

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT
OFFICER
DECISION**

In Re: Determination of Probable Cause to Suspend New Venue Technologies, Inc., New Venue Technologies II, LLC, NewVenue Technologies, Terris Riley LLC, Terris Riley, and Jacque Riley

CASE NO.: 2014-204

POSTING DATE: July 30, 2014

MAILING DATE: July 30, 2014

The South Carolina Consolidated Procurement Code (the "Code") authorizes the appropriate chief procurement officer to suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. S.C. Code Ann. § 11-35-4220. On October 8, 2013, the Information Technology Management Office ("ITMO") advised the Chief Procurement Officer ("CPO") that actions by New Venue Technology, Inc. ("New Venue") alleged in a contract controversy filed with the CPO on September 30, 2013, if proved, constitute cause for debarment under S.C. Code Ann. § 11-35-4220 (2011). Those actions include, but are not limited to, (1) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; (2) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; and (3) other acts so serious and compelling as to affect responsibility as a state contractor or subcontractor. By letter dated October 8, 2013, ITMO also requested the suspension of New Venue from consideration for award of contracts or subcontracts during an investigation whether such debarment be appropriate.

Section 11-35-4220(1) Authorizes the appropriate chief procurement officer to suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment.

- (2) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to:
- (d) violation of contract provisions, as set forth below, of a character regarded by the appropriate chief procurement officer to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; except, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered a basis for debarment;
 - (f) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor,

including debarment by another governmental entity for any cause listed in this subsection.

Background

New Venue was awarded a state term contract for a Software Acquisition Manager (SAM) (Solicitation No. 5400001873) to provide and maintain a real-time, web-based, vendor hosted system and to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle. No funds were appropriated for this project so offerors were asked to propose a self-funded model to pay for this service.

The Budget and Control Board (“Board” or “State”) filed a request for contract resolution alleging multiple breaches of the SAM state term contract by New Venue Technologies, Inc. Shortly thereafter, the State petitioned the CPO to suspend and debar New Venue from consideration of contract award. The State subsequently withdrew its contract controversy resolution request, but left the suspension / debarment petition in place. Subsequently, New Venue requested resolution of a contract controversy alleging breach of contract by the State. The Board denied New Venue’s allegations of breach of contract and filed counter claims. The CPO held an administrative review of both sets of allegations from May 19, through May 29, 2014. The CPO took nine days of testimony and accepted 465 exhibits comprising more than 25,000 pages of evidence into the record. The CPO issued a decision in Case 2014-206 In Re: Request for Resolution of Contract Controversy by New Venue Technologies, Inc. Counterclaim by South Carolina Budget and Control Board, on July 18, 2014 which is incorporated herein by reference.

DISCUSSION

At the conclusion of the administrative review the CPO found that New Venue, not the Board, breached the contract. While the CPO’s decision in that matter is under appeal, the evidence and testimony presented during the administrative hearing revealed actions by New Venue that were so egregious as to compel the CPO to take immediate action on the Board’s petition to suspend New Venue its principal officers, and any business entities owned or operated by its principals pending the outcome of the State’s investigation to determine if debarment is warranted.

The CPO relies on the following findings of the administrative review in determining that there is probable cause for debarment. New Venue failed to perform any of the primary requirements of the contract including the establishment of a real-time, web-based, vendor hosted system to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license

redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle. New Venue failed to forward orders from Public Procurement Units (PPU) to the software providers within three days as required by the contract. New Venue intentionally misled PPUs as to the status of their orders. In some cases, New Venue accepted payment from the PPUs without forwarding the order to the software providers. New Venue failed to remit payment to the software providers in accordance with the contract. New Venue intentionally misled software providers and ITMO about the status of payments. New Venue appropriated more than \$2.7 million dollars that it received from PPUs that should have been remitted to the software vendors to fund personal expenses of New Venue's owners; Terris and Jacque Riley. These personal expenses included more than \$711,000.00 to a contractor for construction of the personal residence of Terris and Jacque Riley, more than \$66,500.00 for the purchase of the land for that house, plans, a swimming pool and landscaping at the home totaling almost \$70,000.00. Mr. and Ms. Riley took more than \$600,000.00 in cash withdrawals from accounts; none of the cash was paid to any software resellers and spent nearly \$200,000.00 in religious donations and consultant services. The Rileys spent more than \$564,000.00 in debit card transactions on New Venue accounts.

Ms. Riley's testimony regarding New Venue's failure to remit payment to the software contractors within three(3) days of receipt of payment from the PPUs, as required by the contract, is particularly troubling:

Q: Do you contend that you had any entitlement to the use of the 97.5 percent of the funds that you collected and were to remit to the resellers?

A: I contend that I have entitlement to any revenue that comes into my company for the use of productivity in my business, for the use of moving our business forward, and especially for the use of adhering to new contract requirements that were not in place before I was awarded the contract.

Q: Okay. Did you ever notify the State in any way that "I'm keeping money as part of that 97.5 percent that I'm supposed to be delivering to the vendor"?

A: Well, that would mean keeping -- keeping to me -- this is what "keeping" means. "Keeping" means that I am -- I've taken some money. I've stashed some money away, and I have the intent to keep that money stashed away and never to pay anybody, never to remit anything and never to inform you of what it is I intend to do or what it is I'm trying to accomplish ever. That's what "keep" means. So, my answer to you is that, no, I did not contact the State to tell them what I'm keeping, because that's not what I did.

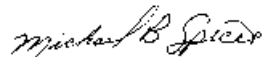
Mrs. Riley inflated her educational achievements claiming minors in Business Administration, Early Childhood Education, and Computer Science in addition to a bachelor's degree in English. The evidence showed that her only degree is one in English.

The corporate profile in New Venue's proposal appears to be misleading in indicating that they had "Offices (including virtual) located in MD, NC, and GA." Testimony indicated that these were not New Venue offices but businesses with which New Venue did business.

Determination

New Venue Technologies, Inc., New Venue Technologies II, LLC, NewVenue Technologies, Terris Riley, LLC, Terris Riley, and Jacque Riley are suspended from consideration for award of contracts or subcontracts pending completion of investigations conducted by the Board or any other State agency the Board's requests to assist in the investigation to determine if debarment is warranted.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Suspension / Debarment Appeal Notice (Revised October 2013)

The South Carolina Procurement Code, in Section 11-35-4220, subsection 5, states:

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2043 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. [The Request for Filing Fee Waiver form is attached to this Decision.] If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 26, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

Name of Requestor

Address

City State Zip

Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.