



to hear Circle "C"'s case because "it appears that these monies are being disbursed as grant funds rather than expended as procurement contracts under the Procurement Code."<sup>1</sup>

Circle "C" now appeals the decision of the Chief Procurement Officer to the Panel arguing that the funds in question are subject to the Consolidated Procurement Code.

#### CONCLUSIONS OF LAW

Section 11-35-4210(1) of the Consolidated Procurement Code provides:

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 facts giving rise thereto, but in no circumstance after thirty days of notification of award of contract.

On the face of its protest dated October 11, 1989, Circle "C" states that it was notified on July 12th that its proposal was not approved by the Governor's Office. Circle "C" did not file its protest within 10 days of when it

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<sup>1</sup>The CPO concluded that the Procurement Code, which applies to "every expenditure of funds by this State under contract", does not apply to grant monies because 11-35-310 (19) (1976) defines grant to exclude a "procurement contract" resulting from "an award the primary purpose of which is to procure specified end products, whether in the form of supplies, services, or construction."

learned or should have learned of the facts giving rise to its protest. Circle "C" has also missed the ultimate deadline of 30 days from notification of award.

Because the Panel considers these deadlines to be jurisdictional, the Panel cannot consider the issues raised by the untimely protest of Circle "C".<sup>2</sup> The protest is therefore dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL



Hugh K. Leatherman, Sr.  
Chairman

Columbia, S.C.  
11-2-, 1989

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<sup>2</sup>See, In re: Protest of Oakland Janitorial Service,  
Case No. 1988-13.