

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

BEFORE THE SOUTH CAROLINA  
PROCUREMENT REVIEW PANEL  
CASE NO. 1988-17

IN RE: PROTEST OF PRACTORCARE, )  
INC. )  
\_\_\_\_\_ )

O R D E R

This case came before the South Carolina Procurement Review Panel ("the Panel") for review on December 14, 1988, on the protest by Practorcare, Inc., of the award of a contract to provide software for a food management and nutritional analysis system for the Department of Mental Health ("DMH").

Present before the Panel were DMH represented by its General Counsel Kennerly McLendon, Esq., and the Division of General Services, represented by its General Counsel Wayne Rush, Esq. The protestant Practorcare, Inc., submitted its case on the affidavit of Panayotis Economopoulos, Ph.D., and the record. DMH and General Services made brief opening statements to the Panel and submitted their cases on the record. The Panel on its own initiative interviewed as witnesses the Chief Procurement Officer, Ron Moore, and the four DMH employees who evaluated the proposals submitted by the Protestant and other vendors on this procurement.

FINDING OF FACTS

Considering the affidavit of Mr. Economopoulos, the record on appeal and the testimony of the witnesses, the Panel makes the following findings of fact. On July 28, 1988, MMO issued a Request for Proposals to provide software

for a food management and nutritional analysis system for DMH. As one of its requirements, the RFP stated:

VIII. SUPPORT

DMH anticipates that the vendor will provide support for the software should a problem occur. Specify the following information:

1. Who DMH would contact if a problem is encountered or questions are raised. Specify the position of the contact within the vendor organization and the location of the office which would service DMH.
2. Would a toll-free phone number be provided for support.
3. Describe the time period that could elapse before a response is received from the vendor after a problem has been reported.
4. Describe the procedure to be followed to correct an identified problem. Specify any applicable cost incurred by DMH for the support by the vendor.
5. Specify the location of the vendor office which would provide support to DMH.

(Record, p. 39). In its proposal Practorcare responded with all the information requested. (Record, p. 90-91).

A cost sheet for each site was to be included in each proposal. The cost sheet listed eleven categories with blanks for Years 1 through 5. Category 10 of the cost sheet is captioned, "Support". Practorcare listed a total cost of \$28,500.00 for support at DMH for five years. (Record, pp. 85).

Practorcare's total proposal cost came to \$127,600 including the cost of on-site support. The proposal which was accepted, Computrition, came to \$111,115. There were two other proposals submitted.

On August 22, 1988, the proposals were opened publicly but the bid amounts were not made public. After the proposals were opened, MMO determined responsiveness and responsibility. The proposals were then turned over to four evaluators. The evaluators gave Practorcare 383.8 out of 400 possible points. Computrition received 390 of 400 points.

Three of the four evaluators stated that they scored Practorcare higher than Computrition in the support category. David Poster testified that he ranked Practorcare's support superior because Practorcare indicated that it would provide on-site support. Mr. Poster stated that he would rank Practorcare equal with Computrition without the on-site support. Evelyn Moose testified that she ranked Practorcare superior because of the on-site support and because Practorcare's service staff is closer to Columbia than Computrition's. Finally, Robert Bowers testified that he ranked Practorcare higher in the support category because of geographic location. James Boggs testified that he considered Practorcare and Computrition equal in the support area.

On October 5, 1988, MMO issued the Intent to Award to Computrition. On October 6, Practorcare wrote to MMO requesting information on which specifications Practorcare failed to meet. Practorcare summarized its on-site support and training system, stated that the on-site support was optional and offered to reduce its proposal cost by \$22,000 to \$105,600 if on-site support was excluded. Practorcare finally requested that it and

the other offerers be allowed to demonstrate their system. (Record, pp. 17-18).

On October 14, MMO responded to Practorcare that Practorcare had met all technical specifications and that Practorcare could not after opening reduce its proposal cost to exclude on-site support. MMO also explained that no system demonstration was required by the RFP and that none would be allowed after the Intent to Award had been issued. (Record, pp. 14-15).

On October 17, Practorcare again wrote MMO seeking to support its position that "the committee miscalculated the total cost of [its] proposal . . . by including the optional on-site support . . . ." (Record, p. 12) Practorcare stated in conclusion that "We priced category 10 separately as an option in case you wanted on-site support. We should not be penalized for attempting to offer you more service." (Record, p. 13).

