

State of South Carolina)	Before the Chief Procurement Officer
)	
County of Richland)	Decision
)	
In Re: Caption Colorado, L.L.C. vs South Carolina Office of Regulatory Staff)	Case 2009-224
)	
Contract Controversy: Real-Time Closed Captioning of News Broadcasts)	Posted: 09/13/2010
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Pursuant to Section 11-35-4230, Caption Colorado, L.L.C. requests resolution of a controversy arising from its performance of transcription and related services used to provide real-time closed captioning of news broadcasts in South Carolina. (Attachment 1) The CPO conducted a hearing of this matter on August 12, 2010. In the hearing, John E. Schmidt, III, Esquire, represented Caption Colorado (CC). Craig K. Davis, Esquire, and Florence P. Belser, Esquire, represented the South Carolina Office of Regulatory Staff (ORS).

At the hearing, the CPO heard motions, oral argument by counsel for both parties, and virtually all of Caption Colorado's case-in-chief.¹ At the conclusion of CC's case, the CPO decided to continue the hearing on another day, at which time CC was to be allowed to submit additional evidence on the issue of damages, followed by ORS' presentation of its case-in-chief. Having decided that this matter should be dismissed for lack of jurisdiction and failure to state a claim, the CPO finds that continuing the evidentiary hearing would be inappropriate.

The Complaint

By letter dated March 10, 2009, Caption Colorado submitted the following request for resolution.

Caption Colorado as subcontractor on the contract to provide certain closed captioning services to the State of South Carolina for news broadcasts, herewith raises its request for review of the below contract controversy to be determined by you.

Caption Colorado has provided such services to the State of South Carolina for many years with few if any issues. Over the past years, efforts have been made to publicly solicit a contract for these services and Caption Colorado has participated honorably in these matters at all times.

¹ At the hearing, CC stated that it was done with its presentation of evidence except with regard to damages. Though CC had adequate notice of the August 12th hearing, CC did not bring all its documentary evidence to substantiate the damages it claimed.

During the ongoing process of implementing a new contract on behalf of the State, Caption Colorado in good faith undertook to and did all things needed to be able to perform as requested by the State.

Hence it was more than disappointing to Caption Colorado when thereafter it was given only about one business days' notice of termination of its services by ORS, to be effective March 1, 2009. When Caption Colorado learned of this commercially unreasonable notice of termination, which was certain to cause Caption Colorado substantial damages, it contacted ORS through counsel to request commercially reasonable notice of termination and to informers that failure to provide such notice would result in a claim for the unreasonable termination notice damages.

ORS evidently reviewed the request and shortly thereafter, the same day, advised that it would not provide the requested commercially reasonable notice of termination. Caption Colorado had already incurred costs and commitments for the captioning to be done during March and April since no notice had been given until the eve of the termination. Hence, this claim is herewith submitted for the damaged caused by that unreasonable and inadequate termination notice.

Caption Colorado has suffered damages from the short notice in the amount of approximately one hundred thousand dollars, plus attorney's fees. Caption Colorado requests a hearing to address this claim and requests that an award in the amount stated above be granted to it. Caption Colorado will provide all material supporting its claim at the hearing of this controversy.

Motions

At the outset, the Office of Regulatory Staff (ORS) moved to dismiss this action on two grounds:

- The CPO lacks jurisdiction "because the contract with SCAD [South Carolina Association of the Deaf] was not 'solicited and awarded pursuant to the provision of the South Carolina Consolidated Procurement Code. " (Letter from Florence P. Belser, General Counsel, ORS, to Michael B. Spicer, CPO (March 16, 2009), at p.2). (Attachment 2)
- Caption Colorado (CC) lacked standing to bring this claim because "[t]he only party where privity of contract applies, SCAD, has filed no objection to the termination and no assignment has been asserted of any alleged rights required to . . . vest CC with real party in interest status." (Letter from Florence P. Belser, General Counsel, ORS, to Michael B. Spicer, CPO (March 16, 2009), at p.2).

ORS subsequently moved to dismiss on the grounds that "CC fails to state any cause of action." (Letter from Florence P. Belser, General Counsel, ORS, to Michael B. Spicer, CPO (April 15, 2009), at p.2) (Attachment 3)

Background

After reviewing all the documents received,² hearing the testimony of several witnesses, and considering the extensive arguments of counsel, the CPO has concluded that the pending motions can be resolved by making very limited, if any, factual findings. Nevertheless, the acquisition of closed captioning services by the State has a unique history that provides some context for the current dispute. The following recitation is offered only to provide context and does not constitute findings of fact by the CPO.

