

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Case No. 1988-11

IN RE: PROTEST OF CONWAY CHILD)
DEVELOPMENT CENTER) O R D E R
)

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on September 29, 1988, on the protest of Conway Child Development Center ("CCDC") of the intent by the Health and Human Services Finance Commission ("HHS") to award a contract for child care services in Horry County to Concern Parents and Friends of Children ("Concern Parents"). Present at the hearing were CCDC, represented by Cameron B. Littlejohn, Jr., Esq., HHS represented by Candace Berlew, and the Division of General Services, represented by Helen Zeigler, Esquire. Concern Parents was present but did not participate.

After hearing all the evidence, the Panel makes the following findings of fact and conclusions of law.

FACTS

HHS issued a Request for Proposals on June 3, 1988, soliciting child care services for needy families in Horry County for the fiscal year 1988-89. (Record, p. 284). The proposals were to be evaluated on demonstrated financial and technical capability and on evidence of the understanding of the problem and the objectives to be achieved. Evaluation criteria in order of importance were:

- (1) Agency Review of Child Development Program Currently Operated (On-site Program Review and Facility Regulatory Review);

(2) Experience Related to Child Development and Qualifications of Staff;

(3) Unit Cost;

(4) Understanding the Problem and Approach.

(Record, p. 290).

HHS chose a panel of three experienced persons to evaluate the proposals - two from HHS staff and one from the Department of Education. Each team member received the proposals submitted, a copy of "Child Development Quality Assurance Standards" (Record, p. 345), and forms on which to perform their evaluations of the proposals. Each team member independently reviewed the proposals and rated each proposal on an Evaluation sheet. (Record, p. 221-239).

The sheet lists various evaluation factors and assigns a total number of points available for that category according to the order of importance set forth in the Request for Proposals. Each evaluator awarded points in each category up to the total number of points available. Comments were recorded on attached pages captioned "Handwritten Analysis Describing Rationale Leading to Specific Conclusions on the Assets and Deficiencies: Reference Specific Language in the Proposal."

Two categories on the evaluation sheet were not completed by the team members but were supplied to them. (Record, p. 221). Category C, Unit Cost, Unit Price was supplied by Dave N. Smith, Jr., Coordinator of Commission Services, Fiscal Manager. This score was based on a simple mathematical calculation. The formula is lowest amount bid divided by amount bid in the

proposal being evaluated X 20 (highest number of points available for that category).

The other score which was supplied to the team was Category A, On-site program review. This score was supplied by Mr. Robert Coffey in HHS' Program Monitoring Division. Mr. Coffey generated the scores by converting (in accordance with a mathematical formula) "raw" scores given after an on-site inspection of the bidders' facilities.

The on-site inspection was conducted by two employees of HHS using an eleven page worksheet entitled "Quality Assurance Documentation Summary." (Record, p. 471-481). This document lists various aspects of child care (such as staff-child interaction, child-child interaction, health and safety, staff qualifications), breaks them down into subcategories and assigns a total point value to each. The evaluator is asked to assign points in each category up to the total number of points available.

Along with the Quality Assurance Documentation Survey, the evaluators were to use the "Child Development Quality Assurance Standards". (Record, p. 345). This document sets out the standards, policies, and philosophies that each provider is expected to meet for each aspect of child care. For example, the following is listed as the first goal and assigned 20 possible points:

A. Staff shall interact frequently with children. Staff shall express respect for and affection toward children by smiling, touching, holding, and speaking to children at their eye level throughout the day.

Criteria for Compliance:

Children are treated impartially by staff.

Staff are relaxed with the children when touching, talking with, and approaching them.

(Record, p. 348). The on-site review team were to observe each employee with respect to how well he or she met the above criteria and assign an overall point value up to 20 for that particular day-care center.

Two agencies submitted proposals in response to the Request For Proposals: CCDC, directed by Mr. Amidu Nallo and Concern Parents, directed by Ms. Dorethea Bowens. CCDC under the direction of Mr. Nallo has been in operation for 8 years and has unsuccessfully bid on the contract in question several times in the past.

Concern Parents is a new corporation formed specifically for the purpose of obtaining this contract. It consists of the same persons who formerly provided day-care under this contract under the auspices of Horry County Council. The Council apparently determined that it no longer wished to supervise and provide day-care pursuant to the HHS program. The former employees, parents and "friends of children" decided to bid for the contract in order to continue the service. Horry County Council is not connected with Concern Parents.

