

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

De Van & Associates

Materials Management Office
IFB No. 5400005244
Employee Background Checks for
Winthrop University

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2013-107

POSTING DATE: March 28, 2013

MAILING DATE: March 28, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest dated February 7, 2013, from De Van & Associates (De Van). With this invitation for bids (IFB), the South Carolina Materials Management Office (MMO) attempts to procure employee background checks on behalf of Winthrop University (Winthrop). Following the evaluation of the bids received, MMO posted its intent to award to SR&I LLC. De Van protested the award. The protest, in its entirety, stated, "Respectfully, we would like to protest the award of solicitation number 5400005244. We would like a copy of the complete offer specifically addressing '*Prices per check less search fees charged by states, municipalities, counties, federal agencies, etc.*'" (emphasis in original.)¹

Because the issue to be decided in this case is entirely statutory, this decision is prepared without the benefit of a hearing.

FINDINGS OF FACT

The following dates are relevant to the protest:

¹ The following morning De Van sent a second message to the protest address. In addition to the sentences quoted, it included two requests for information. The second message provided no grounds for De Van's protest.

1. On December 17, 2012, MMO published the IFB. (Ex. 1)
2. On January 7, 2013, MMO issued Amendment No. 1. (Ex. 2)
3. On January 10, 2013, MMO issued Amendment No. 2. (Ex. 3).
4. On January 14, 2013, MMO issued Amendment No. 3. (Ex. 4)
5. On January 24, 2013, MMO opened the bids received.
6. On February 7, 2013, after evaluating the bids, MMO posted the Intent to Award to SR&I LLC. (Ex. 5)
7. Also on February 7, De Van filed its protest with the CPO.
8. On February 18, 2013, MMO suspended the Intent to Award. (Ex. 7)
9. On March 1, 2013, De Van filed with the CPO an amendment providing the grounds for its protest. (Ex. 8)

CONCLUSIONS OF LAW

Section 11-35-4210 of the Consolidated Procurement Code, which grants bidders the privilege to protest an award reads, in pertinent part:

(1) (b) 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)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(2) Protest Procedure. A protest pursuant to subsection (1)(b) must be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b). At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b). A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(emphasis added.)

MMO posted its Intent to Award February 7, 2013. De Van filed its protest via email with the CPO the same day. The February 7, 2013 protest was timely filed. The email served notice of the protest and requested documents from the procurement file, but stated no grounds whatsoever for the protest. Regarding the protest, De Van wrote simply in its February 7, 2013 email “we would like to protest the award of solicitation number 5400005244.” De Van filed an amended protest notifying the parties of the issues to be decided March 1, 2013, twenty-two days later, well beyond the expiration of the 15-day filing period allowed by the Code.

The South Carolina Procurement Review Panel (Panel) has repeatedly held that the time for filing cannot be waived. *See In Re: Protest of Jones Engineering Sales, Inc.*, Panel Case No. 2001-8 (finding that the CPO did not have jurisdiction to rule on the protest issue because the time for filing protests of the solicitation is jurisdictional and may not be waived); *In Re: Protest of National Cosmetology Ass’n*, Panel Case No. 1996-17 (finding that “where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver”); *In Re: Protest of Vorec Corporation*, Panel Case No. 1994-9 (finding a protest of award untimely when it was filed one day after the deadline then established by the Code). The Panel has explained its rationale for why this time limit is jurisdictional and cannot be waived as follows:

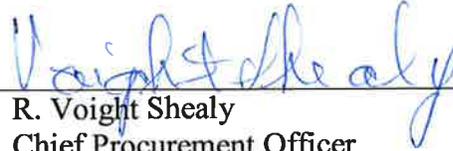
[I]t is essential to the operation of government that challenges its purchasing decisions be limited. If the time for filing protests can be waived, the state will be unable to determine with certainty when it can enter into a contract with one vendor for vital goods and services without the danger of being liable to another vendor.

In Re: Protest of Oakland Janitorial Services, Inc., Panel Case No. 1988-13.

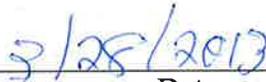
Here De Van filed its protest beyond the time allowed under the Code. Accordingly, the protest is dismissed as untimely filed.

DETERMINATION

For the foregoing reasons the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised January 2013)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2012 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

-
1. What is your/your company's monthly income? _____
 2. What are your/your company's monthly expenses? _____
 3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.