

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	CASE NO. 2000-5
)	
)	
In re:)	ORDER
Protest of Santee Wateree Regional)	
Transportation Authority)	
)	
Appeal by Santee Wateree Regional)	
Transportation Authority)	

This matter arises from an appeal of Santee Wateree Regional Transportation Authority (SWRTA) from a decision by the Chief Procurement Officer to uphold the award of a Title XIX Medicaid Transportation contract to Pee Dee Regional Transportation Authority (Pee Dee). On January 20, 2000, pursuant to S. C. Code of Laws Ann. § 11-35-4410(5), the Procurement Review Panel (Panel) appointed Ms. Faye A. Flowers, Esq. to serve as the hearing officer of the above referenced case for the purpose of conducting an administrative review. On April 17, 2000 a hearing was held. This case came before the Panel on May 8, 2000 by way of report and recommendations from the hearing officer. Ms. Flowers made an oral presentation to the Panel, submitted her written report and recommendations, and was available for questions from the Panel. The written report and recommendations are incorporated herein as part of this order.¹

¹ The findings of fact, questions presented, and conclusions of law in the report from the hearing officer are adopted by the Panel.

and answer period and which made certain revisions to the RFP and its Appendices. On June 9, 1999, MMO issued Amendment No. 2 extending the opening date until further notice. Amendment No. 3, issued on July 2, 1999, established the new opening date as July 21, 1999.

After proposals were opened a three-member panel undertook to review and rate the twenty-two responsive proposals submitted. Prior to evaluation the evaluators met with David Quiat, the procurement officer in this case, and received an evaluation panel briefing sheet which contained instructions to aid the evaluators. The instructions contained sections advising the panel of the confidentiality of the evaluation process, requiring that no evaluator have a conflict of interest, requiring that each evaluator score proposals independently of the other evaluators, requesting that evaluators monitor the responsiveness of proposals by checking proposals against the requirements of the RFP, explaining the rating structure, indicating that cost was not a factor to be considered by the evaluators, explaining how evaluators could document their evaluations, indicating that oral presentation might be requested, and advising panel members of the possibility of protests.

The evaluators were also given score sheets setting forth the criteria and the weightings assigned by the RFP as Cost, 45 points, technical approach, 25 points, coordination of transportation efforts, 15 points, corporate background, experience and financial stability, 10 points, and approach to staffing, 5 points. In addition, the score sheet contained a grade description which attempted to correlate letter grades to possible point ranges, for example, 80 to 89 was described as "Criterion was addressed well. The response indicates some excellent capabilities ("B")."

After the evaluators had independently reviewed and scored proposals, they met with Mr. Quiat to discuss the responses and finalize scores. Mr. Quiat supplied the cost information to determine the final ranking of vendors.

On September 8, 1999, MMO posted the Notice of Intent to Award for all counties. For the Kershaw and Lee County contracts at issue in this proceeding, two offerors submitted proposals, SWRTA and Pee Dee. The Notice of Intent to Award listed Pee Dee as the awarded vendor in both counties.

On September 23, 1999, SWRTA protested the award to Pee Dee on several grounds. The Chief Procurement heard the matter in November, 1999, and issued his decision on December 30, 1999, denying SWRTA's protest on all grounds. On January 10, 2000, SWRTA appealed the decision of the Chief Procurement Officer.

Questions Presented

SWRTA alleges that the award to Pee Dee violates the South Carolina Consolidated Procurement Code because the evaluation process was flawed because each of the evaluators was clearly erroneous, arbitrary, and capricious in his or her scoring of proposals. Specifically, SWRTA alleges that evaluator James Boggs assigned a grade of 85 to all proposals, with few exceptions, without regard to the completeness and merits of each proposal. SWRTA contends that Mr. Bogg's evaluation procedure thus removed the qualitative aspect from the RFP process. SWRTA also contends that, despite the absence of required information in Pee Dee's proposal and despite SWRTA's alleged superiority in several categories of review, none of the evaluators accounted for these facts in scoring.

