

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1986-12

IN RE:)
PROTEST BY GENERAL SALES)
COMPANY, INC.)

O R D E R

INTRODUCTION

This matter is before the South Carolina Procurement Review Panel (Panel) pursuant to a request by General Sales Company, Inc. (GS) for a review of the Decision of the Chief Procurement Officer (CPO) as provided by §11-35-4210(5) and §11-35-4410(6) S. C. Code of Laws, 1976.

A hearing was held on December 17, 1986. GS was represented by D. Cravens Ravenel and Jean H. Toal. The Division of General Services was represented by Helen Zeigler. Bill Gambrell, Assistant Attorney General, also provided representation for General Services. John Reed Palmer, Vice President of the successful vendor, CNC Company, was present but participated only as a witness.

FINDINGS OF FACT

1. Competitive bids were solicited for new kitchen equipment August 26, 1986, in accordance with Budget and Control Board Regulation 19-445.2030. The equipment is to be used at two child care centers in the state. General Services

forwarded bid invitations to bidders on its bid list and advertised its requirements in the S. C. Business Opportunities publication.

2. A "Brand Name" or "Equal" specification, as defined in Budget and Control Board Regulation 19-445.2140, Subsection (A)(2), was used. Vulcan Model #E-36 and Champion Model #UHB were used as the specification to best describe the standard of quality, performance, and other characteristics needed to meet its requirements and allowed for the submission of equivalent products. The specification listed the following features required of each to identify the salient characteristics of the equipment sought:

- A. Electric Range, Vulcan Model #E-36, std. finish, 22" flue riser, 6 surface units, 240 V. single phase.
- B. Dishwasher, Champion Model, #U.H.B. with panels and hot water booster heater, 220/60/1.

3. The invitation for bid (I.F.B.) (p. 5) included the following terms and conditions:

"The information listed is for identification and is not to be considered restrictive as to manufacturer. Items offered must be equal in quality and performance to the items described.

The right is reserved to reject any offering in which the items offered are considered unsatis-

factory in any manner. The State will determine if minor deviations from the listed features are acceptable." (Emphasis Added)

"Bidders offering other than specified must include the catalog number and manufacturer's names of the item offered in the space provided and attach manufacturers latest catalog and/or specifications sheets."

4. GS was one of two (2) bidders to respond to the bid invitation and offered the models as specified. CNC bid a Garland Model range #686 and a Jackson Machine Model #24BF as an equal to models referenced and offered the products at a cost of \$185.00 less than GS. General Services awarded the bid to CNC as the lowest responsive responsible bidder with a price of \$6,814.

5. The uncontroverted testimony revealed that the Vulcan range has French plate heating elements for pots and pans rather than coil type elements which are utilized by the Garland model. Both ranges have six surface elements. Each burner is 9 1/2 inches in diameter on the Vulcan, while the Garland has three 6 1/2 inch elements and three 8 1/2 inch units. The oven of the Vulcan has two heating elements and the Garland only has one.

6. Whether the range was to be used in a commercial setting is under dispute. The precise characterization of the setting in which the range is to be used is not as important as the characteristics of the model listed in the specification. These characteristics or features are part of the specifications in this solicitation. The features of the Vulcan model specified establish the minimum level of quality and performance that must be met by another brand in order for it to be deemed equal. The Panel finds, and the evidence reveals, that the Vulcan features are more akin to the features found on a commercial range, while the features of the Garland model are more similar to those of a domestic range. A Brand name or equivalent specification is designed to be descriptive rather than restrictive. As such, the Panel finds that the Garland range does not meet the minimum level of quality and performance established by listing the Vulcan model as the Brand name in the solicitation.

7. The testimony and evidence before the Panel revealed many differences in the Champion dishwasher specified in the I.F.B. and the Jackson model bid by CNC. The Panel declines to delineate the features of the models bid because Mr. Armstrong, Vice President of G.S., testified that no Jackson model is equal to the Champion model specified in the I.F.B. He further testified that he knew

this to be the case and that CNC had bid a Jackson Model within a day of the bid opening.

Consequently, he knew all the facts necessary to lodge a protest on September 17, 1986. Thus, under the authority of §11-35-4210(1) and In Re: Request for Proposals for Communication Services for the State of South Carolina (No. 7-725-1107200-07/11/83-41) - Request of American Telephone and Telegraph Co., for Review of the 1983-12 Decision of the Chief Procurement Officer, GS's protest is untimely as it was not filed within ten days of the time that the protestant knew of the facts giving rise to the grievance.

8. The solicitation was amended to require that the award be made to one bidder for the entire quantity.
9. The I.F.B. (p.5) required that unit price for each item be listed on the bidding schedule. CNC failed to list a price for each item bid. Rather, CNC bid a aggregate price for all four items.

DISCUSSION AND CONCLUSIONS OF LAW

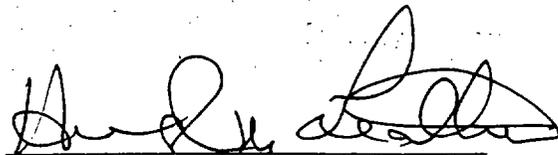
1. In a letter dated 12/8/86 to Richard Campbell, CNC requested that it be awarded certain costs associated with the equipment due to the delay in the execution of this contract. This request is denied as no testimony or evidence relating to these costs were presented in the hearing.
2. Ground (1) of GS's protest letter dated December 1, 1986, relating to the CPO's decision to allow testimony

concerning the slicing machine and freezer is overruled because no evidence was presented that this testimony was improperly admitted. The Panel finds as a matter of law that the CPO acted within his sound discretion.

3. Ground (3) of the GS's protest alleging that a prior determination by the Panel (In re: Protest of the Decision of the Acting Materials Management Officer in the Matter of the Protest of Contract Award by General Sales Company, Inc., Hobart #1712-R Slicer, Medical University of South Carolina, Bid Number 278-2/4-405-1, Purchase Order Number 255182), is overruled as no evidence of its improper use was presented to the Panel.

The Panel concludes that the differences in quality and performance between the Vulcan and Garland ranges is material. This fact coupled with the failure of CNC to list unit price as required in the I.F.B. causes the bid of CNC to be nonresponsive and the Panel so rules. Since §11-35-4210(7) authorizes the panel to order "relief as justice dictates" the panel therefore concludes, due to GS untimely protest concerning the dishwasher and the all or nothing award provided in the I.F.B., that rebid of the contract for purchase of this kitchen equipment be made.

IT IS SO ORDERED.



Hugh K. Leatherman
Chairman, S. C. Procurement Review
Panel

January 15th, 1987