

any descriptive literature with its bid as required by the IFB Bidding Instructions that, "The offeror must include with his bid, supporting product data sufficient for the State to determine equality and acceptability. . . ." (Record, p. 5 - 6).

The Computer Group argued that issue #1 is not timely because WIN failed to raise it in writing before the Chief Procurement Officer within thirty days of notification of award as required by S. C. Code Ann. § 11-35-4210(1)(1986). The Computer Group contended that the issue was first raised in WIN's June 22 appeal letter to the Panel forty-five days after the notification of award dated May 8, 1992.

WIN countered that issue #1 is timely under the thirty-day limit because WIN stated the issue in writing before the CPO in its "Review of the Bid of The Computer Group, Inc.", submitted to the CPO at the hearing on June 2, 1992. In its "Review", WIN states:

Before getting into the specific areas of contention, we would like to point out that we were not provided with technical descriptive literature with the copy of TCG's bid provided to us by the State. We are unsure whether the State just failed to provide it to us or that they in fact were never provided with such literature. However, given that TCG showed only their internal model/part numbers on their bid and did not specify the original equipment manufacturer ("OEM") not the OEM's model number, we feel that the State would have needed such literature in order to verify compliance with the specifications. Without such literature, we believe it is impossible to confirm whether the products offered

by TCG meet or exceed the specifications set forth in the IFB.

(Emphasis added) (Record, pp. 140-141).

At the hearing on June 2, The Computer Group admitted that it submitted no technical literature to the State. At that time WIN orally put forth the issue that the State could not determine whether WIN was responsive without such information.

The CPO did not address this issue in his written decision because he did not believe that the issue was before him.

The Panel finds WIN's issue #1 timely under the thirty-day deadline for filing protests.

Section 11-35-4210(1) requires an aggrieved protestant to submit its protest in writing within ten days of learning of the facts giving rise to the protest but "in no circumstances after thirty days of notification of award of contract." The Panel holds that, in this case, WIN's written statement in the "Review" submitted to the CPO on June 2 that the State could not verify compliance without The Computer Group's technical descriptive literature is timely under the thirty-day rule and was sufficient to place the issue before the CPO.¹

¹The parties did not raise the question or present evidence whether issue #1 is timely under the ten-day limit. Therefore, the Panel makes no ruling on that point.

Because the CPO failed to consider issue #1, the Panel was required to remand the matter back to the CPO for his consideration of the issue. Hitachi Data Systems Corp. v. Leatherman, ___ S.E.2d ___ (S.C. August 10, 1992).

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

By: 
Gus J. Roberts
Chairman

Columbia, S.C.
October 26, 1992