

IN RE: PROTEST OF ALLENDALE COUNTY OFFICE ON AGING
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) C/A #92-CP-03-180

ALLENDALE COUNTY OFFICE ON AGING)
Petitioner,)
-vs-)
SOUTH CAROLINA PROCUREMENT REVIEW PANEL)
and STATE BUDGET AND CONTROL BOARD)
Respondents.)

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MARY E. HARRIS
CLERK
ALLENDALE COUNTY, SOUTH CAROLINA
O R D E R

This matter comes before the court pursuant to the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310, et seq. (1986) on Allendale County Office on Aging's ("Allendale") Petition for Review of an administrative decision by the South Carolina Procurement Review Panel.

BACKGROUND

The operative facts are admitted.

On January 17, 1992, the State issued a Request for Proposals to provide Title XIX Medicaid transportation for citizens in Allendale County. The Notice of Intent to Award the contract to Orangeburg-Calhoun-Allendale-Bamberg Community Action Agency, Inc. ("OCAB") was issued on April 27. Allendale received the Notice on April 29, 1992.

The Executive Director of Allendale, Jacqueline Jones, called State Procurement on April 29 and asked if the decision to award to OCAB were final. She was advised by procurement officer Bruce Breedlove that it was. Mr. Breedlove did not indicate to Ms. Jones that Allendale had

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the right to protest the award to OCAB under S. C. Code Ann. §11-35-4210(1)(1986) if it disagreed with the decision.

On May 15, Ms. Jones met with Mr. Breedlove in order to find out where Allendale could obtain copies of the Consolidated Procurement Code. After her meeting with Mr. Breedlove, Ms. Jones drafted a letter of protest dated May 15 but did not submit it to the Chief Procurement Officer until May 26.

Allendale's grounds of protest were that OCAB is 45 miles away from Allendale County and that such distances will negatively impact on the care given by OCAB and that OCAB's unfamiliarity with the clients might affect the quality of the service given.

Both the Chief Procurement Officer and the Procurement Review Panel found they lacked jurisdiction because Allendale did not timely submit its protest under § 11-35-4210(1). Allendale appeals.

DISCUSSION

This case presents an issue of first impression for the court - that is, proper interpretation of the ten and thirty-day limits for filing protests under S. C. Code Ann. §11-35-4210 (1). That section of the Consolidated Procurement provides 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.

Allendale conceded before the Procurement Review Panel that it did not file its protest within the ten-day limit, however, it argues that it is not equitable to enforce that deadline against it because State Procurement did not inform Allendale of its right to protest when Ms. Jones called on April 29 to ask if the decision to award to OCAB were final. Allendale contends that, under circumstances such as these where is it not equitable to enforce the ten-day limit, the thirty-day deadline should apply instead. If the thirty-day deadline applies, then Allendale is timely, having filed its protest on the twenty-seventh day after notification of award.

The Procurement Review Panel rejected Allendale's argument based on two previous decisions by it. In In re: Oakland Janitorial Service, Inc., Case No. 1988-13, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 533, the Panel held that the time limit for filing a protest is jurisdictional and cannot be affected by the conduct of the parties. In In re: American Telephone & Telegraph Company, Case No. 1983-12, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 95, the Panel held that the thirty-day time limit is not an additional opportunity to file a protest but rather is intended to shorten the time for persons who learn of the

facts giving rise to their protest twenty-one or more days after notification of award.

The Procurement Review Panel charged Allendale with knowing its rights under the law and held that State Procurement's alleged failure to advise Allendale of its rights had no effect on Allendale's duty to file its protest within the ten-day time limit set forth in § 11-35-4210(1). The Panel further held that the thirty-day limit does not apply to Allendale.

This court agrees with the Procurement Review Panel's interpretation of § 11-35-4210(1). Section 11-35-4210(1) states that a protestant "shall" file its protest within ten days of learning of the facts giving rise thereto. The statute goes on to state "but in no circumstance" shall a protest be filed later than thirty days from notification of award.

Allendale's interpretation would allow a protestant who failed to file a protest within ten days of learning the facts an additional chance to file under the thirty-day limit. This interpretation renders the mandatory ten-day limit meaningless.

The court finds that the only reasonable interpretation is that the thirty-day limit serves to shorten the ten-day limit. For example, if a person first learns of the facts giving rise to his protest twenty-one days after notification of award, that person does not have the full ten days in which to file a protest but only nine.

This court holds that, under the correct interpretation of §11-35-4210(1), a protest must be filed within ten days of knowing (or should have known) of the facts giving rise to the protest or within thirty days of notification of award, whichever comes first. The court believes that only under this interpretation do both the mandatory ten-day and thirty-day limits have meaning.

The court further finds that Mr. Breedlove's informing Allendale that the decision to award to OCAB was final without advising of the right to protest within ten days did not relieve Allendale from meeting the appropriate deadline. It is settled law that ignorance of the requirement for filing within a certain time is no legal excuse for failure to file within the time. Lovell v. C. A. Timbes, Inc., 263 S.C. 384, 210 S.E.2d 610 (1974). Further, a party cannot claim reasonable reliance on a representation by another in the face of a clear statutory mandate. Freeman v. Fisher, 288 S.C. 192, 341 S.E.2d 136 (1981).

CONCLUSION

For the reasons outlined above, the court finds that the Petition for Review of Allendale County Council on Aging lacks merit and hereby dismisses it.

AND IT IS SO ORDERED.



Luke N. Brown, Jr.
Presiding Judge
Fourteenth Judicial Circuit

Jan 11, 1993