



1982-4 HONEYWELL, INC.

that Richland Memorial Hospital had made a written claim as statutorily required for the preference and met the statutory requirements for resident vendor status under Section 11-35-1520(9)(d); that Honeywell, Inc.'s failure to claim the preference was not due to mistake, inadvertence, or misrepresentation; and that the Resident Vendor Preference carried the presumption of constitutionality.

On November 16, 1982, Honeywell, Inc. requested a Review of the Decision of the Acting Materials Management Officer before the Procurement Review Panel. Pursuant to its authority under Section 11-35-4410, Code of Laws of South Carolina (1976), as amended, a hearing was held before the Review Panel on December 7, 1982. Testimony was taken and evidence received from representatives of Honeywell, Inc., Richland Memorial Hospital, and the Division of General Services. All parties were represented by legal counsel.

FINDINGS OF FACT

On or about August 30, 1982, the Materials Management Office of the Division of General Services issued a Bid Invitation for Preventative Maintenance and Repair Service on Clinical and Biomedical Equipment, Bid Number 6-793-1116200-09/20/82-P. These services were to be furnished to the South Carolina Department of Mental Retardation. Bids were received until September 20, 1982. The Bid submitted by the Protestant, Honeywell, Inc., carried a vendor mailing address in Atlanta, Georgia. The "South Carolina Resident Vendor Preference Request" on the Bid form was unsigned. Honeywell, Inc.'s Bid was on the Alternate 1, \$156,130.00. Richland Memorial Hospital submitted a Bid on Alternate 1 of \$156,297.00. Richland Memorial Hospital

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claimed Resident Vendor Preference on its Bid. The application of the statutory two (2%) percent preference rendered the Bid of Richland Memorial subject to acceptance. On September 29, 1982, a Statement of Award was made to Richland Memorial Hospital by the Materials Management Office for this contract, Number 6-793-28035-09/20/82-P.

The first grievance raised by Honeywell, Inc. is that the Resident Vendor Preference does not apply because both Honeywell, Inc. and Richland Memorial Hospital are resident vendors. Section 11-35-1520 is very clear. The statute requires the preference may be applied only between a resident and a non-resident vendor and "...if such resident vendor has made written claim for such preference at the time the Bid was submitted". The evidence clearly shows that Honeywell, Inc. submitted its Bid from an out-of-state address and did not claim Resident Vendor Preference. Irrespective of whether or not Honeywell, Inc. claims to maintain offices in this State which may or may not meet the resident vendor requirements, the Bid Form is the only means by which the Materials Management Office may lawfully determine resident status. The facts demonstrate that no error was committed in granting the Resident Vendor Preference to Richland Memorial Hospital in the Award of this contract.

The second grievance Honeywell, Inc. raises is that, even if the preference is applicable under these facts, Richland Memorial Hospital may not receive the preference on the ground that it fails to meet the residence requirements outlined in Section 11-35-1520(9)(d). A vendor is deemed to be a resident for preference purposes if that vendor is (1) an individual, partnership, or corporation authorized to transact business within the State; (2) maintains an office in this

State; (3) maintains a representative inventory of commodities on which the Bid is submitted; and (4) has paid all taxes duly assessed. Richland Memorial Hospital is a chartered, non-profit corporation with the authority to operate any scientific department which better the facilities for patient care at the Hospital. Resultant from this express authority is the implied authority for the operation of business enterprises as a means to provide income for the Hospital or expanded Hospital services. There is nothing in the enabling legislation of Richland Memorial Hospital prohibiting either profit-making or non-charitable activities. The Panel finds it unnecessary to hold, however, that the activity in issue here, the furnishing of service and maintenance for Biomedical Equipment to outside institutions, bears a definite relation to the Hospital's purpose since it was held in Leborde v. St. Michael and All Angels Church, 272 S.C. 490, 252 S.E.2d 876 (1979), relying on Section 33-3-30, South Carolina Code of Laws (1976), that only members of a chartered organization have standing to raise the issue of whether or not acts in question are beyond the purpose of that chartered organization. Richland Memorial Hospital is granted the power to enter into contracts by law, and this Panel finds that Richland Memorial Hospital is authorized to do business in this State. That Richland Memorial Hospital may be non-profit and tax-exempt does not bar it from resident status. Richland Memorial Hospital pays sales taxes. That no other taxes may be duly assessed does not invalidate its claim to Resident Vendor Status. The testimony before the Panel is that Richland Memorial Hospital has paid all taxes duly assessed against it and is otherwise fully qualified to receive preference. There is no bar in the Procurement Code against granting

the preference to tax-exempt, non-profit corporations, such as Richland Memorial Hospital. The testimony before the Panel is that Richland Memorial Hospital is fully able to fulfill this contract and that equipment sufficient for service and maintenance is maintained. The record demonstrates that Richland Memorial Hospital maintains an office in this State and that it is a chartered, non-profit corporation empowered to enter into contracts under the laws of this State. Therefore, the Panel finds that Richland Memorial Hospital does qualify for the Resident Vendor Preference.

Honeywell, Inc.'s third grievance alleges that its failure to claim the Resident Vendor Preference was directly attributable to employees of the Department of Mental Retardation. The Bid Invitation clearly directed that all inquiries concerning the Bid Invitation were to be made to Bill McLeod, Purchasing Assistant for the Materials Management Office. No such inquiries were made. Testimony before the Materials Management Officer and the Panel was that employees of the Department of Mental Retardation did not instruct employees of Honeywell, Inc. that Honeywell did not qualify for the Resident Vendor Preference. Therefore, the Panel finds that Honeywell, Inc.'s failure to sign the Resident Vendor Preference claim was not due to any alleged mistake, inadvertence, or reliance on alleged misrepresentations made by employees of the Department of Mental Retardation.

The fourth grievance of Honeywell, Inc. concerns the constitutionality of the Resident Vendor Preference. The Panel finds that the statutory preference is presumptively valid.

CONCLUSIONS OF LAW

1. The Panel accordingly finds that the Protestant, Honeywell, Inc., is not entitled to make a claim for Resident Vendor Status following the time for the receipt of Bids. On the face of the Bid Document, Honeywell, Inc. is a non-resident vendor submitting its Bid from an out-of-state address. Honeywell, Inc. is, therefore, bound by those documents and may not now deprive Richland Memorial Hospital of its claimed Resident Vendor Preference on the basis of its own failure to assert resident status.

2. The Panel further holds that Richland Memorial Hospital qualifies for the Resident Vendor Preference.

3. The Panel further holds that Honeywell Inc.'s failure to claim the Resident Vendor Preference was not due to mistake, inadvertence, or justified reliance. The Bid Invitations were published by the Materials Management Office. Inquiries were directed to be made to that Office. No inquiry was made by the Protestant concerning its ability to claim Resident Vendor Status.

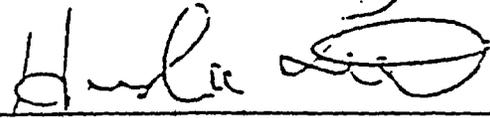
4. The Panel further holds that the Resident Vendor Preference is a statutory enactment of the Legislature of this State and must be presumed to be constitutional by this Panel until such time as the Supreme Court of this State may hold otherwise.

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IT IS THEREFORE ORDERED that the Determination of the Acting Materials Management Officer be upheld and affirmed and that the Process of that Decision is denied.

IT IS SO ORDERED.

THE SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL



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Senator Hugh K. Leatherman  
Chairman

December 13<sup>th</sup>, 1982.