

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
) CASE NO. 1992-17

IN RE: PROTEST OF CONSOLIDATED AREA)
) TRANSPORTATION AUTHORITY; APPEAL) O R D E R
) BY CONSOLIDATED AREA TRANSPORTATION)
) AUTHORITY) APPEALED
)

This matter came before the South Carolina Procurement Review Panel for hearing on July 29 and September 9, 1992, on the appeal by Consolidated Area Transportation Authority ("CATA") of a decision by the Chief Procurement Officer ("CPO") dismissing as untimely CATA's protest of the award of Title XIX Medicaid transportation contracts to York County Council on Aging and Spartanburg Regional Medical Center.

Present and participating in the hearing before the Panel were CATA, represented by Steve Schusterman, Esq.; and the Division of General Services, represented by James Rion, Esquire.

FINDINGS OF FACT

On January 17, 1992, the State issued a Request for Proposals to provide Title XIX Medicaid transportation for citizens in York and Union Counties. The Final Award Report was issued on April 27. (Record, pp. 7-11).

On April 29, Ms. Roger Durant, the Director of CATA, received a telephone call from Ms. Maggie Holmes, the Director of Fairfield County Transit System, an offeror on the RFP, who had received the Final Award Report that day. Ms. Holmes' organization had not participated in this

particular type of RFP before and she sought the advice of Ms. Durant on what the Final Award Report meant. CATA has nine years' experience with Title XIX contracts.

Ms. Holmes read Ms. Durant the title of the report and told her that neither Fairfield nor CATA appeared on the list of recipients of the contract. That same day, April 29, Ms. Durant called State Procurement and asked about the procedures for filing a protest.

On May 4, CATA received its copy of the Final Award Report and filed a protest on May 12. The grounds of the protest were that CATA has successfully performed the contract for the past nine years, that CATA has a stable financial record, that CATA has developed a close relationship with the local social service agencies, that CATA's capability to serve clients exceeds that of the apparent winners of the contracts, that CATA has successfully passed monitoring visits, and that CATA's cost is lower than its competitors. (Record, pp. 16-17).

The CPO found that CATA did not timely file its protest because it knew or should have known of the grounds of its protest on April 29 when Ms. Durant spoke to Ms. Holmes and State Procurement.

CATA appealed the CPO's decision to the Panel on June 25, 1992. In its appeal letter CATA states as additional grounds for relief that one evaluator was biased because of his relationship with some of the providers and that the

§11-35-4210(1). Under this section, a protest must be filed within ten days of when a protestant "knows or should have known" of the facts giving rise to its protest. No "official" or even "written" notice is required. The ten-day limit begins to toll when the protestant discovers (or should have discovered) that it has an actionable complaint about the solicitation or award of a contract.¹

In this case, CATA's director discovered on April 29 that CATA was not the winner of the contracts in question. CATA's grounds of protest are all related to its prior experience and success in performing this contract. All of these facts were known (or should have been known) to CATA on April 29. Therefore, April 29 is the day that CATA knew or should have known all it needed to know to file a protest under section 11-35-4210(1). Indeed, CATA had enough appreciation of its position on April 29 to call State Procurement and inquire about protest procedures.²

Because CATA waited until May 12 to file its protest, CATA did not meet the ten-day limit for filing protests.

¹Cf., Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333, 334 (1981) ("[I]njured party must act with some promptness where facts and circumstances of injury would put person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist; statute of limitations begins to run from that point, and not when advice of counsel was sought or full-blown theory of recovery developed.")

²See, Smith v. Smith, 354 S.E.2d 36 (1987) (Consultation with attorneys about claim indicates that Plaintiffs discovered or should have discovered claim by that time.)

entire evaluation committee was biased because of its racial makeup.

CONCLUSIONS OF LAW

The only issue before the Panel is whether CATA filed its protest within the time limit set by Section 11-35-4210 (1) of the Consolidated Procurement Code 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.

General Services argues that CATA 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 Ms. Durant was informed that the Final Award Report did not list CATA as a recipient of the contract in question.

CATA argues that its protest is timely filed because it did not receive the official written Final Award Report until May 4, some eight days before it filed its protest. CATA argues that the April 29 telephone conversation between Ms. Holmes and Ms. Durant is not sufficient notice under §11-35-4210(1) to start the protest time running.

The Panel does not agree with CATA's interpretation of

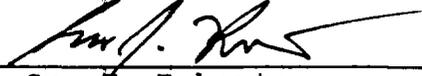
The Panel therefore lacks jurisdiction to hear CATA's protest.

Likewise, the two additional grounds of protest raised for the first time in CATA's June 25 appeal letter to the Panel, some fifty-two days after receipt of the Final Award Report, are not timely under the thirty-day time limit and must be dismissed.

For the reasons stated above, the Panel affirms the June 15, 1992 decision of the Chief Procurement Officer and dismisses the of Consolidated Area Transportation Authority.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 
Gus J. Roberts

Columbia, S.C.
Sept. 23, 1992