

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1986-1

IN RE:)
)
PROTEST BY KAHN-LOCKWOOD, INC.) O R D E R
)
)

This matter is before the S.C. Procurement Review Panel (Panel pursuant to §§ 11-35-4410 and 11-35-4210, S.C. Code Ann. (1976, as amended)). Kahn-Lockwood, Inc. (Kahn) timely filed a request for review of the decision of the Chief Engineer. The Chief Engineer had ruled Kahn's bid to be non-responsive because it did not contain the bid listing documents required by addendum 2. He ruled that the bid should be awarded to Moose Construction Company, the next lowest bidder.

All parties were given notice of the Panel's hearing. The Chief Engineer and Kahn were present and were represented by counsel. Moose Construction Company did not appear.

Kahn submitted its bid timely on January 7, 1986. At that time its bid did not contain the subcontractor listing sheet contained in addendum 2 to this project. Kahn presented this form to the Chief Engineer at the time of his hearing. At bid opening, Mr. Charles Crawford, architect on the project asked the bidders whether they had received the two addenda as the

bid form did not include a place to acknowledge receipt of the addenda. Mr. Crawford testified that he also asked each bidder to orally acknowledge receipt of the addenda as he opened that bidder's bid.

Bill Miller represented Kahn at the bid opening. He acknowledged receipt of the addenda on Kahn's behalf. He testified that he did not understand there were two addenda when he acknowledged receipt. He believed there was only one addendum and that he was acknowledging receipt of it.

The bid documents stated that addenda would not be distributed less than four days before the bid opening. Mr. Crawford prepared addendum 2 on Friday, January 3, 1986. It was completed in the afternoon and in the regular course of business should have been mailed that afternoon. There is no evidence that it was not. However, both Kahn and the State Engineer failed to receive the addendum prior to bid date January 7, 1986. Both received the addendum on January 8, after the bids were opened. The other bidders on this project did however, receive and include the bid listing sheet in addendum 2.

For whatever reason Kahn and the State Engineer did not receive copies of addendum 2 in a timely fashion. Neither could have used it to prepare for a bid opening at 2 p.m. on January 7, 1986.

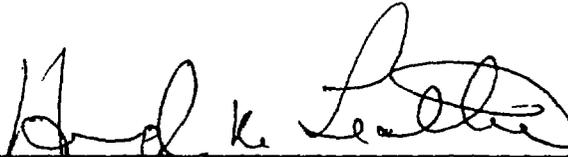
The evidence as to acknowledgement of receipt of bids is ambiguous. The bid opening the State was opening and recording

bids on multiple projects. The bid under protest was not the only one. Addendum 2 was not, according to the testimony, a significant change to the project. It was an additional requirement for the listing of subcontractors. Kahn has shown itself ready to provide this information and in fact did so at the Chief Engineer's hearing.

Because the evidence shows the impossibility of performance in accordance with addendum 2 Kahn should not be penalized. Nor should the State reject the lowest bid where it has been shown that the failure to use the listing form in addendum 2 was not the result of Kahn's error or mistake but rather an inability to perform.

The Panel therefore, rules that Kahn's bid should be found to be responsive it having submitted the proper forms when these were made available to it.

IT IS SO ORDERED


Hugh K. Leatherman. Sr.

May 29th, 1986