STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	BEFORE THE SOUTH CAROLINA PROCUREMENT REVIEW PANEL Case No. 1990-13

IN RE:

PROTEST OF CATHCART AND ASSOCIATES, INC. — O R D E R

This case came before the South Carolina Procurement Review Panel for hearing on October 30 and December 3, 1990, on the appeal by Cathcart and Associates, Inc. ("Cathcart") of a decision by the Chief Procurement Officer ("CPO") upholding the award to PHP Healthcare Corporation ("PHP") of a contract to provide nursing home management services to the Richard Michael Campbell Veteran's Nursing Home in Anderson, South Carolina.[1]

Present at the hearing were Cathcart, represented by Michael R. Daniel, Esq. and Pamella A. Seay, Esq.; PHP, represented by William Hubbard, Esq. and John Schmidt, Esq.; the Department of Mental Health, represented by William H. Davidson, II, Esq., and Leslie Moore, Esq.; and the Division of General Services, represented by Helen Zeigler, Esquire.

FINDING OF FACTS

On February 20, 1990, State Procurement solicited proposals to provide management and operation services for a 220-bed veteran's nursing home in Anderson, South Carolina, called the Richard Michael Campbell Veterans' Nursing Home.

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[1]Another vendor, Health Management Services, Inc., also protested the award to PHP. See In re: Protest of Health Management Services, Inc., Case No. 1990-14.

(Record, p. 81). The facility falls under the responsibility of the South Carolina Department of Mental Health.

The Request for Proposals ("RFP") listed the selection criteria in order of importance, as follows:

> Experience - (35 points maximum) -
>
> (a) experience of corporate management in community long term care, specifically ownership and/or operation of community intermediate and skilled nursing care facilities;
>
> (b) quality of services provided as determined by references, on-site visits, and recent licensure and certification surveys; and
>
> (c) history of successful contracting with government agencies for managing this type of facility.
>
> Quality of Response - (26 points maximum) -
>
> (a) Contractor's understanding of the project; and
>
> (b) The quality and comprehensiveness of Offeror's plan.
>
> Price - (24 points maximum)
>
> Corporate Financial Stability - (10 points maximum) - financial stability, resources and ability to manage a project of this size.
>
> References - (5 points maximum)

(Record, p. 104).

The price criteria was applied objectively using the ratio formula approved by the Panel in In re: Protest of Polaroid Corporation, Case No. 1988-12, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 515.

(Record, pp. 455-460). The proposals were evaluated on the remaining criteria by a five-member evaluation committee. A different three-member committee visited and evaluated two facilities, which were to be listed by each offeror in its proposal.

The results of both committee evaluations are as follows:

Evaluator	Offeror			
	PHP	Diversified	Cathcart	HMS
Sheilda Friendly	68.38	65.08	57.43	56.96
Carolyn Egbert	92.89	70.97	56.00	58.96
Paul Eleazor	77.89	67.97	67.00	63.96
Kennerly McLendon	86.89	71.97	67.00	50.96
John Bourne	84.69	74.57	58.60	53.36
	410.74	350.56	306.03	284.20
Site visit	102.25	90.75	73.25	78.50
TOTAL	512.99	441.31	379.28	362.70

(Record, p. 433). The highest possible score any offeror could receive was 666 points.

Based on the evaluation results, a Notice of Intent to Award to PHP, a Virginia corporation, was issued on July 16, 1990. The Notice of Intent was rescinded on July 31, as a result of Cathcart's and other protests.

Cathcart protested the award to PHP by letters of July 23 (Record, p. 72), August 3 (Record, p. 60), August 17 (Record, p. 19), August 21 (Record, p. 22) and August 23, 1990 (Record, p. 13). In two decisions dated August 24 and August 29, the Chief Procurement Officer found in favor of the State and PHP and dismissed Cathcart's protests. Cathcart appealed the CPO's decision to the Panel by letter

dated August 30, 1990, raising eight issues. (Record, p. 2). Cathcart also included in its appeal letter a motion on behalf of Service Management, Inc., ("SMI") to be admitted as a party-protestant to this action. (Record, p. 4).

Seven of Cathcart's issues were disposed of at the outset of the hearing or at the conclusion of Cathcart's case. One issue was decided on the merits at the conclusion of the hearing. The Panel discusses its decision as to SMI's motion and each of Cathcart's grounds in detail below. The grounds are referenced by the same number as in Cathcart's appeal letter. (Record, p. 2).

