

decision was rendered by the Materials Management Officer on June 2, 1982, which determined that Southeastern Hospital Supply Corporation should not receive consideration as a resident vendor in regards to Items 27 and 58 of the contract because of its failure to maintain the necessary representative inventory for such items within the State of South Carolina. The Order further required that the South Carolina Department of Mental Health award contracts for Items 27 and 58 as outlined in its Bid Notice of March 23, 1982, to the lowest responsive and responsible bidder.

The matter came before this Panel by way of an appeal by Southeastern Hospital Supply Corporation of the decision of the Materials Management Officer. This appeal, dated June 10, 1982, asserted that the Materials Management Officer had erred in denying Southeastern Hospital Supply Corporation resident vendor status under § 11-35-1520(9)(d) of the Code of Laws of South Carolina (1976) in that Southeastern Hospital Supply Corporation in fact maintained a representative inventory of commodities within the State of South Carolina. The appeal further alleged that Southeastern Hospital Supply Corporation maintained a representative inventory of the specific commodities as to the particular bid and that the corporation had fully complied with all the requirements of the Code for qualification as an instate vendor.

A hearing was held by the South Carolina Procurement Review Panel on June 22, 1982. In addition to the Panel

members present for this hearing, the South Carolina Department of Mental Health was represented, as was Southeastern Hospital Supply Corporation and Durr-Fillauer Medical, Inc. At the hearing, arguments were heard by all parties in support of their positions. In reaching its decision, the Panel has considered not only those arguments, but also the evidence which was presented to the Materials Management Officer, as well as a letter dated June 28, 1982, by James D. Cooper, Jr., Esquire, Attorney for Southeastern Hospital Supply Corporation, which letter enclosed an Affidavit by Wilbur S. Matthews, an employee and agent of Southeastern Hospital Supply Corporation. As a result of the aforesaid evidence and arguments presented to and considered by this Panel, we are of the opinion that there is little dispute as to the critical facts in this case, and we have determined that the decision of the Materials Management Officer, dated June 2, 1982, should be affirmed.

In reaching our decision in this case, we have considered and concur with the Materials Management Officer's interpretation of the requirements to achieve instate vendor status under § 11-35-1520(9)(d) of the South Carolina Code of Laws (1976). We, therefore, expressly affirm and adopt the following section of the decision of the Materials Management Officer dated June 2, 1982:

A resident vendor must be a person or organization engaged in the business of selling tangible personal property or services to the

State who is in good standing under the laws of the State of South Carolina and who:

1. If selling tangible personal property:
 - (a) Is a resident of the State or a foreign corporation authorized to transact business in the State; and
 - (b) Maintains an office in the State; and
 - (c) Has a stock of materials held in South Carolina for sale in the ordinary course of business, which stock is of the general type offered, and which is reasonably sufficient in quantity to meet the ordinary requirements of customers; and
 - (d) Has paid personal property taxes pursuant to Title 12, Chapter 27, Article 1, et seq., of the Code of Laws of South Carolina, 1976, as amended, on equipment used in the regular course of supplying services of the general type offered; and
 - (e) Has paid business and occupational taxes pursuant to Title 12, Chapters 19, 21, 23, and 35, as applicable, of the Code of Laws of South Carolina, 1976, as amended.

2. If selling services:
 - (a) Is a resident of the State or is a foreign corporation authorized to transact business in the State; and
 - (b) Maintains an office in the State; and
 - (c) Has paid personal property taxes pursuant to Title 12, Chapter 37, Article 1, et seq., of the Code of Laws of South Carolina, 1976, as amended, on equipment used in the regular course of supplying services of the general type offered; and
 - (d) Has paid business and occupational taxes pursuant to Title 12, Chapters 19, 21, 23, and 35, as applicable, of the Code of Laws of South Carolina, 1976, as amended.

A vendor if expressly prohibited from claiming the in-state vendor preference on bids for items not normally stocked or handled by the company, or if the vendor's stock is comprised of samples only and is not sufficient to fill the day-to-day orders of customers.

Based on the evidence presented to us, we hereby make the following findings of fact:

1. Southeastern Hospital Supply Corporation was incorporated in the State of North Carolina and first registered to do business in the State of South Carolina on March 16, 1982.

2. Southeastern Hospital Supply Corporation was engaged in the business of supplying medical supplies to various medical institutions in South Carolina, including hospitals, State agencies, etc.

3. Southeastern Hospital Supply Corporation maintains storage facilities in North Carolina, Virginia, and Columbia, South Carolina. The warehouse in North Carolina contains 180,000 square feet of space.

4. The one office and storage facility in South Carolina is located at 4508 St. Andrews Road. This facility is shared with eighteen (18) other businesses. Furthermore, this facility is 400 square feet in size.

5. Item 27 of the bid protest involves polypropelene cups. Orders for these cups are required to be filled in between five (5) and seven (7) days.

