

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND) CASE NO. 1989-5

IN RE:)
ARCHITECTURAL SERVICES PROCUREMENT)
FOR REPLACEMENT OF CENTRAL CORRECTIONAL)
INSTITUTE - LEE CORRECTIONAL INSTITUTE) O R D E R
PROJECT)
)

The above case is scheduled for hearing before the South Carolina Procurement Review Panel on May 22, 1989, pursuant to S. C. Code Ann. § 11-35-4410 (1976). The issue before the Panel is whether any violations of the Consolidated Procurement Code occurred in the architect selection process for the Lee Correctional Institute Project. The selection process was implemented by the Department of Corrections ("Corrections") and overseen by the Budget & Control Board, Division of General Services ("General Services"). The first choice to receive the contract is Architectural Engineering Associates, Inc., ("AEA"). The only parties before the Panel at present are Corrections and General Services.

By Petition dated May 16, 1989, AEA, its Chairman of the Board, R. Phil Roof, its President, Anders J. Kaufmann, and RPR & Associates, ask to intervene in and be made parties to the matter before the Panel. The Petition states as grounds:

- (1) The proceeding before the Panel affects the present rights of the Petitioners with respect to the contract to provide architectural services at issue and also with respect to their rights to be considered for awards of

future contracts with the State of South Carolina and its political subdivisions.

(2) Due process under the South Carolina Constitution requires that the petitioners be given an opportunity to be heard.

(3) Intervention would not unduly delay or prejudice the rights of existing parties.

In determining whether intervention should be allowed, an agency should balance the need to keep a hearing manageable against the need to protect the rights of the parties and other interested persons and the need to obtain evidence and arguments for better informed decisions. Generally, the right to intervene turns on whether the petitioner has standing before an agency, i.e., whether the proceeding can materially affect the petitioner's legal rights. D. Shipley, South Carolina Administrative Law 5-55 - 5-56 (1983).

In this case AEA is the first choice of the Department of Corrections to receive a \$2.7 Million contract to provide architectural services to the Department. AEA cannot receive the contract, however, until it is approved by the State Engineer's Office (General Services). The request for such approval was withdrawn from the State Engineer on April 27, 1989.

Because AEA's interest is inchoate, its right to intervene is questionable. Balancing the needs listed above, however, and because the other parties will not be prejudiced, the Panel finds AEA's interest significant

enough to allow intervention of AEA in the proceeding before the Panel.

The same is not true of the other Petitioners. Messrs. Roof and Kaufmann are Chairman of the Board and President, respectively, of AEA. Their only interest comes by reason of their status as officers of the corporation. They have no individual interest in the proceeding beyond that of witnesses. The Panel finds that Mr. Roof and Mr. Kaufmann's interests do not warrant intervention.

Even further removed is RPR & Associates. The only connection RPR has with the contract at issue is that it may have acted as a consultant to AEA, if AEA received the contract. Beyond its interest as a witness, RPR has no legal interest in the proceeding before the Panel which would warrant intervention.

For the reasons stated above, AEA is hereby granted the right to intervene in the May 22 proceeding before the Panel and shall be accorded full participation with the right to present witnesses and other evidence, to cross-examine and to argue before the Panel. The Petitions of Anders J. Kaufmann, R. Phil Roof, and RPR & Associates are denied.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



Hugh K. Leatherman, Sr.
Chairman

Columbia, S. C.
MAY 19th, 1989