

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
) CASE NO. 1983-12

IN RE:)
)
PROTEST BY AMERICAN TELEPHONE &) O R D E R
TELEGRAPH COMPANY)
)
_____)

This matter is before the South Carolina Procurement Review Panel (hereinafter "Panel") for administrative review pursuant to §§ 11-35-4210(5) and 11-35-4410, South Carolina Code of Laws of 1976, as amended, as a result of a Determination issued by the Information Technology Management Officer and a Request for Review of that Determination.

The threshold question before the Panel concerns the timeliness of the Protest filed by AT&T with the Information Technology Management Officer. The Panel concludes that the Protest was not timely filed and that the Information Technology Management Officer acted correctly in dismissing the Protest as untimely, and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On May 9, 1983, the State of South Carolina issued a Request for Proposal ("RFP") for communications services. The RFP stated that all proposals should be received by 2:00 p.m. on July 11, 1983.

2. On May 24, 1983, AT&T submitted two sets of questions to the Materials Management Office. On May 27, the State's response was issued and sent to AT&T. The deadline for such questions was May 24, 1983.

3. On June 14, 1983, AT&T sent the Materials Management Office a letter stating that AT&T would respond by July 11, but requesting a 90-day extension of time for responses.

4. On June 17, 1983, AT&T's letter was returned by the Materials Management Office, and the request for extension was effectively denied.

5. A similar exchange of correspondence occurred by letters dated June 20, 1983, and June 21, 1983, respectively.

6. On July 8, 1983, three days before the deadline for proposals, AT&T notified the Materials Management Office that it did not intend to submit a bid or proposal.

7. On July 22, 1983, AT&T wrote the members of the Budget and Control Board, criticizing the RFP and stating that "we welcome the opportunity to work with you to develop a better overall solution to the State's telecommunications requirements."

8. On August 24, 1983, the Materials Management Office issued a "Statement of Award" stating that no award would be made and that "all otherwise acceptable proposals are at unreasonable price."

9. On September 22, 1983, AT&T filed its protest with the Information Technology Management Officer, who dismissed the protest as untimely under § 11-35-4210(1). AT&T filed its Request for Review on October 7, 1983. The hearing before the Panel, by agreement of counsel, was deferred until November 7, 1983.

CONCLUSIONS OF LAW

1. Section 11-35-4210(1), which creates the right of protest to the appropriate chief procurement officer (in this case, the Information Technology Management Officer), requires that the protest "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."

2. The Panel finds that there is no evidence in the record which suggests that AT&T did not know everything necessary to make its protest by July 11, 1983, if not earlier.

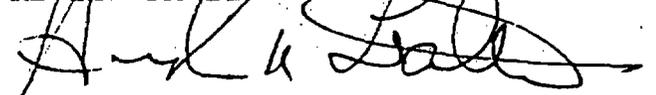
3. The letter of July 22, 1983, was not, in the opinion of the Panel, intended as a protest, nor would it be reasonable to construe it as such. By its terms, the letter is merely an offer of information and assistance and a promise of continuing availability should the State desire to initiate further contacts with AT&T.

4. The Panel finds, however, that the ten-day provision of § 11-35-4210(1), rather than the thirty-day provision, applies. Since the Panel has found that AT&T knew or should have known of the facts giving rise to its protest no later than July 11, 1983, the Panel concludes that an application of the thirty-day limitation period in this case would render the ten-day limitation meaningless. The thirty-day limitation, in the Panel's opinion, was intended to shorten the limitation periods for persons who learned of facts giving rise to a protest after the award.* It was not intended to lengthen the period for persons, such as AT&T, who knew or should have known everything necessary to file a protest well before the contract was awarded.

5. Since the ten-day limitation applies to AT&T in this case, and since AT&T did not file a protest within ten days of July 11, 1983, the Panel concludes that AT&T's protest was not timely filed and that the dismissal of the protest by the Information Technology Management Officer is confirmed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



SENATOR HUGH K. LEATHERMAN,
Chairman

November 18, 1983

* Thus, for example, if a person learned of facts giving rise to a protest twenty-one days after the award, that person would have nine days (the remainder of the thirty-day period), rather than ten days to file his protest.