

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
) CASE NO. 1992-8

IN RE:)
)
PROTEST OF DELTA INDUSTRIAL ELECTRIC) O R D E R
COMPANY, INC.;)
APPEAL BY GREGORY ELECTRIC COMPANY,)
INC., and the MEDICAL UNIVERSITY OF)
SOUTH CAROLINA)
)

This case originally came before the South Carolina Procurement Review Panel ("Panel") for hearing on May 13, 1992, on the appeals of Gregory Electric Company, Inc. ("Gregory") and the Medical University of South Carolina ("MUSC") from a decision by the Chief Procurement Officer ("CPO") upholding the award of a contract to Delta Industrial Electric Company, Inc. ("Delta"). In its order dated May 18, 1992, the Panel reversed the decision of the CPO and declared the bid of Delta not responsive to the Invitation for Bids for failure to list a licensed subcontractor in accordance with S. C. Code Ann. § 11-35-3020(2)(b)(i)(1986).

On May 27, 1992, the Division of General Services and Delta moved the Panel to reconsider its May 18 order. The Panel heard arguments on the motion from counsel for all parties on June 23, 1992.

After considering the arguments of the parties, the Panel declines to reverse its May 18 decision but issues this clarification.

The May 18 order of the Panel is not meant to bring about broad changes in procurement law as it relates to subcontractor listing. Rather, the decision is an affirmation of the principle already set forth in In re: Protests of Pizzagalli, et al., Case No. 1991-8 and 9, and related cases - that is, the requirements of section 11-35-3020(2)(b) are not satisfied when a prime contractor lists an unlicensed subcontractor to perform work.

In this case, the subcontractor listed by Delta, R & E Electronics, North Charleston, is not licensed as required by the South Carolina Regulation of Burglar Alarm System Businesses Act, S. C. Code Ann. §§40-79-10, et seq. (1991 Cum. Supp.). This fact is not disputed by the parties.

The May 18 decision of the Panel should not be read to require a prime contractor to list every office of a subcontractor which might possibly provide workers to a project. The Panel is aware that many contractors who do business with the State have many different locations and utilize workers from various locations when performing on state projects.

The May 18 decision simply stands for the proposition that the subcontractor whose name and location appears on the bid form must be licensed to perform all the work. In most cases, this requirement will not result in any extra effort on the prime contractor's part. In this case, however, because state law recognizes different branches of the same contractor as different entities for purposes of

licensing for burglar alarm work, a greater degree of care may have been required.

The Panel does not create a different standard for different situations. In every case, the requirement is that the name and location of the subcontractor listed must be for a subcontractor duly licensed to perform the work.

The Panel rejects Delta's argument that, under the Panel's interpretation of the law, Delta was not required to list any subcontractor for security work because the amount of that work falls under the threshold. The work was bid to Delta as a package and Delta chose to list the work as a package.

For the reasons stated above, the Panel denies the Motion to Rehear and Reconsider its May 18 decision.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 
Gus J. Roberts
Chairman

July 2, 1992
Columbia, South Carolina