

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1989-24

IN RE:)
PROTEST OF TRI-COUNTY CITIZENS AGAINST) O R D E R
SEXUAL ASSAULT)
_____)

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on February 8, 1990, on the appeal by Tri-County Citizens Against Sexual Assault ("CASA") of a decision by the Chief Procurement Officer ("CPO") dismissing CASA's protest.

Present at the hearing before the Panel were CASA, represented by John F. Shuler, Esq.; the Department of Health & Environmental Control ("DHEC), represented by Elizabeth Partlow, Esq.; and the Division of General Services, represented by Helen T. Zeigler, Esquire.

FINDINGS OF FACT

On July 6, 1989, State Procurement issued a Request for Proposals ("RFP") on behalf of DHEC in an effort to distribute funds appropriated by the General Assembly for rape counselling and prevention services across the state.

DHEC accepted proposals from at least sixteen offerors and judged them on the following criteria:

	<u>POINTS</u>
A. Scope and Quality of Service Offered	30
B. Need (based on # of victims served or lack of service in area)	25
C. Broad-based Community Support	20
D. Documentation of Eligibility and Completeness of Proposal Information	15
E. Cost	10

100

The evaluation panel, consisting of two DHEC employees, one representative of the Governor's office and one representative of the South Carolina Chapter of the National Association of Social Workers, reviewed each proposal independently and scored it. The evaluators then met as a group and discussed each proposal's merits as to each criteria. The two DHEC committee members then reviewed the committee evaluations and assigned each proposal a final score. Ms. Teresa Gjennestad, a coordinator for DHEC's Office of Primary Care, who sat on the evaluation committee, testified that she and her superior Thomas McGee, who also sat on the committee, decided that the fairest method of scoring would be to discard the highest and lowest scores and average the remaining two. According to Ms. Gjennestad, she and Mr. McGee felt that discarding the two extreme scores would counter any bias that might have entered an evaluator's scoring.

Using this method, CASA's proposal was awarded a score of 62, which placed it third from the bottom on the list of proposers. A Notice of Intent to Award was issued on November 3, indicating that fourteen rape crisis centers were to be awarded various amounts.¹ CASA was awarded

¹The other two centers were removed from the RFP process and were to receive funding through another procurement mechanism. See In re: Protest of YWCA of the Upper Lowlands, Inc., Case No. 1989-23.

\$30,451, which is approximately half of the amount it requested.

CASA timely protested the evaluation process, basing its protest on the alleged "inequitable distribution of the available funds." The CPO examined the various sub-issues raised by CASA under this ground and found them to be without merit. CASA appeals this decision of the CPO to the Panel.

CONCLUSIONS OF LAW

As its first issue of protest CASA alleges that DHEC should not have awarded money to new rape counselling programs because the General Assembly intended the increased funding it appropriated to cover the shortfalls of existing centers like CASA rather than to encourage development of new ones. As evidence of its first grounds, CASA offered the testimony of its director, Ms. Gilda Cobb Hunter, that prior to the appropriation of the funds in question, CASA and members of other organizations met with various legislators about the need to bring existing programs up to an equal footing across the State in terms of staffing and employee benefits.

CASA also points to the letter from Senator John Matthews indicating that his memory of the Legislature's intent, after discussion with some of his colleagues, is that the Senate provided increased funding to enhance services provided by existing programs and to bring them all up to equal footing in terms of staffing. (Record, p. 69).

Finally, CASA sought to introduce the statement of Senator Herbert U. Fielding, whose recollection of the intent of the increased funding is similar to Senator Matthews'.

The Panel does not believe that the issue of legislative intent is a procurement issue over which it has jurisdiction. The Panel's duty is to review expenditures of state funds to assure that they are in accordance with the procedures and rules set forth in the Procurement Code and the terms set forth in the solicitation documents. It is not within the Panel's authority to determine what the intent of the General Assembly was in appropriating the funds for such expenditures.

CASA's second complaint is that the evaluation committee was arbitrary and biased in its evaluation of the proposals. As evidence of this grounds, CASA cites several examples. First, CASA claims that, although criteria B, worth 25 points, is "Need Based on Number of Victims Served or Lack of Community Services for Sexual Assault," the ultimate awards indicate that this factor was not consistently applied. CASA cites its own analysis at page 23 of the record which indicates, for instance, that Waccamaw served 72 victims and received \$35,147, while Columbia served 352 victims and received \$32,000. (Record, p. 23).

The Panel does not agree with CASA that this evidence indicates arbitrary or biased conduct on DHEC's part. "Need Based on Number of Victims Served" is the first part of

criteria B. The second part is "or Lack of Community Services for Sexual Assault." It is entirely possible that some of the disparity between number of victims served and ultimate funding noted in CASA's analysis is due to the application of this factor. Also, there are four other criteria which affected the award given each center.

As evidence that the committee was arbitrary in its evaluations, CASA also alleges that the committee never reached a consensus on how to assign a final score to each proposal. Ms. Gjennestad and another committee member, Ms. Majorie Hammock, testified that only the two DHEC committee members chose the method used to assign a final score. The Panel does not believe that a lack of consensus on scoring indicates arbitrariness in this case. The CPO in his order demonstrates that there is very little difference between the final score of proposals as assigned under DHEC's method in this case and the final score as it would have been if all four scores had been used. (Record, pp. 3-4). In either case, CASA's proposal ranked third from the bottom.

