

District for comment. Counsel for the District responded by letter of October 24, 1985. The School District continued its opposition to any award of attorney fees and raised certain factual questions as to the costs submitted by Sperry.

The Panel held a hearing on the matter on December 16, 1985, at which Sperry and the School District were represented by counsel. Counsel for the District reiterated its position as stated in the letter of October 24 but eschewed any cross-examination and placed its reliance on the Panel's examination of the petition for costs. At the hearing the Panel requested further documentation, specifically affidavits to support the time sheets filed earlier, stating the relationship of the activity on the time sheets to bid no. 8485-29. (Transcript of Proceedings 12/16/85, p. 10-12)

By letter of January 14, 1986, the Panel made further specific requests for authentication and explanation of Sperry's bid preparation costs as previously submitted. (See attachment) To date no response has been received.

FINDINGS OF FACT

- 1) The Panel has made numerous efforts to obtain sufficient information to determine the merits of Sperry's petition for attorney fees and bid preparation costs in this matter.
- 2) The information submitted to the Panel is insufficient to determine the award of bid preparation costs because it is conflicting and ambiguous.

- 3) Information requested has not been submitted to support the request for bid preparation costs.
- 4) Information has been submitted to support the request for attorney's fees in this protest.
- 5) The information submitted to determine attorney's fees is clear and concise. It relates to the tasks associated with this protest both in time and in subject matter.

CONCLUSIONS OF LAW

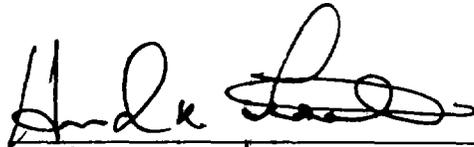
1) The Panel has the authority under §11-35-4210, S.C. Code Ann (1976) as amended to award "reimbursement of bid preparation costs and may order such other and further relief as justice dictates." Paddock Construction Co. v. U.S.C., Davis Adv. Sheets, p. 25, June 28, 1986, Court of Appeals.

2) The information in support of the request for bid preparation costs is so conflicting and ambiguous that it is impossible for the Panel to determine a cost to Sperry for the preparation of this bid. Acknowledging that a bidder does not usually keep records specific to a particular bid, the Panel must however require authentication and explanation beyond the mere assertion that all persons' - secretaries, middle managers, vice-presidents - time on the project is valued at the same rate. Further, the Panel must require allocation of an employee's time in a day to this project when the individual's time records clearly indicate involvement with individuals not part of this bid.

3) The fees charged are reasonable in this area of South Carolina for the experience of the attorney and the complexity of the issues involved. The issue of bias in the evaluation procedure is a novel issue in South Carolina. Counsel also argues a rule of statutory construction little used in this State.

4) In this case justice requires the award of attorney's fees because the protestant's willingness to pursue this case resulted in a ruling by the Panel on several issues of law not previously determined. Further, the determination of this case may provide an exemplar for other similarly situated aggrieved bidders.

IT IS THEREFORE ORDERED that Richland School District I reimburse Sperry Corporation \$7,893.64 for its attorney fees in this matter and that the remainder of the \$18,266.65 as determined in the Panel's order of August 14, 1985, shall be paid over to the General Fund of the State of South Carolina for inclusion in the funds of the Education Improvement Act to the extent practicable under law.



Hugh K. Leatherman, Sr.
Chairman
Procurement Review Panel

7-11-86, 1986