

opening on June 24, 1998. In July, 1998, evaluators completed evaluation of the proposals, the proposals were ranked based on scores and the top ranked offeror, is NCS. NCS demonstrated its proposed system, Schools Administrative Student Information system (SASI™xp). Cost negotiations were completed with NCS on September 16, 1998. The Notice of Intent to Award was issued September 18, 1998. (Record p. 26). DPC raised issues of protest in a letter to the Chief Procurement Officer (CPO), dated September 30, 1998, and Horizon raised issues of protest in a letter to the CPO dated October 1, 1998. (Record pp. 20-23). The CPO conducted a review and issued a decision. (Record pp. 8-18).

Horizon and DPC appealed to the Panel with eleven issues. (Record pp. 4-7). At the Panel hearing, several issues were withdrawn by Horizon and DPC, and NCS, DOE and General Services moved to dismiss most of the remaining issues.

CONCLUSIONS OF LAW

DPC and Horizon withdrew items numbered 2, 4, 5, 6, and 7 in their letter of appeal to the Panel, so those issues are not considered.

MOTIONS TO DISMISS

NCS and DOE made a motion to dismiss the remaining items numbered 1, 3, 8 and 11. General Services joined in the motions to dismiss. For ease of argument at the hearing, the issues were discussed in terms of the numbered issues in the appeal letter of Horizon and DPC. However, the issues as stated in

the appeal letter are an interpretation of the protest letters. The Panel does not agree that the protest letters raise all of the issues stated in the appeal letter. The protest letters establish the issues of the case, and any issues not established in the protest letter are untimely filed under the time constraints of S. C. Code §11-35-4210.

Issue 1

Horizon and DPC allege that paragraph 2.30 of the RFP, which states the Award Criteria, violates S. C. Code §11-35-20 (a), (b), (f), & (g), some of the purposes and policies of the Procurement Code, in that the decision of the evaluation team is arbitrary and capricious. Horizon and DPC argue that the issue is not the criteria, but “the method used to evaluate the proposals”, as stated in the last sentence of Horizon’s protest letter. The methods used to evaluate the proposals cannot be protested until after the notice of award, because they are unknown at the time of the issuance of the RFP. Although the Panel agrees that generally a protest concerning the evaluation team is timely raised after the award notice, this is not the issue stated in the protest letters of Horizon and DPC. The protest letters do not specifically claim that the decision of the evaluation team is arbitrary and capricious, and upon review, do not raise the issue of the team as arbitrary and capricious in its evaluation of the proposals. The Horizon protest letter (Record p. 20) protests “on the basis that the award criteria specified in the RFP did not provide for a fair and equitable selection of proposed systems.” Horizon then specifies that the points of protest are the failure of the RFP to provide for a demonstration of the system, and the

failure of the RFP to include cost as a criteria. Similarly, DPC's letter (Record p. 21) argues under the heading of "Award Criteria" that "a paper review of the RFP response and product documentation alone" is not sufficient, and a demonstration of the competing software products is essential to a decision to purchase. From reading the protest letters, the issues raised are attacking the award criteria, specifically the failure to include cost and a demonstration by all offerors. A protest of the award criteria stated in the RFP must be made within fifteen days from the issuance of the RFP, or the relevant amendment to the RFP. The RFP outlines the award criteria, which clearly does not include cost or a demonstration. Prospective offerors had fifteen days from the issuance of the RFP to protest the fact that cost and a demonstration are not included in the RFP's award criteria or specifications. The Panel finds that issue 1 is not timely under S. C. Code §11-35-4210(1). The protest letters do not raise issues of arbitrariness and capriciousness of the evaluators or methods used to evaluate the proposals, and therefore the Panel lacks jurisdiction to hear such issues. The Motions to Dismiss Issue 1, as stated in the appeal letter, was granted at the hearing.

Issue 3

Horizon and DPC allege the Notice of Intent to Award violates the law because the evaluation panel members lack background, training and expertise to properly evaluate the proposals resulting in arbitrary and capricious evaluation scoring. The DPC protest letter states "[t]he RFP did not mention the qualifications of, or how, the Evaluation Team members were selected. We

question that any Evaluation Team could properly evaluate products based on a point system.” (Record p. 21). That statement does not specifically protest the qualifications of the evaluation team members. It states a fact, and then explains that the question is the teams ability to “evaluate products based on a point system”. The DPC protest letter, in discussing award criteria, questions the qualifications of the “Evaluation Team members” in relation to their ability to “properly evaluate products based on a point system”. The context of the allegation involves the need for a demonstration of the software, not a separate issue attacking the individual qualifications of the evaluation team members. When read in context, the statement is part of the protest of the failure to include a demonstration of each offeror's product for evaluation. The fact that a demonstration by each offeror is not a criteria of the RFP is easily determined by review of the RFP, and would be an issue that must be raised within fifteen days from the issuance of the RFP. The issue that the lack of qualifications of the evaluation team makes the evaluation scoring arbitrary and capricious is not raised in the protest letters and therefore is untimely filed under S. C. Code §11-35-4210(1). Failure to file within the time required by the Procurement Code deprives the Panel of jurisdiction to consider the issue.