CONCLUSIONS OF LAW

Motion to Admit SMI, Inc., as a Party-Protestant

Service Management, Inc., ("SMI"), an affiliate of Cathcart, moved to intervene in this proceedings on the grounds that it was an offeror and has an interest in the outcome of this case. SMI argues that, considering the proposal of Cathcart, beginning on page 323 of the record, as a whole, it is clear that SMI was offering services to the State and intended to be bound to the State if Cathcart received award of this contract. SMI points to the inclusion of both Cathcart and SMI's Federal Employee Identification Numbers (Record, p. 326), the statement that SMI and Cathcart intend to fully comply with the prohibition of gratuities section (Record, p. 326), the statement in the Introduction that this proposal offerers the strength of two nursing home companies, SMI and Cathcart (Record, p. 327),

and the listing of SMI facilities (Record, p. 499) as evidence of SMI's intent to be an offeror in this case.

On the other hand, the Defendants point to the heading of the proposal ("CATHCART & ASSOCIATES, INC. PROPOSAL FOR RICHARD MICHAEL CAMPBELL NURSING HOME") (Record, pp. 323-369), the statement that "this proposal is intended to indicate acceptance by Cathcart and Associates, Inc. of all the requirements contained in the RFP" (Record, p. 326), the statement that, "Cathcart and Associates, Inc., will be the contractor for this project" and "Service Management, Inc., will provide support management services to Cathcart and Associates, Inc." (Record, p. 327), the organizational chart at page 370 in the record, which indicates that SMI will be bound only to Cathcart and not the Department of Mental Health, and the signature page of the proposal which also indicates Cathcart as the offeror (Panel's Ex. 4).

Weighing the evidence as a whole, the Panel is convinced that SMI was not an offeror in this procurement and did not intend to be bound to the State. The weight of the evidence suggests that SMI was to be a subcontractor providing support services to assist Cathcart in fulfilling its obligations if it received award of the contract. For that reason, the Panel finds that SMI lacks standing to intervene in this proceeding under §11-35-4210(1), which provides that only an offerer or prospective offeror can file a protest. See also, In re: Protest of ACMG, Inc., Case No. 1990-4.

Grounds of Appeal

1a. Improper Influence. The presence of Sheilda Friendly on the evaluation committee and Charles Gatch on the site committee created an unfair advantage for PHP, given the relationship of the two evaluators with PHP.

This issue came before the Panel on a motion for directed verdict. Construing the evidence presented by Cathcart in the light most favorable to it, Cathcart proved the following: Sheilda Friendly, a member of the proposal evaluation committee, is the facilities director for the Dowdy-Gardner Nursing Center in Rock Hill, South Carolina. The Dowdy-Gardner Center is managed by PHP under contract with the Department of Mental Health. Ms. Friendly is an employee of the Department of Mental Health. In her capacity as facilities director, Ms. Friendly visited the Dowdy-Gardner Center on three separate occasions from the time the proposal was issued until award was made. (Plaintiff's Ex. 4). No evaluators, other than the scheduled site evaluation team, made visits to Cathcart facilities during this time.

Regarding Mr. Gatch, Cathcart showed that Mr. Gatch was a member of the site evaluation panel and that Mr. Gatch was formerly the Director of the Dowdy-Gardner Nursing Center at a time when it was managed by PHP. One of the PHP facilities visited by the site evaluators was Dowdy-Gardner Center.

Cathcart produced no evidence that Ms. Friendly or Mr. Gatch had a financial interest in or relationship with PHP. Mr. Terry Cash, a co-owner of Cathcart, testified that

Cathcart had no evidence concerning what transpired at the visits Ms. Friendly made to Dowdy-Gardner during the time the RFP was issued and proposals were under consideration. The trip logs introduced by Cathcart indicate that the number of visits taken by Ms. Friendly to the Dowdy-Gardner facility during the time relevant to this procurement was not any greater or less than the number taken during comparable periods throughout the year. (Plaintiff's Ex. 4). Finally, none of Cathcart's witnesses could say whether Ms. Friendly or Mr. Gatch actually influenced, or attempted to influence, their fellow panel members in favor of PHP or were themselves biased in favor of PHP.