Pee Dee contends that, even if the evaluation process was not perfect, it was not arbitrary, capricious, or contrary to law. MMO and HHS agree with Pee Dee assertions.

Conclusions of Law

Under § 11-35-2410, a determination by the State as to which proposal is the most advantageous considering price and the other evaluation criteria is final and conclusive unless such

determination is “clearly erroneous, arbitrary, capricious, or contrary to law.” The Panel has held numerous times that this section dictates that the Panel will not re-evaluate proposals and will not substitute its judgment for the judgment of the evaluators. *See, e.g., Protest of Travelsigns*, Case No. 1995-8; *Protest of First Sun EAP Alliance, Inc.*, Case No. 1994-11; *Protest of NBS Imaging Systems, Inc.*, Case No. 1993-16; and *Protest of Coastal Rapid Public Transit Authority*, Case No. 1992-16.

In the *Coastal Rapid Public Transit Authority* case, the Panel established the basic framework for review of challenges to evaluators’ conduct:

The determination by the State who is the most advantageous offeror is final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law. . . . The burden of proof is on [the protestant] to demonstrate by a preponderance of the evidence that the determination in this case has such flaws. . . .The Panel will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

The Panel has held that the evaluation process does not need to be perfect so long as it is fair. *NBS Imaging Systems, Inc.*, cited above. Further, because the Panel will not re-evaluate proposals or substitute its judgment for that of the evaluators, the Panel has held that a claim of superiority by a vendor in certain areas of evaluation, however valid, does not compel the finding that the vendor is the most advantageous to the State. *See, Protest of First Sun EAP Alliance, Inc.*, and *Protest of Coastal Rapid Public Transit Authority*, cited above.

Evaluator John Stevens testified that he reviewed the RFP prior to evaluating proposals, that he reviewed each proposal only once, that he spent some twenty hours evaluating proposals, that he scored the proposals independently without input from the other evaluators concerning baseline scores and the like, that he would have deducted points if anything had been blatantly missing,

although he could not recall where he gave deductions to Pee Dee or SWRTA, that he based his overall ratings on how achievable each offeror's proposal was based on the four evaluation criteria, that he did not single out any particular area of a proposal for scrutiny, that he used the same procedures for all proposals, that he had no economic or other conflicts of interest and that he followed the evaluator's instructions as he best understood them. Based on this procedure, Evaluator Stevens awarded SWRTA a total of 50.2 out of 55 points and Pee Dee a total of 52.4 out of 55 points.

Evaluator Vanessa Busbee testified that, prior to evaluating proposals, she read the RFP, then she read the proposals and graded them based on her opinion of their compliance with the RFP. Ms. Busbee stated that, as she graded the proposals, she had an idea of what someone needed to do to perform the contract and that she assigned this baseline minimum a score of 85, to which she would add or deduct depending on each offeror's response to the criteria. She indicated that she arrived at her baseline method without consulting anyone. Ms. Busbee testified that she felt that both Pee Dee and SWRTA met her baseline requirements and that both could adequately perform the contract. Ms. Boggs awarded SWRTA 47.3 of 55 points and Pee Dee 45.8 of 55 points.

Evaluator James Boggs testified as follows concerning his evaluation procedures. He reviewed the RFP prior to beginning evaluations. He thereafter reviewed each proposal once briefly and then re-read it looking for key points. He evaluated each proposal against his understanding of the RFP criteria and requirements and not by comparing one proposal against the others. Based on the scoring sheet grade description, he determined that he would assign an 85 score as to each listed criteria if a proposal covered the elements and was an excellent proposal. To the extent he could determine that a proposal did not adequately address criteria, he would deduct points. He reviewed

each proposal in as much detail as possible. Mr. Boggs awarded both SWRTA and Pee Dee 46.75 of 55 possible points.