In 1999 the South Carolina Public Service Commission (PSC), the Clerk of the Senate, the Clerk of the House, and the South Carolina Association for the Deaf (SCAD) began a pilot project to provide real-time closed captioning of news programs, pre-selected public affairs programs, emergency news broadcast, and other selected programming at a television station in four media markets in South Carolina. The funding came from the Dual Party Relay Fund and was memorialized in a Memorandum of Understanding (MOU) between the Public Service Commission and SCAD. (Attachment 4) The project continued with a new MOU each year until 2004. The 2004 MOU was challenged by another potential provider of the services and a review by the Audit and Certification staff of the Budget and Control Board determined that this arrangement was subject to the South Carolina Consolidated Procurement Code. (Attachment 5) The PSC was granted a month-to-month ratification of the unauthorized procurement of these services under Budget and Control Board Regulation 19-445.2015 for the fiscal year ending in June 30, 2005, to allow for the competitive procurement of those services. (Attachment 6). Apparently, the project was transferred to the ORS upon its creation in January 2005. In September 2005, ORS sought ratification of the unauthorized procurement of captioning services for the months of July and August of 2005. (Attachment 7) Also in September 2005, ORS executed a six-month emergency procurement³ for these services which expired in February 2006. Although the services continued to be provided, there is no documentation in the record that would serve as a basis for continuation of this project from March 2006 until the passage of the first proviso in the FY 07-08 state budget. According to the parties, there was no written

² While most were not offered by either party, extensive documents were submitted to the CPO at his request. As the reasoning of this order will make clear, most of the documents received are irrelevant. Accordingly, the CPO's exhibits are limited to those attached to this order.

³ Attachment 2, footnote 2

contract between ORS and SCAD from March 1, 2006, until the arrangement was terminated on March 1, 2009. Attempts to procure these services met with repeated protests and delays from July 1, 2004, until a contract was finally solicited and awarded in February 2009.

Motion to Dismiss for Lack of Jurisdiction

As its first ground for dismissal, ORS argues that the CPO lacks the authority to hear this matter because the contract with SCAD was not solicited and awarded pursuant to the Procurement Code. Section 11-35-4230(1) provides as follows:

This section applies to controversies between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. The procedure set forth in this section constitutes the exclusive means of resolving a controversy between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, *concerning a contract solicited and awarded pursuant to the provisions of the South Carolina Consolidated Procurement Code.* (emphasis added)

ORS relies on the italicized text of the second sentence, which provides that "[t]he procedure set forth in this section constitutes the exclusive means of resolving" certain disputes. On its face, this sentence does not define the scope of the CPO's authority to hear disputes. Rather, it defines when the process created by section 11-35-4230 is exclusive. Contrary to ORS' argument, the scope of the CPO's authority is defined in the first sentence, which expressly defines the controversies to which "[t]his section applies..." Nothing in the second sentence ties the CPO's authority to the concept of "solicited and awarded."

Even if the CPO is wrong and the scope of the CPO's authority is defined by both sentences, the result is the same. If the acquisition is governed by the Procurement Code,⁴ the CPO has authority to hear the resulting dispute. A CPO has authority to address both disputes arising out of a contract properly formed pursuant to the Procurement Code and disputes arising

⁴ In relevant part, section 11-35-40(2) provides that the Procurement Code " applies to every procurement . . . by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal Requirements) and except that this code does not apply to gifts, to the issuance of grants, or to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations)." Section 11-35-310(24) defines procurement as "buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction." Section 11-35-310(8) defines contract as "all types of state agreements, *regardless of what they may be called*, for the procurement or disposal of supplies, services, information technology, or construction." (emphasis added)

out of "failed" relationships that are subject to the Procurement Code but not properly competed or that otherwise fail to successfully result in the formation of a valid contract. To conclude otherwise would create an absurd result. For example, the CPO would be authorized to resolve controversies based upon a cause of action for breach of contract, but if, after hearing the entire case, the CPO concludes that the contract was illegal, say for failure to use a competitive process or lack of actual authority, the CPO would be compelled to dismiss the entire case for lack of jurisdiction. The CPO rejects this analysis.

This general proposition is supported by the attached circuit court order, which the CPO finds persuasive. *Xerox Corp. v. South Carolina State University*, No. 06-CP-40-5478 (Richland, S.C., Ct. Common Pleas, March 28, 2007) ("Reviewing the § 11-35-4230(1) phrase 'solicited and awarded pursuant to the provisions of the South Carolina Consolidated Procurement Code' in context of the Procurement Code, I find that this phrase means § 11-35-4230 is applicable any time the Code is applicable to a governmental purchase, not just when the governmental body follows the proper purchasing procedures."). While the facts of the Xerox case are materially different than those under consideration, the court's general analysis is sound and its conclusion was not tied to highly unique facts.

