



desired to initiate the protest process. On October 16, 1996, the CPO issued a decision finding lack of jurisdiction because the protest was untimely filed. NCA appeals the CPO's decision to the Panel.

### CONCLUSIONS OF LAW

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 in the manner stated in subsection (2) below within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

In Panel Case No. 1989-13, In re: Protest of Oakland Janitorial Service, Inc., and many Orders since, the Panel has held that the time frame for filing a protest under S. C. Code Ann. §11-35-4210 is jurisdictional. Thus, the threshold issue of jurisdiction to review the issues raised by NCA has been previously determined by the Panel. In Oakland, the Panel states that "in the absence of statutory language to the contrary, perfection of a review proceeding within the time limited by statute or rule is jurisdictional. Where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver."

NCA filed a letter as "initiation of the protest process" on October 9, 1996, which is more than fifteen days from the date the RFP was issued, and clearly not timely filed under S. C. Code Ann. §11-35-4210. The initial letter sent by

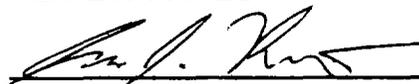
NCA stating its concern over the award criteria, dated September 24, 1996, even if considered a protest letter, is also beyond the fifteen days allowed under the law. The RFP was issued September 4, 1996, and a timely protest of the solicitation would be due within fifteen days, or by September 20, 1996. NCA's protest was not filed by the mandated deadline, and therefore, the Panel does not have jurisdiction to determine the issues raised by NCA's protest.

**CONCLUSION**

For the reasons stated above, the Panel upholds the decision of the Chief Procurement Officer and dismisses the protest of National Cosmetology Association of South Carolina for lack of jurisdiction.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL



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Gus J. Roberts, Chairman

Columbia, S. C.

Nov. 15, 1996.