To the contrary, the objective evidence is that Ms. Friendly scored Cathcart higher than PHP in one category and the same in one category. Ms. Friendly also had the narrowest point spread among offerors of any evaluator at 11.42 points. (Other evaluators scores varied by as much as 30 points.) Further, all five evaluators scored PHP the highest and three of the other four evaluators ranked Cathcart third as did Ms. Friendly. Even if Ms. Friendly's score were deleted, there would be no change in the ranking of any of the offerors. (Record, pp. 435-454).

The Panel has previously found as a matter of law that an evaluation committee member's business relationship with one of the vendors being evaluated, which arises solely by reason of his or her state employment, does not by itself warrant the conclusion that the committee was tainted by

improper influence. See, In re: Protest of ACMG, Inc., Case No. 1990-4.

In this case, construing the evidence in a light most favorable to Cathcart, the Panel concludes that Cathcart has failed to support its claim that any improper influence was exerted by Ms. Friendly or Mr. Gatch which tainted the results of this procurement.

The first grounds of Cathcart's protest is hereby dismissed.

In light of the Panel's decision on this issue, the Defendant's motions to dismiss the first grounds of protest as untimely are moot.

1b. Improper Influence. The presence of Kennerly McLendon, General Counsel for the Department of Mental Health and evaluation committee member, as an attorney at the hearing before the CPO improperly influenced the outcome of the review hearing.

Cathcart accuses the Department of Mental Health of attempting to influence the outcome of the review hearing before the CPO by having its in-house attorney, who was also a member of the evaluation team, appear before the CPO.

The Panel dismissed this ground at the outset of the hearing. As a matter of law, the Panel determined that any alleged attempt to influence the CPO would be corrected or mooted by the de novo hearing to be held before the Panel. Ms. McLendon did not appear as an attorney for the Department before the Panel.

This grounds of protest is hereby dismissed.

2. Prior Knowledge. The running of a newspaper advertisement for key personnel positions on August 12,

1990, indicates that PHP had prior knowledge that it would receive the award of this contract.

On August 12, 1990, the following advertisement ran in the Anderson Independent-Mail:

MEDICAL OPPORTUNITIES

PHP HEALTHCARE CORPORATION, a leader in health-care management services, is actively recruiting for the following positions at the Richard M. Campbell War Veterans Home in Anderson, SC:

- PROJECT MANAGER (3 yrs. exp., 4 yr. degree: Nursing Home Admin. License)
- ACCOUNTANT (4 yr. degree Accounting or Business)
- DIRECTOR OF NURSING (BSN preferred)
- ADMIN. SECRETARIES
- EXECUTIVE HOUSEKEEPER
- BUILDING SUPERVISOR
- DIRECTOR OF PASTORAL CARE (Master's Degree-Seminary School)
- DIRECTOR OF SOCIAL SERVICES (MSW)
- ACTIVITY DIRECTOR (Certified)
- PHARMACY DIRECTOR (SC Licensed)
- FOOD SERVICE MANAGER (Food Service Supervisor's Certificate)
- DIETICIAN (Part Time)
- PHYSICAL THERAPY ASSISTANT (SC Licensed)
- CERTIFIED OCCUPATIONAL THERAPY ASSISTANT (SC Licensed)
- LAUNDRY WORKERS
- LEAD HOUSEKEEPER
- HOUSEKEEPERS
- MAINTENANCE ASSISTANT
- DRIVER (Valid SC driver's license)
- MEDICAL RECORDS DIRECTOR
- WARD CLERK
- COOK
- DIETARY SUPERVISORS
- DIETARY AIDES
- SALAD MAKER
- SECURITY GUARDS
- QA/INFECTION CONTROL RN
- NURSE SUPERVISORS
- STAFF RNs
- LPN
- CERTIFIED NURSING ASSISTANTS
- ACTIVITY THERAPISTS
- PHARMACY TECHNICIAN
- COSMETOLOGIST (SC Licensed)
- RECEPTIONIST

The Richard M. Campbell War Veterans Home will open officially on October 1, 1990.

PHP Healthcare Corporation offers excellent pay and benefits coupled with challenging work. If you are interested in one of these positions, please apply in person between 8:30 AM and 4 PM at:

South Carolina Employment Security Commission
309 West Whitner Street
Anderson, SC

NO PHONE CALLS PLEASE

PHP HEALTHCARE CORPORATION

An Equal Opportunity Employer M/F

(Plaintiff's Ex. 3).

