

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
In re: )  
 )  
Protest of American Southern )  
Insurance Co. )  
 )  
Appeal by )  
American Southern Insurance Co. )  
 )

BEFORE THE SOUTH CAROLINA  
PROCUREMENT REVIEW PANEL

CASE NO. 2003-3

ORDER TO DISMISS IN PART

ORDER TO STAY IN PART

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This matter came before the South Carolina Procurement Review Panel on April 29, 2003, on appeal from American Southern Insurance Company.

On May 12, 2003, counsel for the Insurance Reserve Fund, filed a Motion to Dismiss with the Panel. Counsel for American Southern filed a response on May 14, 2003, stating that a dismissal is not appropriate but that a stay of the case before the Panel is the better remedy. The Insurance Reserve Fund also filed a reply to the response of American Southern.

The Panel met by telephone conference on May 28, 2003.

### BACKGROUND

The matter initially stems from the Insurance Reserve Fund's procurement of automobile liability reinsurance. The Budget and Control Board, through its Insurance Reserve Fund, insures all state vehicles by acquiring liability reinsurance through the private insurance sector. The most recent reinsurance contract expired on May 1, 2003. Prior to that date, a solicitation went out seeking bidders for a new contract to be awarded for a three-year period. The solicitation was protested. Because the contract was near expiration, the Budget and Control Board declared an emergency and issued an emergency solicitation for a contract that would last one year. The emergency procurement was protested. The CPO issued an order allowing the emergency procurement to proceed despite the

protest. Typically, the procurement would have been stayed pending the protest. As a result of that order, American Southern protested the emergency procurement and the lifting of the stay to the Panel.

### **DISCUSSION**

The Motion to Dismiss filed by the Insurance Reserve Fund contends that the issues are not properly before the Panel and therefore should be dismissed. American Southern responded that the issues on appeal are within the original jurisdiction of the Panel and should only be held in abeyance until the CPO issues a decision in the protest of the emergency procurement.

An emergency solicitation and procurement are subject to protest under § 11-35-4210 (1) of the S.C. Code of Laws. Pursuant to that section, such a protest is to be made before the Chief Procurement Officer. In this matter, the protest has in fact been made to the CPO with a hearing set for May 30, 2003. This issue is not properly before the Panel. A decision is not final and conclusive under §11-35-4210 until a decision is rendered by the CPO.

The lifting of the automatic stay pursuant to §11-35-4210 (7), made by written determination that a solicitation or award should go forward without delay to protect the best interests of the State, is a final decision of the Chief Procurement Officer and is not subject to further review by the CPO. This is pursuant to §11-35-2410. Therefore, this issue is properly before the Panel. However, for practicality and scheduling purposes, this issue should be held in abeyance until such time as the protest of the emergency procurement is decided by the CPO.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA PROCUREMENT REVIEW PANEL**

BY: Willie D. Franks  
Willie D. Franks, Vice Chairman

**Columbia, South Carolina**

**June 3, 2003**