

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1992-16

IN RE: PROTEST OF COASTAL RAPID PUBLIC)
TRANSIT AUTHORITY; APPEAL BY) O R D E R
COASTAL RAPID PUBLIC TRANSIT)
AUTHORITY)
_____)

This matter came before the South Carolina Procurement Review Panel for hearing on July 29, 1992, on the appeal of Coastal Rapid Public Transit Authority ("CRPTA") from a decision by the Chief Procurement Officer upholding awards of contracts to Georgetown County Council on Aging ("Georgetown") and Pee Dee Regional Transportation Authority ("Pee Dee").

Present and participating in the hearing before the Panel were CRPTA, represented by John Thompson, Esq., and Emma Ruth Brittain, Esq.; Georgetown, represented by its director, James P. Jayroe; Pee Dee represented by Mike Ballenger, Esq.; Office of the Governor, Division of Economic Opportunity, represented by Tim Harbeson, Esq.; and the Division of General Services, represented by Helen T. Zeigler, Esq., and Jim Rion, Esquire.

FINDINGS OF FACTS

On January 17, 1992, the State issued a Request for Proposals ("RFP") on a contract to provide Title XIX Medicaid transportation services to citizens in Georgetown and Williamsburg Counties. Proposals were received and opened on February 27.

The State Procurement buyer reviewed the proposals for responsiveness and distributed a copy of each proposal to each member of the evaluation committee. Each member evaluated and scored each proposal independently using the following criteria set forth in the RFP and considering only the information contained in the proposal:

- A. Provider's experience in transportation services.
- B. Provider's operations, plans and approach to the work including dispatch of vehicles, maintenance of records, billing and program management systems;
- C. Cost, to include the per passenger mile rate in conjunction with the number of passenger miles and number of clients;
- D. Provider's financial stability
- E. Provider's experience in providing transportation services to physically and mentally impaired individuals or persons with special needs.

(Protestant's Ex. #1). The criteria were listed in order of important and were assigned the following point values: Criteria A - 30; B - 25; C - 20; D - 15; E - 10 for a total of 100 points.

After independently evaluating proposals, the evaluation committee met to have questions answered. The State Procurement buyer then collected individual scores, added in the score for the cost component, and totaled the points for each offeror. The offeror with the highest number of points for each county was then determined to be the offeror whose proposal was most advantageous to the State for that county.

As a result of the evaluation process, the State issued a Notice of Intent to Award the contract in Georgetown County to Georgetown County Council on Aging and in Williamsburg County to Pee Dee Regional Transportation Authority.

CRPTA offered a proposal on both counties but was not the high scorer and, therefore, was not issued an Intent to Award. On May 7, CRPTA protested the awards to Georgetown and Pee Dee stating the following grounds of protest:

1. CRPTA has successfully provided service in Georgetown and Williamsburg for nine years, has a proven financial track record, has advanced from rural to urbanized status to increase resources and stability, has developed a positive relationship with operators in the area, and holds quarterly meetings to showcase its facilities;

2. CRPTA's level of service far exceeds Georgetown's and is "exceptionally compatible" to Pee Dee's;

3. CRPTA's overall cost is lower in Williamsburg County;

(Record, p. 17-18). CRPTA clarified the protest grounds by letter of May 20, stating that the award results were arbitrary and capricious because award was not made to the most advantageous offeror and that the selection committee failed to follow the Code in evaluating the proposals. (Record, p. 15-16).

CRPTA presented uncontradicted evidence that it was chartered in 1983 to provide the type of transportation services solicited (Protestant's Ex. #2), that CRPTA has

performed the services solicited in Georgetown, Williamsburg and Horry Counties for at least six years without complaint, that CRPTA personnel know the Department of Social Services (DSS) contact persons, that CRPTA holds quarterly meetings with such DSS personnel, and that CRPTA has not had any material exceptions in its audit reports.

CONCLUSIONS OF LAW

CRPTA appeals the awards to Georgetown and Williamsburg arguing that they violate S. C. Code Ann. §§ 11-35-1530(7), 11-35-310(26), and 11-35-1810(1). Those sections provide:

Award must be made to the responsive offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the proposals. No other factors or criteria may be used in evaluation and there must be adherence to any weighting specified for each factor in the request for proposals. . . . (§11-35-1530(7) (Cum. Supp. 1991)).

