

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
In re:)
)
Protest of Venturi Technology)
Partners;)
)
Appeal of Venturi Technology)
Partners.)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 2004-1

ORDER

Background

This case came before the South Carolina Procurement Review Panel (Panel) on appeal from Venturi Technology Partners (Venturi). A hearing was held on March 16, 2004. At the hearing before the Panel, Venturi was represented by Daniel Ballou, Esquire. Keith McCook, Esquire, represented the Chief Procurement Officer (CPO). Beeline was represented by John Schmidt, Esquire.

Motion to Dismiss

The CPO made a Motion to Dismiss the Supplemental Notice of Protest which was received by the CPO from Venturi on December 5, 2003. The original protest had been filed on November 25, 2003, but the supplemental letter which included additional grounds of protest was filed after Venturi received information through a Freedom of Information Act request.

The motion was based on the provisions of S.C. Code Ann. §11-35-4210 which provides that any protest filed shall be made within fifteen days of the date of the notification of an award. The receipt of the second supplemental notice was after the fifteen days had expired.

Precedent of the Panel is clear on this issue. We turn to In re: Protest of: Atlas Food Systems and Services, Inc.; Appeal by Atlas Food Systems and Services, Inc., Case No. 1997-6, for previous consideration of this issue. It is for the most part a finding on the same set of facts. Atlas filed a timely protest, but then after receiving information as a result of a Freedom of Information Act request, they filed an amendment to the appeal. The Panel said the statute does not allow it. Section 11-35-4210 clearly states an appeal must be made within 15 days and state with particularity what issues it is appealing. The ruling of Atlas was affirmed again by the Panel in In re: Protest of Transportation Management Services, Inc., Appeal by Transportation Management Services, Inc., Case No. 2000-02. Therefore, the Panel upholds the CPO's decision not to consider those issues in the Supplemental Notice of Protest and further dismisses those grounds from this appeal.

Further, at the close of Venturi's case, Beeline made a Motion for Directed Verdict which we held in abeyance until the close of the case. We deny the motion finding that there was enough evidence to proceed with the case.

Findings of Fact

At the time of the hearing in this matter, the parties submitted a document to the Panel in which they stipulated some factual matters. Those stipulations are incorporated herein and adopted as our own.

1. A Request for Qualifications (RFQ) for Solicitation 03-S5468, Services to Manage the Staffing of Information Technology Temporary Personnel, was issued on September 6, 2002 and amended on September 10, 2002.
2. Solicitation 03-S5468 involved a request by the State's Information Technology

Management Office (ITMO) for proposals for services of a contractor to manage the information technology temporary supplier contract for the State of South Carolina.

3. The responses to the RFQ were opened on September 24, 2002.

4. A Request for Proposals (RFP) for Solicitation 03-S5468, Services to Manage the Staffing of Information Technology Temporary Personnel, was issued on October 30, 2002 and amended on November 13, 2002.

5. The responses to the RFP were opened on November 26, 2002.

6. Solicitation 03-S5468 was officially cancelled on May 2, 2003.

7. Solicitation 04-S6172 (Solicitation), Vendor Management Services for the State of South Carolina, was issued on September 4, 2003.

8. The Solicitation involved a request by ITMO for proposals for services of a contractor to manage the information technology supplier contract for the State of South Carolina. Solicitation 04-S6172 and Solicitation 03-S5468 sought to acquire essentially the same services.

9. Amendments 1,2, and 3 to the Solicitation were issued on September 17, 18, and October 1, 2003, respectively.

10. The restrictions created by the "Contact Limitation" paragraph of the Solicitation (Record at page 39) ran from September 4, 2003 until November 12, 2003.

11. On October 2, 2003 proposals were received by ITMO from Venturi and

Beeline as well as other companies. The proposal from Beeline included an undated letter from Darla Moore, a director of Beeline's parent company. The letter was addressed to Frank Fusco, Executive Director of the South Carolina Budget and Control Board.

12. The undated letter was sent separately to Frank Fusco who acknowledges that he received it, but he has no information or knowledge as to when the letter was received. Mr. Fusco had no communication with any of the evaluators responsible for evaluating the Solicitation.

13. ITMO issued an Intent to Award a contract under the Solicitation to Beeline on November 12, 2003. On November 20, 2003, at Venturi's request, ITMO staff provided to Venturi additional information relating to the Intent to Award, including a summary of the score sheets relating to the relative scores of the proposals that were submitted.

14. The CPO received a letter of protest from Venturi on November 26, 2003.

15. Venturi filed a supplemental letter of protest on December 5, 2003, with the CPO.

Conclusions of Law

Venturi claims that circumstantial evidence shows that the letter from Darla Moore was sent to Frank Fusco during the "blackout period." Under the solicitation, the "blackout period" is that period of time during which a party may not contact a prohibited party in reference to the solicitation. The "blackout period" in this solicitation was from the issuance of the proposal until the statement of intent to award. We find no evidence, direct or circumstantial, that the undated

letter was received during this period. The letter uses the phrase “[T]his month a Request for Proposal will be issued by Michael Spicer...” We have no way of knowing if this referred to the month of September, but what it does seem to indicate is that when Ms. Moore wrote the letter she did not believe the solicitation had been issued. The protestant has not shown sufficient evidence to indicate the letter was received during the blackout period. “[T]he burden of proof lies with the protestant, which must sustain its allegations by the weight or preponderance of the evidence.” In Re: Protest of Johnson Controls, Inc., Case No. 1989-9, pg.7.

Therefore, we find no reason to address the question of whether Mr. Fusco was a prohibited party.

We do agree with Venturi that there are times a letter could be so prejudicial on its face that we would have to assume some effect on the evaluators. However, this is not such a case. The evaluators went through a process of scoring based on certain criteria to determine who should be awarded the contract and we will not substitute our judgment in their place. There is no evidence that an evaluator was influenced by the letter.

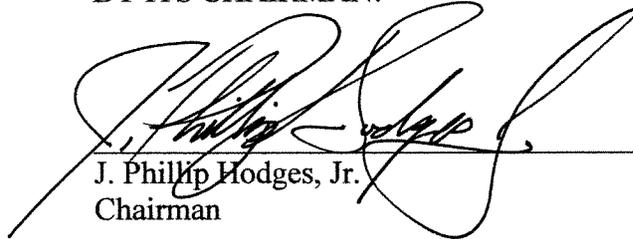
Order

After finding the foregoing facts and making the foregoing conclusions of law,

IT IS HEREBY ORDERED that the order of the CPO denying Venturi’s protest be affirmed.

AND IT IS SO ORDERED.

**SOUTH CAROLINA PROCUREMENT REVIEW
BY ITS CHAIRMAN:**



J. Phillip Hodges, Jr.
Chairman

This 16th day of April, 2004