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ment, Office of the Division of General Services of the State of South Carolina is an agency of the State of South Carolina (hereinafter referred to as State) and is charged with the responsibility of awarding contracts for copying machines for the State. Respondent, Acta-Fax Business Machines, (hereinafter referred to as Acta-Fax) a corporation doing business in the State of South Carolina is also engaged in manufacturing and selling copying machines and other business equipment.

In response to the bid invitation mentioned above, Petitioner Royal and Respondent Acta-Fax submitted bids. The Petitioner alleges that although it was the responsible and responsive low bidder, it was not awarded the contract. It is the State's contention, however, that the Petitioner's bid was unresponsive in that it did not provide unit costs as required by the bid form. Respondent Acta-Fax also alleges that the Petitioner's bid was not responsive.

The Petitioner alleges that on or about September 10, 1984, it was advised orally that its bid had not been accepted. On September 17, 1984, after an unsuccessful settlement conference between the Petitioner and the Respondent State, the Petitioner through its attorney, advised the State that they were protesting the fact that they were not awarded the contract. By letter dated September 28, 1984, an administrative hearing was scheduled for September 28, 1984. The Administrative hearing was conducted and apparently the administrative officer (based on statements

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made during the hearing before the court) issued his determination on October 4 or 5, 1984.

On September 28, 1984 the Honorable Edward B. Cottingham, Presiding Judge of the Fifth Judicial Circuit, issued a temporary restraining order restraining the State from "...executing or performing any contracts or awards for Lot Nos. 1-6, 17, 18, 25 and 37 under Bid No. 1-600-08/24/84-P until such time as Petitioner herein receives due process through the exhaustion of the remedies provided under S.C. Consolidated Procurement Code, or until such further order of this court." A hearing was set for October 5, 1984 for a determination to be made as to whether a permanent injunction should be granted. All parties appeared at this hearing either in person or through counsel. The Petitioner relied upon the record which included the previous order of the Honorable Edward Cottingham. The Respondent State was prepared to offer testimony to support its contention that 1) the Petitioner's bid was unresponsive and that 2) the State would suffer great harm if a permanent injunction was issued. The Respondent Acta-Fax was also prepared to offer evidence of the harm it would suffer if a permanent injunction was to be issued. Counsel for the State proffered into the record a synopsis of his witnesses' testimony. Counsel for the Petitioner and for Acta-Fax indicated that they did not totally agree with the summary presented.

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Based upon a review of the pleadings, briefs, statutes and statements of counsel, this Court makes the following factual findings.

1. This Court has jurisdiction to hear this matter.
2. The State's proffered testimony was sufficient to establish some inconvenience and additional cost occasioned by a delay in implementing a contract on October 1, 1984 but was insufficient to establish that irreparable harm would be caused by the delay.
3. Similarly, the proffered testimony of Acta-Fax would have been sufficient to show some additional financial costs but was insufficient to establish irreparable harm.
4. The Petitioner failed to establish that they did not have an adequate remedy at law for redress of any alleged wrongs.

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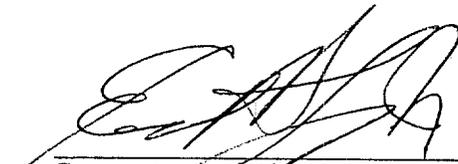
Based upon these factual findings, this Court's interpretation of the statutes and common law, and after a careful consideration of the authorities and briefs submitted by the parties, this Court refuses to grant the Petitioner's request for a Permanent Injunction ruling that the Petitioner has an adequate remedy at law under the provisions of §11-35-4210 South Carolina Consolidated Procurement Code (1981) and other theories of the law it may elect to peruse.

The Temporary Restraining Order of Judge Cottingham is hereby dissolved as of 2:00 P.M., Friday, October 12, 1984. The reason for the delay in the dissolution of the Temporary Restraining Order is to allow either of the parties aggrieved by this Order an opportunity to pursue any additional remedies

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they perceive may exist. Dismissal of the Temporary Restraining Order is without prejudice to Petitioner's right to litigate any of the issues raised before this Court in any subsequent proceedings.

IT IS SO ORDERED.



Ernest A. Finney, Jr.
Presiding Judge of the
Fifth Judicial Circuit

STB
#5
Sumter, S. C.

October 10, 1984.



THE CIRCUIT COURT OF SOUTH CAROLINA

THIRD JUDICIAL CIRCUIT

ERNEST A. FINNEY, JR.
RESIDENT JUDGE
SUMTER COUNTY COURTHOUSE
P.O. BOX 1355
SUMTER, SOUTH CAROLINA 29150
TELE: (803) 775-8823

SUMTER COUNTY
CLARENCE COUNTY
LEE COUNTY
WILLIAMSBURG COUNTY

October 10, 1984

The Honorable John R. Major, Jr.
Clerk of Court for Richland County
Post Office Box 192
Columbia, South Carolina 29202

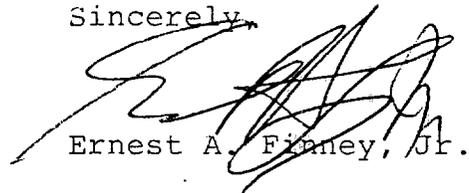
Re: Royal Business Machines, Inc. vs. Information
Technology Management Office of the Division of
General Services of the State of South Carolina,
and Acta-Fax Business Machines, Inc.

Dear Mr. Major:

Enclosed is the original of an Order I have signed
in the above entitled matter along with the complete
file in this matter.

It was my pleasure to work with you last week.
Please give my kindest regards and deepest appreciation
to each member of your fine staff.

Sincerely,



Ernest A. Finney, Jr.

EAFJr/dd

Enclosure

cc: William C. Hubbard, Esquire
Eugene F. Rogers, Esquire
David C. Eckstrom, Esquire