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STATE OF SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

JUL 06 1993

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 CONSOLIDATED AREA TRANSPORTATION)
 AUTHORITY)
 PETITIONER,)
 VS.)
 SOUTH CAROLINA PROCUREMENT REVIEW)
 PANEL, SOUTH CAROLINA BUDGET AND)
 CONTROL BOARD AND DIVISION OF)
 GENERAL SERVICES)
 RESPONDENTS.)

IN THE COURT OF COMMON PLEAS)
 C/A #92-CP-46-1715)

IN RE: PROTEST OF CONSOLODATED AREA)
 TRANSPORTATION AUTHORITY)

O R D E R

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This matter comes before the court pursuant to the Administrative Procedures Act, S.C. Code Ann. §§1-23-310, et seq. (1986) on the Consolidated Area Transportation Authority's (CATA) Petition for Review of an administrative decision by the South Carolina Procurement Review Panel (Panel).

BACKGROUND

On January 17, 1992, the State issued a Request for Proposals (RFP) to provide Title XIX Medicaid transportation for citizens in York, Union and other counties. The Final Award Report was issued on April 27, 1992.

On April 29, 1992, Ms. Roger Durant, the Director of CATA, received a telephone call from Ms. Maggie Holmes, the Director of Fairfield County Transit System (FCTS), an offeror on the RFP for that area, who had received the Final Award Report listing the contracts to be awarded under the RFP. Ms. Holmes' organization had not participated in this particular type of RFP before and she sought Ms. Durant's advice on what the Final Award

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Report meant since CATA has nine years' experience with Title XIX contracts.

Ms. Holmes testified, and the Panel found, that she read Ms. Durant the title of the report and told her that neither FTCS nor CATA appeared on the list of recipients of the contract. It is uncontested that Ms. Durant called State Procurement (General Services) and asked about the procedures for filing a protest that same day, April 29, 1992.

On May 4, CATA received its copy of the Final Award Report and filed a protest on May 12. The grounds of the protest were that CATA has successfully performed the contract for the past nine years, that CATA has a stable financial record, that CATA has developed a close relationship with the local social service agencies, that CATA's capability to serve clients exceeds that of the apparent winners of the contracts, that CATA has successfully passed monitoring visits, and that CATA's cost is lower than its competitors.

The Chief Procurement Officer (General Services) found that CATA did not timely file its protest, because it knew, or should have known, of the grounds of its protest on April 29, 1992, when Ms. Durant spoke to Ms. Holmes and State Procurement about the contract award and procedures for protesting same.

CATA appealed the Chief Procurement Officer's decision to the Panel on June 25, 1992. On September 23, 1992, the Panel issued its Order dismissing the appeal and affirming the Chief Procurement Officer's decision that the protest was untimely. CATA appealed the Panel's decision to this Court on October 22,

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1992, alleging the six grounds for reversal or modification provided by §1-23-380(g) of the Administrative Procedures Act, specifically that Ms. Durant's conversation with Ms. Holmes did not begin the ten-day timely filing period, because it was not official, written or reliable.

DISCUSSION

The only issue before this Court is whether CATA filed its protest within the time limit set by Section 11-35-4210 (1) of the Consolidated Procurement Code as follows:

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

The Panel held, and it and General Services argued, that CATA failed to file its protest within the ten-day limit, because CATA knew or should have known of all of the facts giving rise to its protest on April 29, 1992, when Ms. Durant was informed that the Final Award Report did not list CATA as a recipient of the contract in question, and asked State Procurement about the procedures for protest.

CATA argues that its protest is timely filed because it did not receive the official written Final Award Report until May 4, some eight days before it filed its protest. It argues that the April 29 telephone conversation between Ms. Holmes and Ms. Durant is not sufficient notice under §11-35-4210(1) to start the

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protest time running, because it was not official, written or reliable. However, the Legislature, in §11-35-4210(1), refers to the "official written Notice," the Notice of Intent to Award, when it so intends, in terms of the 30 day outer limit for filing a protest. It does not do so in the shorter, applicable ten day time limit, where it requires that a protest must be filed within ten days of when a protestant "knows or should have known" of the facts giving rise to its protest. Thus the Panel is correct in holding that, as the Legislature intends and the plain meaning of the statutory language states, Section 11-35-4210(6) requires no "official" or even "written" notice for the ten-day limit to begin. The ten-day limit begins when the protestant discovers (or should have discovered) that it has an actionable complaint about the solicitation or award of a contract, as in any analogous the timely filing requirement for civil or administrative or judicial appeals. See, Cf., Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333, 334 (1981)("[I]njured party must act with some promptness where facts and circumstances of injury would put person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist; statute of limitations begins to run from that point, and not when advice of counsel was sought of full-blown theory of recovery developed.")

CATA's appeal to this Court does not contest Ms. Holmes testimony that she told Ms. Durant that CATA was not listed in the relevant Final Awards Report as receiving an award. This, and her failure to inquire about CATA's status when calling State

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Procurement that day, constitute substantial evidence in the Panel's record that CATA knew, or should have known, it did not receive an award on April 29, 1992. This is further demonstrated by the fact that CATA had enough appreciation of its position on April 29 to call State Procurement and inquire about protest procedures. See, e.g. Smith v. Smith, 354 S.E2d 36 (1987) (Consultation with attorneys about claim indicates that Plaintiffs discovered or should have discovered claim by that time.)

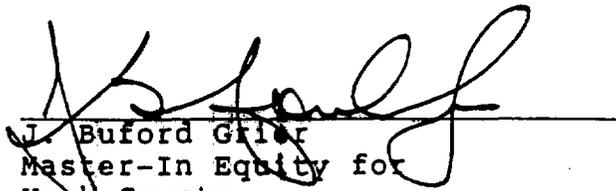
Since CATA's director discovered on April 29 that CATA was not the winner of the contracts in question, and CATA's grounds of protest are all related to its prior experience and success in performing this contract, of which it knew or should have been known prior to April 29, 1993, April 29 is the day that CATA knew or should have known all it needed to know to file a protest under §11-35-4210(1). Consequently, since CATA waited until May 12 to file its protest, it did not meet the ten-day limit for filing protests. Neither the Panel nor this Court have jurisdiction or authority to alter the timeliness prerequisites to jurisdiction. See, Burnett v. S.C. State Highway Dept., 252 S.C. 579, 167 S.E.2d 572 (1969). The Chief Procurement Officer and Panel therefore lacked jurisdiction to hear CATA's protest and the Panel's decision does not violate any of the Administrative Procedures Acts' grounds for reversal or modification.

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CONCLUSION

For the reasons outlined above, the Court finds that the Petition for Review of Consolidated Area Transportation Authority lacks merit, and hereby dismisses it.

IT IS SO ORDERED.


J. Buford Grier
Master-In Equity for
York County

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York, S.C.

June 29, 1993