

1976 S.C. Op. Atty. Gen. 233 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4393, 1976 WL 23011

Office of the Attorney General

State of South Carolina

Opinion No. 4393

July 14, 1976

*1 The failure of the apparent low bidder to a 'Contractor's Qualification Statement' prior to the bid opening given the facts in this particular instance, is a mere technicality in the bid and may be waived by the Department of Mental Health in its discretion.

TO: Dr. William S. Hall
Commissioner
South Carolina Department of Mental Health

QUESTION INVOLVED:

Is a bid on a construction project responsive to the invitation to bid where the plans and specifications call for each bidder to file a 'Contractor's Qualification Statement' prior to application to bid where the submitted bid does not contain a 'Contractor's Qualification Statement'?

AUTHORITIES:

[Murdock Contracting Co. v. Borough of Verona](#), 135 A2d 352 (1957);

[Board of Education of Carroll County v. Allender](#), 112 A2d 455 (1955);

[Pascoe v. Barlum](#), 225 N.W. 506, 65 ALR 833 (1929); 65 ALR 835 (anno.).

DISCUSSION:

On June 8, 1976, at 2:00 p.m., the South Carolina Department of Mental Health received bids for construction of the Supply and Laundry Center, Crafts Farrow State Hospital. The plans and specifications upon which contractors bid required the contractor 'to provide a Contractor's Qualification Statement (AIA Document A305) in advance of application to bid.' The Qualification Statement requirement was not in the published invitation to bid. At the public bid opening, it was discovered that the contractor who submitted the low bid failed to file a 'Contractor's Qualification Statement' with his bid.

The general rule with respect to competitive bidding is that a contractor proposing to do work for a public body pursuant to competitive bidding must substantially conform to the bid proposal on material requirements. 65 ALR 835 at 836 (anno.). However,

[m]ere irregularities in a bid do not stand upon the same footing as substantial variances from the specifications, as regards the right or duty to reject the bid. Notwithstanding the requirement that the bid shall be in substantial compliance with the proposal for public work, mere irregularity in the form of bid will not justify its rejection, for the same may be corrected after being opened, on entering the contract. [Urbany v. Carroll](#), 176 Iowa 217, 157 N.W. 852, 65 ALR 835 at 838 (anno.). See also: [Murdock Contracting Co. v. Borough of Verona](#), 135 A2d 352 (1957).

Furthermore, it has been held that a contractor's variation from the specifications will not exclude him from consideration unless the variation is so substantial as to give the bidder a special advantage over the other bidders, [Board of Education of Carroll County v. Allender](#), 112 A2d 455 at 460 (1955), or which confer a benefit not enjoyed by other bidders, [Pascoe v. Barlum](#), 225 N.W. 506, 65 ALR 833 at 834 (1929).

The failure of the apparent low bidder to file a 'Contractor's Qualification Statement' confers no special advantage nor benefit upon the contractor. Moreover, the 'Contractor's Qualification Statement' is not an element in fixing the construction price. [Pascoe v. Barlum](#), *supra* at 834.

CONCLUSION:

*2 The failure of the apparent low bidder to file a 'Contractor's Qualification Statement,' given the facts in this particular instance, is a mere technicality in the bid and may be waived by the Department of Mental Health in its discretion.

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