

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	
)	
)	ORDER
IN RE: Appeal by TSI, Inc.)	
)	Case No. 2016-9
Sol. No. 5400008056)	
Statewide – IT Temporary Services)	
)	
)	

This matter came before the South Carolina Procurement Review Panel (the Panel) for a hearing on August 3, 2016, pursuant to a request for review by Technology Solutions, Inc. (TSI) under sections 11-35-4210(6) and 11-35-4410(1)(a) of the Consolidated Procurement Code (the Procurement Code). TSI appealed the Chief Procurement Officer’s (the CPO’s) denial of its protest of an amendment to a statewide solicitation seeking to establish state term contracts for IT Temporary Staff Services. When the Panel convened its hearing on August 3, 2016, counsel for TSI, Geoffrey K. Chambers, advised the Panel that his client was unable to attend the hearing because she had been called to attend a status conference in a Circuit Court case that conflicted with the Panel’s hearing.¹ Mr. Chambers requested a continuance in light of his client’s absence. Counsel for the CPO, William Dixon Robertson, III, agreed to the continuance, but requested that the Panel not reschedule the hearing, but rather conduct its administrative review based on the record before the Panel and the written submissions of the parties. The Panel granted TSI’s request for a continuance and allowed TSI thirty (30) days to respond to the CPO’s Hearing Memorandum. The Panel also advised the parties that it would issue an order based on the parties’ written arguments.

¹ Mr. Chambers also e-mailed the Panel’s attorney at 8:42 p.m. on the night of August 2, 2016, to advise her of the conflict. The Panel notes that its August 3rd hearing was set on June 28, 2016, and that notice of the hearing was given that same day.

On September 2, 2016, TSI filed a responsive brief with the Panel, which was signed by Mr. Chambers and Mr. S. Jahue Moore. Mr. Moore advised the Panel that he was taking Mr. Chambers' place as counsel for TSI and requested that the Panel schedule a hearing based on substitution of counsel. Finding that a hearing would not aid it in conducting its administrative review, the Panel declined to schedule a new hearing. The Panel now issues this decision based on the record before it, the written arguments submitted by the parties, and the applicable law and precedents.²

Findings of Fact

On September 2, 2015, the Information Technology Management Office (ITMO) issued a fixed price bid solicitation to establish state term contracts for IT Temporary Staff Augmentation Services.³ The September 2015 solicitation was issued to replace current state contracts set to expire in August of 2016 that had been awarded under a similar solicitation in 2009. As noted by the CPO in his written determination, the September 2015 solicitation has been amended numerous times and was protested twice, with appeals filed with the Panel, between its issuance in September 2015 and April of this year. Record at PRP3. On May 17, 2016, ITMO issued Amendment #10, which set new opening and award dates. Record at PRP70. In addition, Amendment #10 set forth the following modification to the scope of work:

1. Section III. SCOPE OF WORK/SPECIFICATIONS, page 25, #33, is modified as follows:

Current Suppliers with Consultants on Assignment(s): If you currently have a Consultant on an assignment or if a Consultant is on-boarded prior to the current

² Five of the six current Panel members participated in this administrative review. Ms. Margaret A. Collins recused herself from participation.

³ The solicitation documents for Fixed Price Bid No. 5400008056 may be accessed at <http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400008056>. (last viewed September 14, 2016).

contract expiring they will continue on that assignment until that assignment expires. ~~No extensions will be given for current placements.~~ Job Extensions and Length of Assignment shall be in accordance with the requirements of this solicitation. In addition, only those candidates submitted after the effective award date as indicated on the Intent to Award relevant to this solicitation, will be considered for the Supplier Performance Criteria below.

Record at PRP70 (redlines in original). This language is the only substantive change to the solicitation contained in Amendment #10.

TSI filed a protest in response to Amendment #10 on May 31, 2016. Record at PRP8 – PRP17; PRP41 – PRP53. TSI sets forth twenty-eight issues in its protest letter, none of which takes issue with the language of Amendment #10 quoted above.⁴ *Id.* Instead, TSI recites a litany of complaints about how the solicitation’s requirements are overly restrictive and unfair to small and minority businesses. In addition, TSI expresses dissatisfaction with ITMO’s administration of the expiring contracts.

Conclusions of Law

In order to protest the solicitation of a contract or an amendment thereto, an aggrieved prospective bidder must file its protest within fifteen days of the issuance of the solicitation documents, “or any amendment to it, if the amendment is at issue.” S.C. Code Ann. § 11-35-4210(1)(a) (2011). The Panel has consistently held that the time limit for filing set by the statute is jurisdictional and cannot be extended. *In re: Protest by First Sun EAP Alliance, Inc.*, Panel Case No. 1994-11. In addition, the Panel has held that an amendment is “at issue” only when “it provide[s] new or different information than the solicitation documents.” *In re: Protest of Mechanical Contractors Ass’n of S.C.*, Panel Case No. 1995-12 at 1. Furthermore, the Panel has

⁴ As demonstrated by the CPO in his written determination, most of the issues raised by TSI in its May 31st protest letter were also unsuccessfully raised by TSI in a separate protest of this very solicitation in October of 2015. Record at PRP4, n. 2.

recently confirmed that a protest filed after the issuance of an amendment must raise issues related to the substance of the amendment and not attempt to renew issues that were apparent in the original solicitation documents or in earlier amendments. *In re: Appeal by J-Kell, Inc.*, Panel Case No. 2016-2 at 8 (“[J-Kell’s] reliance on the issuance of Amendment #8 on December 8, 2015, to make its protest timely is misplaced because the protest letter does not raise any issue in connection with the specification modified in Amendment #8.”); *see also In re: Appeal by South Carolina Ass’n of the Deaf*, Panel Case No. 2008-2 at 4 (wherein the Panel noted that a protest filed within fifteen days of an irrelevant amendment “[was] an impermissible attempt to extend the applicable protest period” where the issues raised by the protest were all related to provisions in the original IFB specifications.).

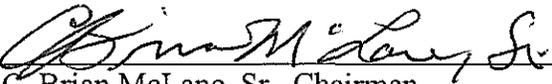
As noted above, none of the twenty-eight protest issues raised in TSI’s May 31st letter addresses the substantive change contained within Amendment #10. For this reason, the Panel concludes that Amendment #10 is not “at issue” as required by section 11-35-4210(1)(a), and that TSI’s May 31st protest is an impermissible attempt to renew its October 2015 protest. Therefore, the Panel finds that TSI’s protest is untimely filed and that it lacks jurisdiction to consider this matter.

Conclusion

Having found that the issues raised by TSI’s protest were untimely, the Panel hereby affirms the CPO’s order and dismisses TSI’s appeal in its entirety.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL


BY: C. Brian McLane, Sr., Chairman

Date: September 22, 2016.
Columbia, SC