

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1999-6

In re:)
Protest of Technology Solutions, Inc.;) **ORDER**
Appeal by Technology Solutions, Inc.)

This case was received by the South Carolina Procurement Review Panel (Panel) on August 23, 1999, from an appeal by Technology Solutions, Inc. (TSI), of the decision of the Chief Procurement Officer (CPO) finding TSI's protest untimely filed. The Panel issues this order without conducting a hearing based on the threshold issue of jurisdiction as determined from the undisputed facts of the case together with established law.

FINDINGS OF FACT

On June 7, 1999, the Information Technology Management Office (ITMO) issued a Request For Proposals (RFP) on behalf of Clemson University for temporary information technology personnel services. Responses to the RFP were opened on June 17, 1999, and the offerors were named at the public opening. SCB Computer Technology (SCB) was not named as an offeror at the opening. However, SCB did in fact submit a proposal in response to the RFP which was received prior to the bid opening date and time. SCB provided evidence of a Federal Express tracking document showing delivery on June 17, 1999 at 10:05 a.m. and signed by E. Dove, the bid room clerk. S.C. Code Ann. Reg. 19-445.2070(H) allows for acceptance of a bid in the situation, such as this, where a bid is properly delivered prior to the bid opening. On July 2, 1999, ITMO

posted and issued an intent to award the contract to SCB. TSI submitted a letter protesting the award to SCB on July 20, 1999.

CONCLUSIONS OF LAW

S. C. Code Ann. Section 11-35-4210(1) provides in pertinent part:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2) below within fifteen days of the date notification of award is posted in accordance with this code.

The intent to award the contract was posted on July 2, 1999. In computing the time to protest, one must look at S. C. Code, Ann. Section 310(13), which defines "days" as calendar days. The day of posting is not included, so the fifteen days begins to run on the day after the day of posting. Fifteen days from July 3, 1999, is July 18, 1999, which is a Sunday. Because the fifteenth day after the posting is a weekend day, the time to protest runs to the end of the next business day, which is July 19, 1999. TSI had until July 19, 1999, to file a protest of the award of the contract to SCB. TSI filed its protest on July 20, 1999.

TSI contends that it filed its protest late because General Services did not provide information in response to a request under the Freedom of Information Act before the time to protest expired. TSI further alleges that Eric Pickney, the ITMO buyer for the RFP, promised to get the information to TSI prior to the deadline for filing a protest, and advised TSI to wait on the information to decide if a protest was in order. One cannot rely on any assurances contrary to the

written law, even if from the procuring agency. According to the law, an offeror must take action within a specified time frame to preserve the right to protest. Any personnel problems perceived by TSI should be discussed with the appropriate management at ITMO.

The Panel has previously determined in Case No. 1988-13, In re: Protest of Oakland Janitorial, and many cases since, that the time to file a protest is jurisdictional and cannot be waived by conduct or consent of the parties. It is the responsibility of TSI to file a protest of the intent to award on or before July 19, 1999, in order to confer jurisdiction to review the merits of the protest. TSI's protest is not filed within the time frame specified by law, and there can be no other conclusion than lack of jurisdiction to consider the merits of the protest.

CONCLUSION

The Panel finds that TSI's protest letter is clearly untimely filed under S. C Code Ann. Section 11-35-4210(1), therefore the Panel lacks jurisdiction to consider the merits of the protest and TSI's protest is dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 
Gus J. Roberts, Chairman

Columbia, SC

Sept. 28, 1999.