

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND ) BEFORE THE SOUTH CAROLINA  
PROCUREMENT REVIEW PANEL  
CASE NO. 1999-1

In re: )  
Protest of Analytical Automation )  
Specialists, Inc.; ) ORDER  
Appeal by Analytical Automation )  
Specialists, Inc. )

This case came before the South Carolina Procurement Review Panel (Panel) for a hearing on April 22, 1999 on appeal by Analytical Automation Specialists, Inc. (AAS). Present at the hearing were AAS represented by John Beach, Esq., AS Acquisition Corp. d/b/a LabVantage Solutions (LS) represented by Daniel Brailsford, Esq., South Carolina Department of Health and Environmental Control (DHEC) represented by Jacquelyn Dickman, Esq., and the Office of General Services of the Budget and Control Board (General Services) represented by Keith McCook, Esq.

#### FINDINGS OF FACT

On August 19, 1998, General Services' Information Technology Management Office issued a Request For Proposals (RFP) on behalf of DHEC for an Environmental Quality Control (EQC) Laboratory Information Management System (LIMS). [Record p. 36-64]. Three responses were received and DHEC evaluated each. On November 11, 1998, General Services made a determination that two of the offerors, including AAS, submitted nonresponsive proposals, based on their cost proposals. An award was issued to LabVantage Solutions (LS) on December 9, 1998, after clarification concerning software

license agreements. AAS protested the award, which was suspended pending review. AAS raises the following issues in its protest letter: (1) its price proposal is responsive; (2) if nonresponsive, the price proposal discrepancy is a minor informality; (3) its proposal is superior; (4) the state did not properly determine responsibility of the offerors; (5) LS did not meet the RFP requirements; (6) award to LS is arbitrary, capricious, and violates the law. The CPO determined that AAS is nonresponsive to the RFP and that LS is responsive and responsible and should receive award of the contract. [Record p. 14-24].

On April 21, 1999, prior to the Panel's hearing, the CPO received a written request from DHEC to cancel the solicitation and re-solicit the project after revisions to the RFP. General Services brought the request to the attention of the Panel and sought guidance on how to proceed as the CPO decision concerning cancellation and resolicitation would likely impact any decision made by the Panel after a hearing on the issues in the case. The Panel held a conference with the attorneys for the parties concerning DHEC's request. The Panel suggested that the CPO proceed to issue a written determination on DHEC's request to cancel and resolicit the procurement. To promote judicial economy, the Panel then continued the matter until the CPO decision was issued. The CPO issued a written determination on May 12, 1999. The parties were given the opportunity to provide the Panel with written arguments in support or opposition to the CPO's decision to allow resolicitation of the procurement in this case, and the Panel issues this Order without further

hearings, but based on the Record and written arguments of the parties. The Panel notes that the decision to allow or disallow resolicitation, when not an issue in a case, is still appealable to the Panel under S. C. Code Ann. Section 11-35-4410.

### CONCLUSIONS OF LAW

S. C. Code Ann. Section 11-35-1520(7) authorizes a CPO to cancel an award or contract prior to performance, in accordance with regulations promulgated by the board, and requires such a decision to be supported by a written determination of appropriateness. Procurement Regulations at 23 S.C. Code Ann. Regs.19-445.2085(C) states, in pertinent part:

When it is determined after an award has been issued but before performance has begun that the State's requirements for the goods or services have changed or have not been met, the award or contract may be canceled and either reawarded or a new solicitation issued if the CPO determines in writing that:

(2) Specifications have been revised;...

(5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;...

(8) For other reasons, cancellation is clearly in the best interest of the State.

The CPO based the decision to cancel and resolicit on Procurement Regulation 19.445.2085(C)(2), (5) & (8).

DHEC's requirements for the LIMS have changed. DHEC has revised the RFP specifications to expand the scope of work to include an additional related division of the agency. Under the revised RFP, the Radiological Environmental Monitoring (REM) Division will also use the Environmental Quality Control (EQC) Laboratory Information Management System (LIMS). The addition of the REM

Division, which is not currently automated, requires modification of the RFP primarily by including new equipment with which the LIMS must interface. Including the additional requirements in the RFP to add the REM Division changes the obligations of the offeror. It appears to be in the State's best interest to revise the RFP and resolicit to include use of the EQC LIMS for the REM Division.

Also, and possibly more significantly, the removal of the requirement to use Oracle as the database could significantly decrease the cost of the system, and provide more competition with different options. When first soliciting the LIMS in August of 1998, Oracle was DHEC's agency standard database. Subsequently, the administration of the agency, in a decision made separate from this solicitation, chose to no longer use Oracle as DHEC's agency database standard. If no longer required to use Oracle, DHEC could possibly purchase an EQC LIMS for a significantly lower cost and have more options from offerors not using the Oracle database. The change of database requirements is a significant change in the RFP and appears to be in the best interest of the State.

Under S. C. Code Ann. Section 11-35-2410, the CPO's decision is "final and conclusive" unless "clearly erroneous, arbitrary, capricious, or contrary to law". Based on the foregoing, the Panel finds that the decision of the CPO to cancel and resolicit the procurement in this case is not erroneous, arbitrary, capricious, or contrary to law. The Panel takes this opportunity to caution agencies to carefully consider before requesting cancellation and resolicitation, especially when a protest has been filed, as the request may appear to be an

attempt to circumvent the procurement process. The Panel encourages the CPOs to continue to cautiously and carefully exercise the authority to cancel and resolicit procurements, especially when a protest has been filed. In this case, the CPO has stated ITMO will assist DHEC to assure the fair and equitable treatment of potential offerors.

Further the Panel finds that the appropriate decision of the CPO to cancel the RFP and resolicit the procurement with significant changes is dispositive of the issues involved in AAS' appeal in this case. AAS will have the opportunity to participate in responding to the resolicitation. The cancellation and resolicitation of this procurement makes the issues raised in the appeal letter of AAS moot. Therefore, the appeal of AAS is dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

BY:

  
Gus J. Roberts, Chairman

Columbia, SC

June 25, 1999.