In further support of its motion to dismiss for lack of jurisdiction, ORS argues that – in the absence of a valid contractual obligation – sovereign immunity has not been waived. ORS explains that "absent a specific statutory basis for asserting waiver of the state's immunity . . . there is no jurisdiction under S.C. Code Section 11-35-4230." (Letter from Florence P. Belser, General Counsel, ORS, to Michael B. Spicer, CPO (March 16, 2009), at p.2) ORS further explains that "ORS' Motion, which essentially asserts that the state is immune from this suit, and that there is no statutory authority to proceed in this matter, raises fundamental jurisdictional issues..." (Letter from Craig K. Davis, legal counsel for ORS, to Michael B. Spicer, CPO (August 5, 2010), at p. 1). (Attachment 8) This argument has no bearing on the jurisdictional question. Sovereign immunity is an affirmative defense, not a matter of jurisdiction. *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (S.C. 1994) ("[W]e overrule the antiquated rule that sovereign immunity is a jurisdictional bar and, accordingly, cannot be waived. We join those jurisdictions which hold that sovereign immunity is an affirmative defense that must be pled. This accords with modern precedent of this Court, holding that subject matter jurisdiction is met if the case is brought in the court which has the authority and power to determine the type of

action at issue.") (citations omitted). ORS' reliance on *Unisys Corp. v. South Carolina Budget and Control Board*, 346 S.C. 158, 177 n.13, 551 S.E.2d 263, 273 n.13 (S.C. 2001) is likewise misplaced. In that case, the Court dismissed not on jurisdictional grounds or on the grounds of sovereign immunity. Rather, the Court dismissed for failure to exhaust administrative remedies and expressly noted that "the required exhaustion of administrative remedies goes to the prematurity of a case and not subject matter jurisdiction."

Tangentially, ORS also argues that the law authorizing ORS' expenditure of funds for this project – a proviso of the annual appropriations act – does not waive sovereign immunity. At the hearing, ORS additionally argued that this proviso formed a contract between the General Assembly and SCAD. The proviso reads as follows:

56.1. (PSC: Real-Time Closed Captioning - Major Media Markets) The Public Service Commission is authorized and instructed to expend up to \$810,000 from the Dual Party Relay Fund in order to continue real-time closed captioning of locally produced news services for the four television stations that are currently providing the service. The purpose of the voluntary project is to allow for the deaf and hard-of-hearing citizens of our state to have real-time access to news and weather information. Only expenditures directly related to real-time closed captioning can be funded from this appropriation. This proviso will remain in effect through June 30, 2009, or until such time as a contract for real-time closed captioning may be awarded, whichever comes first.

2008 S.C. Act No. 310, Part IB, § 56.1. The CPO concludes that this proviso is not relevant to the issue of jurisdiction. Likewise, the CPO fails to see how the authorization to spend funds and the instructions provided by this proviso form a contract with a private party, a party which, absent agreement, would be under no obligation to provide the government with services.

Motion to Dismiss for Lack of Standing

As its second ground for dismissal, ORS argues that Caption Colorado lacked standing to bring this claim because Caption Colorado is not a real party in interest.

Caption Colorado argues that "[t]here is jurisdiction over this matter in the CPO because [Caption Colorado] was a subcontractor who stands as the real party in interest in regard to its claim for losses under a state contract." (Letter from John E. Schmidt, III, legal counsel for ORS, to Michael B. Spicer, CPO (August 5, 2010), at p.1) (Attachment 8)

Section 11-35-4230 provides that it "applies to controversies between a governmental body and a . . . subcontractor, when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them..." The Panel directly addressed this provision with

its opinion in *In re: Graduate Science Research Facility at the University of South Carolina*, Case No. 2003-2.

