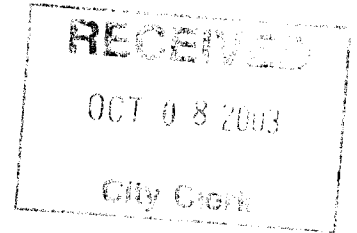


Chatham Electric, Inc
PO Box 34977
Juneau, AK 99803
Phone: (907) 789-9899 Fax: (907) 789-6954



October 7, 2003

City & Borough of Juneau
City Clerk
155 S. Seward St.
Juneau, AK 99801

Re: Bidding Review Board Decision Recommendation, RFP #E03-335

Dear Sir or Madam:

Pursuant to Alaska Administrative Code Section 01.50 et. seq. please consider this a Notice of Appeal of the Bidding Review Board Decision and Recommendation, RFP #E03-335, attached here to.

1. Name, Mailing Address, telephone and facsimile Numbers of Appellant:

Chatham Electric, Inc.
PO Box 34977
Juneau, AK 99803
907-789-9899 (phone)
907-789-6954 (fax)

2. The signature of the Appellant:

See the signature set forth below.

3. Not applicable

4. A copy of the decision being appealed is attached hereto.

5. A Concise Statement of the legal and factual errors in the decision that form the basis for the appeal.

The Decision and Recommendation of the Bidding Review Board to overturn the decision of the Purchasing Officer of the City and Borough of Juneau ignored pertinent facts, and in so doing, is *directly contrary* to established law.

It is undisputed that Chatham Electric is the low bidder. Chatham's bid was also fully responsive to the invitation. The Board erroneously found that "minimum

requirements are an issue of responsiveness.” This is legally incorrect. In Government contracting the ability of a bidder to successfully meet minimum requirements is an issue of “responsibility.” See, Schnitzer, *Government Contract Bidding* (3d Ed. 1987 at 16-2).

The only issue raised by appeal was, therefore, a responsibility issue, whether Chatham met the minimum experience requirement of *at least five years of experience as a licensed Electrical Contractor in Southeast Alaska*. Schnitzer and the Comptroller General have repeatedly and consistently held that in public contract bidding the “prior experience” responsibility criteria are to be applied so as to recognize that *people perform work, not corporations*. Accordingly, where the bidder is a new or relatively new business, federal procurement law *mandates* that the experience of individuals at the bidding company, as well as the experience of a predecessor firm, be considered. (See, Snitzer, *Government Contract Bidding* (3d Ed. 1987) at 16-4 and See, S.C. Jones Services, Inc., B-223155 86-2 CPD 158 (Aug 5, 1986); Matter of: R.J. Crowley, Inc., B-229,559, 88-1 CPD P220 (March 2, 1988); D.H. Kim Enterprises, B-255124, 94-1 CPD 86 (February 8, 1994); D.J. Enterprises, Inc., B-233410, 89-1 CPD 59 (January 23, 1989); Margaret N. Cox, B-232588.2 88-2 CPD 605 (December 20, 1988); and Gulf States Elevator Corp., B-160758 (May 15, 1967). If the specifications do not consider the personal experience of the principal(s) or the experience of the predecessor corporation(s), the specifications will be considered unduly restrictive. See, e.g., Military Services of Georgia, B-221384, 86-1 CPD 423 (1986). This has been the rule since at least 1927. See, Comptroller General McCarl to the Postmaster General, 6 Comp.Gen. 557 (1927)

Appellant argued, and the Board erroneously agreed, that because the corporate entity, Chatham Electric Inc., has not existed for at least five years it failed to meet this requirement. In so finding, the Board ignored the above referenced law and failed to properly consider relevant and determinative facts: (1) that Ralph Kibby, Chatham’s President, has 10 years experience as an electrical contractor in Southeast Alaska; (2) that Mr. Kibby worked for eight (8) years at Cave Electric, a Southeast Alaska Electrical Contractor since 1982; (3) that on August 11, 1999, the Board of Directors of Cave Electric elected Mr. Kibby President (Minutes of Special Meeting of Shareholders and Board of Directors of Cave Electric, Inc. were presented to the CBJ Purchasing Officer); (4) that in 1999 Mr. Kibby purchased the assets and business obligations of Cave Electric and formed Chatham Electric; (5) that Chatham completed the contracts of Cave Electric as well as warranty work for Cave’s clients; (6) that the IBEW transferred all of Cave’s employees to Chatham; (7) that the business phone and physical address of Cave became the business phone number and physical address of Chatham; (8) that David Shilts, project manager with Chatham Electric, has held an Alaska Electrical Administrator’s license since 1988; and (9) that William Bernier, a licensed Electrical Administrator since 1979, maintains his license in Chatham Electric.

