

STATE OF SOUTH CAROLINA )  
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COUNTY OF RICHLAND ) BEFORE THE SOUTH CAROLINA  
 ) PROCUREMENT REVIEW PANEL  
 ) CASE NO. 1990-5

IN RE: )  
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 ) PROTEST OF ANACOMP, INC. ) O R D E R  
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This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on June 15, 1990, on the appeal by Anacomp, Inc. ("Anacomp") of a decision by the Chief Procurement Officer ("CPO") upholding the award to Eastman-Kodak Co. ("Kodak") of a contract to supply a microfiche recorder system to the Financial Data Systems office of the Budget & Control Board.

Present at the hearing were Anacomp, represented by its Deputy Director, Lawrence W. Harrod; Kodak, represented by Robert D. Coble, Esq., and the Division of General Services, represented by Helen T. Zeigler, Esquire.

#### FINDINGS OF FACTS

On March 12, 1990, the Division of General Services Information Technology Management Office issued an Invitation for Bids ("IFB") on a contract to furnish, deliver, and install an online microfiche recorder system to the Budget & Control Board's Financial Data Systems Office. (Record, p. 50). On March 26, 1990, the State received two responses to its IFB - one from the protestant Anacomp, Inc., which bid a machine designated Anacomp XL, and one from Eastman-Kodak, which bid a machine designated Komstar IV. (Record, p. 71).

On March 30, the State issued a Notice of Intent to Award to Kodak. (Record, p. 20). Anacomp protested the award by letter of April 9 raising three issues and by supplementary letter of April 13, raising a fourth issue. (Record, pp. 44-46 and 49). The Intent to Award was stayed on April 11, pending resolution of Anacomp's protest. (Record, p. 22).

At the hearing before the Chief Procurement Officer, Anacomp withdrew two of its four issues. On the remaining two issues the CPO found in Kodak and the State's favor. On May 15, Anacomp timely appealed the CPO's decision to the Procurement Review Panel, stating only one ground, that Kodak is not responsive to the IFB because its microfiche machine does not meet the requirement under "Microfiche Recorder Specifications" that the microfiche system, "[m]ust have a throughput rating of not less than 10,000 lines per minute." (Record, p. 59).

In support of its claim, Anacomp offered the testimony of its District Manager, Karen Oravetz, that in four years of performing benchmark tests of the Kodak Komstar and the Anacomp XL in the Southeast, she had never observed the Komstar to exceed a throughput speed of more than 9000 lines per minute. Ms. Oravetz admitted under cross-examination that the tests were done with the machines in the production mode, which may slow a machine down.

In addition to Ms. Oravetz' testimony, Anacomp pointed to three documents contained in the record, which were

introduced at the hearing before the CPO. The first document is a page from a report, produced by Kodak, which indicates that an unspecified Komstar machine has a maximum throughput speed of 6,416 lines per minute. (Record, p. 21). Lawrence W. Harrod, Anacomp's Deputy Director, could not produce the rest of the report and had no information other than the report came from an Anacomp file. Kodak acknowledged that the document (except for certain boxed-in comments) is a page from a Kodak report produced in 1977 and which "is descriptive of a Kodak product discontinued from sale in 1981. According to Kodak that product "is not relevant to the KOMSTAR IV Imaging System, which uses page buffering, rather than the line buffering used on older equipment." (Record, p. 152). Anacomp offered no evidence contradicting Kodak's explanation of the report.

The second document offered by Anacomp is a report comparing a Komstar machine with the Anacomp XL and finding the XL much faster. The Komstar is listed as having throughput speeds ranging from 4840 to 5960 lines per minute. (Record, pp. 23-24). Mr. Harrod testified that this report is an internal sales document produced by Anacomp. The report itself does not indicate which Komstar recorder - (there are four versions 100, 200, 300, and IV) - is being tested. According to Kodak, the Komstar IV was released in 1987. The report indicates that testing took place in 1986. Kodak admits that it is possible that the

machine in question could be a prototype Komstar IV, however, no party offered any evidence which conclusively proved to which machine the sales document refers.