SWRTA questioned each of the three evaluators on several areas of Pee Dee proposal which SWRTA alleges are deficient. No evaluator could locate Pee Dee's maintenance procedures as required by the Technical Approach section of the RFP.¹ Each evaluator, however, recalled seeing some of what they considered to be maintenance procedures in other portions of Pee Dee proposal.² SWRTA's proposal contained a section describing in detail its maintenance procedures and it attached copies of its procedures.

SWRTA also points to Pee Dee's response to the requirement that the offeror provide a detailed explanation and plan of how it intended to coordinate transportation efforts under the RFP. Pee Dee's proposal contains a specific section addressing coordination of transportation efforts; however, there is no specific mention of Medicaid transportation services in the plan. The evaluators testified that they did not deduct points simply because Medicaid was not mentioned and that they were satisfied that Pee Dee had experience coordinating transportation efforts and could do so in this case.

¹Pee Dee's proposal, which was provided to SWRTA in response to a Freedom of Information Act request, was redacted almost in its entirety and to the point where locating any coherent information would have been difficult for SWRTA. *See*, §11-35-410 (Unless at the time of submitting a proposal, offeror identifies confidential information, entire proposal is public information).

²The RFP Technical Approach section required the offeror to "describe in detail its Technical approach for (1) dispatch, vehicle communications, and maintenance procedures . . ." The RFP also required all information to be presented in the listed order and format. Thus, SWRTA relies on the absence in Pee Dee's Table of Contents of any section entitled "Maintenance Procedures". Recognizing that SWRTA is not alleging that Pee Dee is not responsive for failure to include maintenance procedures, nevertheless the Panel has held that mere failure to follow the prescribed format is a minor informality which can be waived. *Protest of Justice Technology, Inc.*, Case No. 1992-4. Thus, the evaluators were free to give Pee Dee credit for maintenance procedures wherever they appeared in the proposal.

Pee Dee, MMO and HHS point out that the “Technical Approach” section in the RFP has nine elements and that item (1) has three subparts to it. Thus, there are eleven factors to be considered in awarding the total 25 points available under this section. Even if SWRTA met its burden of proof as to maintenance procedures, there are ten other factors which could account for the overall scoring of the evaluators. *See, Protest of Cathcart and Associates, Inc.*, Case No. 1990-13.

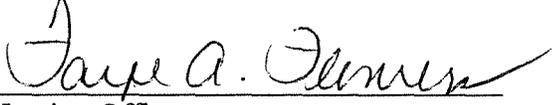
Based on the requirements of § 11-35-2410 and previous Panel decisions, I find that SWRTA has failed to prove that the evaluation process in this case was clearly erroneous, arbitrary, capricious, or contrary to law. Each of the evaluators testified that he or she reviewed each proposal, evaluated it against the criteria set forth in the RFP, and independently arrived at a score. Mr. Boggs scored Pee Dee and SWRTA the same. Ms. Busbee scored SWRTA *higher* than Pee Dee. Mr. Stevens scored SWRTA less than two points lower than Pee Dee. As Pee Dee argues, subjectivity is the hallmark of the RFP process and it does not equate with arbitrariness.

Further, even if SWRTA’s claims of superiority in certain areas are meritorious, SWRTA has not proven that the process was arbitrary, capricious, and contrary law. Neither has SWRTA demonstrated that its proposal is overall the most advantageous to the State. As the Panel has held numerous times, in the absence of this proof, the Panel will not re-evaluate proposals and substitute its judgment for that of the evaluators.

Recommendations

1. The award to Pee Dee should be affirmed and the protest of SWRTA should be dismissed.

Respectfully Submitted,


Jaye A. Thomas
Hearing Officer

Columbia, S.C.
May 8, 2000

CONCLUSION

Based on the report and recommendations of the hearing officer the award to Pee Dee is affirmed.

For the foregoing reasons, the appeal by SWRTA 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

May 16, 2000