In that case, USC contracted with Kahn. Kahn subcontracted with ACM. ACM submitted eight claims to Kahn, which Kahn communicated to USC. Kahn and ACM then entered into an agreement providing, in pertinent part, that ACM would not sue Kahn and that Kahn would assist ACM in recovering from USC on its claims. Kahn subsequently filed a request for resolution against USC based on ACM's claims. Kahn and USC ultimately settled. In their agreement, USC expressly acknowledged "that *claims of M.B. Kahn's subcontractors and suppliers concerning the Project, if any, may be pursued directly against USC in M.B. Kahn's name...*" (Emphasis added.) Based on those express findings of fact, the Panel concluded that ACM was a real party in interest. In reaching this conclusion, the Panel concluded that it would be "incongruous to argue that ACM is not a real party in interest *when all parties had notice and made representations that ACM could continue to make claims against USC. Under these facts, with these consents and representations, there was no question that the subcontractor was a real party in interest...*" (emphasis added.) The Panel further explained as follows:

[W]e find it very persuasive that the settlement agreement between USC and Kahn recognized the claims of subcontractors and clearly said they may be pursued against USC in Kahn's name. By signing and affirming the settlement agreement, USC and Kahn confirmed and represented that the ACM is a real party in interest in this case... Following the settlement and release of Kahn, ACM was the only party with interest in the claims against USC...

... Our holding is that the dismissal by the CPO on procedural grounds and then the further granting of summary judgment was not warranted *by the facts in this case.* (emphasis added)

The alleged circumstances in this case are in stark contrast to the facts repeatedly emphasized by the Panel in its *Graduate Science* opinion. Caption Colorado and SCAD have not agreed that CC will not sue SCAD. CC and SCAD have not agreed that SCAD will assist CC in bringing a claim against ORS. Most importantly, ORS has not signed an agreement with SCAD expressly acknowledging that SCAD's subcontractors and suppliers "may pursue directly

against" ORS, as USC did in the *Graduate Science* case. Accordingly, the CPO finds that the *Graduate Science* opinion is not controlling in this case.⁵

In a contract action, the real parties in interest are, as a general rule, the parties that can enforce the contract.⁶ Obviously, the parties to a contract can enforce the contract. In some instances, a third party also has the right to enforce a contract, if it is an intended beneficiary of that contract.⁷ In addition, a party may be able to enforce a contract as an assignee of a party to the contract. Depending on the facts, a subcontractor could fall into any of these categories.

Here, Caption Colorado has not argued that it has a contract with ORS. To the contrary, it expressly argues that it is a subcontractor to SCAD.

The claim is that the subcontractor, Caption Colorado, was directly harmed by ORS' failure to give any form of commercially reasonable notice of termination of the services ORS specifically asked SCAD to provide, when it fully knew Caption Colorado was the subcontractor that would do the work.

(Letter from John E. Schmidt, III, legal counsel for ORS, to Michael B. Spicer, CPO (April 22, 2009), at p.4) (Attachment 10) Likewise, CC has not argued or offered any evidence to support a finding that SCAD has assigned any of its rights to CC. In fact, at the hearing, CC expressly stated it was not claiming any assignment.

Though not addressed in any of its written filings, CC did argue at the CPO hearing that it was an intended third party beneficiary of a contract between ORS and SCAD. However, the CPO heard no evidence to support this position. Rather, CC simply argued that it was an intended third party beneficiary of a notice provision in a contract between ORS and SCAD *because* notice was of value only to CC, not SCAD, and as the subcontractor, CC would be harmed by failure to comply with this notice provision. Even assuming these assertions are true, status as a third party beneficiary requires more. *Bob Hammond Construction Co. v. Banks Construction Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994).

⁵ One author has characterized the Panel's ruling in this case as follows: "[T]he Panel has ruled that a subcontractor is a real party in interest where the subcontractor has entered into a liquidating agreement with the general contractor whereby the general contractor agrees to present the claim to the State and the subcontractor agrees to accept what the general contractor recovers from the State without any further claims against the general contractor." Lawrence C. Melton, *South Carolina Construction Law* § 4.3.9, at 164 (HLK Global Communications, Inc. 2005).

⁶ See *Dagle Construction Co. v. Cerrati*, 262 S.E.2d 12 (S.C. 1980) (for lack of status as a real party in interest, dismissing case brought by corporation when the owner of the construction company, not the company itself, was the party to the contract at issue).

⁷ *Bob Hammond Construction Co. v. Banks Construction Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994) ("[I]f a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person.").

In *Bob Hammond*, the South Carolina Highway Department (Highway Dept.) contracted with Banks Construction Co. (Banks) to perform highway construction. Banks contracted with Bob Hammond Construction Co. (Bob Hammond) to perform some of the work Banks had agreed to perform for the Highway Dept. Bob Hammond later sued both Banks and the Highway Dept., claiming that both had breached their contracts. The circuit court judge granted summary judgment against Bob Hammond on its action against the Highway Dept. on the grounds that Bob Hammond and the Highway Dept. lacked privity of contract. Bob Hammond appealed. The Court of Appeals affirmed. On appeal, Bob Hammond argued that "although it was not a party to the contract between the Highway Department and Banks, it had a sufficient relationship with the Highway Department to support an action against it." In rejecting Bob Hammond's argument, the Court of Appeals offered the following analysis:

Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third party is not, as such, recoverable by the plaintiff. However, if a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person.

