

STATE OF SOUTH CAROLINA )  
                                  )  
COUNTY OF RICHLAND      )

IN THE COURT OF COMMON PLEAS

IN RE: PROTEST OF PADDOCK CONSTRUCTION CO.

Paddock Construction Company, )  
Inc.,                              )  
                                  )  
          Appellant,              )  
                                  )  
          -vs-                      )  
                                  )  
South Carolina Procurement      )  
Review Panel,                      )  
                                  )  
          Respondents.            )  
                                  )  
                                  )

84 CP 40 2591

ORDER OF REMAND

A. CAMDEN LEWIS  
FOR THE APPELLANT

MALCOLM E. RENTZ, KENNETH  
P. WOODINGTON, AND JOSEPH  
McCULLOCH, JR. FOR THE  
RESPONDENTS

APR 29 3 39 PM '85  
BARBARA A. SCOTT  
C.C.C.P. & G.S.

FILED

HEARD: April 17, 1985

This matter is before me for judicial review pursuant to a Final Administrative Decision.

Paddock is a construction company specializing in construction of swimming pools with related support items. Paddock submitted a bid on the project advertised by the University of South Carolina on December 2, 1983. The project contract was awarded to Wise Construction Company, Inc. as general contractor and Price Pool Company, Inc., as subcontractor. On March 16, 1984, Paddock filed a bid protest with the Chief Procurement Officer, John McPherson, Jr. McPherson filed a decision dated April 30, 1984.

Paddock filed a request for review pursuant to South Carolina Code §11-35-4210(5) (1976) before the South Carolina Procurement Review Panel. A hearing was held where both documentary evidence and oral testimony were taken. The Review Panel issued its Order of Determination June 14, 1984.

By Petition and Appeal of Final Administrative Decision filed July 4, 1984, the entire proceeding came before this court for judicial review.

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A TRUE COPY

*Barbara A. Scott*  
C. C. C. P. & G. S.

The Order of Determination under South Carolina Code §11-35-4410(7) (1976) was a final administrative decision. Under South Carolina Code §1-23-380 (1976) the "agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review."

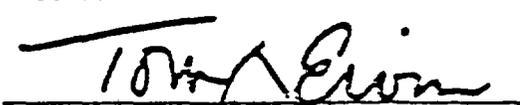
The record in a contested case, as this is, is defined in South Carolina Code §1-23-320(1976). That section specifically identifies what "shall" be in the record. South Carolina Code §1-23-320 (h) (1976) says:

"Oral proceeding or any part thereof shall be transcribed on request of any party."

When the record was transmitted to the court, a transcription of the oral proceedings was not included. The parties stipulated and agreed that a request was properly made to the agency for such a transcript. It was also agreed that there was no stipulation allowing the record to be shortened. The tape of the oral proceeding was apparently lost or inadvertently destroyed prior to transcription. Paddock moved for an order remanding the entire proceeding to the Review Panel for a new hearing in the absence<sup>of</sup> a record.

A record is necessary for meaningful review. Eg. Environmental Defense Fund Ins. v. Hardin, 428 F2d 1093 (D.C. Cir. 1970). The proper course where a substantial defect is found in the administrative process is to remand such for further proceedings. Eg. Dick v. U.S. 330 F.Supp 1231 (D.C. DC 1972). Since there is no record for judicial review, remand is ordered.

This matter is remanded to the Procurement Review Board for the purposes of a full hearing to make a record on the merits of the bid protest.

  
 THOMAS J. ERVIN  
 Presiding Judge  
 Fifth Judicial Circuit

April 29, 1985

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