STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND	)	CASE NO. 1994-5

In re:

Protest of Smith & Jones Distributing Co., Inc.;
Appeal by Smith & Jones Distributing Co., Inc.

ORDER

This case was filed with the South Carolina Procurement Review Panel (Panel) on April 18, 1994, by the appeal filed by Smith & Jones Distributing Co., Inc., from a decision by the Chief Procurement Officer (CPO) finding Smith & Jones lacks standing to protest the award of the contract to Portion Pac Chemical Corporation and dismissing the protest.

The Panel issues this Order without conducting a hearing, as the threshold issue of standing has been established by prior Panel Orders.[1]

FINDINGS OF FACT

The Panel adopts the following facts from the decision of the CPO and the Panel's Record.

On December 13, 1993, the State issued an Invitation For Bids (IFB) to purchase a pre-measured cleaning system for the Department of Corrections. Bids were opened on January 14, 1994, revealing Portion Pac Chemical Corp. (Portion Pac) as the only company submitting a bid. Several companies submitted a "no bid". Smith & Jones Distributing Co., Inc., (Smith & Jones) submitted a "No Bid". (Record p. 52). Smith & Jones attached a letter to its "No Bid", which the CPO treated as a protest. On February 15, 1994, the CPO found

1 The issue of standing when a bid or proposal is not submitted has been determined by the Panel in prior cases. In Case No. 1990-18, In re: Protest of Laurens County Service Council For Senior Citizens, the Panel found that a vendor could be a prospective bidder or offeror on a solicitation only until bid or proposal opening. After that, a vendor must have been an actual bidder or offeror, having submitted a bid or proposal, in order to protest. See also, Case No. 1991-8 and 1991-10 (Consolidated), In re: Protest of Pizzagalli Construction Company, Primesouth, Inc., and Harbert International, Inc., and Case No.1993-9, In re: Protest of Eastern Data, Inc., footnote 1.

the issues raised by Smith & Jones, which protested the specifications of the IFB, untimely filed. Smith & Jones did not appeal the CPO's decision to the Panel.

An Intent to Award to Portion Pac was issued on February 23, 1994. Smith & Jones filed a protest of the award, raising the same four issues as previously raised and a new fifth issue. The award was suspended until the CPO conducted an administrative review. After a hearing, the CPO issued a decision on April 1, 1994, finding Smith & Jones did not have standing to protest the award of the contract to Portion Pac. Smith & Jones appeals the finding of the CPO to the Procurement Review Panel by notice dated April 7, 1994.

CONCLUSIONS OF LAW

The threshold issue is whether Smith & Jones has standing to protest the award of the contract to Portion Pac. The Consolidated Procurement Code provides the right to protest in Section 11-35-4210(1), as follows:

> Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer....
> any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer.... [Emphasis added.]

Only an " actual" or "prospective bidder, offeror, contractor, or subcontractor" has standing to protest under 11-35-4210(1). A bidder is a vendor which submits a bid in response to an Invitation For Bids, under S. C. Code Ann. Section 11-35-1520. An offeror is a vendor which submits a proposal in response to a Request For Proposals, under S. C. Code Ann. Section 11-35-1530. A contractor and subcontractor are taking part in a construction procurement, under S. C. Code Ann. Section 11-35-3020. The reference to

offerors, contractors, and subcontractors does not apply to this case as this procurement involves the use of competitive sealed bidding, under S. C. Code Ann. Section 11-35-1520.

Smith & Jones did not submit a bid, and therefore is not an "actual bidder". A prospective bidder exists only prior to bid opening, since the opportunity to submit a bid no longer exists after bid opening. Therefore, the Panel finds that Smith & Jones does not have standing under S. C. Code Section 11-35-4210 to protest the award of the contract.

CONCLUSION

For the reasons stated above, the Panel upholds the decision of the Chief Procurement Officer and dismisses the protest of Smith & Jones for lack of standing.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

Gus J. Roberts, Chairman

Columbia, S.C.
May 10, 1994.