

STATE OF SOUTH CAROLINA))
COUNTY OF RICHLAND)) 'BEFORE THE CHIEF PROCUREMENT OFFICER

IN THE MATTER OF:

Award Protest of American Scientific)
Product Division of American Hospital)
Supply Corporation, New Laboratory)
Supplies, Equipment and Chemicals)
Bid Invitation #1-490-5/01/86P)

D E C I S I O N

This matter is before the Chief Procurement Officer pursuant to the authority granted under Section 11-35-4210, South Carolina Code of Laws, 1976, as amended, and the regulations promulgated thereunder. This section of the State Consolidated Procurement Code grants the right of protest to any bidder who is aggrieved in connection with the solicitation or award of a contract. American Scientific Product Division of American Hospital Supply Corporation (hereinafter "ASC") filed a protest under Section 11-35-4210 of the State Consolidated Procurement Code. An administrative hearing was conducted in the office of the Materials Management Officer on July 25, 1986 with the representatives of ASC, State Procurements (hereinafter "SP"), Curtin Matheson Scientific, Inc. (hereinafter "CMS") and Fisher Scientific Company (hereinafter "FSC"). ASC's protest of the award made by SP is based upon SP's denial of ACS's claim to resident vendor preference in the evaluation and award process of this bid solicitation. The granting of such preference would have given ASC the award for Lot "A", the only lot contested in this award.

FINDINGS OF FACT

I. SP solicited competitive sealed bids for new laboratory supplies, equipment and chemicals for the period of July 1, 1986 through June 30, 1988 in accordance with State Procurement Regulation 19-445.2030. SP forwarded bid invitations to known vendors and advertised its requirements in the South Carolina Business Opportunities publication. SP used bid specifications derived from market research and statewide requirements to best describe the standard of quality, performance and other characteristics necessary to meet its requirements. This methodology has been used successfully on more than one occasion in the past several years.

II. ASC responded to this solicitation and submitted price discounts in accordance with specified lot definitions, catalog numbers and published price lists. ASC also submitted a signed affidavit certifying that it was a South Carolina resident vendor at the time the bid was submitted in accordance with the South Carolina Procurement Code (Act 148 of 1981) as defined in Section 11-35-1520(9)(D) of the 1976 Code of Laws of South Carolina, as amended.

III. ASC, in its certification of resident vendor status, declared that it had meet all conditions necessary to make such a declaration. ASC certified that it was a corporation that is:

1. Authorized to transact business in South Carolina
2. Maintained an office in South Carolina at Kingstree Manufacturing Plant, part of Baxter Travenol Inc. Group, Kingstree, S. C.
3. Maintains a representative inventory which is defined as that inventory for expendable items located in South Carolina at the time of this bid having a total value of \$10,000 or more based on the bid price, but not to exceed the amount of the contract, which inventory is representative of the general type of commodities on which the bid is submitted.
4. Has paid all duly assessed taxes.

IV. ASC indicated in its bid document, as required by the solicitation, the following information:

- A. Orders should be placed to American Scientific Products, 8350 Arrowridge Boulevard, Charlotte, North Carolina 28210
- B. Locations of principal warehouses servicing South Carolina to be:

1. Charlotte, North Carolina
2. Atlanta, Georgia

C. Approximate inventory value at warehouses to be
\$6,800,000

V. SP denied ASP certification of resident vendor status after it determined, by site visit, that the inventory located in South Carolina, as defined in ASP's Resident Vendor Preference Affidavit, was not representative of the expendable items necessary to support the contract.

VI. SP further determined that the inventory identified by ASC, in its Resident Vendor Preference Affidavit, was medical gloves which represented an insignificant number of line items as compared to the 40,000 to 50,000 line items in which the contract award was intended to support.

VII. SP's denial of resident vendor status to ASC resulted in the award being made on actual bid prices without regard to the two percent (2%) preference granted resident vendors over nonresident vendors. In reality, the award went to Curtin Matheson Scientific Inc. (CMS) based upon the determination that CMS was the lowest responsive and responsible bidder.

VIII. ASC protested the determination made by SP and stated it had satisfied the requirements or conditions for resident vendor status as defined by the S. C. Procurement Code in Section 11-35-1520(9)(D).

IX. ASC contends that the resident vendor status should be evaluated based upon the entire corporate entity in which the following are components.

