

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1993-5

In re:)
)
Protest of Action Temporaries;) O R D E R
Appeal by Action Temporaries.)
)
)

This case came before the South Carolina Procurement Review Panel for hearing on March 23, 1993, on the appeal of Action Temporaries from a decision by the Chief Procurement Officer ("CPO") dismissing Action Temporaries' protest as untimely filed.

Present and participating in the hearing before the Panel were Action Temporaries, represented by its CEO, Julia M. Rhinehart, and the Division of General Services, represented by James W. Rion, Esquire.

FACTS

On September 22, 1992, State Procurement issued an Invitation For Bids ("IFB") for statewide temporary employment services. The IFB provided that only a bidder who had been in business in a particular location for six months or more could receive the contract for that location.

On October 26, 1992, bids were opened and Action Temporaries ("Action") was the lowest bidder for the Charleston area. Subsequent to bid opening, questions arose about whether Action had been in the Charleston area for the required six months and State Procurement undertook an investigation of the issue. (Record, p. 91).

On December 3, 1992, David Quiat, the procurement officer on this procurement, called Charles Watson, Action's representative. During that conversation, Mr. Watson inquired about whether Action would receive the Charleston location. Mr. Quiat told Mr. Watson that Action was not going to be awarded Charleston.

On December 7, 1992, Mr. Watson called Mr. Quiat and indicated that Action might appeal the decision on Charleston.

On December 11, 1992, the Notice of Intent to Award was mailed to all vendors that submitted bids. The Notice indicates that only Tempo, Manpower and Kelly received the contracts for Charleston. Action is not listed as a contract recipient. Along with the Notice, State Procurement also mailed a Final Award report indicating that Action did not receive the contract.

Action did not receive the Notice of Intent to Award or the Final Award Report until December 24, 1992.

On December 29, Action protested the Charleston award, giving as a reason "Submitted lowest bid". (Record, p. 14).

Conclusions of Law

The only issue before the Panel is the timeliness of Action Temporaries' protest. Timeliness of a protest is governed by S. C. Code Ann. section 11-35-4210(1), which provides:

Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of 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 circumstance after thirty days of notification of award of contract.

General Services contends, and the Chief Procurement Officer so found, that Action's protest is not timely because Action knew or should have known it did not receive the Charleston contract on December 3, 1992, when Mr. Quiat advised Mr. Watson of that fact in their telephone conversation, some twenty-six days prior to the filing of the protest.

Action argues that written notice is required to start the ten-day time limit to file a protest under section 11-35-4210(1) and that Action did not receive the Notice of Intent to Award until December 24, only five days prior to the filing of the protest.

Section 11-35-4210(1) requires that protests be filed within ten days of when aggrieved protestants "know or should have known" of the facts giving rise to the protests. No requirement exists that the protestant learn of the facts giving rise to its protest from written materials. Indeed, a protestant may learn of the facts of its protest in any number of ways, including by telephone conversation.

The Panel holds that Action knew or should have known on December 3, 1992, that it would not receive the Charleston contract. Because its protest was not submitted

to the CPO until twenty-six days later, Action's protest is not timely filed under section 11-35-4210(1).

For the reasons stated above, the Procurement Review Panel affirms the February 9, 1993, decision of the Chief Procurement Officer and dismisses the protest of Action Temporaries as untimely.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 
Gus J. Roberts

Columbia, S.C.
April 13, 1993