

STATE OF SOUTH CAROLINA ) BEFORE THE SOUTH CAROLINA  
 ) PROCUREMENT REVIEW PANEL  
COUNTY OF RICHLAND ) CASE NO. 1992-9

IN RE: )  
 )  
PROTEST OF THE MEGG CORPORATION OF ) O R D E R  
GREENVILLE; )  
APPEAL BY THE MEGG CORPORATION OF )  
GREENVILLE )  
\_\_\_\_\_ )

This case comes before the South Carolina Procurement Review Panel (the "Panel") on the appeal by The MEGG Corporation of Greenville ("MEGG") from a decision by the Chief Procurement Officer ("CPO") dismissing MEGG's protest for failure to sufficiently state a grievance.

The Panel decides this case without a hearing and considers only the record made before the CPO as submitted to the Panel.

#### FINDINGS OF FACT

On October 7, 1991, State Procurement issued a Request for Proposals ("RFP") for annual maintenance on computers owned by the Department of Mental Health. MEGG and six other vendors responded on November 4, 1991.

The award criteria listed in sections 5.1 to 5.4 were:

5.1 Qualifications and experience of offeror and the technicians who will be assigned to this contract in providing services similar to those required by this contract.

5.2 Quality and effectiveness of offeror's plans and procedures for maintaining parts, receiving service requests and responding to requests in a timely manner.

5.3 Input from references.

5.4 Offeror's total annual price.

(RFP Amendment #001, page 26). On March 9, 1992, the State issued a Notice of Intent to Award to The Computer Group.

Shortly thereafter, MEGG discussed its failure to receive the contract with the procurement officer. Those discussions revealed a possible problem with the evaluation committee's check of MEGG's references.

On March 18, 1992, MEGG protested the award to The Computer Group in writing as follows:

The Megg Corporation would like to formally protest the award given the Computer Group for the RFP #B200472, annual maintenance for Micro Computer Hardware for the Department of Mental Health.

The Megg Corporation understands that many factors were used in awarding the RFP. We feel that The Megg has met the award criteria in (5.1-5.4) therefore, we do not understand why we're eliminated from this RFP. We have already established an excellent reputation with the State of South Carolina maintaining the same type of equipment listed on the RFP.

Until we can review how the evaluation was done, we will not understand why it took four months to arrive at a decision, how the decision was reached, and why there was no personal contact with us if there were questions about our ability to service Department of Mental Health.

If I may further clarify my concerns, please let me know. Until then, I look forward to reviewing the evaluation documents and procedures in regards to the award of the RFP to Computer Group.

(Record, p. 14).

On March 23, the State received a Freedom of Information Act request from MEGG for copies of all proposals submitted in response to the RFP and for information how the proposals were evaluated. (Record, Exhibit #6). The State responded to the request on April 1. MEGG received the information on April 4.

At the hearing before the CPO on April 15, MEGG attempted to present a detailed statement of its grounds for protest as follows:

PROTEST OF RFP B20Q472

Obviously from the reference check list our correct references were not contacted. It seems somebody was using the reference sheet of our technician and called them about the Megg Corporation.

Don Owens gave us a rating of.....1  
Regis Parsons gave us a rating of...1  
Robert Barkalow gave us a rating of.8  
David Poster gave us a rating of...12  
Richard Kustrin gave us a rating of.5

Out of a possible point total of 120 we received only 27 because of a mistake by the evaluating committee.

I also believe that Parsons, Owens, Barkalow and Poster would normally be biased in other areas of judgement since they do not know the Megg Corporation and after the response from the incorrect reference what else would they believe.

Mr. Richard Kustrin, who knows us, these past four years, rated us fair in areas (1) and (2). Yet gave us a low reference because of the mistake.

The evaluation of points (1) and (2) of Owens and Parson are totally out of line with Mr. Kustrin. I find this

unsettling as to what formula they used in this area.

My recommendation is to award the contract to the Megg Corporation since it is obvious that we were low bidder; should have received as least 90 or more points on references; and perhaps more in the other areas if an objective review was taken.

Also why did it take so long to make a decision?

(Record, Exhibit #8).

The Department of Mental Health objected to the introduction of the more detailed grounds on the basis of timeliness and moved to dismiss the protest as set forth in MEGG's March 18 letter for failure to sufficiently state a grievance.

The CPO granted Mental Health's motion to dismiss the March 18 protest and rejected the more detailed statement of grounds offered on April 15 as untimely.

MEGG appeals the decision of the CPO to the Panel.

#### CONCLUSIONS OF LAW

The issue is whether the March 18, 1992, protest letter of MEGG Corporation meets the requirements of Section 11-35-4210(1) of the South Carolina Consolidated Procurement Code. That section provides:

Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the appropriate Chief Procurement Officer. The protest, setting forth the grievance, shall be submitted in writing within ten days after such aggrieved persons know or should have known of the facts giving

rise thereto, but in no circumstances after thirty days of notification of award of contract.

The Panel in previous cases has elaborated on the requirements of a protest under this section. A protest letter must in some way alert the parties that the author is formally protesting, rather than simply complaining or inquiring<sup>1</sup> and the letter must set forth the general nature of the grounds for protest.<sup>2</sup> Whether a protest is specific enough to meet the above requirements is not to be judged on highly technical or formal standards.<sup>3</sup>

The Panel finds that the March 18 letter of MEGG easily meets the requirement that it alert<sup>s</sup> the parties that MEGG is protesting rather than simply complaining or inquiring. The first sentence of the letter indicates, "The Megg Corporation would like to formally protest the award given to the Computer Group for the RFP #B200472 . . . ."

The Panel further finds that MEGG's letter meets, though just barely, the second formal requirement of a protest letter - that it put the parties on notice of the general nature of the grievance. Read broadly, rather than technically, MEGG's letter states that, even though MEGG met

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<sup>1</sup>In re: Protest of Computerland, Case No. 1988-4, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 433.

<sup>2</sup>In re: Protest of Sterile Services Corporation, Case No. 1983-17, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 99.

<sup>3</sup>Sterile Services Corporation, cited above, at p. 100.

all the requirements of the award criteria and even though it has established "an excellent reputation with the State of South Carolina maintaining the same type of equipment listed on the RFP", it was eliminated from receiving award of the contract.

The Panel believes that this is a sufficient statement of the general nature of MEGG's grounds - that MEGG has been aggrieved because the State unfairly considered or failed to consider its references.<sup>4</sup> MEGG also sufficiently raises questions about the length of time taken to evaluate the proposals and why no one from the Department of Mental Health sought clarification of its proposal.

In deciding that MEGG's March 18 protest letter sufficiently states a grievance, the Panel does not decide whether any of MEGG's grounds have legal or factual merit but rather leaves such questions in the first instance to the Chief Procurement Officer.

The Panel notes that the proceeding before the Chief Procurement Officer is informal and designed to resolve matters by compromise if possible. See S. C. Code Ann. §§ 11-35-4210(2) and (3) (1986). So long as a protestant raises the general nature of its grounds, the Panel believes

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<sup>4</sup>The Panel does not read MEGG's more detailed statement of grounds as altering the general nature of MEGG's original complaint. The Panel believes that the more detailed statement can be read to merely clarify the original complaint concerning MEGG's references and the length of time taken to evaluation proposals.

that it is proper that the specifics of such grounds be developed before the CPO.

For the reasons stated above, the Panel reverses the April 17 decision of the Chief Procurement Officer and remands this case to the CPO for consideration of the merits in accordance with the above opinion.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

By: 

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Gus J. Roberts  
Chairman

May 19, 1992  
Columbia, S.C.