

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
CASE NO. 88-CP-40-<sup>5986</sup>~~5968~~

Polaroid Corporation, )  
Petitioner, )  
v. )  
South Carolina Procurement )  
Review Panel, et al. )  
Respondents. )

IN RE: PROTEST OF POLAROID CORP.

O R D E R

89 OCT 19 PM 2:45  
BARBARA A. SCOTT  
C.C.C. & G.S.

FILED

This case is before the Court on the petition of Polaroid Corporation (Petitioner) pursuant to the Administrative Procedures Act appealing an order of the South Carolina Procurement Review Panel. The Procurement Review Panel is charged by statute with the duty of providing a final administrative review of disputes between vendors and the State over purchasing matters. S.C. Code Ann §11-35-4410 et seq. (1976).

The order appealed from in this case required the Division of General Services and the Highway Department to rebid a contract to provide laminated colored photographic drivers' licenses to the Highway Department. Petitioner had successfully contended before the Procurement Review Panel that its proposal to the State was not given due consideration by the evaluators. Although successful, Petitioner appealed to this Court alleging that, rather than ordering rebid of the contract, the Procurement Review Panel should have awarded the contract to Petitioner outright.

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FACTS

1. Petitioner filed on December 7, 1988, and thereafter served on Respondents, its Summons and Petition for a review of the agency decision of the South Carolina Procurement Panel.

2. Petitioner in its Petition contended that the only other offeror, Respondent NBS Imaging Systems, Inc. (NBS), was not responsive to the requirement of the Request For Proposals, that all equipment must be U.L. listed or certified to meet Underwriters Laboratory Standards, and that the Procurement Panel erred in ordering a rebid and should have awarded the bid to Petitioner.

3. All Respondents have answered the Petition.

4. A non-jury hearing was held before me on October 2, 1989 at 3:50 P.M.

5. Petitioner was represented at the hearing by Robert W. Foster, Jr., Esquire and Dwight F. Drake, Esquire of Nelson, Mullins, Riley and Scarborough, Respondent South Carolina Procurement Review Panel was represented by Faye A. Flowers, Esquire, Respondent NBS Imaging Systems, Inc., was represented by Robert D. Coble, Esquire of Nexsen, Pruet, Jacobs and Pollard, Respondent South Carolina Department of Highways and Public Transportation was represented by Victor S. Evans, Esquire, and Respondent Materials Management Office of South Carolina was represented by J. Patrick Hudson, Esquire of the South Carolina Attorney General's Office.

6. The only issue before the Court was whether Respondent NBS was a responsive bidder.

7. All parties agreed that Jack L. Craven, Vice President of NBS had signed the following certification:

"NBS certifies that the camera and all electrical components offered in its bid response have been purchased, designed and built to meet the requirements of Underwriters Laboratory standards."

8. William Doug Horton, the Procurement Specialist with the Materials Management Office, who was responsible for the RFP, testified before the Procurement Panel that the above certification was sufficient to meet the requirements of the RFP.

9. Mr. Horton further testified before the Panel that the RFP had originally required that all equipment be UL listed. Mr. Horton testified that he thereafter discovered that NBS would not be able to comply with the RFP if it required UL listed. Mr. Horton testified that in an effort to make sure that there was competition for the RFP he changed the language in the RFP to require that all the equipment be UL listed or certified to meet Underwriters Laboratory Standards.

10. That Mr. Craven testified before the Panel that the certification he signed was accurate.

#### CONCLUSION OF LAW

11. The standard of review applicable to this case is that enunciated by the Supreme Court in Lark v. BI-LO, Inc., 276 S.E.2d 304, 306 (1981) that a finding by an administrative agency will be set aside only if it is unsupported by substantial evidence. In Lark, the Supreme Court said that "[t]he substantial evidence test need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment; and a

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judgment upon which reasonable men might differ will not be set aside." 276 S.E.2d, at page 307.

12. That under the substantial evidence rule it is clear that Mr. Craven's testimony was more than adequate to allow the Panel to conclude that Mr. Craven's certification was true and accurate and that it met the requirements of the RFP.

13. That even if this Court concluded that NBS was not a responsive bidder to the RFP the proper remedy would be to rebid, as the Panel ordered, and not to award the contract to the Petitioner because the testimony from Mr. Horton was clear that the State of South Carolina wanted competition for this RFP. Therefore, the State should have the opportunity to rebid the RFP to insure that the Petitioner and NBS, the only two possible bidders, would be able to compete for the RFP.

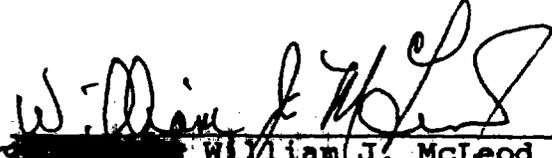
14. That the Petitioner, at the hearing, withdrew any request for attorney fees and costs.

15. That the only issue before this Court was that NBS was not responsive to the RFP, and it is the ruling of this Court that the finding of the Panel that NBS was responsive should be upheld and that the Petition of Polaroid should be dismissed.

NOW, THEREFORE IT IS ORDERED, that the Petition of Polaroid is hereby dismissed.

Columbia, S.C.

October 18, 1989.

  
~~William J. McLeod~~ William J. McLeod, Special  
Judge