STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND	)	CASE NO. 1993-16

In re:	)	
	)	
Protest of NBS Imaging Systems, Inc.;	)	**ORDER**
Appeal by NBS Imaging Systems, Inc.	)	
	)	

This case came before the South Carolina Procurement Review Panel (Panel) for hearing on August 23, 1993, on the appeal by NBS Imaging Systems, Inc. (NBS) of a decision by the Chief Procurement Officer (CPO) dismissing portions of NBS' protest as untimely and meritless.

Present and participating in the hearing before the Panel were NBS represented by Robert Coble, Esq. and David Summer, Esq.; Unisys Corporation (Unisys) represented by Elizabeth Crum, Esq., Steven Blaske, Esq. and Elizabeth Holderman, Esq.; the former Department of Highways and Public Transportation, now the Department of Transportation and the Department of Tax and Revenue, represented by Glennith Johnson, Esq.; and General Services represented by James Rion, Esq.

FINDINGS OF FACT

The State issued a Request For Proposal (RFP) on February 10, 1993, for a Digitized Imaging Driver's License System for the former SC Department of Highways and Public Transportation. Section 3.15 of the RFP states:

> Vendor must provide at least one (1) reference, and no more than three (3) references, from customers who have a comparable Imaging System at an operational site. (Record p. 99)

The State did not issue an Amendment #001 to the RFP. On February 10, 1993, Amendment #002 to the RFP was issued. Amendment #002 changes

the opening date from March 5, 1993 to March 12, 1993. Amendment #003 was issued on March 2, 1993 to answer the questions raised at the preproposal conference and change the opening date to March 25, 1993. Unisys posed the following question and the State answered in Amendment #003, which states:

> Due to the fact that these are relatively new capabilities, would the State redefine "(3) references, from customers who have a comparable Imaging System at an operational site" to "offeror must provide three (3) references for similar large integration solution projects".
>
> Answer: Vendor must provide at least one (1) reference, and no more than three (3) references, from firms who have a comparable Imaging System at an operational site. [Emphasis in original]
>
> (Record p. 141)

Amendment #004 was issued on March 8, 1993, and states:

> Regarding answer to question 16 of Amendment 003, for additional clarification "comparable imaging system" means an imaging system similar in nature to the one requested that the vendor has proposed and installed. (Record p. 149)

The State issued Amendment #005 on March 22, 1993 to change a specification in the RFP and change the opening date to April 1, 1993.

The State opened proposals on April 1, 1993, and after determining that the proposals were responsive, the noncost sections of the proposals were given to a committee of six evaluators to be independently evaluated. The RFP lists the award criteria, in order of importance, as follows:

> a. The proposed system design and the responsiveness to technical specifications.
> b. Cost
> c. Quality of the DL\ ID cards- based on the samples provided.

d. Vendor's technical and maintenance support capability.
e. Adaptability \ functionality of the system to current operating environment.

The evaluators were instructed by the State to evaluate each proposal against the RFP and not to evaluate a proposal against another proposal. The State evaluated the cost section of the proposal. The evaluators did not have the cost information when they evaluated the proposals. One committee member was given the responsibility to contact references. Once individual scoring was done, the evaluators met together as a committee. At the committee meeting, a sheet with the information about references was given to each evaluator.

Unisys received a total average score of 63.63 and NBS received 39.15 from all the evaluators for the noncost criteria of the RFP. The other two offerors received total average scores of 39.5 and 38.81. The cost evaluation, based on an objective mathematical formula, added 27.89 points to NBS' score, and 18.93 points to Unisys' score. NBS' total score for all criteria is 67.04 and Unisys' total score for all criteria is 82.56.

The intent to award to Unisys was issued on June 8, 1993, and suspended on June 22, 1993, pending protests filed with the CPO. NBS' protest letter to the CPO states, in part, "Unisys did not meet the RFP requirements for system design, technical specifications, technical support, and maintenance support". The CPO dismissed this issue as too vague.

CONCLUSIONS OF LAW

I. VAGUENESS OF NBS' PROTEST OF RFP SPECIFICATIONS

At the start of the hearing before the Panel, Unisys moved to have NBS' protest issue concerning the specifications of the RFP dismissed as vague. The

Panel reserved its ruling as to vagueness, but stated that the issues before the Panel concerned the reference issue and the arbitrary and capricious issue.

The Panel finds that the statement of NBS' issue on the specifications of the RFP is too vague to meet the requirements of SC Code Section 11-35-4210. NBS relies on In re: Protest of Megg Corporation of Greenville, Inc., Case No. 1992-9, which states that "so long as a protestant raises the general nature of its ground, the Panel believes that it is proper that the specifics of such grounds be developed before the CPO." The Megg case is distinguished from this case because the RFP and its requirements were much smaller in the Megg case. The larger the RFP and its requirements, the more specific a protestant will need to be to state its grievance and give notice of the issues of protest. The Panel held in In re: Protest by J&T Technology, Case No. 1987-3, "implicit under Section 11-35-4210 is the requirement that protestants state their grievance with enough specificity to put all parties on notice of the issues to be decided". NBS' protest concerning the RFP specifications states only broad areas of RFP requirements. In a procurement of this size, more specificity is required to indicate the protestant's grievance and to give notice of the issues raised.