On October 21, Practorcare formally protested the award to Computrition giving as grounds that its price was the lowest because category 10 was optional and that the evaluators failed to consider that Practorcare's expenses for training were less than Computrition's because Practorcare's office is closer to Columbia.<sup>1</sup>

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1. Although not raised by the parties, it appears that Practorcare's protest to the CPO may have been untimely. The October 6 letter, written one day after the Notice of Intent to Award, indicates that Practorcare was aware that its failure to get the contract was related to the "optional" support cost. Practorcare did not protest until October 21, 14 days after that letter and 15 days after Notice of Intent to Award.

The CPO decided the case without a hearing based on the documents in his possession. The CPO found that Practorcare did not specify that on-site support was optional and could not alter its proposal after opening and that no error had been made by the evaluators in calculating support costs.

#### CONCLUSIONS OF LAW

On appeal to the CPO, Practorcare claimed that the evaluators should have realized that its on-site support costs were optional. The CPO found and the Panel concurs that Practorcare nowhere indicated in its proposal that the support cost was optional - that DMH could reduce the total cost by \$22,000 at its option.

In In Re: Protest of CNC Company, Case No. 1988-5, the Panel found that the failure of CNC to fill in installation charges and total bid charges in the appropriate blanks on the bid form rendered it unresponsive. CNC argued that installation charges were included in its unit and total unit price charges and that a simple calculation of the unit prices would have revealed the total bid price. The Panel noted, "General Services could not assume that CNC's bid was the total of total unit price and it could not contact CNC after the bids were opened for clarification. To do so would have been patently unfair to the other bidders . . . ."

Likewise in this case, DMH could not in fairness to the other bidders simply assume that a portion of Practorcare's quoted cost was optional. Section 11-35-1510 provides:

Award must be made to the responsible offeror whose proposal is determined to be the most

advantageous to the State, taking into consideration price and the other evaluation factors set forth in the request for proposals. No other factors or criteria may be used in evaluation and there must be adherence to any weightings specified for each factor in the request for proposals.

The Procurement Code prohibited the evaluators in this case from considering any factor not listed in the Request for Proposals. The Panel finds that the evaluators acted properly in considering Practorcare's total cost as written.

On appeal to the Panel, Practorcare raises three issues. First, Practorcare claims that the support specification is ambiguous in that Practorcare could reasonably interpret "support" to mean only on-site support since training, maintenance, enhancement and upgrade were all listed as separate categories.<sup>2</sup>

The Panel has reviewed specification in question and can find nothing ambiguous therein. The specification neither specifically excludes nor includes on-site support. The CPO, Ron Moore, testified that on-site support was not necessary to insure success of the project but that vendors were always free to propose more than the Request For Proposals required. The Panel finds that, if a reasonable question existed in Practorcare's mind, it was incumbent on it to ask questions as is provided in the Request For Proposals at paragraph 1.1.5. (Record, p. 57).

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2. This argument seems inconsistent with Practorcare's argument to the CPO that it intended on-site support to be optional all along.

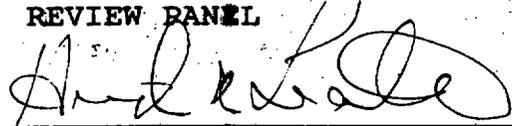
Practorcare's second argument is that the evaluators failed to consider that Practorcare's training expenses were less than Computrition because its office is closer to Columbia. There is no evidence in the record to indicate whether or not the evaluators considered location in the training category. Further the Request For Proposals does not require that location be considered in the training category. The Panel finds that the evaluators properly considered Practorcare's proposal in the training category.

Finally Practorcare argues that its proposal met all the requirements of the Request For Proposal and cannot be disqualified for that reason. The evidence before the Panel plainly shows that Practorcare's proposal did in fact meet the specifications and was in fact fully considered by DMH. Practorcare's proposal was not disqualified as is suggested by Practorcare. The Panel find no merit in Practorcare's third argument.

For the reasons stated above, the Panel affirms the November 3, 1988 decision of the CPO and orders that the protest of Practorcare be dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL



Hugh K. Leatherman, Sr.  
Chairman

Columbia, S. C.

12.21, 1988