

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

BEFORE THE SOUTH CAROLINA  
PROCUREMENT REVIEW PANEL  
CASE NO. 1991-5

IN RE: )  
 )  
PROTEST OF INTREX, INC. )  
 )  
 )

O R D E R

This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on February 28, 1991, on the appeal of Intrex, Inc., of a decision by the Chief Procurement Officer to award to Currie Systems, Inc., a contract to supply the University of South Carolina ("USC") with tape cartridges.

FINDINGS OF FACTS

On November 26, 1990, the Information Technology Management Office issued an Invitation for Bids ("IFB") to procure IBM-compatible communications controllers, printers, cartridge tape drives, and disk drives to be installed at the Computer Services Division of USC. The portion of the bid in question is Lot 6, the solicitation of tape cartridges.

Section 6, Lot 6, Item 3 of section 6.1 of the specifications dealing with tape cartridges provides:

Cartridges must exhibit NO permanent errors after 6000 full-length passes.

(Record, p. 45). The IFB did not require a vendor to submit any proof, such as product manuals, specification sheets or brochures, that its product could meet the 6000 passes standard.

Intrex claims that the low bidder Currie Systems, Inc., bid a cartridge - the BASF 3480 - which does not meet the 6000 full length passes requirement. In support of its claim, Intrex introduced the testimony of Mike Spicer, the procurement officer in charge of this bid, Ron Moore, the Chief Procurement Officer for Information Technology, and Jim Revels, the Manager of computer operations for the Department of Social Services.

Mr. Spicer testified that the IFB in this case requires that the winning vendor supply tape cartridges which can complete 6000 passes (i.e., can be read 6000) without a permanent error. Mr. Spicer noted that the IFB does not require that a vendor submit proof that its product can meet this requirement. Mr. Spicer admitted that, if the IFB had required a product specifications sheet as proof, then the sheet would have to indicate that the product met all bid requirements.

Intrex then questioned Mr. Spicer regarding the BASF specifications sheet, which was voluntarily submitted by Currie with its bid. (Record, p. 172). This sheet indicates that the BASF 3480 can withstand only 400 long length passes without a temporary write error. As Mr. Spicer testified, however, the specification sheet addresses "temporary write errors" while the IFB requirement concerns

only permanent errors.<sup>1</sup> Mr. Spicer stated that he did not consider the BASF specifications sheet as part of Currie's bid since it was not asked for.

Mr. Moore testified that, in his January 30, 1991, decision below, he expressed some concern that the 6000 pass requirement in this case might be too restrictive. He also stated that he believed that any such performance requirement in future IFBs needs to be supported by proof from the vendor. Mr. Moore believes that a specifications sheet would not be adequate but that a statement of compliance from the vendor would.

Finally, Mr. Revels testified as an expert in the field of "archival" cartridge tape. Mr. Revels initially testified that, in his opinion, the BASF cartridge tape bid by Currie did not meet the 6000 pass requirement. Mr. Revels' requirement was based on the specifications sheet indicating that the BASF tape could endure 400 full length passes without a temporary error.

On cross-examination, Mr. Revels appeared to realize for the first time that the BASF specification concerned temporary rather than permanent errors as required by the IFB. Mr. Revels recanted his original testimony and stated that he could not say, based on the specification sheet,

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<sup>1</sup>A temporary error is one that allows the job to be recovered, that is, it is able to be corrected. A permanent error "wipes out" the job thus preventing it from being recovered.

whether the BASF tape could or could not meet the 6000 pass requirement.

Mr. Revels also testified that he could draw no conclusions about the BASF tape's ability to meet the 6000 pass requirement from the 400 temporary write error specification.

#### CONCLUSIONS OF LAW

At the conclusion of the Intrex's case, General Services moved to dismiss Intrex's protest on the grounds that Intrex failed to present evidence sufficient to prove its allegations that the BASF 3480 tape cartridge bid by Currie cannot meet the 6000 passes without a permanent error requirement. Examining the evidence in a light most favorable to Intrex, the Panel concludes, for the reasons set forth below, that Intrex has failed to meet its burden of proof in this case.

As summarized above, Intrex proved that Currie submitted a BASF 3480 specifications sheet with its bid even though such sheet was not required. Intrex also showed that BASF's own information indicated that the 3480 cartridge could undergo only 400 readings without a temporary write error. Further, Intrex demonstrated that the IFB in this case might have been deficient in not requiring verifiable proof by a vendor that its product could meet the 6000 passes specification.

Intrex was, however, unable to make the crucial link between temporary write errors and permanent errors. All of

Intrex's witnesses distinguished between temporary and permanent errors and all agreed that a significant difference exists. Intrex's own expert refused to draw any conclusions on the BASF 3840's ability to meet the IFB requirement based on its specifications sheet.

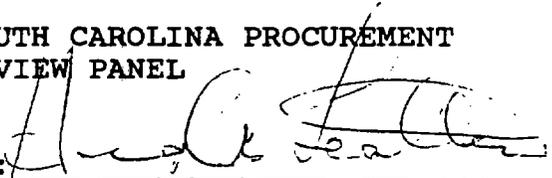
In contrast, the bid submitted by Currie contained signed affirmation of the statement, "By submission of a bid, you are guaranteeing that all goods and services meet the requirements of the solicitation during contract period." (Record, 162).

Intrex has not proven by the weight of the evidence that the BASF 3480 tape cartridge bid by Currie cannot meet the requirement of 6000 passes without a permanent error. Thus Intrex has failed to meet the burden of proof applicable to these kinds of cases set forth by the Panel in In re: Protest of Anacom, Inc., Case No. 1990-5.

For the reasons stated above, the Panel affirms the January 30, 1991, decision of the Chief Procurement Officer and hereby dismisses the protest of Intrex, Inc.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

By: 

Hugh K. Leatherman, Sr.  
Chairman

Columbia, S.C.  
3-19-91, 1991