

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1986-10

IN RE:)
)
PROTEST BY CONWAY CHILD CARE, INC.)

O R D E R

INTRODUCTION

This matter is before the South Carolina Procurement Review Panel pursuant to a request by Conway Child Care, Inc. (CCC) for Review of the Decision of the Chief Procurement Officer (CPO). A hearing was held on November 13, 1986. Health and Human Services Finance Commission (HHSFC) was present and represented by counsel, Mr. Tim Fincher. CCC was represented by its Chief Executive Officer, Mr. Amidu J. Nallo, but was not represented by counsel. Mr. Richard Campbell was present as a representative of General Services but did not participate in the hearing. Representatives of the Horry County Council were also present but did not participate.

After the Chairman called the hearing to order, it was determined that a quorum was not present. The parties participating, HHSFC and CCC, were informed of their right to have a quorum present and both agreed to waive this requirement. During the opening statements, Mr. Luther Taylor arrived and from that point forward, a quorum of the Panel was present.

At the outset of the hearing, the Chairman inquired of Mr. Nallo how he intended to present his protest. The Chairman also explained that the normal procedure of the Panel is that the protestant has the burden of going forward as well as the burden of proof. In the interest of fairness, since Mr. Nallo was alone, the Chairman suggested, and all parties agreed, that HHSFC would present its witnesses first. Effectively, the burden of proof to show that the award of child care contract was made properly was shifted to HHSFC. Mr. Nallo could then elicit the points relevant to his protest on cross-examination. Mr. Nallo was fully informed by the Chairman that he had the right to take the witness stand and make a sworn statement. He chose not to do so. He was further informed that sworn testimony was weighted more heavily than unsworn opening or closing statements. Finally, the Chairman explained that any reference Mr. Nallo made to correspondence, evaluations or other materials in the record that tended to prove his assertions, would be given weight equal to that of sworn testimony as those matters are deemed to be in evidence.

FINDINGS OF FACT

1. HHSFC solicited competitive sealed proposals for the provision of Child Development Services for the fiscal year 1986-87. HHSFC identified the requirements for the provision of service and established the award criteria in the Request for

Proposals (RFP).

2. CCC attended a pre-proposal conference which was held by HHSFC to assist vendors in understanding the award criteria and to answer any questions they might have concerning the RFP. The Panel finds that, based on this meeting and prior responses to the RFP, CCC was familiar with the evaluation process and the award criteria.

3. HHSFC established five-member evaluation panels with knowledgeable, experienced personnel and evaluated the proposals in accordance with the Quality Assurance Standards (QAS) for Child Development which was incorporated into the RFP.

4. A second group of evaluators under the direction of Mr. Robert L. Coffey, Director, Division of Program Evaluation Monitoring, conducted an On-Site Programmatic Review of the child care centers submitting an RFP.

5. Although there is some discrepancy concerning the exact date on which HHSFC conducted the On-Site Programmatic Review of CCC, the Panel finds, and the uncontroverted testimony revealed, that the review was properly done in accordance with the RFP. Whether the precise date was July 23, or 24, 1986, is insignificant. In fact, HHSFC sent two representatives to CCC to ensure objectivity in the review because of past award disputes with the provider.

6. The On-Site Programmatic Reviews assigned a point value in two areas: on-site program review and on-site regulatory

review. These numbers were added to the point value assigned by the five-member evaluation team that rated the responses to the criteria set forth in the RFP. CCC alleged that there were inconsistencies or inequities in the assignment of points for various evaluation factors. The Panel finds, and the uncontroverted testimony demonstrated, that the members of the evaluation team assigned the point values given independently of one another and met to review the results only after their individual determinations had been made. The Panel further finds that it is in full accord with the CPO's determination as to the ratings and the point values assigned.

7. HHSFC established Quality Assurance Standards (QAS) for Child Development which are published and distributed to providers of these services in the state and incorporated these standards in the RFP. The Panel finds that although CCC seems to differ with the QAS as to its philosophy or approach toward child care, the QAS was properly used as part of the evaluation process. Additionally, insofar as CCC's fourth ground of protest relating to whether the QAS should have evaluated care for toddlers differently from infants, it is untimely under the authority of In Re: Request for Proposals for Communication Services for the State of South Carolina (No. 7-725-1107200-07/11/83-41) - Request of American Telephone and Telegraph Co., for Review of the 1983-12 Decision of the Chief Procurement Officer. CCC knew, or should have known, the standards for evaluation soon after receiving the RFP, long before the award was actually made. To the extent that CCC

protests the evaluation process concerning toddlers vis a vis infants, the Panel finds that there are no inequities.

8. HHSFC performed the evaluation outlined above and determined that Horry County Council was the most responsive offeror and that they submitted the proposal most advantageous to the State, taking into consideration price and the evaluation factors set forth in the RFP.

CONCLUSIONS OF LAW

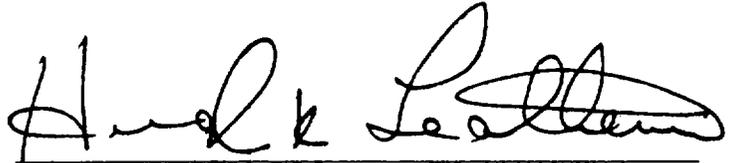
HHSFC counsel, Tim Fincher, orally moved that certain elements of CCC's protest be stricken as being untimely. The chairman took the motion under advisement. To the extent that CCC was protesting solicitations of this contract made in prior years, the Panel rules that this issue is untimely. Consequently, CCC's first ground of protest is deemed to be untimely. All other grounds of protest not specifically addressed previously in this order were timely raised.

No evidence was presented that demonstrated that the CPO was biased in his findings against CCC. Consequently, the Panel concludes as a matter of law the CPO's determinations were fair and properly made. Thus, where not in conflict with this Order, the Panel affirms the CPO's determinations in his Decision dated October 3, 1986, and adopts it as its own.

The Panel, therefore, rules that the contract for the provision of child care was properly awarded to the Horry

County Council.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Hugh K. Leatherman". The signature is written in a cursive style with a large, sweeping flourish at the end.

Hugh K. Leatherman
Chairman, S. C. Procurement Review
Panel

Columbia, South Carolina

December 10th, 1986