

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	
)	
)	CASE NO. 2001-8
In re:)	
Protest of Jones Engineering Sales, Inc.)	
)	ORDER
)	
Appeal by Jones Engineering Sales, Inc.))	

This case came before the South Carolina Procurement Review Panel (Panel) on June 15, 2001, by way of written appeal from Jones Engineering Sales, Inc. (Jones) of a decision by the Chief Procurement Officer (CPO) dismissing Jones' protest as untimely filed under South Carolina Code Ann. § 11-35-4210(1).

FINDINGS OF FACT

On March 19, 2001, ITMO issued a best value bid (BVB) numbered 01-S4127 for a Liebert Parallel Redundant UPS System for the Department of Revenue. On March 21, 2001, ITMO issued amendment 1 to the BVB setting up a site visit for March 28, 2001. On April 10, 2001, ITMO issued amendment 2 to the BVB extending the bid opening date to April 18, 2001. The responses to the BVB were opened on April 18, 2001. On April 24, 2001, ITMO issued an intent to award BVB 01-S4127 to HR Allen, Inc. for \$207,226. On April 25, 2001, Jones' protest was received by the CPO. Jones' protest requested that they be allowed to bid a Powerware/Exide UPS as an equal to the specified Liebert UPS on this project. On June 1, 2001, the CPO received a Motion To Dismiss Jones's protest as untimely filed under South Carolina Code Ann. § 11-35-4210(1). On June 11, 2001, the CPO issued a decision dismissing Jones' protest as untimely filed. On June 18, 2001, the Panel received Jones' request for review. On September 7, 2001, the Panel received a Motion To Dismiss (Without A Hearing) Jones' protest from the Office of General Services of the Budget and Control Board (General Services).

After a review of the relevant code section and prior case law, the Panel granted General Services' motion.

CONCLUSIONS OF LAW

South Carolina Consolidated Procurement Code Annotated § 11-35-4210 (1) provides is part the following:

Right to Protest; Exclusive Remedy. Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer ... within **fifteen days of the date of issuance of the Invitation For Bids or Request For Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.**

In the case at hand the solicitation documents were issued on March 19, 2001 and no amendment was at issue. Jones' protest was based solely on the initial solicitation. Therefore, the protest time ended on or about April 3, 2001. Jones protest was received on April 25, 2001.

In *Protest of Oakland Janitorial Services*, Case No. 1988-13, the Panel found that the time for filing protests set forth in section 11-35-4210 is jurisdictional and may not be waived by conduct or consent of the parties. Based on the facts set out above, neither the CPO nor the Panel would have jurisdiction to determine the issue raised by Jones' protest.

CONCLUSION

For the forgoing reasons, the decision of the CPO is upheld and Jones' appeal is dismissed.

IT IS SO ORDERED.

**SOUTH CAROLINA PROCUREMENT
REVIEW PANEL**

BY: _____


Gus J. Roberts, Chairman

Columbia, SC

September 24, 2001