

South Carolina Procurement Review Panel

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MEMORANDUM

FROM: CHRISTIE M. EMANUEL
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TO: ALL PARTICIPANTS

The following is the procedure used by the Procurement Review Panel in conducting its review hearings. If you have any questions concerning the Panel's procedures, please contact me.

Representation

All persons, including business entities, appearing before the Panel are entitled to be represented by legal counsel at their own expense. Business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by an attorney before the Panel. However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

Presentation of Case

The parties are allowed to make opening statements. Subject to the rules of evidence, all parties may present witnesses, who are placed under oath and are available for direct examination, cross-examination, re-direct and re-cross. Once the parties have finished questioning a witness, the Panel may or may not have questions of that witness. Once the Panel has finished questioning a witness, the parties may not question that witness further. However, a party may make a motion, at the appropriate time, to be allowed to call a reply witness for rebuttal testimony if necessary.

After the protestant/appellant rests its case upon presenting all witnesses and other evidence it desires, the agency, other bidder/offeror, Chief Procurement

Officer, and/or other parties may proceed. Upon completion of presentation of all witnesses and other evidence, closing statements are allowed, if desired.

Burden of Proof

The party bringing the original action before the Chief Procurement Officer generally has the burden of going forward and of proof. The burden may shift on a particular motion or issue as appropriate.

Time

There is no time limit on any facet of the case. The parties may take as much time as needed. However, because more than one case is often scheduled for a particular day, the Panel encourages the parties to be as economical with time as possible. The parties are also encouraged to stipulate testimony or facts where possible.

Decision

At the conclusion of the closing statements, the Panel retires to receive legal advice, as needed, and to deliberate the questions before it. The Panel's decision is in the form of a written order, which will be forwarded to every party within ten working days of the hearing as required by S. C. Code Ann. Section 11-35-4410(5). However, if the Panel designates the matter to be complex, its decision will be recorded within thirty days, as allowed by S.C. Code Ann. Section 11-35-4410(5).

Record

The Panel will send each party or its legal counsel, if represented, a compilation of the physical exhibits presented to the Chief Procurement Officer, except those exhibits which are too voluminous or too large to copy. These documents are numbered sequentially in the upper right hand corner. This package, along with the exhibits too voluminous or too large to copy, constitutes the initial record before the Panel. A transcript of the testimony before the CPO is not normally available or included in the record.

The parties should refer to any documents or exhibits by page number in the Panel record. Documents and exhibits in the Panel record, subject to objections under the rules of evidence, are presumed to be admissible, and may be referred to without the necessity of reintroducing these documents.

Because the Panel hearing is *de novo*, the parties are free, subject to the rules of evidence, to introduce any additional documents to be made a part of the record. When providing additional evidence, parties are encouraged to bring enough copies for the other parties, as well as the Panel members.

Although the Panel will receive additional evidence, the issues heard by the Panel, except for jurisdiction and standing, are limited to those raised before the Chief Procurement Officer.

Motions

The Panel requests that the parties make motions with as much advance notice as possible before the date of the hearing. The motion shall be filed with the Panel and a copy of the motion shall be served by the movant on the other party or parties.

Appeal

The proceedings before the Panel are recorded by a court reporter and will be transcribed and forwarded as part of the record in the event that one or more parties appeal to the circuit court. S. C. Code Ann. Section 11-35-4410(6) provides that "the decision of the Procurement Review Panel is final as to administrative review and may be appealed only to the circuit court. The standard of review is as provided by the provisions of the South Carolina Administrative Procedures Act." The appealing party is responsible for ordering the transcript and for the cost of the transcript.

Subpoenas

The Panel has the authority to issue subpoenas under S. C. Code Ann. Section 11-35-4410(4)(a)(ii), and will consider written requests for the issuance of subpoenas. The Panel will not issue "blank" subpoenas to be filled in by the party. The party requesting the subpoena is responsible for service of the subpoena.

Frivolous Protests

S. C. Code Ann. Section 11-35-4330(1) provides:

The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read the document, to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and it is not interposed for an improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

If S. C. Code Ann. Section 11-35-4330(1) is violated, subsection (2) allows for the imposition of an appropriate sanction, "that may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee."