they are different classifications under the general contractor's license. Mr. Galloway emphasized that first the type of overall project, or "big picture", is decided, and in this case the project is water supply from a well for a fish hatchery, which is not board regulated work. Then, in examining the more specific line items, the well houses of line item three would be classified under the general contractor's building classification, but it is less than half of the entire project, so the project would not be classified as a building project. Thus the project is not regulated by the CLB.

The Contractors' Licensing Board has the jurisdiction to determine what construction it regulates and if a contractor's license is required. The CLB has made the determination that this is an unregulated project and a contractor's license is not required. The project as a whole is not considered a building project, nor is any portion of the project that could be considered a building project over the thirty thousand dollar threshold requiring a general contractor's license. The Panel finds that Rushmoore has not met its burden of proof that Professional is nonresponsive for failure to be a licensed contractor. The Panel upholds the decision of the CPO.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 
Gus J. Roberts, Chairman

Columbia, SC

August 18, 1999.