

STATE OF SOUTH CAROLINA )  
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COUNTY OF RICHLAND ) BEFORE THE SOUTH CAROLINA  
 ) PROCUREMENT REVIEW PANEL  
 ) CASE NO. 1989-23

IN RE: )  
 ) PROTEST OF YWCA OF THE UPPER LOWLANDS, INC.) O R D E R  
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This case came before the South Carolina Procurement Review Panel ("Panel") for hearing on February 8, 1990, on the appeal by YWCA of the Upper Lowlands, Inc. ("YWCA") of a decision by the Chief Procurement Officer ("CPO") that the protest of YWCA was not timely filed.

Present at the hearing before the Panel were YWCA, represented by William Calloway, Esq.; the Department of Health & Environmental Control ("DHEC), represented by Elizabeth Partlow, Esq.; and the Division of General Services, represented by Helen T. Zeigler, Esquire.

FINDINGS OF FACT

On July 6, 1989, State Procurement issued a Request for Proposals ("RFP") on behalf of DHEC in an effort to distribute funds appropriated by the General Assembly for rape counselling and prevention services over the entire state. Proposals were opened on August 10, 1989.

An Intent to Award was issued on November 3, indicating that fourteen rape crisis centers were to be awarded various amounts. The protestant YWCA of the Upper Lowlands was not listed as receiving an award. (Record, p. 18). A separate letter, dated November 3, was sent to YWCA and the Kershaw County Coalition Against Sexual Assault, advising that allocations to those two organizations would

be delayed because of an unresolved conflict of duplication for one service area by the two organizations. (Record, pp. 22-23). Both groups apparently claim Lee County as a service area. The letter indicated that DHEC intended to treat funding to these groups as a sole source procurement.

YWCA admits that it received this letter and the Notice of Intent to Award on November 6, 1989. On November 8, YWCA received information indicating the amounts that it and each of the other organizations would receive.

On November 17th, YWCA mailed its protest which was dated November 16 to the Chief Procurement Officer stating as follows:

We are appealing the Statement of Award (effective 5 p.m., 11/20/89) and request rescission of same. Concerns:

The removal of the YWCA from the normal proposal process that other grantees have been allowed and placed in a special category due to alleged conflict of geographical territory, make-up of the proposal review committee (possible conflict of interest), and inequities in funding.

(Record, pp. 13 and 222).

The CPO held that YWCA was not timely in its protest of the decision to remove YWCA and Kershaw from the RFP process because YWCA knew or should have known of the decision on November 6th when it received the November 3 letter. YWCA did not submit its protest until 11 days later on November 17. The CPO also found that, even though YWCA's other grounds concerning the alleged inequities in funding and the

makeup of the evaluation team were timely, those issues were moot because of the decision to cancel the RFP process as to YWCA and Kershaw. Since the decision to cancel could not be heard, the CPO found YWCA's other grounds irrelevant.

YWCA appeals this decision of the CPO to the Panel.

#### CONCLUSIONS OF LAW

Section 11-35-4210 of the Procurement Code provides:

Any actual or prospective bidder . . . who is aggrieved in connection with the solicitation or award of a contract may protest . . . . 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.

The Panel has held in a previous case that a protest is "submitted" when it is deposited in the post office, properly addressed with postage paid. In re: Protest of Warehouse Distributing Company, Case No. 1988-2, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 405. Based on the postmarked envelope found in the record at page 222, YWCA submitted its protest on November 17, 1989. Since YWCA admits that it received notification of DHEC's decision to cancel the RFP process as to YWCA on

November 6, YWCA is not timely under the ten-day limit set forth in 11-35-4210(1).<sup>1</sup>

YWCA argues that it should be allowed to take advantage of the thirty-day limit in which to file a protest. However, under the Panel's decision in In re Protest of AT&T, Case No. 1983-12, Decisions of the Procurement Review Panel 1982-1988, p. 95, the thirty-day limit would not apply to this case. As the Panel explained in AT&T, the purpose of the thirty-day limit is to shorten the ten-day limit for persons learning of facts giving rise to a protest after the award. "Thus, for example, if a person learns 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." Decisions, at p. 98.

As to the other grounds which are admittedly timely under the ten-day limit, the Panel agrees with the CPO that these issues are mooted by the decision to cancel the solicitation as to YWCA. Since the decision to remove YWCA from the RFP process is not timely and cannot be challenged, there would appear to be no benefit to YWCA in examining the actual RFP process to see if it was fair.

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<sup>1</sup>The time limitations set forth in 11-35-4210(1) are jurisdictional and cannot be waived by the conduct of a party or the State. In re: Protest of Oakland Janitorial Service, Case 1988-13, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 533.

For the reasons stated above, the Panel affirms the December 11, 1989, decision of the CPO and hereby dismisses the protest of YWCA of the Upper Lowlands, Inc.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL



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HUGH K. LEATHERMAN, SR.  
CHAIRMAN

February 12, 1990  
Columbia, South Carolina