"Request for Proposals (RFP)" means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies or services, which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be the most advantageous to the State. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP, and which must include but not be controlled alone by the factor of price proposed to be charged. (§ 11-35-310(26) (Cum. Supp. 1991)).

Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contract and based upon past record

of performance for similar contracts. .
. . (§11-35-1810(1)(1986)).

CRPTA contends that it is a responsible offeror because it has successfully performed this contract for the past six years and, therefore, it is the most advantageous offeror. CRPTA argues that nothing in the record shows that any other offeror is more advantageous to justify ending CRPTA's incumbency. CRPTA further argues that, because it offered the lowest price of any offeror, it is the most advantageous.

The Panel finds that neither the evidence nor the law supports CRPTA's arguments.

In an RFP procurement, award must be made to "the offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the proposals." (Emphasis added)(§11-35-1520(7)). No other factors or criteria may be used in the evaluation. A defining characteristic of an RFP is that price is not the controlling factor. (§11-35-310(26)).

The determination by the State who is the most advantageous offeror is final and conclusive unless clearly erroneous, arbitrary, capricious or contrary to law. §11-35-2410. The burden of proof is on CRPTA to demonstrate by a preponderance of the evidence that the determination in this case has such flaws. See In re: Protest of Johnson Controls, Inc., Case No. 1989-9. The Panel will not substitute its judgment for the judgment of the evaluators,

who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

No evidence exists that the State in this case departed from the standards set forth in the Procurement Code and the RFP. No evidence exists that the evaluation committee disregarded all or any portion of CRPTA's proposal or scored it arbitrarily or unfairly relative to the other proposals.

To the contrary, the evidence in this case is that the evaluation committee considered only the information contained in the proposals and applied only the factors listed in the RFP. The evidence is that the evaluation committee considered the experience of all offerors as allowed by the criteria and as demonstrated in the proposals.

CRPTA points to several examples which it claims demonstrate arbitrariness. CRPTA claims that Georgetown lacks the experience and resources that CRPTA has and should have been scored much lower on criteria A, B and E. However, CRPTA presented no evidence that the judgment the evaluators made of the offerors' experience and resources, based only on the information contained in the proposals, was erroneous, biased, or arbitrary. Although CRPTA has demonstrated that it is a capable provider of the services requested here, it has not demonstrated that it is the most advantageous "taking into consideration price and the

evaluation factors set forth in the proposals." See In re: Protest of Cathcart and Associates, Inc., Case No. 1990-13.

Whether or not CRPTA is a responsible offeror is, therefore, not relevant because CRPTA was not determined to be the most advantageous offeror. The Procurement Code in §11-35-1810(1) requires that, prior to awarding the contract to the most advantageous offeror, the State must make a determination that that offeror qualifies as a "responsible offeror" under the definition stated in § 11-35-1410(7). The State determines responsibility based on factors listed in Reg. 19-445.2125, including whether the vendor has satisfactorily performed similar contracts in the past or whether the vendor has been the subject of complaints.

Responsibility is not an extra evaluation criterion. Award is not made to the "most responsible offeror" but rather to the most advantageous offeror, who then must meet minimum responsibility standards. CRPTA's suggestion that the evaluators should have considered its past performance on this contract is misplaced to the extent that that information was not in its proposal or was not covered by the stated evaluation factors.

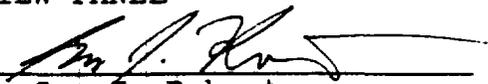
Finally, CRPTA argues that award to Georgetown and Pee Dee violates the stated policies behind the Procurement Code - to ensure the fair and equitable treatment of all persons in the procurement process, to provide increased economy and maximize State funds, and to foster effective broad-based competition. (§§11-35-20(e), (f), and (g)). The Panel finds

no evidence that the State violated any of these policies in this procurement. To the contrary, the only evidence on this issue is that the State attempted to structure the RFP to allow both large multi-county agencies and small single-county agencies to compete and to gain volume discounts wherever possible.

For the reasons stated above, the Panel affirms the June 15, 1992 decision of the Chief Procurement Officer and dismisses the protest of Coastal Rapid Public Transit Authority.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 

Gus J. Roberts

Columbia, S.C.

August 10, 1992