II. UNISYS' RESPONSIVENESS TO REFERENCE REQUIREMENT

NBS alleges that Unisys "failed to provide a reference for a 'comparable Imaging System' in its proposal" as required by section 3.15 of the RFP. Amendment #004 defines comparable as a system "similar in nature" to the proposed system. The requirement for a comparable or similar system does not specify an identical system.

The Panel finds that Unisys' proposal meets the reference requirement in the RFP. Ms. Wicker, one of the evaluators, indicated that she determined Unisys' references to contain a comparable system by reading Unisys' description of the existing systems in its proposal. Ms. Stubbs, project manager

for the system being procured and an evaluator, testified that Unisys' references in Alabama and Florida involved a host with remote locations, which she feels is similar to the system being procured. She further testified that the Florida reference had a digitized registration card, which she felt was similar. Ms. Johnson, who has 21 years experience in procurement and was also an evaluator, testified that the distributed system for the digitized imaging as found in the RFP is relatively new to states and therefore the State did not expect references for the exact same system. Ms. Johnson further testified that the references provided by Unisys served the purpose of the reference requirement in the RFP by providing the information needed to evaluate Unisys' ability to provide the system being procured. The State is interested in fostering competition in procurement and therefore requested references for a comparable rather than an identical system. Unisys is not required to give a reference for the exact system being procured, but rather to give references which indicate that it has a similar system that is operational and not just in the planning or testing stages. The evidence shows that Unisys' references meet the requirement of the RFP.

III. ARBITRARY AND CAPRICIOUS EVALUATION

The Panel concludes that the evidence does not support NBS' contention that the proposals were evaluated arbitrarily and capriciously. NBS bases its arguments on the disparity between scores given Unisys and the other offerors, which it claims diluted the cost criteria, as well as the alleged reliance of the evaluators on the opinion of one evaluator, Mr. Collins.

The Panel finds NBS has failed to prove the evaluators arbitrarily and capriciously evaluated the proposals. Four of the six evaluators testified that they independently scored each proposal against the RFP. They each also testified that they did not change their scores after the committee meeting. No

evidence was presented to prove undue influence of one evaluator over the others. Ms. Wicker testified that she asked Mr. Collins a question about printers. The other evaluators testified that they did not recall asking any questions. The evaluation process allows the evaluators to bring questions from outside their expertise to ask of other evaluators during the committee meeting. The purpose in allowing questions is to give the evaluator a better understanding of what he or she is scoring. The Panel finds nothing inappropriate in the evaluators discussing technical aspects of the RFP at the committee meeting.

NBS cites In re: Protest of Systems & Methods, Inc., Case No. 1989-8, to show that the improper dilution of the cost criteria of a RFP is a proper ground for protest. The Panel agrees that an offeror may protest on these grounds, but finds that NBS has failed to prove an improper dilution of the cost criteria in this case. The Systems case is distinguished in that initial evaluation scores were determined, the cost factor was added in, and then additional oral presentations were evaluated, changing the evaluators scores. The evaluators and Mr. Spicer, executive manager at Information Technology Management Office, testified that the evaluators did not have the cost scores when they evaluated the proposals. Mr. Spicer added the cost scores. The evaluators did not change their scores for the noncost factors after the cost scores were added.

As the Panel has found previously, the variation of evaluators scores alone, is only proof of the subjective nature of the evaluation aspect of the RFP process. In re: Protest of Drew Industrial Division, Case No. 1993-14. NBS relies on the disparity in the higher scores given Unisys by each evaluator to show dilution of the cost criteria. A disparity in scores alone does not prove dilution of the cost criteria. The disparity between Unisys' scores and the other offerors can be explained as Unisys providing what the evaluators considered

the best solution for the State. The Panel will not substitute its judgment for that of the evaluators.

The RFP process allows the State to evaluate criteria other than cost in determining what is the best outcome for the State. The cost criteria is one of five criteria in the RFP. It is not inconceivable that a proposal could receive high enough scores on the other four criteria, to balance out a low score on the cost criteria. That is in fact what happened in this case. Cost dilution or arbitrariness is not proven because each evaluator scored one proposal higher than the others in the noncost criteria. This is particularly true because the evaluators did not know the scores for the cost criteria. The Panel finds that the evaluators independently evaluated the proposals and did not act arbitrarily or capriciously. The Panel further finds that the process used to evaluate the proposals, while not perfect, is not arbitrary and capricious.

For the foregoing reasons, the Panel upholds the decision of the CPO and dismisses NBS' protest as meritless.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

By: Gus J. Roberts, Chairman

Columbia, SC
September 1, 1993.