A. Baxter Travenol Laboratories

1. Parent Holding Company
2. Home Office - State of Illinois

B. American Hospital Supply Corporation

1. Major Division of Baxter/Travenol
2. Home Office - State of Illinois

C. American Pharmaseal Division

1. Home Office - Glendale, California
2. Kingstree Manufacturing Plant reports directly to this division
3. Division of American Hospital Supply Company

D. American Scientific Products

1. Division of American Hospital Supply Corporation

2. Sales or marketing division for products
referenced in bid

3. Office located in Charlotte, North Carolina

X. ASC stated in the hearing that the Kingstree Plant would ship gloves in lots of 10 cases or more if contract required. No history of this distribution process was made available to the Chief Procurement Officer.

XI. ASC claims the office located in Kingstree, which is in support of the manufacturing process, is considered the office certified in its Resident Vendor Preference Affidavit. This office has no sales or marketing significance but is used in support of the manufacturing effort for American Pharmaseal Division, located in Glendale, California.

XII. "Office" for the purpose of this protest, is defined as a place where business is transacted.

XIII. "Vendor" for the purpose of this protest, is defined as a person or agency that sells.

XIV. The Procurement Review Panel has expressly affirmed and adopted the following as conditions for the designation of a resident vendor qualifying for preferences:

A resident vendor must be a person or organization engaged in the business of selling tangible personal property or services to the State who is in good standing under the laws of the State of South Carolina and who:

1. If selling tangible personal property:

- (a) Is a resident of the State or a foreign corporation authorized to transact business in the State; and
- (b) Maintains an office in the State; and
- (c) Has a stock of materials held in South Carolina for sale in the ordinary course of business, which stock is of the general type offered, and which is reasonably sufficient in quality to meet the ordinary requirements of customers; and
- (d) Has paid personal property taxes pursuant to Title 12, Chapter 27, Article 1, et seq., of the Code of Laws of South Carolina, 1976, as amended, on equipment used in the regular course of supplying services of the general type offered; and
- (e) Has paid business and occupational taxes pursuant to Title 12, Chapters 19, 21, 23, and 35, as

applicable, of the Code of Laws of South Carolina,
1976, as amended.

A vendor is expressly prohibited from claiming the in-state vendor preference on bids for items not normally stocked or handled by the company, or if the vendor's stock is comprised of samples only and is not sufficient to fill the day-to-day orders of customers.

DETERMINATION

IT IS DETERMINED THAT a resident vendor, as established in Section 11-35-1520(9)(D) of the South Carolina Procurement Code, is a person or organization engaged in the business of selling tangible personal property to the State, who is in good standing under the laws of the State of South Carolina and meets the criteria established by this Code section and definitions adopted by the South Carolina Procurement Review Panel as authorized by Section 11-35-4410 of the South Carolina Procurement Code.

IT IS FURTHER DETERMINED THAT an evaluation of the qualifying conditions under Section 11-35-4520(9)(D) and the definitions adopted by the Procurement Review Panel as applicable to ASC's affidavit, as requested by the protestant, reveal the following:

- A. ASC is a foreign corporation authorized to transact business in the State.
- B. ASC does not maintain an office in the State in support of its selling function. The Chief Procurement Officer finds that a resident vendor as defined in Section 11-35-1520(9)(D) must maintain an office in support of the selling function, as a vendor is a person or agency that sells. Preference granted for the manufacturing component in the business environment is distinct and Section 16 (4) of the 1985-86 Appropriations Bill addresses such a preference for goods manufactured in disadvantaged counties. Proposed regulations on the purchase of products made, manufactured or grown in South Carolina are not yet enacted. The office of the Kingstree Manufacturing Plant is in support of the manufacturing component of ASC. The sales function of ASC is transacted in Charlotte, North Carolina.
- C. ASC does not have a stock of commodities held in South Carolina for sale in the ordinary course of business, which stock is of the general type offered, and which is reasonably sufficient in quantity to meet the ordinary requirements of the contract. The inventory maintained in the Kingstree Plant represents only gloves and is insufficient to satisfy a contract requiring 40,000 to

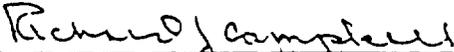
50,000 line items of other medical supplies, equipment or chemicals.

D. It appears ASC has paid all duly assessed taxes.

IT IS THEREFORE DETERMINED THAT ASC is not a resident vendor as defined in Section 11-35-1520 (9) (D) of the S. C. Procurement Code and its denial as such by SP is affirmed.

Protest Denied.

FOR THE MATERIALS MANAGEMENT OFFICE



Richard J. Campbell
Materials Management Officer

August 13, 1986

Columbia, South Carolina