

Competitive procurements made by any governmental body must be made from a responsive and responsible vendor resident in South Carolina: (i) for procurements under two million, five hundred thousand dollars, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than two percent of the latter bid, and if the resident vendor has made written claim for the preference at the time the bid was submitted; . . . A vendor is considered to be a resident of this State if the vendor is an individual, partnership, association, or corporation that is authorized to transact business within this State, maintains an office in the State, maintains a representative inventory of commodities on which the bid is submitted, and has paid all assessed taxes.

In 1982, following the case of In re: Protest of Durr-Fillauer, Case No. 1982-1, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 1, The Procurement Review Panel clarified the requirement that a bidder claiming resident status have in this State "a representative inventory of commodities on which the bid is submitted." In a memorandum to the Division of General Services, the Panel stated:

Representative inventory for expendable items is defined as that inventory located in the State at the time of the bid having a total value of \$10,000 or more based on the bid price, but not to exceed the amount of the contract, which inventory is representative of the general type of commodities on which the bid is submitted.

(Record, p. 16).

Intrex wrote a letter to ITMO on November 9th challenging the resident vendor claim of UARCO insofar as it

claimed to have a representative inventory of commodities stored in South Carolina.¹ (Record, p. 28). UARCO responded by citing the inventory of its wholly-owned subsidiary (York Tape and Label) housed in York's Columbia facilities and UARCO's own inventory of business forms stored in a Fort Mill, S.C., warehouse.

ITMO replied to UARCO on November 14, advising that the inventory of its wholly-owned subsidiary would not qualify under the resident vendor statute and requesting that UARCO prove ownership of the Fort Mill inventory. (Record, p. 26).

On November 16, 1989, UARCO responded to ITMO giving the following information:

1. UARCO leased space in the Fort Mill warehouse in September of 1989 to service a contract with the Charlotte-Mecklenburg Hospital Authority entered in July, 1989.

2. The inventory consists of business forms the fair market value of which is over \$10,000.

3. UARCO's contract with the Hospital Authority requires that delivery be "FOB Destination" and that the Authority indemnify UARCO if the forms become obsolete. The Authority is required to buy all forms remaining at the end of twelve months.

(Record, pp. 24-25).

¹Mr. Jimmy Bullard, UARCO's district sales manager testified before the Panel that UARCO is incorporated in a state other than South Carolina but is authorized to transact business here. Mr. Bullard also testified that UARCO has four offices in South Carolina (Florence, Mt. Pleasant, Columbia, and Greer), maintains a sales force of 10 persons in South Carolina, and has paid all duly assessed South Carolina taxes. Intrex does not challenge UARCO on these requirements of the resident vendor statute.

On November 20th, ITMO notified Intrex that UARCO qualified as a resident vendor. On November 29th, Intrex protested, claiming that inventory held in South Carolina strictly to service a North Carolina account is not sufficient to give resident status to UARCO.

Prior to the hearing before him, the CPO sent Mr. B.M. Cave, the procurement officer in charge of this contract, to Fort Mill to examine UARCO's inventory. Mr. Cave testified to the Panel that the warehouse in question is located in both North and South Carolina with a line on the middle of the floor to designate the border between the states. By Mr. Cave's measurements, 85% of the warehouse lies in North Carolina and 15% of the warehouse lies in South Carolina (See sketch in Record at p. 18). Entry is from the North Carolina side only.

Mr. Cave stated that he took an inventory of the business forms stored on the South Carolina side and determined their value to be \$13,281.92, based on bid price. Mr. Cave further testified that he was told the forms had been stored on the South Carolina side of the warehouse since delivery. Mr. Jimmy Bullard, District Sales Manager for UARCO, testified that the forms, which were produced in Georgia and Kentucky, had been stored in the warehouse on the South Carolina side since the middle of October.

The CPO denied Intrex's protest finding that the UARCO met all the requirements of the resident vendor statute and

was properly awarded the contract. Intrex appeals to the Panel.

CONCLUSIONS OF LAW

The issue in this case is whether UARCO meets the requirement of the resident vendor statute that it maintain in South Carolina a representative inventory of commodities on which the bid is submitted. Intrex claims that UARCO's attempt to use inventory manufactured out of state and held in transit in a warehouse located 85% in North Carolina for sale to a North Carolina customer violates the Procurement Code's requirement of good faith and fair dealing.

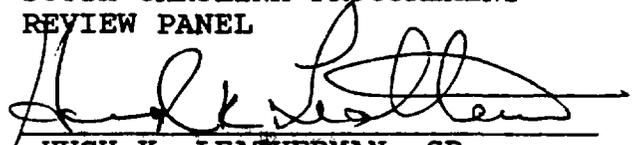
Section 11-35-20 provides "Every contract or duty within this Code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing."

Based on the evidence presented to it, the Panel cannot say that UARCO has breached its duty of good faith negotiation with the State. The resident vendor statute requires that the representative inventory be located in South Carolina at the time of bidding and that the commodities held be of the general type solicited. It is undisputed that UARCO's inventory meets these requirements. The Panel has further required that the value of the representative inventory be \$10,000 or greater. It is undisputed that UARCO's inventory meets this requirement.

That the inventory was manufactured in Georgia and Kentucky and is for sale only to a North Carolina customer is irrelevant to UARCO's claim of South Carolina resident vendor status as the statute presently stands.² UARCO is entitled to resident vendor status and properly claimed the preference.

For the reasons stated above, the Panel affirms the December 15, 1989, decision of the Chief Procurement Officer and dismisses the protest of Intrex.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



HUGH K. LEATHERMAN, SR.
CHAIRMAN

2-9-90, 1990
COLUMBIA, SOUTH CAROLINA

²Intrex admits that its real quarrel is with the wording of the resident vendor statute itself. Intrex recognizes that those problems are for a forum other than the Procurement Review Panel.