

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND) CASE NO. 1993-11

In re:)

Protest of Industrial Sales Co.,)
Inc.; Appeal by Industrial Sales)
Co., Inc.)

O R D E R

APPEALED

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on June 1, 1993, on the appeal of Industrial Sales Co. ("ISC") from a decision by the Chief Procurement Officer ("CPO") denying ISC's protest.

Present and participating in the hearing before the Panel were ISC, represented by Arnold Goodstein, Esq., and Lawrence Richter, Jr., Esq.; Cameron & Barkley ("C&B") represented by Palmer Freeman, Esq., and Robert Knowlton, Esq.; Medical University of South Carolina ("MUSC") represented by Joseph Good, Jr., Esq.; and General Services represented by James Rion, Esq.

FINDINGS OF FACT

On December 15, 1992, the State issued a Request For Proposals ("RFP") to furnish, warehouse and deliver maintenance\repair supplies and equipment to the Medical University of South Carolina ("MUSC"). MUSC held a mandatory preproposal conference and site visit on January 19, 1993, to address questions from potential offerors. Amendment #001 was issued January 28, 1993, to answer the questions raised at the preproposal conference and to change some items listed in the Cost Section market basket. The RFP required

an offerors' response to the Cost Section to be submitted separately from the remaining RFP response.

Proposals were opened February 11, 1993 and evaluated. The RFP lists the following four criteria for evaluating the proposals: cost of proposal, demonstrated understanding of the project, contractor profile, proposed method of prescheduled price adjustments. (Record p. 80). The price criteria was determined by a mathematical formula. The remaining evaluation criteria were considered by an evaluation committee composed of MUSC employees.

The State issued a Notice of Intent to Award to C&B on March 12, 1993. The Intent to Award was suspended on March 24, 1993 upon the protest of ISC.

The CPO conducted a hearing on ISC's protest on April 12, 1993 and issued a decision on April 21, 1993. The CPO received ISC's appeal to the Procurement Review Panel on May 3, 1993. (Record pp. 4-12).

CONCLUSIONS OF LAW

I. Motion to Dismiss

At the beginning of the Panel hearing, C&B renewed its written motion to dismiss the protest of ISC. C&B argues that ISC's protest raised three issues each of which lack merit. The Panel sustained C&B's motion to dismiss ISC's protest issue concerning the evaluation of cost and dismissed C&B's motion to dismiss the remaining issues of ISC's protest for the following reasons.

ISC argues that it should have received more points in the evaluation because it offered the lowest price for the work. However, a standard mathematical formula was used in determining the points given for the Price criteria. The Panel has previously upheld the use of a standard mathematical formula in evaluating the cost section of RFP responses. In re: Protest of Polaroid Corporation, Case No. 1988-12, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 515 at p. 530, ("Cost in this case was evaluated using a standard mathematical formula. The Panel can find nothing unfair or unreasonable in crediting each proposal for its price in this objective way.")

As to ISC's remaining grounds, the Panel determined that those grounds contained issues of fact for consideration by the Panel.

II. Errors of the CPO

ISC's protest to the Panel also claims that the CPO did not consider certain portions of the RFP in making his decision. (Record p. 7). Any alleged errors of the CPO are moot because the hearing before the Panel is de novo, allowing the presentation of new evidence.

III. C&B is nonresponsive for failure to conform to the RFP

ISC also contends that C&B's response to the RFP does not conform to the requirements of the RFP and, therefore, is nonresponsive. The Panel agrees.

Exhibit P-5 is the proposal C&B submitted to the State in response to the RFP and Amendment #001. C&B submitted

filled in cost sheets from the original market basket sample provided in the RFP and then attached filled in cost sheets for the amended market basket sample provided in Amendment #001. However, Amendment #001 of the RFP duplicates parts of the original market basket sample. Mr. Price, the procurement officer in charge of this procurement, testified that he folded together C&B's original and amended proposals to obtain a correct total cost amount.

The Panel finds that C&B was not responsive to the RFP because it submitted two proposals, an original and an amended, with two different cost totals, which could not be evaluated in the form that they were submitted. It is apparent from the RFP's Amendment #001 that the amended pages were meant to replace the original pages of the market basket sample. Otherwise, duplicates were created. The total amount of the original and the total amount of the amendment cannot simply be added together to get a correct amount. C&B's proposal, as submitted, created the necessity for the State to take two separate offers and weed out information that was duplicated to make one complete offer.

The Panel further finds that such an irregularity is not a minor informality which can be waived by the State in that it creates more than a negligible effect on price. The market basket sample was the means by which the State evaluated the cost of proposal criteria. Furthermore, the waiver of such an irregularity, in effect, causes the State

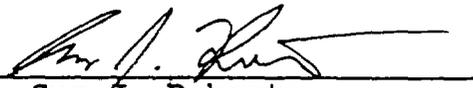
to blend together information submitted by an offeror to create a total cost amount. The State's involvement in the creation of an offeror's proposal is inherently prejudicial to other offerors.

All other issues before the Panel are not dispositive and are not addressed.¹

For the foregoing reasons, the Panel reverses the CPO's decision and orders the award of the contract to the next offeror evaluated most advantageous to the State and found responsive and responsible, if any.²

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 
Gus J. Roberts

Columbia, S.C.
June 30, 1993

¹ Although not dispositive, the Panel also finds that C&B was not nonresponsive for failure to list subcontractors. The RFP does not require the use of subcontractors. The RFP, under Scope of Work, defines the services expected under the contract. ISC did not meet its burden to prove that C&B could not provide the services required under the RFP without the use of subcontractors. Mr. Bateman testified about how C&B was capable of meeting the requirements of the RFP, and the Panel finds that C&B is capable of fulfilling the requirements of the RFP without the use of subcontractors.

² Carter Goble Associates, Inc., Case No. 1989-25, which specifies resolicitation as the remedy when the RFP process is used, is distinguished from this case because in the present case only two offerors were evaluated.