STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	))	BEFORE THE SOUTH CAROLINA PROCUREMENT REVIEW PANEL CASE NO. 2007-1
Appeal of Pee Dee Regional Transportation Services and Senior Solutions Re: Non-Emergency Transportation Services to Medicaid Beneficiaries RFP No. 06-S6993	)))))))	**ORDER TO DISMISS APPEAL**

This matter arises out of a Motion to Dismiss filed by the attorney for the Chief Procurement Officer requesting that the appeal filed in this matter by Pee Dee Regional Transportation (PDRTA) be dismissed as not timely filed. The Panel grants this Motion to Dismiss.

FINDINGS OF FACT

This matter originally arose out of a Request for Proposal (RFP) issued on September 21, 2005 to provide non-emergency transportation services to Medicaid beneficiaries for the SC Department of Health and Human Services. PDRTA protested the award to another provider by filing a written letter with the Chief Procurement Officer (CPO). The CPO conducted a hearing on December 14, 2006 and posted his decision on December 27, 2006. The CPO dismissed PDRTA's protest. The deadline for appeal of the CPO Order was January 8, 2007. The tenth day for the appeal deadline fell on Saturday, January 6, 2007 so the deadline was extended to the next business day pursuant to S.C. Code of Laws Section 11-35-310(13) making the deadline for appeal January 8, 2007. The Materials Management Office closed at 5:00 p.m. and no appeal had been received as of this time on January 8, 2007. On January 9, 2007, Ms. Deborah Martin,

administrative assistant for the CPO, found a fax from PDRTA requesting an appeal. The fax was dated January 8, 2007 at 6:59 p.m. According to the parties and the material submitted to the Panel, there does not appear to be any factual dispute concerning the times and dates of PDRTA's appeal. [1]

The State moved, by way of a Motion to Dismiss, that the appeal be dismissed as it was not timely filed. Both parties submitted briefs to the Panel. A phone conference was held on February 8, 2007 in which both parties were allowed oral arguments before a quorum of the Panel. Both parties waived the voting of the Panel in their presence and consented to the Panel discussing and voting on the matter with notification to them of the decision by electronic mail after the phone conference. Such notification was sent. PDRTA argued that the appeal was timely filed because it was received on January 8, 2007 regardless of the time. The CPO argued that the appeal was not timely as it was not received until after the close or end of the business day at MMO. The Panel dismissed the appeal of PDRTA as untimely based upon the briefs and oral arguments presented.

CONCLUSIONS OF LAW

The requirements for appeal to the Procurement Review Panel are set forth in S.C. Code of Laws Section 11-35-4210(6), which reads in part:

> (6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision....

1. The CPO submitted the affidavit of Ms. Martin for the Panel to consider in support of its motion. The factual allegations set forth in the affidavit were not contested.

The Procurement Code defines "days" pursuant to S.C. Code of Laws Section 11-35-310(13) as follows:

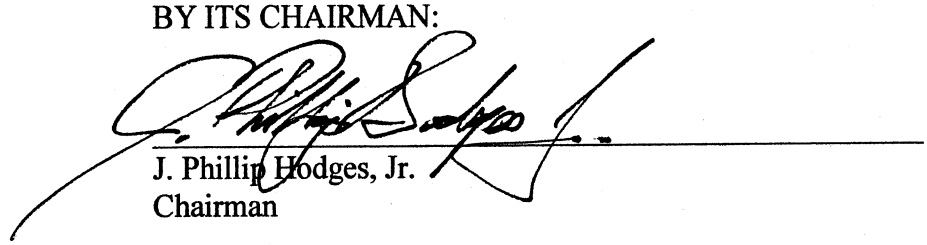
> (13) "Days" means calendar days. In computing any period of time prescribed by this code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

In Protest of Palmetto Unilect, LLC, Case No. 2004-6, this Panel dismissed an appeal because it was submitted to the CPO after 5:00 p.m. on the date of the appeal deadline. In that case, the appeal was received by the CPO by electronic mail at 5:28 p.m. on the day of the deadline. Moreover, the counsel for the CPO was served with a courtesy copy of the email prior to 5:00 p.m. on the date of the deadline. Nonetheless, the Panel dismissed the appeal as untimely. The Panel specifically noted that the "provisions of the CPO's order are fulfilled as soon as the time for appeal passes. This is necessary to ensure the business of the State goes forward in a timely manner. This is also the reason a postmark through the U.S. mail has not been used as a filing date." While the CPO has accepted appeals in a number of mediums depending upon the circumstances (i.e., by mail, fax, or emails), it does not accept them after 5:00 p.m. on the date that such appeals would be due and the regulations and/or statutory authority does not require it to accept such appeals as timely. Until the CPO and/or the Panel promulgate regulations or procedures to the contrary or permitting more elastic deadlines, parties have properly been on notice that "timely" appeals are *received* by the CPO by 5:00 p.m. on the day of the deadline. In Re: Protest of Spherix, Case No. 2004-5 (wherein the Panel held that a

bid mis-delivered by Fed Ex that was not received by the close of the bid time was untimely). The Panel further stated in Protest of Spherix that, "This Panel has always strictly interpreted the delivery requirements of the Code. To do otherwise could wreak havoc with the State business by leaving the State in a position of not knowing where any other bids might be." PDRTA provided no reason or legitimate excuse why its appeal was not filed before the close of business on the day of the deadline. Accordingly, under the text of the Procurement Code and consistent with the Panel's Order in Protest of Palmetto Unilect, we find that the appeal of PDRTA shall be dismissed as untimely.

AND IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL
BY ITS CHAIRMAN:



J. Phillip Hodges, Jr.
Chairman

This 8TH day of FEB. 2007