

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND) CASE NO. 1991-3

IN RE:)
)
 APPEAL OF UARCO, INC.) O R D E R
)
_____)

This case came before the South Carolina Procurement Review Panel for hearing on March 14, 1991, on the appeal by UARCO, Inc., of a decision by the Chief Procurement Officer ("CPO") under S. C. Code Ann. §11-35-4230 (1976).

Present at the hearing before the Panel were UARCO, represented by Hardwick Stuart, Esq., and Bristow Marchant, Esq.; the Department of Highways and Public Transportation ("Highway Department"), represented by Linda McDonald, Esq., and the Division of General Services.

FINDINGS OF FACT

This is a contract controversy between the Highway Department and UARCO over whether certain business forms meet contract specifications. On July 10, 1990, the Office of Information Technology Management issued a solicitation on behalf of the Highway Department to print Affidavit & Notification of Sale of Motor Vehicle and Power of Attorney-Odometer Disclosure forms. (Record, p. 47). As low bidder, UARCO was awarded the contract on August 9, 1990.

The Invitation for Bids contained several relevant specifications:

All work shall be performed by the contractor in accordance with the specifications and contract and in a thoroughly first-class manner and must be satisfactory to the agency.

Composition shall be neat and free from broken or battered type. Presswork shall be first grade, producing a clear, sharp image. (Record, p. 52)

Documents must have the following security features: Pantograph VOID feature, erasure sensitive background inks, security paper. (Record, p. 62)

Attached to the IFB was a portion of 49 C.F.R. Part 580,¹ which describes various acceptable security features including the Pantograph Void Feature as follows:

(e) Pantograph Void Feature - wording incorporated into a pantograph by varying screen density in the pantograph. The wording will appear when attempts are made to photocopy on color copiers.

(Record, p. 63). The specifications do not state a minimum requirement for success of the security features.

The Pantograph Void Feature is what is at issue in this case. The idea is to produce an original blue form with the word "VOID" printed several times in the background. When the form is copied on a color photocopier, the "VOID"s become visible and alert the receiver that the document is a forgery.

Mike Yandle, Manager of Titles for the Highway Department, testified that the Department chose security paper, erasure sensitive ink and the Pantograph Void Feature as its security devices over possibly more effective

¹49 C.F.R. Part 580 requires that the forms in question be produced using a minimum number of the secured printing processes described.

measures because of the expense and because the combination of these three features was recommended by the American Association of Motor Vehicle Administrators. (Defendant's Ex. 1, p. 9). Mr. Yandle stated that he did not question the bidders in this case or otherwise research the effectiveness of the Pantograph Void Feature. However, Mr. Yandle was familiar with the feature from his experience with other states' forms, other vendors and his work with the Association of Motor Vehicle Administrators.

After the contract was awarded, UARCO presented the Highway Department with a proof to select the color of the Pantograph background. The Highway Department chose one of the colors listed by UARCO - light blue. (Plaintiff's Ex. 3). UARCO did not advise the Highway Department that using a blue background might diminish the effectiveness of the Pantograph Void Feature.

As required by its contract, UARCO printed two million Affidavit of Sale forms and fifty thousand Power of Attorney forms using the blue background and delivered them to the Highway Department. When several randomly chosen forms failed to show "VOID" when copied on a color photocopier, the Highway Department sent UARCO a letter advising that the forms failed to meet the security requirements of the IFB. (Record, p. 68).

On October 16, UARCO wrote the Highway Department that tests performed by UARCO indicated that the forms did meet specifications. UARCO promised to pull random samples and

send them to Quality Control for further testing. (Record, p. 69). On October 17, the Office of Information Technology Management wrote UARCO and asked that it reprint the forms to comply with the security specifications. (Record, p. 70). On October 20, UARCO again responded that its forms met the specifications. UARCO expressed the opinion that the level of sophistication attained in the color photocopying industry outdates the usefulness of the Pantograph Void feature as a security device. (Record, p. 71).

On November 15, the Office of Information Technology Management warned UARCO that it was in breach of its contract and required it to remove the forms from the Highway Department premises. UARCO was advised that it would be charged for the costs of the State's undertaking to procure forms which met the security specifications. (Record, p. 73).

On December 21, UARCO requested a hearing before the Chief Procurement Officer pursuant to §11-35-4230 to resolve the dispute between it and the Highway Department. (Record, p. 76). Prior to hearing before the CPO, the parties agreed that copies of two randomly chosen UARCO forms and two other vendors' forms would be made on two brands of color photocopiers on a light, normal and dark setting and the results would be the only physical evidence submitted to the CPO for consideration. The results of this test was presented to the Panel as Plaintiff's Exhibit 5.

Exhibit 5 reveals that UARCO's forms failed to show "VOID" when copied on a color photocopier 100% of the time for the Power of Attorney form and 66% of the time for the Affidavit of Sale form. Although "VOID" does not show on a significant number of copies, it is still possible to tell that at least some of those copies are counterfeit because of the mottled background.

UARCO presented the testimony of its sales representative, Greg Baird, that when UARCO bid this job, it did not understand that any particular level of success was required by the IFB for the Pantograph Void Feature. Mr. Baird expressed the opinion that no security feature could be 100% successful in deterring counterfeiting and that UARCO would have protested the specifications or not bid at all if it realized that the Highway Department expected the void feature to work 100% of the time.²

Mr. Yandle testified that the Department does not expect 100% success but UARCO's rate of less than 50% success is not acceptable. In testimony before the Panel, UARCO refused to guarantee any percent of success with the Pantograph Void Feature.

