

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
) CASE NO. 1990-8

IN RE:)
)
PROTEST OF INFOLAB, INC.) O R D E R
)
)

This case came before the South Carolina Procurement Review Panel for hearing on August 16, 1990 on the appeal by Infolab, Inc., ("Infolab") of a decision by the Chief Procurement Officer ("CPO") dismissing Infolab's protest as untimely.

Present at the hearing were Infolab, represented by its General Manager Sumner Spradling; Curtin Matheson Scientific represented by Jeffrey Silver, Esq.; and the Division of General Services, represented by Pat Hudson, Esq., of the South Carolina Attorney General's Office. Also present but not participating as parties were Baxter Scientific, Inc., and Fisher Scientific Company, Inc.

FINDING OF FACTS

On March 20, 1990, State Procurement issued an Invitation for Bids on a contract to provide laboratory supplies to all state agencies, school districts, municipalities and other governmental entities for a period of five years beginning July 1, 1990. The award was to be made in three lots based on a selection of frequently used items within three categories - Chemicals (Acids, Dry

Chemicals and Solutions, High Purity Solvents); General Laboratory Equipment, Apparatus, Glassware and Supplies; and Bio-Medical Supplies (Diagnostics). Each lot was to be awarded to the two lowest responsive and responsible bidders, as co-primary vendors. Estimated purchases under the contract total \$4 Million per year.

To determine which items appeared on the "shopping list", for each category State Procurement consulted the three incumbent vendors - Curtin Matheson, Baxter and Fisher - and by letter of March 19 asked each of them to list for each lot 100 items frequently used by the State from the thousands available in the catalogues.¹ Each incumbent was required to cross-reference catalogue numbers for the major suppliers of each item and the prices from the current catalogue. Responses were due April 3, 1990.

The Invitation for Bids instructed each bidder to bid discounts for groups of items in their catalogue without advising the bidders which specific items would appear on the final shopping list. The IFB stated that, "Bidders will be required to assist in developing and pricing the list of items used to determine awards." (Record, p. 26).

On April 3, the incumbents submitted their suggested lists. According to Horace Sharpe, the procurement officer

¹Fisher sales representative Eric Patterson testified in a related hearing that Fisher never received the March 19 letter. See In re: Protest of Fisher Scientific Company, Case No. 1990-7.

in charge of this solicitation, the State took the lists submitted by the incumbent vendors, randomly selected items from each list, and compiled a final representative list of approximately 100 items for each of the three lots. The State did not consult with the using agencies on the final lists and did not attempt to verify that items listed by the vendors were indeed those frequently used by the State.

On April 11, bids were opened and each bidder was given a shopping list for each lot with instructions to calculate prices, by unit, based on the discounts quoted in the bidder's bid. All bidders returned the requested information by the April 23 deadline.

Horace Sharpe testified that he met with each bidder to check the price extensions and make corrections to the shopping lists and bids. Mr. Sharpe discussed some aspects of Infolab's bid with Infolab employee Nancy Pierce on May 11 and met with Ms. Pierce and another Infolab employee on May 16. During one of these conversations, Mr. Sharpe advised Infolab of the lot totals for each bidder and that Item 6 of Lot C was deleted from all bids.

On May 15, the State issued a Notice of Intent to Award the contract as follows:

Lot A	Curtin Matheson Baxter Scientific
Lot B	Curtin Matheson Baxter Scientific
Lot C	Fisher Scientific Baxter Scientific

(Record, p. 37). Sumner Spradling, Infolab's General Manager, testified that Infolab received the Notice of Intent to Award on May 17.

On May 31, Infolab protested the award, alleging that the State violated the provision of the Invitation for Bids that the list would be developed with the assistance of bidders based on items frequently used by the State because: (1) the list is not representative of frequently used items and (2) neither Infolab nor the using agencies were given input into the list. Infolab claims that the procedure used favored the incumbents who were given input into the shopping list and disfavored Infolab as a nonincumbent bidder. (Record, p. 11). In addition, Infolab claims the deletion of Item 6 of lot C from all bids was unfair to Infolab.

The Chief Procurement Officer dismissed Infolab's protest as untimely under S. C. Code Ann. §11-35-4210(1) (1976).

CONCLUSIONS OF LAW

Section 11-35-4210(1) requires a bidder to file its protest in writing within ten days of when it knew or should have known of the facts giving rise to the protest.

In this case, Infolab's sales representative Cecil Ollinger testified that Infolab knew on April 11 when it received the shopping lists for each lot that Infolab had no input into the development of the list being used to determine award. Further, Mr. Ollinger testified that on

April 11 Infolab had the opportunity to determine whether items on the lists were in fact frequently used by the State. Mr. Sharpe testified without contradiction that Infolab knew no later than May 16 that Item 6 from Lot C was being deleted from all bids. Surely, Infolab knew on May 17 when it received the Notice of Intent to Award that Infolab did not win any portion of the contract, that the incumbent vendors did win the contract and that the shopping lists were not going to be changed.

All of the facts necessary to Infolab's protest were known or should have been known to Infolab no later than May 17. Nevertheless, Infolab waited fourteen days or until May 31 to file its protest. Infolab's protest is not timely under §11-35-4210(1).

For the reasons stated above, the Procurement Review Panel affirms the July 2, 1990 decision of the Chief Procurement Officer and dismisses the protest of Infolab, Inc., as untimely.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



Hugh K. Leatherman, Sr.
Chairman

Columbia, South Carolina
8-30-90, 1990