

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

In re: Contract Controversy – Agricultural
Biotechnology/Molecular Biology Complex

EllisDon Construction, Inc.

v.

Clemson University

Case No. 2005-2

**CONFERENCE AND SCHEDULING
ORDER**

For good cause shown, pursuant to S.C. Code §§ 11-35-4410(4)(a) and (5) and other authority and precedent, and consistent with the ORDER dated June 25, 2005 (the “ORDER”), the undersigned hearing officer hereby sets forth the following Conference and Scheduling Order for this hearing:

1. On or before **June 30, 2005**, EllisDon shall inform the other parties in writing which of the issues contained in its January 21, 2005 request for review letter, if any, it wants to abandon, modify or add in light of the ORDER. This communication shall be served on opposing counsel and is not to be filed with the Panel or hearing officer.
2. On or before **July 7, 2005**, Clemson shall inform the parties in writing which issues brought before the CPO in the hearing below it wants to bring before the Panel for consideration. This communication shall be served on opposing counsel and is not to be filed with the Panel or hearing officer.¹
3. On or before **July 12, 2005**, the parties shall confer to discuss the issues raised by the stipulations set forth below, to identify any documents on which they may rely and/or introduce at the hearing, and identify the responsibilities of the parties concerning the stipulations.
4. Motions, if any, are to be filed on or before **July 20, 2005**. Responses to any motions are due within ten (10) days.²
5. On or before **July 30, 2005**:
 - a. the parties shall file and serve a joint pre-hearing brief that stipulates as to the issues that the hearing officer is to resolve by organizing and consolidating the issues set forth in the request for review letters. Each party is to state its position on each issue, which party holds the burden of proof on such issue, and if such

¹ It is expected that the parties will be specific in their issues before the appeal, either following the format followed by the CPO in his decision and/or some other organized format (i.e., the January 21, 2005 request for review letter filed by EllisDon). A mere recital that a party appeals “all the issues before the CPO” would not be consistent with this Scheduling Order.

² Originals of motions and stipulations/pre-trial briefs shall be filed with the Panel’s counsel in Columbia. A working copy shall also be served on the undersigned hearing officer in electronic form (with the exception of the joint appendix or other voluminous documents, for which hard copies are appropriate).

issue concerns damages or remedial relief, specifying in detail the damages or remedy sought.³

- b. Each party shall file and serve a document that
 - i. identifies the witnesses expected to be called by such party, which issues such witness will testify to, and a summary of anticipated testimony.
 - ii. identifies any questions of law deemed by the party to be unique or unusual that are likely to arise in the hearing and legal authorities in support of the party's position.
 - c. The parties shall file and serve a joint appendix that contains all exhibits and other documentary records that may be used by either party at the hearing by organizing and consecutively numbering the potential record. This joint appendix shall include any documents brought before the CPO that the parties intend to rely on or introduce at the hearing and any additional exhibits the parties expect or intend to introduce at the hearing. An index to the joint appendix shall also be filed, containing each party's objections to the admission of particular exhibits and the basis of the objection (or if a party disagrees that a particular document should be contained in the joint appendix).⁴ Any reference to exhibits in pre- or post-hearing briefs and/or the hearing itself shall be to the numbered joint appendix.⁵
6. The parties are to schedule with the Panel's counsel a pre-hearing telephone conference between counsel and the hearing officer on or before **August 3, 2005**.
 7. The hearing on this matter shall commence **August 8, 2005**, at 10:00 a.m. in the conference room at 200 E. Camperdown Way, Greenville, South Carolina and shall continue day-to-day until the hearing is complete. Except as otherwise provided in this Conference and Scheduling Order, the parties are directed to the Panel's Procedural Memorandum.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



Mark W. Bakker
Hearing Officer

³ The positions may be concise, but should be informative. The example set forth in the January 21, 2005 request for review letter filed by EllisDon is helpful. It is assumed that all of the issues to be heard were addressed and contained in the CPO Decision, reflecting the CPO's position. To the extent that the parties raise issues not addressed in this decision, the CPO is invited to set forth his position on that particular issue.

⁴ The parties should also stipulate as to which documents can be automatically admitted into evidence. All other documents must be admitted through witness testimony at the hearing.

⁵ It may be helpful for the parties to divide discrete documents into pre-numbered exhibits before consecutively numbering the documents.