Cathcart claims that this advertisement indicates that PHP had prior knowledge that that it would be awarded the

contract despite the ongoing protest of Cathcart. Cathcart's protest was heard on August 14, two days after the ad ran. Other than the fact that the ad was placed, Cathcart produced no other evidence to substantiate its claim of PHP's prior knowledge.

It is undisputed that, although offerors are required to state in their proposals the experience and qualifications of certain key personnel, no key personnel could be hired until after award with the approval of the Department of Mental Health. (Record, p. 89). It is also undisputed that the winning offeror was required to begin operation of the facility within 60 days of award on October 1, 1990 (Record, p. 85). PHP argues that the ad is evidence of its prudent business efforts to be prepared in case it was the ultimate winner of the contract.

Construing the evidence on this issue in a light most favorable to Cathcart, the Panel finds that Cathcart has failed to sustain its allegation that PHP had prior knowledge that it would be awarded the contract. The mere placing of an advertisement for personnel during the time a protest was pending does not in and of itself raise the inference that PHP was certain it would get the contract.

The second grounds of Cathcart's protest is hereby dismissed.

3. Nonresponsive Proposal. PHP has not selected key personnel and included information on their experience and qualifications as required by the RFP.

Part VI of the RFP, captioned, "Proposal Content", provides:

> Offerors must submit the following information in the order described and in the length and form where indicated (A page is one 8 1/2 x 11 sheet):
>
> * * *
>
> V. Offeror should submit experience and qualifications of the proposed Facility Director, Medical Director, Nursing Director and other key personnel. One page on each should be included.

(Record, p. 101).

Cathcart contends that the placing of the August 12th advertisement, set forth above, indicates that PHP had not selected its Project Manager and Director of Nursing by the time proposals were to be opened on April 19, 1990. Therefore, according to Cathcart, PHP could not have included information on their qualifications and experience as required by the RFP.

Mr. Cash also testified that Cathcart requested a copy of PHP's proposal pursuant to the Freedom of Information Act and did not receive any personnel information in response. Mr. Cash admitted that Cathcart had marked its personnel information confidential and that PHP may have done the same. Under §11-35-410 of the Consolidated Procurement Code, information so marked would not be released to competitors. Except for raising the issue in its protest, Cathcart never specifically asked whether the missing personnel information was included in PHP's proposal but marked confidential.

Because the Panel believed that this evidence, viewed in a light most favorable to Cathcart, raised a slight inference that the PHP's personnel information might not be included its proposal, the Panel denied the Department of Mental Health's motion for a directed verdict and took evidence from the defendants on this issue.

Mr. Charles H. Robbins, President and Chief Executive Officer of PHP, testified that he reviewed and signed PHP's proposal in this procurement and that he was familiar with it. Mr. Robbins stated that PHP had consulted and interviewed qualified persons for the positions of Medical Director, Director of Nursing, and Administrator and that the qualifications and experience of PHP's proposed candidates for these positions were included in its proposal submitted to the State on April 19, 1990. The interviews and discussions took place prior to April 19, 1990, and all persons proposed were properly licensed in South Carolina.

In addition, Mr. Thomas W. DeLoach, then State Procurement Officer in charge of this procurement, testified that he reviewed the proposals submitted by each offeror on April 19, 1990, and that PHP was responsive to every requirement of the RFP, including the requirement that the qualifications and experience of key personnel be stated.

The Panel concludes that Mr. Robbins and Mr. DeLoach's direct testimony that all of the required information was timely submitted with PHP's proposal outweighs the inference created by the placing of the August 12 advertisement. It

certainly outweighs the inference created by Mr. Cash's testimony that Cathcart requested PHP's entire proposal and did not receive the personnel information since Mr. Cash admitted that he did not know whether the information was there and simply not provided because it was marked confidential pursuant to §11-35-410.

The third grounds of PHP's protest is hereby dismissed. In light of the Panel's decision on this issue, the motions of the Defendants to dismiss this grounds as untimely is moot.

4. History of Contracting With the State. PHP and Cathcart both have contracts with the State and these contracts were not fairly considered by the evaluation committee.

Selection criteria A(3) provides:

> EXPERIENCE Each Offeror's experience will be evaluated in the following areas:
>
> * * *
>
> 3. History of successful contracting with government agencies for management of long term nursing care facilities.

(Record, p. 104). Cathcart was awarded between 13 and 21 of a total 35 points on the experience criteria. PHP received between 19 and 34 points on the same criteria. (See Plaintiff's Ex. 2).

