

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1992-13

IN RE: PROTEST OF ALLENDALE COUNTY OFFICE)
ON AGING; APPEAL BY ALLENDALE) O R D E R
COUNTY OFFICE ON AGING)
) APPEALED

This matter came before the South Carolina Procurement Review Panel for hearing on July 30, 1992, on the appeal of Allendale County Office on Aging ("Allendale") from a decision by the Chief Procurement Officer ("CPO") upholding award of a contract to Orangeburg-Calhoun-Allendale-Bamberg Community Action Agency, Inc. ("OCAB").

Present and participating in the hearing before the Panel were Allendale, represented by Elizabeth Gooding, Esq.; OCAB, represented by Robert R. Horger, Esq.; and the Division of General Services, represented by Jim Rion, Esquire.

FINDINGS OF FACTS

The only issue before the Panel is whether Allendale filed its protest within the time limit set by the Consolidated Procurement Code. The relevant facts are not in dispute.

On January 17, 1992, the State issued a Request for Proposals to provide Title XIX Medicaid transportation for citizens in Allendale County. The Notice of Intent to Award the contract to OCAB was issued on April 27. Allendale received the Notice on April 29.

The Executive Director of Allendale, Jacqueline Jones called State Procurement on April 29 and asked if the Notice

were final. She was advised that it was. (Record, p. 14). State Procurement did not indicate to Ms. Jones whether Allendale had the right to protest the award to OCAB.

On May 15, Ms. Jones met with the State Procurement buyer in order to find out where Allendale could obtain copies of the Procurement Code. After her meeting with the buyer, Ms. Jones drafted a letter of protest.

The protest letter was submitted to the Chief Procurement Officer on May 26, 1992. The grounds of protest are that OCAB is 45 miles away from Allendale County and that such distances will negatively impact on the care given by OCAB and that OCAB's unfamiliarity with the clients might affect the quality of the service given. (Record, p. 12).

CONCLUSIONS OF LAW

Section 11-35-4210(1) of the Consolidated Procurement sets the time limit for protests as follows:

Any actual or prospective bidder, offeror, contractor or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the appropriate chief procurement officer. The protest, setting forth the grievance, shall be submitted in writing within ten days after such aggrieved persons know or should have known of the facts giving rise thereto, but in no circumstances after thirty days of notification of award of contract.

OCAB and General Services argue that Allendale failed to file its protest within the ten-day limit because it knew or should have known of all of the facts giving rise to its protest on April 29, 1992, when it received the Notice of

Intent to Award to OCAB. Nevertheless, Allendale did not file its protest until May 26, some twenty-seven days later.

Allendale concedes that it did not file within the ten-day deadline, however, it argues that it is not equitable to enforce the deadline against it because State Procurement did not inform Allendale of its right to protest when Ms. Jones called on April 29 to ask if the Notice of Intent to Award to OCAB were final. Allendale also argues that, even if it missed the ten-day deadline, it did file its protest within thirty days of notification of award.

The Panel is required by precedent to reject both of Allendale's arguments. In In re: Oakland Janitorial Service, Inc., Case No. 1988-13, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 533, the Panel held that the time limits for filing a protest are jurisdictional and may not be affected by the conduct of the parties. In Oakland, the protestant charged that the State Procurement buyer had stated a longer protest period than that allowed by statute. In rejecting Oakland's attempt to toll the time limit, the Panel noted the general rule that a party cannot claim reasonable reliance on a representation by another in the face of a clear statutory mandate.

Allendale is charged with knowing its rights under the law. State Procurement's alleged failure to advise Allendale of its rights has no effect on Allendale's duty to file its protest within the time required by law.

Allendale's second argument that the thirty-day, rather than ten-day limit applies, is also without merit. In In re: American Telephone & Telegraph Company, Case No. 1983-12, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 95, the Panel held that the thirty-day limit is not an additional opportunity to file a protest but rather is intended to shorten the time for persons who learn of the facts giving rise to their protest twenty-one or more days after notification of award. In other words, if a person first learns of facts giving rise to his protest twenty-one days after notification of award, that person does not have ten days to file a protest but only nine. Therefore, a protest must be filed within ten days of knowing (or should have known) of the facts giving rise thereto or within thirty days of notification of award, whichever comes first.

In this case, Allendale concedes that the ten-day period ran without Allendale's filing its protest. Therefore, the thirty-day limit is not applicable.

For the reasons stated above, the Panel finds the protest of Allendale County Council on Aging untimely and hereby dismisses it. The June 15, 1992 decision of the Chief Procurement Officer is affirmed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 
Gus J. Roberts

Columbia, S.C.
August 10, 1992