

STATE OF SOUTH CAROLINA )  
 )  
PANEL )  
COUNTY OF RICHLAND )  
 )  
In re: )  
 )  
Protest of Companion Property and )  
Casualty Insurance Company;) )  
 )  
Appeal of: Rooney, McArthur & )  
Suggs, Inc. )  
\_\_\_\_\_ )

BEFORE THE SOUTH CAROLINA  
PROCUREMENT REVIEW

CASE NO. 2000-1

**ORDER ON REQUEST  
FOR REMEDY HEARING**

**Background**

This case came before the South Carolina Procurement Review Panel (Panel) on remand from the South Carolina Court of Appeals. A hearing was held on February 24, 2004. At the hearing before the Panel, Rooney, McArthur & Suggs (RMS) was represented by Melissa J. Copeland, Esquire. Companion Property and Casualty Insurance Company (Companion) was represented by Daniel T. Brailsford, Esquire. Keith McCook, Esquire, represented the Chief Procurement Officer (CPO).

The Panel ruled that RMS and American Southern should not have been granted a resident vendor preference when the contract was awarded. The order from the Court of Appeals remanded that question to the Panel. At the Panel's hearing Companion also argued that a finding by the Panel that the resident vendor preference should not have been granted to RMS and American Southern meant the contract was awarded in violation of the Procurement Code. Therefore, Companion argued that the provisions of S.C. Code Ann. §11-35-4310 should be applied.

The section provides that the Panel may award costs, including bid preparation costs, to a party when the contract ultimately is awarded in violation of law. The CPO

argued it was inappropriate for the Panel to hear this issue. We held this issue in abeyance pending the submission of briefs by the parties within 20 days of the date of the hearing.

The briefs were submitted by the parties and on April 1, 2004 the Panel decided the issue without oral argument as to whether the issue of costs should be heard.

### Discussion

The Panel considered all of the arguments put forth by the parties. The Panel does not believe the request is fundamentally unfair. Nor does it violate due process. Due process requires notice and an opportunity to be heard which has been and will continue to be afforded. We do not see any prejudice to the State by hearing the matter now.

Neither does the Panel believe that hearing Companion's request is inconsistent with the mandate from the Court of Appeals. "...[O]nce the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling." Martin v. Paradise Cove Marina, 348 S.C. 379, 559 S.E.2d 348 (Ct.App. 2001). In this case, the Court of Appeals remanded a question to the Panel. After answering the question, the Panel has jurisdiction over other matters properly before it provided such matters are not inconsistent with the order of the appellate court.

The viable issue in this matter is whether a request for costs under §11-35-4310 must be stated in the original protest within fifteen days pursuant to §11-35-4210. Companion argues that S.C. Code Ann. §11-35-4310 stands alone to provide remedies available to the Panel whether they were included in the original protest or not.

We find that the Panel may hear and decide a request for costs after a party has prevailed whether or not the party has requested it before. Section 11-35-4310 is clear on

this question. It provides, "In addition to or in lieu of any other relief, when a protest submitted under Section 11-35-4210 is sustained, and it is determined that the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, **then** the protesting bidder or offeror may request and be awarded a reasonable reimbursement amount, including reimbursement of its reasonable bid preparation costs (bolding added). The statute sets out a time for such requests outside of §11-35-4210.

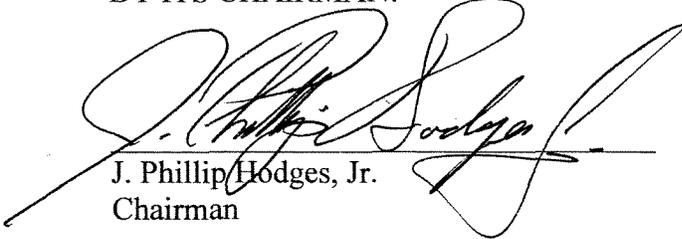
We find it illogical that a vendor hoping to be awarded a contract from his protest at the CPO would be responsible for including such matters as costs in his initial protest. It is more logical as the statute provides that the vendor make the request when he has prevailed, but cannot be awarded the contract.

**Order**

**IT IS HEREBY ORDERED** that Companion be afforded a hearing on its request for costs pursuant to §11-35-4310.

**AND IT IS SO ORDERED.**

SOUTH CAROLINA PROCUREMENT REVIEW  
BY ITS CHAIRMAN:



J. Phillip Hodges, Jr.  
Chairman

This 12<sup>TH</sup> day of April, 2004