

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND) CASE NO. 1993-10

In re:)
)
Protest of Data Trak, Inc.;) O R D E R
Appeal by Data Trak, Inc.)
)

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on April 21, 1993, on the appeal of Data Trak, Inc., ("Data Trak") from a decision by the Chief Procurement Officer ("CPO") denying Data Trak's protest.

Present and participating in the hearing before the Panel were Data Trak, represented by John Schmidt, III, Esquire; Digital Equipment Corporation ("Digital Equipment") represented by John Henderson, Esquire; and the Division of General Services, represented by James W. Rion, Esquire.

FINDINGS OF FACT

In September, 1992, the State issued a Request for Proposals (RFP) for an ID System for students and employees of South Carolina State University. Section 7.1 of the RFP states, "The contractor must be able to demonstrate, to the satisfaction of South Carolina State University, that contractor: [7.1.1] has at least five years experience selling and installing ID cards systems into educational institution".

A preproposal conference was held on October 1, 1992, concerning questions about the RFP. On October 7, 1992, the State issued Amendment 1 to the RFP, which answered

questions from the preproposal conference and extended the RFP opening date. The State received four responses to the RFP, which were opened on November 2, 1992.

The State issued an Intent to Award to Digital Equipment on February 16, 1993. Data Trak filed a letter protesting the State's intent to award on February 26, 1993.

The CPO conducted a hearing and, on March 22, issued an Order denying Data Trak's protest and awarding the contract to Digital Equipment. Data Trak appeals the decision of the CPO.

CONCLUSIONS OF LAW

Data Trak argues that Digital Equipment's response to section 7.1 of the RFP is not responsive, and because section 7.1 requires a minimum of experience which Digital Equipment does not have, Digital Equipment is not a responsible offeror. The requirement of experience, as stated in section 7.1 of the RFP, concerns both the responsiveness and the responsibility of the offeror.¹

To be responsive the offeror must be able to demonstrate the required experience. Experience must be demonstrated so that responsibility may be determined, as required by the RFP and the Code. The demonstration of experience is not limited to the offeror's written response

¹ The minimum experience requirements of an IFB contain elements of both responsibility and responsiveness. See In re: Protest of Constables Security Patrol, Inc., Case No. 1989-19.

to a question such as the one in this RFP requiring a minimum amount of experience. Because an offeror's experience is essential to determining its credentials and responsibility, the offeror's experience will be determined when investigating the responsibility of the offeror.

Section 7.1 of the RFP also requires the demonstration of experience "to the satisfaction of South Carolina State University". This requirement concerns the responsibility of the offeror, which is determined by SCSU. Mr. Richard Kustrin, the Procurement Officer for the State on this project, testified that SCSU found Digital Equipment met the requirements.

The Panel holds that Digital Equipment's response to section 7.1 is responsive because it provides the state, along with responses to other sections of the RFP, with the information needed for the state to determine offeror responsibility. SCSU investigated Digital Equipment's references and found that it met all the requirements of the RFP. Under the facts of this case, Digital Equipment's inclusion of Diebold's experience is acceptable and does not make its response to section 7.1 nonresponsive. Diebold is a subcontractor providing support services to assist Digital in fulfilling its obligations to the state if it receives award of the contract. The RFP does not prohibit the use of suppliers or subcontractors.

Data Trak has the burden of proving its claim that Digital is not a responsible offeror because it does not

have a minimum of five years experience. Data Trak has failed to carry that burden. Ms. Karen Talbert, a sales representative of Digital Equipment, testified that Digital Equipment has at least five years of experience in installing the hardware aspect of the university ID system. Digital Equipment plans to work with a subcontractor or supplier to provide the software aspect of the ID system. No evidence was presented to refute these facts. Instead, Data Trak argues that because Digital Equipment does not provide the software aspect of the ID system it is a nonresponsive and not responsible offeror.

The Panel disagrees and finds, under the facts of this case, that Digital Equipment is not required to provide every aspect of the ID system, but may subcontract or use a supplier to meet its responsibilities under the contract.

For the reasons stated above, the Procurement Review Panel finds that Digital Equipment is a responsive and responsible offeror and the protest of Data Trak is dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 
Gus J. Roberts

Columbia, S.C.
May 19, 1993