

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1988-4

IN THE MATTER OF PROTEST OF)
COMPUTERLAND OF COLUMBIA, INC.)
CONTRACT NUMBER 1-205-00249-)
02/09/88 FOR HEWLETT-PACKARD)
LASER PRINTERS)

ORDER

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on April 21, 1988, pursuant to S. C. Code Ann. § 11-35-4210 and -4410 (1976). The Protestant Computerland of Columbia, Inc. ("Computerland") states a number of grounds on which it claims that state contract number 1-205-00249-02/09/88 for the provision of Hewlett-Packard high-speed printers should be awarded to it rather than Dataprint, Inc., of Charlotte, North Carolina. The Chief Procurement Officer ("CPO") declined to consider the merits of Computerland's protest because he found it untimely.

FINDINGS OF FACT

On February 12, 1988, the Department of General Services issued an Invitation for Bids for the provision of Hewlett-Packard high-speed laser printers to the State for a twelve-month period. The printers were to be used for both educational and agency purposes. Computerland duly prepared and submitted its bid.

On February 9 the bids were opened and read aloud. Mr. Philip Pickard, Select Account Manager for Computerland, attended the bid opening and recorded the bid amounts. The bids were announced by category- Laser Jet 500 Plus, educational and agency,

and Laser Jet Series II, educational and agency. Mr. Pickard testified that he believed that Computerland was the low bidder in both the agency categories, based on the figures announced at the bid opening and his assumptions that the award would be by category and that the 2% resident vendor preference did not apply to Dataprint. On February 9, Mr. Pickard telephoned Dataprint and determined that it did not have an office or service personnel located in South Carolina.

General Services issued an Intent to Award on March 2, 1988, indicating that Dataprint was the lowest responsive and responsible bidder. Mr. Philip Pickard testified that he did not actually see the Intent to Award until Monday March 7, 1988, after he returned to work from being out sick for two days. Mr. Pickard admitted that the notice was probably received by Computerland on March 3 or 4. Mr. Ralph Pickard, Philip's father and the owner of Computerland, testified that Computerland most likely received the Intent to Award on March 4 and that he may have looked at it on that date. He confirmed that his son did not see the notice until the 7th.

On the day he looked at the Intent to Award and discovered that Dataprint was the low bidder, Mr. Philip Pickard telephoned the state official listed on the notice and inquired how the bids were evaluated. That official referred Mr. Pickard to his superior whom Mr. Pickard telephoned the next day. As a result of that conversation Mr. Pickard determined that he needed to talk with the Chief Procurement Officer, Ron Moore.

On March 9, 1988, Mr. Pickard wrote a letter to Mr. Moore, the text of which appears below.

I am writing to request an appointment with you to discuss the State's intent to award a contract for laser printers to Dataprint, Inc. of Charlotte, North Carolina. (Bid number 1-205-02/09/88).

We have some questions about the way in which this request for bids was evaluated. If it is possible I would like to have Mr. Clark of your office sit in with us at this meeting.

Please call to set up an appointment as soon as possible, as the contract goes into effect on March 18, 1988.

Mr. Moore received the letter on Thursday afternoon, March 10th, and a meeting was scheduled for Monday, March 14. Mr. Moore testified that he asked Mr. Pickard on March 10, when he telephoned to schedule the meeting, and at the meeting whether Computerland intended to protest. According to Mr. Moore, Mr. Pickard said he was not protesting and did not want to protest because he had been through that process before.

The Pickards deny that they said they were not protesting. They claim they indicated that they did not want to protest if the matter could be resolved (meaning apparently that they did not wish to continue protesting).

At the meeting, Mr. Moore was unable to answer the Pickards' specific questions concerning how the bid was evaluated. He promised to telephone them with the information, which he did that same afternoon.

Two days later on March 16th, Philip Pickard drafted a letter which begins:

Please accept this letter as our formal protest of your intent to award a state term contract for Hewlett-Packard laser printers.