Hammond was no more than an incidental beneficiary of the contract between the Highway Department and Banks. Therefore, it cannot maintain an action against the Highway Department under its contract with Banks.

Hammond contends that it had been a subcontractor for the Highway Department since the late 1970's and that in relation to its work on the Mark Clark Expressway, it had submitted all required documentation and had been certified by the Highway Department as a subcontractor on the project. Furthermore, Hammond alleges it attended regular progress meetings between the Highway Department, Banks, and the subcontractors and that the Highway Department had specific knowledge of Hammond's contract with Banks. Finally, Hammond contends its contract with Banks bound the parties to the identical rights and obligations that existed under Bank's contract with the Highway Department. Hammond claims these facts create a sufficient third party relationship between itself and the Highway Department to allow the breach of contract action.

Assuming for purposes of the summary judgment motion that all of Hammond's allegations are true, they do not transform Hammond into an intended beneficiary under the Highway Department's contract with Banks. *Hammond has failed to introduce any evidence showing the Highway Department and Banks entered into their contract to directly benefit Hammond. The mere fact that*

Hammond might ultimately and indirectly benefit from the contract between the Highway Department and Banks is not sufficient.

Because we find Hammond cannot maintain a breach of contract action against the Highway Department, we do not reach the remaining arguments raised on appeal.

Id. (citations and footnotes omitted) (emphasis added).

Like the contractor in *Bob Hammond*, CC has failed to introduce any evidence showing that ORS and SCAD entered into a contract in order to directly benefit CC. The mere fact that CC might ultimately and indirectly benefit from that contract, or any individual provision of it, is not sufficient. The CPO concludes that CC is not an intended third party beneficiary of a contract between ORS and SCAD and, accordingly that CC cannot maintain a breach of contract action against ORS. In the absence of any claim, CC is not a real party in interest and, accordingly, lacks standing.⁸

Motion to Dismiss for Failure to State a Claim

ORS moved to dismiss CC's action for failure to state a claim. The CPO agrees. Even if CC is a "real party in interest" as that phrase is used in Section 11-35-4230, CC cannot maintain an action against ORS for breach of contract because it lacks privity of contract with ORS. *Bob Hammond Construction Co. v. Banks Construction Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994). Having failed to state a claim for which relief can be provided, this action is dismissed.⁹

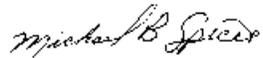
⁸ The CPO does not make any finding on whether a contract existed between ORS and SCAD or what the terms of such a contract might be.

⁹ Though probably unnecessary, the CPO observes that Section 11-35-4230 creates a forum for and establishes rules governing the resolution of claims against the state. Likewise, this Section serves as a limited waiver of the state's sovereignty immunity. *Unisys Corp. v. South Carolina Budget and Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001) ("[B]ecause a statute waiving the State's immunity must be strictly construed, the State can be sued only in the manner and upon the terms and conditions prescribed by the statute. The term "exclusive means" must therefore be strictly construed to limit suits on contracts with the State to the forum provided in § 11-35-4230.") (citation omitted) However, this Section does not create liability where none otherwise exists. Like the Tort Claims Act, this section of the Procurement Code does not create a cause of action against the government, it simply removes a bar and provides a process. *Cf. C. Tolbert Goolsby, Jr. & Ginger D. Goforth, The South Carolina Tort Claims Act: A Primer and Then Some* (S.C. Bar. CLE-Division, 3d ed., 2003) ("Contrary to common misconception, the Tort Claims Act does not create causes of action. Rather, the Act removes the common law bar of sovereign immunity in certain instances, but only to the extent permitted by the Act itself.") (citing *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 19 (2000)).

Decision

For the reasons stated above, ORS' motions to dismiss the claim of Caption Colorado are granted.¹⁰

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

¹⁰ In dismissing this action, the CPO notes that Caption Colorado is not left without a potential remedy. CC argues it had a contract with SCAD. If that contract entitled CC to the notice it claims, CC can pursue its claim against SCAD.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4230, 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 requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(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 why the person disagrees 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 any affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.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 General Appropriations Act for Fiscal Year 2010-2011, "[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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain 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).