Cathcart claims that the evaluation panel failed to consider or fairly compare its facility at Woodruff with PHP's facility at Dowdy-Gardner. Mr. Cash testified that Cathcart owns an 88-bed nursing home facility in Woodruff, South Carolina, that is under contract to the Department of

Mental Health. According to Mr. Cash, the Woodruff facility cares for patients discharged from Crafts-Farrow State Hospital at a rate of approximately $50 per patient per day.

Mr. Cash testified that PHP manages the 220-bed Dowdy-Gardner facility in Rock Hill under contract to the Department of Mental Health for the fee of approximately $95-$100 per patient per day. Mr. Cash believed that Dowdy-Gardner patients were transfers from other Mental Health facilities and were similar to Woodruff's patients. Mr. Cash admitted that he had never seen patient records for Dowdy-Gardner, that he did not know the average age or condition of the patients and that he did not know whether PHP's fee included Department of Mental Health overhead and other expenses.

Both facilities came into operation in 1987 but Dowdy-Gardner is a Department of Mental Health state facility and Woodruff is a private enterprise.

Taking this evidence in the light most favorable to the Plaintiff, the Panel concludes that Cathcart has failed to prove that it should have been ranked higher on the history of contracting with government criteria than PHP. Cathcart argues that its lower charge to the State compels the conclusion that Cathcart is superior in the history of government contracting category. However, Cathcart failed to prove that the two facilities were otherwise comparable. Cathcart had no specific knowledge of the type and condition of patients at Dowdy-Gardner or the quality of care rendered

by PHP. Cathcart had no information whether PHP's fee included charges not found in Cathcart's fee. In short, Cathcart made no showing that the Woodruff and Dowdy-Gardner facilities were comparable except for cost.

As a further sustaining grounds, the Panel notes that the history of contracting is only one of three elements of the experience criteria. Cathcart did not show that in fact it was graded lower on the third element. It only demonstrated that it received less points overall. The other factors in the experience category could have accounted for the difference in Cathcart's and PHP's overall scores on experience.

Cathcart's fourth ground is hereby dismissed.

5. Lack of Experience.

Subsection 2 of the experience criteria provided that offerors would be evaluated on "experience of corporate management in community long term care and specifically the ownership and/or operation of community intermediate and skilled nursing care facilities." (Record, p. 104).

As its fifth grounds, Cathcart claims that it has operated seven South Carolina nursing homes for fifteen years while PHP operates no nursing homes in South Carolina and only has five months' experience operating its only nursing home facility, which is located in Alabama. Cathcart argues that its superior experience in operating nursing homes was not reflected in the scores awarded it and PHP in the experience category.

Notwithstanding the claims of Cathcart, the evidence presented by Cathcart shows that Cathcart operates no nursing home facilities in South Carolina. Of the seven nursing homes listed in Cathcart's proposal, only one, the Woodruff facility, is owned by Cathcart and all are managed and operated by other entities, such as SMI.

Cathcart also concedes that PHP does in fact operate a nursing home facility in South Carolina, the Dowdy-Gardner facility in Rock Hill. At the time it filed its appeal to the Panel, Cathcart was under the impression that the Dowdy-Garner Center was a mental health facility and not a nursing home. Cathcart conceded its error during the hearing before the Panel.

The only other evidence presented by Cathcart on its experience concerned the alleged nursing home experience of its owners, totaling some 67 to 102 years.

Construing the evidence in a light most favorable to Cathcart, the Panel concludes that Cathcart has failed to prove that its scores in the experience category were not fair compared to PHP. Given that Cathcart operates no nursing homes and only owns one, the Panel cannot conclude that the committee unfairly evaluated it in the first area of the experience criteria.

As stated earlier, the experience category consisted of three elements of which nursing home management experience is one. Cathcart made no showing that its score in the nursing home management experience category was in fact

lower that PHP's. Cathcart only demonstrates that its overall experience score was lower.

Cathcart's fifth grounds of protest is hereby dismissed.

6. Site visits were not to comparable facilities.

Cathcart claims that the site evaluation committee chose to visit older Cathcart facilities, which were not comparable in size and reimbursement rate to the project in question. Cathcart argues, in contrast, that the PHP sites were newer and had a much higher patient reimbursement rate.