In support of issue 1 and issue 3, Horizon and DPC argue that the issues raised in the protest letters involves the process, such as failure to “properly evaluate” as stated in DPC’s protest letter, and it is not an untimely protest of the award criteria. However, a protest of the process must also provide specifics in order to give notice of the issues raised and to be defended. In reading the

protest letters of Horizon and DPC, the stated specific problems with the process, failure to consider cost and a demonstration of each offeror's system, relate back to the award criteria of the RFP. Because the specific issues raised relate to the RFP award criteria, they are not timely filed within fifteen days of issuance of the RFP as required by S. C. Code §11-35-4210(1).

Horizon and DPC argue that statements in the protest letters, such as, "...protest the way in which entire process has been handled" is sufficient to raise the issue of the process of evaluation. The Panel does not agree. Such a broad statement attacking the process is not sufficient to give notice of the issues to be determined. A protest letter questioning the process must include specific ways in which the process violates the Procurement Code. If Horizon and DPC felt the evaluation process was arbitrary and capricious, they had to timely state in the protest letters specifically how the process was arbitrary and capricious.

Issue 8

Horizon and DPC allege that NCS' proposal does not meet the requirement of RFP paragraph 3.3, General Module Requirements. However, the issue as stated is insufficient to give notice of the issue to be determined. The paragraph referenced is separated into fourteen sections, over three pages, containing several requirements. The stated issue does not allege a specific requirement and how the specific requirement fails to be met. The statement is too vague to state an issue. Further, except as it relates to RFP paragraph 3.3.11, as raised in the protest letter, and appealed as Issue 9, the allegation in

Issue 8 is not timely filed. The Panel lacks jurisdiction to consider the issue and granted the Motions to Dismiss the issue during the hearing.

Issue 11

Horizon and DPC allege that the protest letters raise issues as to the “totality of the errors” made in the solicitation process. Once again, the specifics of the errors alleged must be stated in the protest letter. To allow a “catchall” phrase such as that to be expanded at the CPO review, or Panel hearing, would defeat the purposes of the deadline stated in S. C. Code §11-35-4210(1). The Panel has often stated that an issue must be stated with specificity to give notice of the issue to be determined. A broad statement such as the “totality of the errors”, without the specific errors alleged, is not sufficient to state an issue to be determined. The Panel granted the motions to dismiss issue 11 at the hearing.

REMAINING ISSUES

Horizon and DPC allege noncompliance by NCS to the requirements of RFP paragraph 3.3.11 of the General Module Requirements. The scope of the issue is limited to the issue as stated in the DPC letter that NCS’ proposal fails to use a School Administration module with the required “industry standard and commercially available database management system that is Open Data Base Compliant [sic] (ODBC)” (RFP paragraph 3.3.11 on Record p. 73). Mr. Bruce Breedlove, procurement officer for this solicitation, testified that the technical term ODBC stands for Open Database Connectivity. NCS’ proposal responds to

the requirement of RFP paragraph 3.3.11, in part, by stating "SASI™xp allows other ODBC-capable applications, including report writers, to access its dBase-IV, Oracle and Microsoft SQL Server files with ODBC drivers provided by Microsoft, Oracle, or other third-party vendors." Horizon and DPC allege that dBase IV is not compliant with the ODBC requirement. Horizon and DPC have the burden to prove by a preponderance of the evidence the issues alleged concerning NCS' nonresponsiveness to the requirements of the RFP. Mr. Brian Lakstins testified about his computer experience, including two projects utilizing ODBC. Mr. Lakstins' testimony included acknowledging that he does not have experience with educational systems, and specifically SASI™xp, the educational software proposed by NCS, nor has he used dBase IV, although he has knowledge of dBase IV. Mr. Lakstins testified, from personal knowledge, that he was not able to access dBase IV with ODBC. Mr. Monte Wagner, employed by NCS as team leader for designing, developing, and deploying software for educational application, testified that ODBC is recognized and widely used in the industry as an application interface that allows external applications to communicate with a database. Mr. Wagner testified that dBase IV is ODBC compliant. NCS' Exhibit One, an article titled "Accessing the World of Information: Open Database Connectivity (ODBC)", states that "Open database connectivity (ODBC) is Microsoft's strategic interface for accessing data in a heterogeneous environment of relational and non-relational database management systems." The article later states that "ODBC allows users to

access data in more than one type of DBMS [database management system] (such as ...dBase) from within a single application." Mr. Wagner further testified that he has personally used ODBC to manipulate dBase IV and his customers have accessed d-Base IV using ODBC. Based on the evidence, the Panel finds that Horizon and DPC did not prove by a preponderance of the evidence that NCS' proposal was nonresponsive to the requirements of RFP paragraph 3.3.11.

For the foregoing reasons, the appeal of Horizon and DPC is dismissed and denied.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY:



Gus J. Roberts, Chairman

Columbia, SC

_____, 1998.