

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	CASE NO. 2000-11
)	
)	
In re:)	ORDER
Protest of R. E. Harrington;)	
Appeal by Gates, McDonald & Company)	
)	
)	

This case came before the South Carolina Procurement Review Panel (Panel) for a hearing on November 2, 2000, on appeal by Gates, McDonald & Company (Gates) of a decision by the Chief Procurement Officer (CPO). Present at the hearing were Gates, represented by John E. Schmidt, III, Esquire, R. E. Harrington (REH), represented by Michael H. Montgomery, Esquire and the Office of General Services of the Budget and Control Board (General Services), represented by Keith McCook, Esquire.

FINDINGS OF FACT

On February 1, 2000 the Office of Insurance Services(OIS) issued an invitation for bids (IFB) to procure unemployment compensation claims administration and management services for the State. On February 23, 2000 OIS conducted a pre-bid conference. On March 7, 2000 OIS issued an amendment to provide the answers to questions raised at the pre-bid conference. On March 29, 2000, OIS opened bid from two companies as follows: 1) Gates, McDonald & Company - .795 per employee and 2) R. E. Harrington - .799 per employee. On April 18, 2000, OIS issued a notice of intent to award to Gates. On May 2, 2000, the CPO received REH's protest. On August 17, 2000 MMO issued a decision directing OIS to remove the resident vendor preference from Gates' bid and determine the lowest responsive and responsible bidder for the award.

CONCLUSIONS OF LAW

MOTION FOR SUMMARY JUDGEMENT

ISSUE I: SUBJECT MATTER JURISDICTION

General Services, joined by REH, moves before the Panel for summary judgment on the grounds that there is no genuine issue of material fact in regards to Gates' appeal issue on subject matter jurisdiction. Gates argues that the CPO did not have subject matter jurisdiction over REH's protest and that the Panel therefore does not have subject matter jurisdiction over REH's appeal. Gates' argument is based on the premise that the protest was not submitted to the appropriate Chief Procurement Officer by REH, but was submitted to Jane Britton, Contracts Manager at OIS and the person listed in the IFB as responsible for administering the bid [Record, pp. 38 & 44]. S.C. Code § 11-35-4210 provides in part the following:

(1) Right to Protest ... Any actual bidder ...who is aggrieved in connection with the intended award ...shall protest to the appropriate chief procurement officer in the manner stated in subsection two below within fifteen days of the date of the date notification of award is posted ...

(2) Protest Procedure ...A protest ...shall be in writing, submitted to the appropriate chief procurement officer, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

The Panel held previously in Protest of Warehouse Distributing Company, Case No. 1988-2 that *a protest sufficiently satisfies the “submitted to the appropriate chief procurement officer” requirement of the statute when it is clear that it is a protest and it is directed to the procurement officer listed on the Bid Invitation.* In the present case, Jane Britton was the procurement officer for OIS and once she received the protest from REH she forwarded it to the State Chief Procurement Officer within the prescribed time limit under the statute. REH's protest was in writing and submitted to the appropriate CPO.

Following the precedent set in *Warehouse Distributing*, the Panel finds that there is no genuine issue of material fact in regards to Gates' subject matter jurisdiction issue. General Services' motion for Summary Judgment is granted.¹

ISSUE II: RESIDENT VENDOR PREFERENCE

Gates argues that the CPO erred in directing OIS to remove the resident vendor preference from Gates, a subsidiary of Nationwide Insurance Company. S. C. Code § 11-35-1524 states in part the following:

(B)(6) Resident vendor means a vendor who is considered to be a resident of this State if the vendor: a) is an individual, partnership, associated, or corporation that is authorized to transact business within the State, b) maintains an office in the state, c) maintains an inventory for expendable items which are representative of the general type of commodities on which the bid is submitted ... and d) has paid all assessed taxes.

¹ Gates' motion for Summary Judgment on the issue of subject matter jurisdiction is hereby denied.

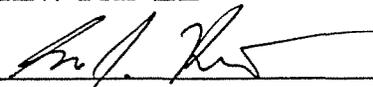
Gates presented the testimony of Ann Saxon and Mary Pick at the hearing before the Panel. Ms. Saxon is Assistant General Counsel for Nationwide Mutual Insurance Companies and Ms. Pick is Gates' Southeast Regional Manager. There was testimony which indicated that some arrangements for office space in South Carolina was made by Ms. Pick with Nationwide Insurance and that an employee of Nationwide Insurance was used by Gates to correspond with OIS. However, both Ms. Saxon and Ms. Pick testified that at the time of the bid, Gates did not have any employees or an office in the state of South Carolina. This testimony clearly showed that Gates did not meet the requirements set forth in S. C. Code § 11-35-1524 because Gates did not maintain an office in the state of South Carolina at the time the bid was made. The Panel finds that Gates' was not entitled to receive the Resident Vendor Preference.

CONCLUSION

General Services, joined by REH, made a motion for a directed verdict which the Panel treats as a motion to dismiss for failure to meet the burden of proof. For the foregoing reasons, the motion is granted, Gates' appeal is dismissed and the decision of the CPO is upheld.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 
Gus J. Roberts, Chairman

Columbia, SC

November 30, 2000

APPENDIX

OIS requested, in writing, that the Panel address whether an agency has a duty to separately inquire into and determine whether a vendor is eligible for resident vendor preferences when the vendor signs a certification claiming these preferences. The Panel suggests that agencies follow the plain language of S. C. Code § 11-35-1524 which does not contain a separate duty of inquiry on the part of agencies. The statute places the determination of false or invalid certifications on the chief procurement officer (See S. C. Code § 11-35-1524 (E)).

The Panel would further suggest that the State require all agencies to include in their invitations for bids and requests for proposals, along with the right to protest, the name and address of the state chief procurement officer.