

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND) CASE NO. 1992-7

IN RE:)
)
PROTEST OF CAMBEX CORPORATION;) O R D E R
APPEAL BY CAMBEX CORPORATION)
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This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on May 12, 1992, on the appeal of Cambex Corporation ("Cambex") from a decision by the Chief Procurement Officer ("CPO") dismissing Cambex's protest of specifications contained in an Invitation for Bids on a contract to upgrade a mainframe computer owned by the Division of Information Resource Management ("DIRM").

Present and participating at the hearing were DIRM, represented by Craig Davis, Esq.; Cambex, represented by its personnel, Jon Conover and Jim Hicks; and the Division of General Services, represented by Helen Zeigler, Esquire.

FINDINGS OF FACT

On February 18, 1992, the State issued an Invitation for Bids (IFB) for a mainframe upgrade for DIRM. DIRM is the state agency which serves the data processing needs for some 55 government agencies. The IFB specified that the upgrade was from an IBM 300E to an IBM 400J and stated that "no other make or model upgrade will be considered" and "all parts of the upgrade and associated features must be manufactured by IBM." (Record, p. 32).

During the vendor question period, Cambex inquired whether its memory software product, which is IBM-compatible

but not manufactured by IBM, was an acceptable alternate to the required IBM product. Amendment #2 dated March 19, 1992, answered Cambex's question thusly:

The installation of memory from a manufacturer different from the central processing unit is not acceptable to the State for a variety of reasons including: creation of a multi-vendor environment for the same equipment which increases maintenance, repair, and diagnostic complexities; consequences to future upgrades; future trade-in or resale value, and current maintenance arrangements. Therefore, the request to permit the installation of non-original equipment memory is denied.

(Record, p. 41).

On March 27, 1992, prior to bid opening, Cambex protested this denial of its request to consider its memory an acceptable alternative to the specified IBM memory. (Record, pp. 20-21). In so doing, Cambex raises the question of the restrictiveness of these specifications. The CPO found that the State's decision to accept only IBM-manufactured memory did not unduly restrict competition and was based on a reasonable analysis of State's needs.

Cambex appeals this decision to the Panel.

CONCLUSIONS OF LAW

At the close of Cambex's case, DIRM moved to dismiss Cambex's protest on the grounds that Cambex had failed to prove by a preponderance of the evidence that the specification in question is unduly restrictive. The Panel granted DIRM's motion and discusses its reasons below.

Section 11-35-2730 of the Consolidated Procurement Code provides that "all specifications shall be drafted so as to assure cost effective procurement of the State's actual need and shall not be unduly restrictive."

Regulation 19-445.2140 allows brand name specifications but explains:

The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose.

Specifications shall be drafted with the objective of clearly describing the State's requirements. All specifications shall be written in a nonrestrictive manner as to describe the requirements to be met.

To summarize, a specification can be restrictive so long as it is not "unduly" so - in other words, it must be written in such a manner as to balance the reasonable, objective needs of the State against the goal of obtaining maximum practicable competition.

In analyzing whether a specification meets the requirement that it not be unduly restrictive, the Panel will not substitute its judgment for the judgment of the using and procuring agencies so long as the choice of specification is not unreasonable, arbitrary, capricious or contrary to the Procurement Code.

In this case, Cambex had the initial burden to prove that the State's decision that IBM-manufactured equipment best meets the needs of the State is unreasonable, arbitrary, capricious, contrary to law and that it unreasonably restricts competition.

The State listed as reasons for choosing to accept only IBM-manufactured memory the desire to avoid a multi-vendor environment which could negatively affect maintenance and repair time and future trade-in or resale value. Further, the State was concerned that its current statewide maintenance agreements with IBM could be affected if the DIRM mainframe portion of the agreement was deleted or diminished.

Viewing all the evidence in a light most favorable to Cambex, the Panel believes that the most Cambex has shown is that the State's decision to reject non-IBM manufactured memory is based in part on the State's bad experience with nonoriginal equipment manufacturer memory ten to fifteen years ago. Even accepting Cambex's point that technology has advanced considerably since that time, Cambex has not shown that the multi-vendor problems anticipated by the State are unrealistic or unreasonable in the current environment. Indeed, a portion of Cambex's correspondence to the State seems to agree that the potential for these problems exists. (Record, pp. 49-50).

Finally, the evidence shows that, although the equipment procured is manufactured only by IBM, this is not

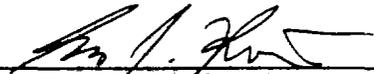
a sole source procurement. Because of the secondary used market, any number of vendors can bid on performing this contract. In fact, the evidence indicated that some fourteen vendors have bid on this job.

The Panel does not believe that Cambex has shown, by a preponderance of the evidence, that the specification allowing only IBM-manufactured memory is unduly restrictive.

For the reasons stated above the Panel dismisses the protest of Cambex Corporation and affirms the April 14, 1992 decision of the Chief Procurement Officer.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 

Gus J. Roberts
Chairman

May 19, 1992
Columbia, S.C.