

Subcontractor Specialty (Completed by A/E)	Subcontractor's Name Or Prime Bidder's Name (Must be completed by bidder)	Subcontractor's SC License Number (for information)
<u>BASE BID WORK</u>		
Roofing	Midwest Maintenance, Inc.	96538
Carpentry	Midwest Maintenance, Inc.	96538
	Carolina Roofing, Inc.	95962

When the bids were opened on March 16, 2004, MMI had the lowest total bid. On March 17, 2004, the project manager for USC, David Northam, called MMI to discuss the bid. At that time he learned that Carolina Roofing would be doing the roofing. MMI's reason for putting Carolina Roofing under Carpentry was lack of space. The roofing work called for built-up roofing which requires a specialty license. Mr. Northam checked the licenses of MMI and Carolina Roofing with the South Carolina Department of Labor, Licensing, and Regulation. He found that MMI had a UB5 classification. This is a general contractors license with an unlimited amount. It does not allow for specialty roofing. He found that Carolina Roofing had a GR5 and a SR5 classification. This is a general roofing license and a specialty roofing license. Mr. Northam found MMI non-responsive based on this information and rejected the bid of MMI. USC issued a Notice of Intent to Award to another company.

On April 15, 2004, the CPOC Michael M. Thomas issued his order on the protest. He found that MMI's bid was responsive because on its face it conforms to the essential requirements. However, he went on to find MMI not responsible because it does not hold a specialty roofing license which is required to perform part of the roofing work.

Conclusions of Law

This bid was solicited pursuant to the provisions of S.C. Code Ann. §11-35-3020 (Construction Procurement Procedures) and §11-35-1520 (Competitive Sealed Bidding). Section 11-35-3020 makes the provisions of §11-35-1520 applicable to construction contracts unless an exception is made. Section 11-35-1520 (10) states the lowest responsive and responsible bidder shall get the award unless there is compelling reason to reject the bid. USC made the determination that MMI was not responsive and therefore was not the lowest responsive and responsible bidder. The CPO found this was in error and we agree.

The CPO cited a 1999 Panel opinion that we agree is on point in this matter. In re: Protest of Brantley Construction Co., Inc., Appeal of Brantley Construction Co., Inc., Case No. 1999-3 explored the issues of responsiveness and responsibility about a bid form that lists prime bidders and subcontractors. In Brantley we said, “If a bidder lists itself, rather than a subcontractor, to perform the required work, the bidder is responsive on the face of the bid. However, the bidder’s ability to do the work may be questioned, and to verify the bidder’s capability, one must look beyond the bid documents.” Brantley at p. 3. During testimony the project manager for USC stated that he was in error and that he should not have found MMI not responsive. At the time of the hearing, he agreed the issue was one of responsibility instead of responsiveness.

Having found MMI responsive, we now turn to §11-35-1520(8) which we believe is controlling in this matter. The CPO found MMI to be not responsible. The CPO found that once USC determined MMI did not have a specialty roofing license, they could not perform the work. Since MMI was listed next to the word “Roofing” on the bid form, they were not responsible to do the work for which they had listed themselves. However, this analysis does not go far enough.

Section 11-35-1520 (8) provides as follow,

Discussion with bidder. As provided in the invitation for bids, discussion may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the procuring agency's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the procurement officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request as required by Section 11-35-410.

In this case, the project manager had a discussion the day after the bid openings with a representative of MMI about the bid and bid form. He learned that Carolina Roofing instead of MMI would be doing the specialty roofing work. He learned that Carolina Roofing was not in the correct place on the bid because MMI could not figure how to fit it in. He learned that Carolina Roofing did have a specialty roofing license. The bidder had a subcontractor with a valid specialty license to do the specialty work. All of this information now "must be included with the bid" according to S.C. Code Ann. §11-35-1520(8).

Section 11-35-1410(6) defines "Responsible bidder or offeror" as "a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance." S.C. Code Regs. §19-445.2125 sets out the state standards of responsibility. The section states in pertinent part,

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has: (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements; ... (4) qualified legally to contract with the State; and (5) supplied all necessary information in connection with the inquiry concerning responsibility.

When the information received during the project manager's clarification becomes part of the bid, the bidder meets these statutory and regulatory requirements and is responsible.

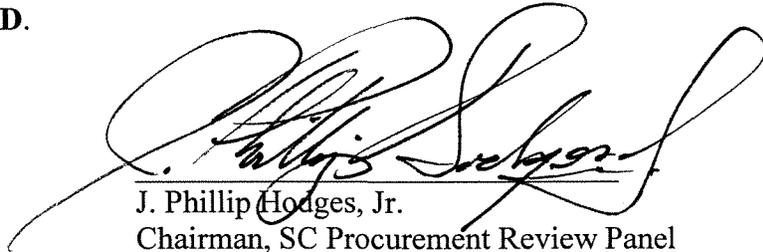
Order

Based on the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that MMI's bid for the roof replacement at DeSaussure College was responsive and that portion of the CPO's order is affirmed.

IT IS FURTHER ORDERED that MMI was a responsible bidder and that portion of the CPO's order is overturned.

AND IT IS SO ORDERED.



J. Phillip Hodges, Jr.
Chairman, SC Procurement Review Panel

This 1st day of July, 2004