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Bid Price Below Minimum Cost is Reason for Rejection

By: [Eric Radz](#)

The Maryland Board of Contract Appeals (the “Board”) recently sustained an appeal brought by PDI-Sheets Construction, Inc. (“PDI”) against the State Highway Administration (“SHA”) on the basis that PDI was the lowest responsive bidder.

The relevant project involved miscellaneous roadway structure repairs throughout Anne Arundel, Calvert, Charles and St. Mary’s Counties. The SHA’s Invitation for Bid (“IFB”) contained Special Bidding Instructions (“SBI”) which alerted the contractor that minimum unit prices had been established for many of the bid items. The SBI also declared that if a bid price was below the minimum unit price for any item, then the entire bid would be deemed non-responsive and, thus, rejected.

At bid opening, it was determined that PDI was the third lowest bidder behind Allied Contractors, Inc. (“Allied”) and Mercier’s Inc. (“Mercier’s”). While all unit prices submitted by PDI in its bid equaled or exceeded the minimum unit prices set forth in the IFB, the same could not be said for Allied and Mercier’s. Both Allied’s and Mercier’s bids included prices that were lower than the established minimum unit prices.

Initially, SHA rejected both Allied’s and Mercier’s bids on the basis that they failed to comply with the IFB’s minimum unit price requirements. At that time, SHA notified PDI of its intent to award the contract to PDI. Shortly thereafter, Allied protested SHA’s rejection of its bid, requesting that its failure to equal or exceed the minimum unit price be deemed a minor irregularity per COMAR 21.06.02.04. Apparently agreeing with Allied, SHA rescinded its rejection of Allied’s bid and notified both Allied and PDI of its intent to award the project to Allied. PDI protested this decision which was denied by SHA via a Procurement Officer’s Final Decision. Allied appealed the decision to the Board.

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In sustaining PDIs appeal, the Board relied on what it deemed the clear language of the IFB:

IF A BID PRICE IS BELOW THE MINIMUM COST ESTABLISHED FOR ANY ITEM, THE BID WILL BE CONSIDERED NON-RESPONSIVE AND THE CONTRACTOR'S BID WILL BE REJECTED.

The Board emphasized that SHA had begun using language such as this in its Special Bidding Instructions in 1996 in an attempt to prevent unbalanced bidding. In fact, four witnesses testified at the hearing that, in their experience, they had never heard of a bid being deemed responsive that did not comply with this particular Special Bidding Instruction.

Stating the often invoked axiom that responsiveness is to be determined from the face of the bidding documents at the time of bid opening, the Board held that an SHA procurement officer's decision after bid opening to waive a material requirement of the IFB as a minor irregularity was arbitrary, capricious and unreasonable.