

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
) CASE NO. 1991-1

IN RE:)
)
PROTEST OF MY SISTER'S HOUSE)
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)

O R D E R

This case came before the South Carolina Procurement Review Panel for hearing on January 31, 1991 on the appeal by My Sister's House of a decision by the Chief Procurement Officer ("CPO") dismissing the protest of My Sister's House as untimely.

Present at the hearing were My Sister's House, represented by Gregg Meyers, Esq., and the Division of General Services, represented by Helen Zeigler, Esquire. Also present but not participating as a party was the Department of Social Services ("DSS"), represented by Virginia Batson, Esquire.

FINDING OF FACTS

The basic facts are undisputed. On August 31, 1990, a Request for Proposals ("RFP") was issued to determine how DSS would distribute \$83,989 in federal funds to provide counseling and other services to victims of family violence across the state. Under the RFP, no winning offeror could receive more than \$20,000.

On September 21, eleven proposals were opened and the evaluation process began. On October 19, a final award statement was sent out but only to the five successful offerors. The RFP contained the provision, "Offerors who

desire a copy of the Statement of award must include a self-addressed stamped envelope." (Defendant's Ex. 1). My Sister's House did not include a self-addressed stamped envelope with its proposal.¹

No notice was mailed or otherwise given to My Sister's House. My Sister's House learned that it had lost the contract when it called DSS on November 21, 1990. In that phone conversation, My Sister's House was advised that it would not get any of the available funds and that no written notice would be sent.

On November 30, My Sister's House protested to the Chief Procurement Officer pursuant to S.C. Code Ann. §11-35-4210(1)(1976). The CPO found the protest of My Sister's House untimely because it was filed more than thirty days after the contract was awarded.

CONCLUSIONS OF LAW

At issue is S.C. Code Ann. § 11-35-4210(1), which provides:

The protest, setting forth the grievance, shall be submitted in writing within ten days after such aggrieved persons know or should have know of the facts giving rise thereto, but in no circumstance after thirty days of notification of award of contract.

General Services argues that "notification of award of contract" means the issuance of the award statement. In

¹The award statement indicates that no offeror sent in the self-addressed stamped envelope. (Defendant's Ex. 2).

this case, that date was October 19, 1990. Under General Service's interpretation, My Sister's House did not file its protest until more than thirty days after notification of award and is, therefore, not timely.

My Sister's House argues that "notification of award" means actual notice to it, either by receipt of the written statement of award or some other actual notice, as the telephone call in this case. My Sister's House learned by telephone call on November 21 that it had lost the contract. It filed its protest within ten days of that date.

The Panel finds that §11-35-1520(10) of the Consolidated Procurement Code compels agreement with General Services' interpretation of the notice requirements in this case. Section -1520(10) provides that "when a contract has a total or potential value in excess of fifty thousand dollars, notice must be given to all bidders responding to the solicitation as to the agency's determination that a certain bidder is the lowest responsive and responsible bidder Notice may be given by first-class mail of this intent to contract to the name and address on the bid documents." ²

Under §11-35-1520, the State is required to notify all bidders only when the contract amount exceeds \$50,000. In this case, no contract exceeded \$20,000.

²S.C. Code Ann. §11-35-1530(7) makes the notice procedures of §11-25-1520 applicable to competitive sealed proposals.

In passing § 11-35-1520(10), the General Assembly clearly intended to relieve the State from the burden of providing notice to all bidders when the contract in question is less than \$50,000. The Panel does not believe that the General Assembly intended to put the burden back in §11-35-4210(1).

Further, even though it was not required by the Code, the Request for Proposals in this case provided a means whereby unsuccessful bidders, such as My Sister's House, could receive a statement of award - namely, sending in a self-addressed stamped envelope with the bid. My Sister's House chose not to utilize this means and cannot be heard to complain of the lack of actual notice in this case.

For the reasons stated above, the Panel holds that the protest of My Sister's House is untimely and hereby dismisses it.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL


HUGH K. LEATHERMAN, SR.
CHAIRMAN

Columbia, S.C.
FEBRUARY 20th, 1991