

While the solicitation was conducted as competitive sealed bid pursuant to §11-35-3020¹, protest rights cannot be conferred by the State's choice of solicitation method. This point is clarified in the Code and Regulations, as follows:

*§11-35-1550(2)(d) Purchases from ten thousand one dollars to twenty-five thousand dollars. Written solicitation of written quotes, **bids**, or proposals shall be made. [emphasis added]*

Reg. 19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

A. Authority.

(1) Small purchases (under \$25,000) shall be made as provided in Section 11-35-1550. In accordance with Section 11-35-1550(2)(d), an agency may:

(a) solicit written quotes, as further specified in Section 11-35-1550(2)(d);

(b) solicit bids in accordance with Section 11-35-1520, Competitive Sealed Bidding, 11-35-1525, Competitive Fixed Price Bidding, or Section 11-35-1528, Competitive Best Value Bidding; or (c) solicit proposals in accordance with Section 11-35-1530, Competitive Sealed Proposals.

*(2) In accordance with Section 11-35-1550(3), procurements made under these procedures may not be protested under Section 11-35-4210 **if the total or potential value of the awarded contract(s) does not exceed \$25,000.00.** [emphasis added]*

DECISION

It is the decision of the Chief Procurement Officer for Construction that the protest of Environmental Management Services, Inc. is dismissed. The College of Charleston may proceed with the award of the contract for the construction of the Project.

IT IS SO ORDERED



Michael M. Thomas
Chief Procurement Officer
for Construction

June 15, 2005
Date

¹ Section 11-35-3020 of the Code modifies and supplements Section 11-35-1520 to address issues specific to construction.

STATEMENT OF THE RIGHT TO APPEAL

The South Carolina Procurement Code, under Section 11-35-4210, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten calendar days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the Panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site: <http://www.state.sc.us/mmo/legal/lawmenu.htm>

NOTE: Pursuant to Proviso 66.1 of the 2002 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel [filed after June 30, 2002] 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(4). . . . 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." 2002 S.C. Act No. 289, Part IB, § 66.1 (emphasis added). PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."