6. The Relief Requested by the Appellant.

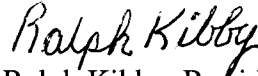
Mr. Kibby’s 23 years of experience and his eight years of experience with Cave Electric as an electrical contractor in Southeast Alaska should have been considered. Mr. Shilts and Mr. Bernier’s experience should also have been considered. When considered, Chatham Electric’s bid was both fully responsive and fully met the responsibility

requirements. The decision of the Bidding Review Board was legally and factually incorrect. The law, the interests of fair play, and the public taxpayer's interest mandate that it must be overturned and the original decision of the Procurement Officer affirmed. RFP contract numbers 2 and 3 should be awarded to Chatham Electric as the responsive and responsible offeror.

7. The filing fee is included with this Notice of Appeal.

Should you have any questions or require anything further, please do not hesitate to contact the undersigned.

Respectfully Submitted,



Ralph Kibby, President
Chatham Electric, Inc.
Appellant

RECEIVED

OCT 03 2003

City Clerk

October 3, 2003

Mayor Sally Smith and CBJ Assembly Members
City & Borough of Juneau
155 S. Seward St.
Juneau, AK 99801

RE: Bidding Review Board appeal hearing of RFP #E03-335; Decision and recommendation.

Mayor Smith,

On October 1, 2003 the CBJ Bidding Review Board (Board) met in special session to hear a protest appeal by Ever Electric on RFP #E03-335. The solicitation was for the establishment of three (3) electrical term contracts for different types of electrical services as needed by the CBJ. The protest appeal centered specifically on the award of contracts #2 and #3. There was no controversy on contract #1 and it should be awarded as solicited.

All interested parties were in attendance and the Board had a legal quorum. Board members present were John Walsh, David Newman, Bob Wostmann, and John White. Ms Pearson was absent and Mr. Walsh chaired the meeting.

The issue presented by the appellant was a question of whether the apparent winner of the solicitation, Chatham Electric, met the minimum requirements as specified in section 1.3 of the solicitation. The appellant claimed that this was a very specific clause and must be adhered to as written. The appellant further testified and provided documentation, which supported his claim that Chatham Electric did not meet the minimum requirements as stipulated in the solicitation.

The minimum requirements are listed on page 7, section 1.3 of the solicitation and read as follows;

“ In order to be considered for a term contract, proposing contractors must have *at least* five years of experience as a licensed Electrical Contractor in Southeast Alaska” [bold text in RFP documents]

Testimony was given and evidence presented by the interested parties in accordance with the established hearing procedures of the Board.

After careful review of the testimony and the evidence presented, the Board feels that the appeal as presented by Ever Electric is valid and unanimously upholds the appeal.

The Board agreed that the minimum requirements are an issue of responsiveness to the solicitation and must be adhered to literally, as written, and without deviation. Simply stated, responsiveness issues are a pass/fail requirement without exception or subject to interpretation. Any other assumption or deviation could result in a loss of integrity to the

formal solicitation process that has been established to eliminate prejudice and ensure fairness to all parties.

Shnitzer defines the basic concept of responsiveness in "Government Contract Bidding", which is paraphrased as follows; †

"To be responsive, a bid must be submitted in exact accord with the essential terms of the solicitation.... Any significant deviation from the terms will result in rejection of the bid, regardless of the reasons... and regardless of the fact that the product or service offered might well satisfy the Governments requirements"

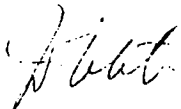
Testimony given supported the rationale for establishing a minimum requirement. The CBJ was prudent in its process to establish such minimums and did so with good reason. The Board feels that the CBJ must abide by what was in the solicitation and should have rejected the proposal submitted by Chatham Electric as non-responsive due to non-compliance to the minimum qualifications as specified.

For the reasons stated above the Board unanimously upholds the protest appeal brought forward by Ever Electric Inc. The Board further recommends that award of the contracts should be made to Ever Electric in accordance with the solicitation and established procedures.

CBJ Staff is requested to inform all interested parties of the decision, distribute copies of said decision, and notify the parties of any further appeal rights.

Dated October 2, 2003, at Juneau Alaska.

BIDDING REVIEW BOARD

By:  10/3/03

John White, Board Member
By direction of the Board

Cc: Rod Swope, CBJ Manager
CBJ Purchasing Staff
Bidding Review Board Members