

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Case No. 1990-18

IN RE: }

PROTEST OF LAURENS COUNTY
SERVICE COUNCIL FOR SENIOR
CITIZENS }

O R D E R

This case came before the South Carolina Procurement Review Panel for hearing on November 19, 1990, on the appeal by Laurens County Service Council for Senior Citizens ("Laurens") of a decision by the Chief Procurement Officer ("CPO") dismissing Laurens protest for lack of standing.

Present at the hearing were Laurens, represented its acting Director, Lila Hanley; the Health and Human Services Finance Commission ("HHSFC"), represented by Candace Burlaw, Esq. and the Division of General Services, represented by Helen Zeigler, Esquire.

FINDING OF FACTS

On May 4, 1990, HHSFC issued a Request for Proposals ("RFP") to provide homemaker services to qualified families and individuals in various counties. (Record, p. 25). Proposals were opened on June 5, 1990, and the contract for Laurens County was awarded to MED-SRV, Inc. (d/b/a/ Health Force) on September 4, 1990.

It is undisputed that the protestant Laurens did not submit a proposal in response to the RFP. It appears from the record that Laurens was mailed a copy of the RFP. (Record, p. 17). Ms. Lila Hanley, Acting Director for Laurens, testified that Laurens did not submit a proposal

because its former executive director advised the Board that the RFP required a contractor to provide local matching funds in the amount of 25% of the grant awarded and that Laurens could not meet this requirement. According to Ms. Hanley, Laurens decided not to submit a proposal because of the 25% matching funds requirement. Laurens had submitted proposals and been awarded the contract in this case for the past 10 years.

Laurens learned after the proposals were opened that the 25% matching funds requirement was no longer in effect. Ms. Hanley testified that Laurens did not know when the 25% matching funds requirement was eliminated and that it could have been in the 1989-1990 RFP. Laurens became suspicious that the requirement had been changed when it learned that MED-SRV, the new contractor in this case, had received a fee increase nearly double what Laurens had proposed in the past.

Laurens filed a protest with the Chief Procurement Officer on September 11, 1990, on the grounds that the RFP misled potential offerors because it did not clearly state that the 25% matching funds requirement was no longer in effect. According to Laurens, Part VI, section C of the RFP is ambiguous when it provides under evaluation factors, "Unit Cost. (More points will be given to those who provide a larger percentage of local support)." (Record, p. 111). Laurens argues that long term contractors such as itself

would have no reason to know that 25% local support was not a minimum requirement of the RFP under section C.

CONCLUSIONS OF LAW

The threshold issue is whether Laurens has standing to protest the award of the contract to MED-SRV. Section 11-35-4210(1) of the Consolidated Procurement Code provides:

Right to Protest. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the appropriate chief procurement officer.

The Chief Procurement Officer held that Laurens lacks standing under the above section because it failed to submit a proposal in response to the RFP it is attempting to protest.

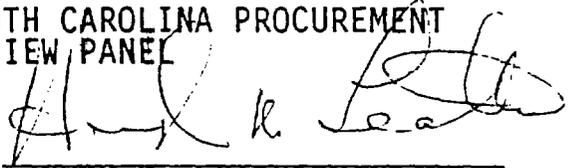
The Panel agrees. Only an offeror or a prospective offeror has the standing to protest under §11-35-4210(1). See In re: Protest of ACMG, Inc., Case No. 1990-4. In this case, Laurens did not submit a proposal and was clearly not an offeror. It cannot claim status as a prospective offeror because bids were opened on June 5 and Laurens did not protest until after that date. The Panel agrees with the CPO that once bids are opened, no opportunity for a vendor to submit an offer^{exists}. Therefore, no vendor can be a "prospective offeror" within the meaning of §11-35-4210(1) after bids are opened.

For the reasons set forth above, the Panel affirms the October 5, 1990, decision of the Chief Procurement Officer

and hereby dismisses the protest of Laurens County Service Council for Senior Citizens for lack of standing.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 

HUGH K. LEATHERMAN, SR.

Columbia, S. C.
12-13-70, 1990