6. Since Item 27 was awarded to Southeastern Hospital Supply Corporation, an order was placed with them on May 4, 1982, for two hundred (200) cases. One hundred (100) cases were received by the South Carolina Department of Mental Health on May 17, 1982, seventy (70) cases were received by the South Carolina Department of Mental Health on May 21,

1982, and thirty (30) cases were received by the South Carolina Department of Mental Health on June 2, 1982.

7. Southeastern Hospital Supply Corporation keeps between one (1%) and two (2%) percent of the amount ordered by the agency of group awarding the contract. In the case of Item 27, polypropelene cups, two hundred (200) cases of the cups are ordered at a time. However, only two (2) cases of the cups are maintained by Southeastern Hospital Supply Corporation at its Columbia, South Carolina, storage facility.

8. Southeastern Hospital Supply Corporation considers the North Carolina warehouse as its primary source to fill South Carolina contracts, with the South Carolina storage facility serving only as an emergency or "back-up" facility.

9. The total inventory maintained by Southeastern Hospital Supply Corporation in South Carolina at any given time is between \$2,000.00 and \$5,000.00

10. As of the date of the hearing, no South Carolina taxes had been paid on any inventory in South Carolina by Southeastern Hospital Supply Corporation.

11. In contrast to the foregoing, Durr-Fillauer Medical, Inc. maintains an inventory of approximately \$1,483,000.00 in medical supplies, said inventory being taken on December 1, 1981, and being located within an approximately 40,000 square foot warehouse located at 2413 Leaphart Road, West Columbia, South Carolina.

The foregoing facts lead us to the conclusion that Southeastern Hospital Supply Corporation does not maintain a representative inventory of commodities on which its bid was submitted and it has not paid all taxes duly assessed, as required by § 11-35-1520(9)(d) of the Code of Laws of South Carolina (1976). Although the exact date on which Southeastern Hospital Supply Corporation began doing business in South Carolina is unclear, it is apparent that this date precedes by a considerable amount the date on which it was formally authorized by the Secretary of State's office to transact business in this State. Therefore, although no taxes have been apparently assessed as of today's date, it appears that this is in part due to the failure by Southeastern to register with the Secretary of State's office.

Of greater importance, however, is the failure of Southeastern to maintain a representative inventory of commodities in this State. It is obvious to us that the small storage facility utilized by Southeastern on St. Andrews Road is not sufficient to provide inventory for this contract, as well as for other contracts in this State. Southeastern has admitted that it only maintains between one (1%) and two (2%) percent of the amount of the contract to be ordered at any given time. Furthermore, they have admitted that the South Carolina inventory is only used for emergency or back up situations.

The whole purpose behind the section of the Procurement Code at issue is to provide a bidding advantage for South Carolina vendors in certain situations. In this case, it appears that bidding advantage would have made a difference insofar as Item 27 is concerned. Furthermore, although it would have made no difference insofar as Item 58 was concerned, nevertheless the certification filed by Southeastern as to its qualifications for resident vendor status was false and misleading. Based on the foregoing, it is clear that Southeastern did not maintain a representative inventory of commodities as required by the Code for Items 27 and 58 and that, therefore, Southeastern was not entitled to resident vendor status at the time the bid was submitted.

We, therefore, make the following conclusions of law:

1. Southeastern Hospital Supply Corporation filed a false and misleading certificate concerning its status as a resident vendor under §11-35-1520(9)(d) of the 1976 Code of Laws of South Carolina (as amended);

2. The certification at issue was false and misleading in that at the time it was given, Southeastern Hospital Supply Corporation did not maintain a representative inventory of commodities on which the bid was submitted in the State of South Carolina, as required under §11-35-1520(9)(d) of the Code;

3. Due to the fact that a false and misleading certificate was filed by Southeastern Hospital Supply Corporation, the bid of Southeastern Hospital Supply

Corporation should be rejected, the contract for Items 27 and 58 rescinded, and the remaining portion of the contract awarded by the South Carolina Department of Mental Health to the lowest responsive and responsible bidder, other than Southeastern Hospital Supply Corporation.

IT IS, THEREFORE, ORDERED that the bid submitted by Southeastern Hospital Supply Corporation to the South Carolina Department of Mental Health for medical supplies be rejected.

IT IS FURTHER ORDERED that the contract which was awarded to Southeastern Hospital Supply Corporation by the South Carolina Department of Mental Health for medical supplies be rescinded as of today's date.

IT IS FURTHER ORDERED that the remaining portion of that contract from the South Carolina Department of Mental Health be awarded to the lowest responsive and responsible bidder, other than the Southeastern Hospital Supply Corporation.

AND IT IS SO ORDERED.

FOR THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

By: /s/ Hugh K. Leatherman
Hugh K. Leatherman, Sr.
Chairman

August 10, 1982
Columbia, S.C.