²UARCO also presented the testimony of Roy D. Vanderburgh, an expert in security printing processes, who stated that the Pantograph Void Feature could not be successful all of the time on all brands of color copiers and that as the color copier industry improves its product the success rate of the Pantograph Void lessens. Mr. Vanderburgh refused to state a current acceptable or expected success rate for the Pantograph Void Feature.

However, UARCO's sales literature on its Pantograph Void Feature, called "Copy-Guard", states:

The advent of the color photocopier in the general business setting has made it possible to copy checks with such success that it poses a serious threat. No longer is the skill of an artist or photoengraver needed - nearly any amateur can produce a copy adequate to fool a busy bank teller.

How to protect against it? . . . You need a system that attacks the problem right at the source. You need UARCO's Copy-Guard system. When a check is printed with Copy-Guard it looks and feels like a regular check - but when someone attempts to copy it on a color photocopier, the word "VOID" appears in large letters on the copy. Thus Copy-Guard helps protect you against most color copier counterfeiters.

(Plaintiff's Ex. 4, bold emphasis appears in original). The literature recommends Copy-Guard for other documents such as titles, licenses, and securities.

CONCLUSIONS OF LAW

UARCO contends that the specifications do not require any level of security for the Pantograph Void Feature and, therefore, its forms meet the specifications as interpreted in light of industry standards. The Panel does not agree.

The contract requires that each form contain three security features - security paper, erasure sensitive ink and the Pantograph Void Feature. The specifications defining "Pantograph Void Feature" state that "wording will appear when attempts are made to photocopy on color copiers." These specifications are taken directly from federal law requiring that motor vehicle forms have certain

minimum security features. Read strictly, the specifications require that all forms must show "VOID" when copied. UARCO's forms clearly do not meet this standard.

Neither party, however, urges such a strict interpretation of the Pantograph Void requirement. The Highway Department indicated that it is willing to accept less than a 100% success rate but that UARCO's rate of less than 50% is not acceptable. UARCO appears to favor no success rate and would not commit to guaranteeing any level of success.

The contract between the parties provides that the work shall be performed in a "thoroughly first-class manner" and must be "satisfactory to the agency." The Panel does not believe that the Highway Department is being unreasonable to reject UARCO's current forms as unsatisfactory and to insist that UARCO produce forms which perform at a rate better than the current forms have. UARCO's own sales literature boasts that its pantograph void feature protects against "most color copier counterfeiters." "Most" is certainly greater than the 0% rate UARCO scored on the Power of Attorney form and the 33% rate it scored on the Affidavit of Sale form.³

³It is possible to tell that some of the forms which fail to show "VOID" are in fact counterfeits when compared to the original forms. The Panel does not find this fact overly significant, however, because the evidence indicates that many, if not most, users of the forms will not have originals to compare. (These users would include out-of-state agencies and general consumers).

UARCO additionally contends that advances in the color copier industry make a 100% crime-proof Pantograph Void Feature impossible. As stated earlier, even though the specifications can be read to require it, the Highway Department is willing to accept less than a foolproof system. Further, UARCO should have known of the alleged limits on the effectiveness of its Pantograph Void Feature when it read the specifications requiring 100% success and it should have protested or refused to bid if it believed that the specifications could not be met. UARCO did not do this and cannot be heard to complain now.

Finally, UARCO complains that use of a blue background reduces the effectiveness of the Pantograph Void Feature. Accepting this complaint as true, the evidence shows that UARCO gave the Highway Department a list of choices for background colors and that light blue was on the list. The Panel cannot not find fault with the Highway Department's choice when UARCO never indicated that blue would be a problem.

For the reasons stated above, the Panel affirms the January 23, 1991 decision of Chief Procurement Officer that UARCO is in breach of its contract and orders the Highway Department to determine exactly what level of success for the Pantograph Void Feature it is willing to accept and to

apprise UARCO of that level.⁴ UARCO shall be given the opportunity to meet the requirement under that portion of the contract which provides, "If any job is rejected because of error attributable to the contractor, the contractor shall promptly reprint the job without any additional charge." (Record, p. 53).

If UARCO is unwilling or unable to comply with the required level, then the Highway Department may proceed in accordance with the contract to rebid the job and assess costs against UARCO, as provided.

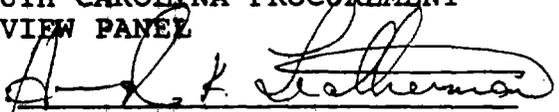
The Panel's holding is not meant to prevent the parties from seeking and arriving at a mutually agreeable compromise position. For example, if the current forms can be made secure to the satisfaction of the Highway Department by the addition of another feature, such as a watermark, then the Panel encourages the parties to explore such possibilities. Or, if it is determined that new forms using another background color might meet the level of success required by the Highway Department, then the parties are encouraged to make such a change.

⁴The Highway Department is encouraged to broaden its test base, if possible. A larger sample size and a wider range of copier brands would undoubtedly yield more accurate results.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By



Hugh K. Leatherman, Sr.
Chairman

Columbia, S.C.
APRIL 11th, 1991