On this claim Cathcart presented evidence that the site evaluation committee visited its Camphaven and Berkeley facilities. Camphaven is a 176-bed facility located in Inman, South Carolina, and built in 1960. Berkeley is a 132-bed facility located in Berkeley County, South Carolina, and built in 1980. These are the oldest two facilities listed by Cathcart in its proposal.[2] Each operates at a per patient per day reimbursement rate of approximately $50.

The two PHP facilities chosen for a site visit were the 220-bed Dowdy-Gardner facility in Rock Hill and the five-month old 150-bed Alabama facility. Dowdy-Gardner operates at a reimbursement rate of approximately $100 per patient per day.

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[2]Neither of these facilities is actually owned or operated by Cathcart.

Mr. Cash admitted that he had never visited the Dowdy-Gardner Center or the Alabama facility and knew only general information about either. Mr. Cash did not know when the Dowdy-Gardner building was actually constructed. He only knew that the nursing home began operation in 1987.

Construing the evidence in a light most favorable to Cathcart, the Panel concludes that Cathcart has failed to prove that the facilities chosen by the site evaluators were not comparable for what was being judged. Even conceding that the Cathcart facilities visited[3] were older, somewhat smaller, and had a lower reimbursement rate than PHP's, Cathcart has not demonstrated that such differences were material to, or even affected, what was being judged by the site evaluators. Indeed, the only evidence presented by Cathcart on how offerors were being judged was the statement by one of the site evaluators to Mr. Cash, that he "could judge health care in a barn."

Cathcart's sixth grounds of protest is hereby dismissed. In light of the Panel's decision on this issue, the Defendants' motion to dismiss Cathcart's sixth grounds as untimely is moot.

7. Cathcart's response is most advantageous to the State because its price is lower and Cathcart is a South Carolina corporation.

The Panel finds as a matter of law that this grounds for relief fails to state a claim. Section 11-35-1530 of

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[3]See Footnote 2.

the Consolidated Procurement Code requires that award 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 request for proposals." The consideration of factors other than price is what distinguishes a Request for Proposals from an Invitation for Bids (11-35-1520). See In re: Protest of Polaroid Corporation, Case No. 1988-12, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 527.

In this case, proposals were to be judged on five criteria. The price component was the third most important and accounted for a maximum of 24 points out of hundred. Cathcart's lower price is not legally significant to warrant award of the contract in an RFP situation.

The Panel also finds Cathcart's argument that it is the most advantageous to the State because it is a South Carolina corporation while PHP is a Virginia corporation legally insufficient to state a claim. Nothing in the stated criteria or the law gives Cathcart automatic award of the contract by reason of its residency.

Cathcart's seventh grounds of protest is hereby dismissed.

8. Cathcart should have received a higher score than PHP on corporate financial stability.

Cathcart claims in its appeal letter that it should have received higher points than PHP on the corporate financial stability criteria because PHP's response shows an

equity of $8 Million compared to Cathcart's equity of $10 Million and PHP's financial report reflects numerous lawsuits against the company. (Record, p. 4).

In contrast, the undisputed evidence is that PHP had revenues of $70 Million in 1989, a pre-tax profit of $2.3 Million, net earnings of $1.4 Million, working capital of $3.5 Million and a net of total assets minus debt of $19 Million. (Record, p. 170).

Mr. Cash admitted that the revenue, pre-tax profit and net earnings figures for Cathcart were lower than PHP's. Mr. Cash testified that the working capital and total assets minus debts figures could not be compared because Cathcart is a Subchapter S corporation. It was also determined that no personal guarantees exist for Cathcart. There is only a statement in Cathcart's proposal that Cathcart's principals will give personal guarantees if needed. The financial merit of Cathcart's individual owners and related entities is not relevant to this RFP because those persons are not obligated to the State by the contract in this case.

Information included in the annual report indicates that several lawsuits were pending against PHP at the time it submitted its proposal. However, one of the lawsuits was settled, and PHP includes the opinion of legal counsel that the other suits are without merit or will not materially affect the company's position. (Record, p. 193). The Panel cannot say that the evaluation committee abused its discretion in considering these lawsuits in light of PHP's financial strength.

Construing the evidence in a light most favorable to Cathcart, the Panel finds that Cathcart has not supported its claim that it should have received higher points that PHP on corporate financial stability.

For the foregoing reasons, the Panel finds that the protest of Cathcart & Associates, Inc., should be dismissed and the award to PHP upheld.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

Glenn F. McConnell
Acting Chairman

Columbia, S. C.
Dec 4, 1990.