

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
) CASE NO. 1993-9

In re:)
)
) Protest of Eastern Data, Inc.;) O R D E R
) Appeal by Eastern Data, Inc.)
)
_____)

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on March 23, 1993, on the appeal of Eastern Data, Inc., ("Eastern Data") from a decision by the Chief Procurement Officer ("CPO") denying Eastern Data's protest.

Present and participating in the hearing before the Panel were Eastern Data, represented by its President, James Goforth, and the Division of General Services, represented by James W. Rion, Esquire.

FINDINGS OF FACT

On August 14, 1992, the Information Technology Management Office ("ITMO") issued a Request for Proposals ("RFP") for an embossing contract for the Medical University of South Carolina ("MUSC"). Eastern Data received a copy of the RFP at its address at 904 Old Winston Road, Kernersville, North Carolina.

On September 2, 1992, ITMO held a pre-proposal conference at MUSC, which was attended by Eastern Data. After the conference, on September 10, 1992, ITMO issued Amendment #001 to the RFP. Amendment #001 extended the opening date "until all questions and answers from the pre-proposal conference can be provided". (Record p. 31).

Eastern Data received a copy of Amendment #001 at its address at 904 Old Winston Road.

On November 2, 1992, MUSC told ITMO that Eastern Data had changed its address from 904 Old Winston Road to 149 South Main Street. (Record p. 45 and 47). In fact, Eastern Data had moved from 149 South Main Street to 904 Old Winston Road several years prior.

On November 23, 1992, ITMO issued Amendment #002 to the RFP, which set the opening date as December 21, 1992. ITMO mailed Amendment #002 to both addresses it had for Eastern Data (Record p. 45).

The U. S. Postal Service returned the amendment sent to Eastern Data at 149 South Main Street. (Record p. 51). The amendment sent to 904 Old Winston Road was not returned to ITMO. Nevertheless, Eastern Data never received a copy of Amendment #002.

On December 21, 1992, ITMO opened the responses received for the RFP, and Eastern Data was not one of the two vendors who responded.

On January 28, 1993, Eastern Data protested the solicitation and award of the RFP on the grounds that it did not receive Amendment #002 and, therefore, was unable to properly respond to the RFP. (Record p. 51).

CONCLUSIONS OF LAW

Eastern Data argues that it was adversely affected by not being allowed to bid because it did not receive Amendment #002 announcing the opening day. Eastern further

contends that the procurement procedure in this case was unfair because MUSC caused an incorrect address to be entered for Eastern Data. Eastern requests a rebid of the contract as a remedy for its alleged wrongs.

General Services counters that it did everything required of it and more when it mailed Amendment #002 to both addresses it had for Eastern Data and that the State does not have the responsibility to insure receipt of documents mailed by it.

Although the Panel finds it most regrettable that Eastern Data did not receive Amendment #002 informing it of bid opening day, the Panel refuses to place the burden on the State to assure receipt of solicitation documents it mails to prospective bidders. Such a requirement would be too economically costly and would set a dangerous precedence. Future bidders could wait for bids to be opened, allege they did not receive the bid solicitation and thus gain the opportunity to submit a bid with full knowledge of their competitors' bids.

The Panel holds that the State did not have the responsibility to insure that Eastern Data received a copy of Amendment #002 and, therefore, Eastern Data's protest lacks merit.¹

¹ The Panel further notes that, although not raised by the parties as an issue, Eastern lacks standing to file a protest under S. C. Code Ann. section 11-35-4210(1) Eastern is neither an actual nor a prospective offeror. In re:
(Footnote Continued)

For the reasons stated above, the Procurement Review Panel affirms the February 16, 1993, decision of the Chief Procurement Officer and dismisses Eastern Data's protest.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 
Gus J. Roberts
Chairman

Columbia, S.C.
April 13, 1993

(Footnote Continued)
Protest of Laurens County Service Council For Senior
Citizens, Case No. 1990-18.