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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF RICHLAND | )<br>)<br>) | BEFORE THE SOUTH CAROLINA<br>PROCUREMENT REVIEW PANEL<br>CASE NO. 1991-21 |

In re:

PROTEST OF INTERNATIONAL BUSINESS MACHINES CORPORATION

APPEALS BY INTERNATIONAL BUSINESS MACHINES CORPORATION and MOTOROLA, INC., MOBILE DATA DIVISION

O R D E R

This case originally came before the South Carolina Procurement Review Panel ("Panel") for hearing on October 22 and 23, 1991, on appeals by International Business Machines Corporation ("IBM") and Motorola, Inc. ("Motorola") from a decision by the Chief Procurement Officer ("CPO") concerning a contract to provide a statewide mobile data communications system to law enforcement and other agencies. After a two-day hearing the Panel issued its Order dated October 29, 1991, directing that the State resolicit the contract because the Request for Proposals ("RFP") contained ambiguous specifications.

Before the Panel now is the Petition for Attorneys' Fees and Costs filed by IBM on November 27, 1991. IBM had requested its bid preparation costs and attorneys' fees in its October 14 appeal letter to the Panel, however, the Panel did not address this request in its October 29, 1991 Order.

Section 11-35-4210(7) of the Consolidated Procurement Code gives the Panel the discretion to award bid preparation costs and other expenses to an applicant who contends that

it should have received a contract but did not. In previous cases, the Panel has exercised this discretion to award costs and attorneys' fees only when other remedies were not available or appropriate (See, e.g., In re: Protest of Tryco, Inc., Case No. 1988-9) or when the State had engaged in egregious conduct which undermined the procurement process (See, e.g., In re: Protest of Homer L. Spires, Case No. 1988-6 and In re: Protest of Kodak and Xerox Corporation, Case No. 1988-15).

In this case, no egregious conduct by the State has occurred. Further, as a remedy for the ambiguous specifications in the Request for Proposals, the Panel has ordered the State to examine the RFP, eliminate any ambiguity, make any other changes deemed useful and then to allow the two offerors to respond to the amended RFP. Because IBM has the opportunity to participate in the resolicitation and may yet receive the contract, the Panel holds that award of attorney's fees and bid preparation costs is not appropriate in this case.

Therefore, the Panel dismisses IBM's Petition for Attorneys' Fees and Costs.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: _____
Hugh K. Leatherman, Sr.
Chairman

Columbia, S.C.
12-4, 1991