There follow specific grounds for a protest and the closing paragraph:

Since Dataprint of Charlotte, N. C. has never claimed resident vendor preference nor do they have an office or representatives in the state of South Carolina, they do not meet the requirements of this bid. The contract should be awarded to the lowest responsive bidder.

The CPO received the above letter on March 18.¹

DISCUSSION AND CONCLUSIONS OF LAW

The threshold question presented to the Panel is whether the protest of Computerland is timely. The Procurement Code requires that a written protest be submitted to the CPO within "ten days after such aggrieved persons know or should have known of the facts giving rise thereto, but in no circumstance after thirty days of notification of award of contract." § 11-35-4210.

Computerland acknowledges that it most probably received the Notice of Intent to Award on or before March 4, 1988. Well before that date, Mr. Philip Pickard had learned the dollar amounts of the bid of his competitors at the bid opening and, through his own investigation, had learned, among other things, that Dataprint allegedly has no instate offices or service representatives. When it got the notice of Dataprint's successful bid on March 4, Computerland "should have known" immediately that it had

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Apparently Mr. Philip Pickard entered the offices of General Services on March 17 after hours (6:30 P. M.), stamped his letter received on March 17 and deposited it where Mr. Moore would find it. The offices were open because of the presence of cleaning staff.

reasons sufficient for a protest. Cf. Dillon County vs. Lewis Metal Works, 332 S.E.2d 555 (S. C. App. 1985)(One does not need to appreciate the full extent of his damages for the limitations period to begin; it is enough that he recognizes that an actionable problem exists).

Because March 14 was the last day on which Computerland could timely file a protest, the March 16 letter, which is unquestionably a protest, is not timely. Computerland argues, however, that the March 9 rather than the March 16 letter was the initial protest letter.

The Panel finds this argument untenable. Nothing in the text of the letter alerts the reader that Computerland is invoking its right to protest a decision by General Services to award the contract to Dataprint or on what ground such protest is based. The letter requests an "appointment" to "discuss" the award. The letter states that Computerland has some "questions" about the way the bids were evaluated. The letter requests that a Mr. Clark from General Services "sit in with us at this meeting." Contrast this vague, almost conciliatory language with the precise language of the March 16 letter-"Please accept this letter as our formal protest of your intent to award. . . ." Both letters were drafted without the aid of an attorney.

The Panel has previously found that while protests are not to be judged by highly technical or formal standards, " § 11-35-4210(1) does require that the protest must in some way alert the parties to the general nature of the grounds for protest." In re:

Sterile Services Corp., 1983-17. Surely, it must also alert the parties that the author is protesting. See In re: American Telephone and Telegraph Co., 1983-12. The March 9 letter fails in both respects and cannot be considered a protest.

Computerland urges that the Procurement Code be construed liberally and that the time requirement be leniently applied. While the Panel recognizes the merit in Computerland's statement that the Code was designed to allow lay persons the opportunity to have their problems with state purchasing resolved without the assistance of lawyers, the existence of this feature has no bearing on the result reached here. Without deciding whether the ten-day limitation is jurisdictional, the Panel simply finds no reason for not strictly enforcing the limitation against Computerland. The General Assembly chose a short time period in recognition of the need for conducting state procurement in a timely, efficient manner. Nothing in the evidence points to any behavior by General Services that might warrant waiving or extending the limitations period or estopping General Services from asserting it.

Second, Computerland has bid on state contracts before and has been successful on a number of them. More importantly, Computerland (through Messrs. Pickard) has filed a protest prior to the one before the Panel now and has participated in hearings before the CPO and the Panel. Computerland's claimed ignorance as a lay person of what is required by the Code is belied by its considerable experience in this area.

The Panel finds the other arguments of Computerland

concerning timeliness equally unpersuasive. The arguments on the merits of Computerland's case are not considered. Also in light of the disposition reached here, General Services' Motion to Dismiss two grounds of Computerland's protest is denied as moot.

The March 30, 1988, Order of the CPO is affirmed and the protest of Computerland is hereby dismissed as untimely.

IT IS SO ORDERED.



Hugh K. Leatherman, Sr.
Chairman

Columbia, South Carolina
4-27-88, 1988