

however, in January 1993, significant discrepancies with the cartridges provided by Megg became apparent. Ms. Lemmon also testified that the overall defective rate for the cartridges was sixty-one percent (61%). Mr. Egan, president of Megg, testified that Megg's sources of cartridges dried up in seven months, which, he felt, was not Megg's fault. After explaining Megg's supply problem with USC and General Services, the parties agreed to terminate the contract. Mr. Egan also points out that Megg maintained service to USC three months after the contract was over, with the intent to satisfy its customer. Megg's contract for laser printer cartridges with USC was canceled effective March 31, 1993.

Megg was awarded a contract for computer repair/exchange service with Trident Technical College (TTC) in July 1993. Ms. Carol Belcher, TTC's director of purchasing and inventory control, testified that TTC began experiencing problems almost immediately in August 1993. Some problems TTC experienced are as follows: a high failure rate for repaired equipment and parts; equipment sent for repair exchanged for inferior equipment or equipment not from the specified manufacturer; problems getting information on parts sent for repair under warranty; serial numbers altered on equipment returned after repair. Mr. Egan testified that he was unsure why the TTC contract had so many problems, since Megg satisfactorily supplies similar services to other customers. Mr. Egan also testified that Megg clearly failed because its customer was not satisfied. On January 12, 1994, Ms. Belcher held a meeting with TTC's service technicians and Megg representatives to discuss the problems with the quality of Megg's service. Seven areas of needed improvement were discussed and TTC gave Megg forty-five (45) days to show improvement. TTC continued to have similar problems, so Megg's contract for computer exchange/repair service with TTC was canceled on February 28, 1994.

Megg was awarded a contract to provide hardware maintenance on Digital Equipment Corporation (DEC) manufactured equipment for the Public Service Commission (PSC) in June 1993. The contract required a response time from four (4) to twenty-four (24) hours for repair. Ms. Terry Morrison, PSC's manager of computer services, testified that PSC experienced numerous problems from the beginning of the contract. The problems included unavailable parts, equipment inoperable for days and weeks, Megg's service personnel not knowledgeable in repairing the equipment, items returned not completely repaired, and very old replacement parts. Once, a printer was taken from PSC for repair, and instead of returning the same printer, Megg, unknown to PSC, replaced it with a printer which was older. The error became apparent to PSC while checking serial numbers during a routine inventory check, and the correct printer was returned upon request. Megg also failed to pay refunds to PSC in a timely manner. Although Megg admitted the refunds were owed to PSC, it failed to pay PSC for several months. The contract for Megg to provide hardware maintenance and repair on DEC manufactured equipment for PSC was canceled on February 22, 1994.

On April 1, 1994, the Information Technology Management Office (ITMO) of the Office of General Services requested the CPO to debar Megg under S. C. Code Ann. Section 11-35-4220. By letter dated April 13, 1994, the CPO informed Megg and Mr. Egan, its principal, that they were debarred from doing business with the State for two years and informed Megg and Mr. Egan of the right to a hearing. (Record p. 27). Megg requested a hearing by letter dated April 18, 1994. (Record p. 26). The CPO conducted a hearing on May 13, 1994 and issued a decision May 20, 1994.

Mr. Egan testified that Megg does not put up a defense, but asks for an opportunity to show that Megg can provide quality goods and service as it has in

the past, and continues to do for other agencies. Mr. Egan also explains that the problems developed because of Megg's rapid growth and expansion. Megg grew from a work force of twenty (20) to a work force of fifty-seven (57), and expanded into ten (10) states, which took key people out of South Carolina. Mr. Egan further testified that Megg has changed policies and has taken steps to correct and avoid similar problems in the future. Megg submitted a copy of its new Standard Operating Policy for doing business with the State of South Carolina and Escalation Procedures. Megg requests probation rather than debarment.

