

includes a recalculation of liquidated damages. (Record vol. 2, p. 3). Both Clemson and McCrory request the Panel's review of the CPO decision, which has been given case number 1994-13. (Record vol. 2, p. 42B & 42J).

By letter dated March 31, 1995, McCrory submitted to the CPO a request for contract resolution concerning Clemson's failure to pay for work completed. The CPO determined that he lacks jurisdiction of the issue, because of the case pending before the Panel. On April 28, 1995, McCrory requested review by the Panel of the CPO's determination. McCrory's request for review by the Panel has been assigned case number 1995-7.

The Panel has scheduled a hearing on case no. 1994-13 and case no. 1995-7, for the week of June 12 through June 16, 1995. Procedural questions were raised by the parties because two parties filed requests for review, and legal counsel for the Panel issued a letter dated May 22, 1995, explaining the procedures the Panel will follow. This letter is in addition to the procedural memorandum issued to each party with the Record of the case.

CONCLUSIONS

The Panel denies the Motion to Change Procedures. The procedures the Panel will follow is to allow McCrory to present its case on the issues of substantial completion, delay claims, liquidated damages, and payment for work completed. The Panel will then allow Clemson to present its defense to these claims. The Panel determines that the issues raised in Clemson's appeal to the Panel are only defenses to the issues raised by McCrory, not new issues. Neither McCrory nor Clemson are allowed to raise new issues at the Panel level of administrative review. However, the Panel's hearing is *de novo* and new evidence may be presented. The Panel is not bound by any aspect of the CPO decision.

The CPO decision has no precedential value to the Panel. The parties must present their cases before the Panel as if no decision has been rendered, because the Panel is not bound by the CPO's decision. General Services is allowed to participate in the Panel hearing and defend the CPO decision as the agency's final administrative decision, however, the Panel is not bound by any aspect of the CPO decision. Because the parties must come to the Panel's *de novo* hearing, and present their cases based on the issues raised in the original request for review, the burden to prove its case remains with the protestant. McCrory's original request for review by the CPO has raised issues in the context of a contract controversy. Neither McCrory's, nor Clemson's, appeal letter stating how it disagrees with the CPO decision changes the issues, or shifts the burden of proof. The issues are established in McCrory's original letters requesting review of the contract controversy, not the letters requesting the Panel's review. The CPO decision does not change this. Therefore, McCrory, the protestant, will be allowed to present its case, and Clemson will then be allowed to defend.

McCrory argues that the Panel should "adopt a procedure that would require each party to present evidence on the issues that were found contrary to that party first, as they are the moving/appealing party on such issues." The Panel disagrees. The issues raised have been put forth by McCrory in its original request for review to the CPO. McCrory retains the burden to prove its case. McCrory's and Clemson's appeal of the CPO decision simply points out areas of the CPO decision that the parties disagree with, and requests the Panel's review of the matter. The Panel is not just reviewing the CPO's decision for errors. The Panel's hearing is *de novo* and the Panel will consider the issues based on the evidence presented at the Panel's hearing, as well as the Record

before the Panel, and will "award such relief as is necessary to resolve the controversy....", as provided in S. C. Code Ann. Section 11-35-4320.

The Panel denies the Motion to Change Procedure.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY:



Gus J. Roberts, Chairman

Columbia, SC

May 29, 1995.