

CONCLUSIONS OF LAW

The statute in question is found at §11-35-1520(11) of the Procurement Code and reads, in pertinent part, as follows:

Prior to soliciting bids, the procuring agency, acting through the authorized procurement officer, may issue a request for qualifications form prospective bidders...After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two prospective bidders by means of an invitation for bids. The failure of a prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest under Section 11-35-4210.

AEA claims that the through the use of §11-35-1520(11), SCDC is systematically excluding them from bidding on construction contracts. While the Panel feels there is possible merit in AEA's claim, the Panel lacks jurisdiction to hear the matter. The statutory law is clear. Section 11-35-1520(11) does not provide for protests. The Panel is concerned, however, that this section has the potential for abuse which may result in discrimination against certain bidders while denying them due process. This result was clearly not the intention of the General Assembly in enacting the Procurement Code as one of the main purposes of the Procurement Code is "to ensure the fair and equitable treatment of all who deal with the procurement system." SC Code Ann. §11-35-20(f).

Because the Panel lacks jurisdiction to hear the matter, the Panel feels the proper remedy for a party aggrieved in connection with §11-35-1520(11) is to petition the General Assembly to examine this statute and make any changes necessary to prevent discrimination against bidders.

For the foregoing reasons the Panel upholds the decision of the CPO and dismisses the protest for lack of jurisdiction.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 
Gus J. Roberts, Chairman

Columbia, South Carolina

DECEMBER 17, 1997