Because Concern Parents as an entity had no program currently in operation, HHS visited the Horry County program then in operation to obtain on-site review scores. Mr. Coffey testified that, for a number of years, it has been the policy of

HHS to credit a new entity with a prior entity's experience if the new entity retains essentially the same staff personnel. Mr. Coffey stated that this policy allows a new entity to be evaluated using current scores generated from the inspection of the former entity.

When the evaluation of the panel was complete, the scores were as follows:

	<u>CCDC</u>	<u>Concern Parents</u>
Evaluator 1	58.10	87.99
Evaluator 2	69.55	91.41
Evaluator 3	60.94	85.03
	_____	_____
TOTAL	188.59	264.43 (out of 300)

The on-site review score incorporated in the above were 11.05 for CCDC and 21.54 for Concern Parents out of 25 total points.

Based on its evaluation, HHS announced its intention to award the contract to Concern Parents.

ISSUES

CCDC protests on two grounds. First, it claims that it was improper for HHS to evaluate Concern Parents using the Horry County Council Program. CCDC contends that the experience of the Horry County program cannot be transferred because of the absence of Horry County Council in the new entity and the lack of evidence that the same staff personnel will be involved.

The Request for Proposals contemplates that prior experience can be used by requiring, "if not currently operating a program

providing child development services, describe specifically any experience which is related to this service." (Record, p. 297). Further, Mr. Coffey testified that it is HHS' long-standing policy to rate a new entity with the same staff personnel by reviewing the former entity.

The Panel finds that, as long as a new entity has the same key staff personnel, it is not unreasonable to measure future performance by observing the current performance of the former entity. Indeed, it gives a truer picture than treating the new entity as having no experience at all.

The Proposal submitted by Concern Parents lists the same staff personnel as are currently employed in the Horry County Council program. CCDC offers no evidence that this listing isn't genuine. The Panel finds that HHS properly considered the experience of the Horry County Program in evaluating Concern Parents.

Second, CCDC argues that one of the reasons it scored low on the Quality Assurance Document Summary and the final evaluation sheet is that it is being operated at odds with the general philosophy of HHS. CCDC contends that agreeing with this philosophy is not one of the state criteria.

The Request for Proposals requires the contractor to "comply with all the requirements of a comprehensive child development program as specified in the Child Development Quality Assurance Standards." (Record, p. 288). Those standards mandate that curriculum be tailored to the children's differences in rates of

learning. CCDC admits that, at the time of review, its program was operated differently from this philosophy.

This same problem apparently existed in 1986 when CCDC appeared before the Panel protesting the award of this same contract for that year. In Case No. 1986-10, In Re: Protest of Conway Child Care, Inc., CCDC (under the name "Conway Child Care") attacked the inclusion of the Quality Assurance Standards as criteria. The Panel found, "although CCC seems to differ with the [quality assurance standards] as to its philosophy or approach toward child care, the [standard] was properly used as part of the evaluation process."

In a Request for Proposals the evaluation factors (only one of which is price) and their relative importance are set forth in the bid documents. "No other factors or criteria shall be used in evaluation and there shall be adherence to any weightings specified for each factor in the request for proposals." S.C. Code Ann. 11-35-1530 (1976).

The Panel finds that the Quality Assurance Standards were properly referenced in the Request for Proposal, were properly included as part of the evaluation process and were properly applied by HHS to CCDC. The Panel notes that CCDC should have been aware of the Quality Assurance Standards when the Request for Proposals was issued on June 3, 1988 and any protest of their being included in the criteria for this procurement not made within ten days from that date is untimely.

CCDC points to several other areas in which it claims it was underrated. In particular, CCDC spent a good part of its case

discussing the letters from landlords confirming the availability of space for day-care. (Record, pp. 202, 205, 208, and 211). CCDC claims that all the letters, which are found in Concern Parents' proposal, apply equally to CCDC and it should not have received reduced scores for lacking the letters. (Record, pp. 221-222, 224, 226-227).

The Panel finds that all the letters were submitted by Concern Parent as part of their proposal and were not in HHS' prior possession. If CCDC intended to rely on these letters it should have included them in its proposal or at least somehow referenced them. In any event, it appears to the Panel that only the letter from the Mayor of Loris applies equally to CCDC. (Record, pg. 208). The total number of points deducted because of the absence of a Loris letter would not have changed the outcome in this case and, assuming HHS should have given CCDC credit for the Loris letter, the error was harmless. The rest of the issues raised by CCDC are without merit.

For the reasons stated above, the Panel affirms the August 26, 1988 decision of the CPO.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: ~~_____~~

Hugh K. Leatherman, Sr.
Chairman

October 12, 1988
Columbia, South Carolina