

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

In the Matter of:)
Honeywell, Inc.,)
Petitioner,)
vs.)
Materials Management Office,)
Division of General Services)
State of South Carolina,)
Respondent.)

No. 83-CP-40-0168
IN RE: PROTEST OF HONEYWELL, INC.

ORDER

This matter came before me for a hearing on March 29, 1984. At issue between the appearing parties was the question of what relief should be granted to Honeywell as the result of this court's Order dated December 13, 1983, reversing the decision of the Procurement Review Panel and concluding that the contract here in issue should have been awarded to Honeywell. The Procurement Review Panel, the Materials Management Office, Richland Memorial Hospital and Honeywell were represented by counsel at the hearing.

All parties except Honeywell questioned the authority of the undersigned, who was serving as Special Circuit Judge during the term at which the original hearing was held. The Court is of the opinion, however, that the present matter is an outgrowth of the original hearing and that the judge

who granted the original relief retains the power to decide matters incident thereto. Accordingly, the motion that the hearing should be postponed to another Circuit Judge at another term of Court is denied.

Testimony was presented by Honeywell as to the amount of expenses it claims to have incurred in connection with the bid preparation. The parties stipulated that the legal fees incurred by Honeywell to date were reasonable, although the precise amount of fees incurred in connection with the March 29 hearing had not been determined. The State respondents presented the testimony of a Department of Mental Retardation official who offered a letter indicating the Department's desire to terminate the contract with Richland Memorial as soon as possible and to perform the work itself. This request is still under advisement with the Materials Management Office, but if honored could result in the termination of the contract over a year prior to its scheduled expiration date.

At the hearing, Honeywell announced its intention not to pursue the remedy of lost profits under the contract. Honeywell had originally sought a mandamus order compelling the award of the remainder of the contract to it, or an order declaring the present contract void and reopening bidding. However, after the testimony made it clear that the

Department of Mental Retardation intends to perform the contracted-for work itself as soon as possible, Honeywell announced that it was no longer seeking the aforementioned remedies and that it was instead seeking only the recovery of costs incurred, including costs connected with the present legal proceedings.

Section 11-35-4210(7) provides specifically for the remedy of reimbursement of bid costs by requiring the protestant to apply to the Procurement Review Panel for "reimbursement of the actual costs, not to exceed five thousand dollars, incurred in connection with the solicitation including bid preparation." The same subsection further provides that the Panel "may order the computation of a reasonable amount and make such recommendations to the [Budget and Control] board as it deems equitable, including reimbursement of bid preparation costs, not to exceed five thousand dollars, and other relief."

In the view of the Court, it would be appropriate for the Panel to make the initial finding as to the appropriate degree of compensation to be awarded to Honeywell, and the matter is accordingly remanded to the Panel for the sole purpose of considering the amount of relief to which Honeywell is entitled under § 11-35-4210(7). In ordering this remand, the Court deems it unnecessary to decide whether

§ 11-35-4210(7) provides the exclusive procedure for determining the amount of an award of this nature. Likewise, the Court expresses no opinion as to what may be considered by the Panel in awarding monetary relief, and whether the \$5000 limit constitutes the maximum monetary award which may be made. However, the Court instructs the Panel that it should consider only monetary relief, and that the Court's decision that Honeywell should have been awarded the contract precludes the Panel from re-examining the question as to who should have been awarded the contract.

For the foregoing reasons; then, it is ordered that this matter be remanded to the Procurement Review Panel for the sole purpose of determining the extent of monetary relief to be awarded to Honeywell.

AND IT IS SO ORDERED.



James C. Harrison
Special Circuit Judge

April 13, 1984