The final document offered by Anacomp is a report showing that the throughput speed of the Anacomp XL reaches 17,000 lines per minute. (Record, p. 150). Kodak does not dispute the information contained in this document but disputes its relevance.

In rebuttal Kodak offered the testimony of its District Sales Manager, Barry Barrineau, that the Komstar IV meets the throughput requirements of this IFB and a printout of a test performed by Kodak in its Rochester office, indicating that the Komstar IV used in that test had a throughput speed of 10,157 lines per minute. (Def. Ex. #1). Mr. Barrineau admitted under cross examination that the microfiche record used in the test did not have a title or borders, which are often used by customers, and that these additions might decrease throughput speed.

In addition to Kodak's evidence, the Panel notes Kodak states in its bid:

A. STATEMENT OF UNDERSTANDING

Eastman-Kodak intends to comply with all stated requirements, terms, conditions, work statement tasks and schedules contained in your RFP [sic].

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B. TECHNICAL SUMMARY

Kodak's proposed complement of hardware and software not only meets but exceeds all "Appendix A" specifications required

by the State of South Carolina. Additionally, all "Microfiche Recorder Specifications", "Microfiche Duplicator/Collator Specifications," "Microfiche Software Specifications", "Maintenance Specifications" and "Miscellaneous Specifications" are and will be met with the proposed configuration.

(Record, p. 73).<sup>1</sup>

#### CONCLUSIONS OF LAW

The only question for the Panel is one of fact - whether the Kodak Komstar IV meets the requirement of the IFB that the machine bid have a throughput speed of 10,000 lines per minute. Anacomp has the burden of proving by a preponderance of the evidence that Kodak does not meet the requirement.

The Panel finds that Anacomp has failed to meet its burden.

The first document offered by Anacomp (Record, p. 21) is a page from a 1977 Kodak report which does not on its face refer to the Komstar IV machine and which Kodak claims,

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<sup>1</sup>Both Kodak and Anacomp spent a portion of its case on the question whether an independent organization, such as the Association for Information and Imaging Management (AIIM), had tested or would test the Komstar IV's throughput speed. Kodak sought to introduce evidence that AIIM would not perform such testing. Anacomp objected to the evidence all the while maintaining that it would drop its protest if Kodak would produce an AIIM test showing the Komstar IV with a throughput speed of 10,000 lines per minute or better.

The Panel finds this whole discussion irrelevant. The IFB does not require independent testing or certification of throughput speed.

without contradiction, concerns an obsolete machine. The Panel finds that this report is not relevant to the Komstar IV's throughput speed.

Similarly, the second report (Record, pp. 23-24) does not indicate on its face which Komstar machine is being discussed. Although the parties admit that it is possible that the report concerns a Komstar IV prototype, no conclusive evidence was produced that the information in this report is relevant to the Komstar IV bid in this case. When weighed against the counter evidence, the Panel finds this report inconclusive and not persuasive on the throughput speed issue.

The Panel finds that the third report of the Anacomp XL's throughput speed is irrelevant because neither the State nor Kodak questions Anacomp's ability to meet the 10,000 line per minute throughput requirement.

Finally, the Panel finds that the testimony of Ms. Oravetz that she has never seen a Komstar IV with a throughput speed faster than 9000 lines per minute is not persuasive in light of the counter testimony of Mr. Barrineau that the Komstar IV can meet the requirement, the test done for the hearing before the Panel indicating that a Komstar IV performed at a throughput speed of 10,157 lines per minute, and the statements made by Kodak in its bid that it can and will meet the specifications of the State in this procurement.

Considering all of the evidence and bearing in mind the burden of proof, the Panel holds that Anacomp has failed to prove that the Kodak Komstar IV microfiche recorder does not have a throughput speed of at least 10,000 lines per minute. The Panel therefore finds that Kodak is responsive to the IFB.

For the reasons set forth above, the Panel affirms the May 7, 1990 decision of the Chief Procurement Officer awarding the contract in question to Kodak and dismisses the appeal of Anacomp, Inc.

IT IS SO ORDERED.

South Carolina Procurement  
Review Panel

By 

Hugh K. Leatherman, Sr.  
Chairman

6-19, 1990  
Columbia, South Carolina