CONCLUSIONS OF LAW

Debarment proceedings are provided in South Carolina Code Ann. Section 11-35-4220(1), as follows:

After reasonable notice to the person or firm involved, and a reasonable opportunity for such person or firm to be heard, the appropriate chief procurement officer shall have the authority to debar a person for cause from consideration for award of contracts, provided that doing so is in the best interest of the State and there is probable cause for debarment. The appropriate chief procurement officer may also suspend a person or firm from consideration for award of contracts during an investigation where there is probable cause for debarment. The period of debarment or suspension shall be as prescribed by the appropriate chief procurement officer.

The Panel finds that reasonable notice and opportunity to be heard was given to Mr. Egan and Megg. The evidence of Megg's performance reveals cause for debarring Mr. Egan and Megg from doing business with the State. It is in the best interest of the State to avoid problems such as were experienced by the agencies prior to cancellation of the contracts with Megg.

The debarment of Megg is pursued under South Carolina Code Ann. Section 1-35-4220(2)(d)(ii), which provides:

The causes for debarment or suspension shall include, but not be limited to, the following:

(d) violation of contract provisions, as set forth below, of a character which is regarded by the appropriate chief procurement officer to be so serious as to justify debarment action:

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

The evidence shows, and Megg admits, unsatisfactory performance by Megg under the terms of one or more recent contracts with the State. The evidence of the problems experienced by the agencies also reveal contract violations of a serious nature. For instance, a sixty-one percent (61%) defective rate for an item supplied under a state contract is unacceptable. Altered serial numbers on equipment returned after repair is a very serious problem, not only for inventory purposes, but also in the event equipment is recalled for safety hazards. Other evidence, such as failure to repair equipment for long lengths of time and failure to refund money owed are also unacceptable and serious violations. The Panel finds that clearly grounds for debarment exist.

Megg admits that it has made mistakes due to its rapid growth. However, Megg argues that the CPO's decision of debarment for three years is too severe, and asks for probation, rather than debarment. Megg points to the years of satisfactory service it has provided and continues to provide at reasonable cost to the State. Megg provided several letters from agencies satisfied and commending Megg's performance in the past and present.

The Panel finds that the Consolidated Procurement Code does not provide for a probationary period under the debarment process. The Panel would urge General Services and/or agencies to establish a procedure to facilitate working through problems with companies prior to bringing debarment proceedings which would be similar to a probationary period.

Megg's "mistakes" cost agencies time and resources spent on trying to deal with Megg's failure to perform satisfactorily, as well as, leading to the cancellation of contracts with state agencies, creating the need to find other sources for the canceled services and products. Because the State provides services to the public with public funds, it is important for contracts the State awards to be adhered to specifically. The satisfactory completion of contract terms by a company doing business with the State is also important because it can be a time consuming process for the State to initially obtain goods and services or replace canceled contracts under the procedures established in the Consolidated Procurement Code. Although the Panel understands that companies may experience problems during a growing spurt, it is the companies' responsibility to manage its resources in a way which will fulfill its contractual obligations.

Megg has clearly performed State contracts satisfactorily in the past, as well as currently performing some contracts to the satisfaction of the State. Megg certainly has the potential of performing contracts satisfactorily at the lowest cost available to the State in the future. Megg has stated its intent is to give the State the level of service that has gained it praise from its satisfied State customers, which is evidenced by Megg's implementation of procedures to better service its accounts with the State and avoid problems that caused it to lose the three canceled state contracts. Although the Panel believes Megg should have an opportunity to prove it has corrected the problems which caused

it to perform unsatisfactorily, the fact remains that Megg failed to perform under three contracts with the State over a period of a year to eighteen months. The Panel finds that, based on the facts and evidence of this case, John J. Egan, Jr. and the Megg Corporation of Greenville are debarred from consideration for award of contracts by the State for one year.

CONCLUSION

Based on the foregoing, the Panel finds that Mr. Egan and Megg are debarred from consideration for award of contracts by the State for one year to commence July 1, 1994 and end June 30, 1995. Megg may continue performing under current contracts with the State, including renewal of term contracts currently in place. The Panel upholds the decision of the CPO, as far as it is consistent with this opinion, to debar John J. Egan, Jr. and the Megg Corporation of Greenville.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 
Gus J. Roberts, Chairman

Columbia, SC

July 1, 1994.