Even though the Panel finds that DHEC's scoring method did not invalidate the results in this case, the Panel cautions against future use of such a method. The method used here in effect eliminated half of the evaluation committee from the process. Each evaluator is presumably chosen for his or her experience and judgment. Once chosen, an evaluator should be allowed to have that experience and judgment enter into the procurement process. If the

evaluators are carefully chosen at the outset there should be no concern for eliminating bias.

As further evidence of arbitrariness, CASA claims that the evaluation committee should not have deducted points under Criteria B, "Number of Victims Served or Lack of Community Services for Sexual Assault", for CASA's lack of a volunteer training manual. The score sheets do not indicate that CASA was penalized under criteria B for lack of a manual. (Record, pp. 81-83 and 85). CASA's failure to have a manual was reflected on several of the evaluators' score sheets with points apparently taken off by at least one of the evaluators under section D - Documentation.

The Panel does not believe that deducting points under criteria D indicates arbitrary action on the evaluators' part. Award criteria D was "completeness of proposal information". The manual was required to be attached as item 12 of the offeror's proposal. (Record, p. 52). The absence of a manual clearly went to this criteria. (Record, p. 33).²

²CASA cites Part III of the RFP, which states "Rape Crisis centers or agencies must meet and provide the following documentation and service performance at the time of submitting proposals or proposals must reflect plans to meet these criteria." (emphasis added) (Record, p. 31). CASA indicated in its proposal that a manual was being developed. (Record, p. 141). CASA's reliance on Part III is misplaced. The list of "following documentation" which the offeror can plan to meet does not include the Volunteer Training Manual. (Record, p. 31).

Finally, CASA argues that the evaluators improperly judged the information CASA submitted concerning uncompensated volunteer hours. CASA submitted the information that its volunteers offered 43,290 unpaid hours of time per year in response to the request for information concerning in-kind contributions. (Record, p. 109). At least one evaluator used this information to question CASA's need for 1.5 additional staff members. (Record, p. 84). In its protest letter to the Panel, CASA states that the 43,290 figure is a typographical error (the correct figure is 4329) and argues that the evaluators should not have considered this information to determine staffing needs.

The Panel finds that it was proper for an evaluator to consider the number of volunteer hours reported by CASA for purposes other than CASA intended. Once an offeror submits information with its proposal, that information is presumed accurate (unless timely and lawfully corrected) and may be used in evaluating the proposal in whatever way the information is relevant to the stated criteria.

As its third and final issue, CASA claims that the award to Anderson center violates the terms of the RFP because Anderson did not submit its proposal until after the time required.³ The RFP states: "State law requires that a

³ The CPO found this ground of CASA's complaint untimely because the director of CASA testified that she overheard some DHEC officials discussing Anderson's award
(Footnote Continued)

copy of the proposal be submitted no later than the date and time specified in the proposal. . . .Any proposals received after the scheduled opening date and time will be immediately disqualified in accordance with the S.C. Consolidated Procurement Code and Regulations." (Record, p. 37). It is undisputed that Anderson's proposal did not arrive on time and was nevertheless considered by DHEC.

DHEC points to the language of the RFP which provides, "The State reserves the right to add qualified vendors during the term of the contract." (Record, p. 34). CASA claims this language cannot be used to support Anderson's award since the "term of the contract" is October 1, 1989 through June 30, 1990. (Record, p. 33) Anderson's proposal was submitted shortly before the term of the contract began.

The Panel finds that the award to Anderson in this case did technically violate the terms of the RFP. However, the effect of the violation does not warrant resolicitation and reaward. The intent of this procurement is to distribute funds to serve victims of sexual assault in all parts of the State. Therefore, unlike the usual procurement, this is a multi-award situation in which every offeror receives some money. If the Panel were to hold the \$8526 award to

(Footnote Continued)

more than ten days before CASA filed its protest on this issue. CASA claims that it could not act on unfounded rumor but properly waited until it received official notice of who had been awarded the contract. The Panel agrees that CASA was not required to act on rumors or conversations it overheard.

Anderson invalid, there would be no easy way to redistribute the money. CASA is not automatically entitled to all or any of it.⁴ Finally, if the Panel revokes Anderson's award and gives the funds back to DHEC for redistribution, under the terms of the RFP, DHEC would now be within its rights to add Anderson to the contract and award the funds right back to it.

The Panel finds that, although the State erred in accepting Anderson's proposal when it did, the error in this case is not significant enough to warrant invalidating the process.

For the reasons stated above, the Panel affirms the December 11, 1989, decision of the CPO and hereby dismisses the protest of Tri-County Citizens Against Sexual Assault.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



HUGH K. LEATHERMAN, SR.
CHAIRMAN

February 12, 1990
Columbia, South Carolina

⁴Indeed, CASA's director, Ms. Gilda Cobb Hunter, testified that it was not CASA's desire to take Anderson's award away.