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Protest Decision

Matter of: Provaliant Holdings, LLC and Provaliant Retirement, LLC

Case No.: 2017-205

Posting Date: April 19, 2017

Contracting Entity: South Carolina Public Employee Benefit Authority

Project No.: PEBA0122016

Description: Client Services Vendor to Facilitate and Support Program Activities

DIGEST

Protest of award alleging, among other things, a disqualifying organizational conflict of interest, dismissed as untimely. Provaliant Holdings, LLC and Provaliant Retirement, LLC's (Provaliant) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	09/16/2016
Amendment 1 Issued	09/27/2016
Amendment 2 Issued	10/04/2016
Amendment 3 Issued	10/18/2016
Amendment 1 Issued	11/01/2016
Intent to Award Posted	10/07/2016
Protest Received	01/13/2017
Protest Amended	01/30/2017
Linea Solutions, Inc.'s (Linea) Motion to Dismiss	02/16/2017
Provaliant's Response to Linea's Motion to Dismiss	02/21/2017
Linea's Response to Provaliant's Response ¹	02/24/2017

ANALYSIS

Provaliant's protest has its genesis in a request for proposals (RFP) for assessment services ITMO conducted on behalf of PEBA in 2014. [Solicitation Number 5400008095, "Business Process and Operational Systems Assessment" (Assessment RFP)]. The Assessment RFP and subsequent amendments clearly stated that the awardee would not be eligible for subsequent scopes of work arising out of the Assessment RFP. On December 17, 2014, ITMO awarded the contract for assessment services to Linea. On November 14, 2015, ITMO issued a change order to Linea's contract that provided in pertinent part:

"The Contractor may submit a proposal response for any future procurement to include: "procurement development and support, project management and oversight, and Independent Verification and Validation (IV&V)."

Change Order #2 [Attachment 2].

On September 16, 2016, PEBA issued a solicitation for a "Client Services Vendor to Facilitate and Support Program Activities" (CSV), which is the subject of this protest.² The CSV solicitation did not prohibit the Assessment Contractor from submitting a proposal.

¹ Due to certain representations made in this response, the CPOITMO delegated this protest to the CPO on March 3, 2017.

PEBA conducted a pre-proposal conference held on October 27, 2016. Representatives from Provaliant, Linea, and others attended. At the conference, PEBA distributed to all participants, the written questions PEBA had received from potential offerors before the conference. Three of the questions, two of which Provaliant submitted, directly related to whether PEBA would allow Linea to participate in the CSV solicitation. At the pre-bid conference, PEBA orally confirmed that Linea could submit a proposal in response the CSV solicitation. [Affidavit of David Quiat, Exhibit 10A to Linea's motion to dismiss]

On November 1, 2016, four days after the pre-bid conference, PEBA issued Amendment #4 wherein it answered vendor questions. With respect to the three questions directly related to Linea's ability to participate in the CSV solicitation, PEBA answered as follows:³

1. Amendment 2 (issued on 10/01/2014) to SC PEBA Solicitation number 5400008095⁴ (issued on 08/22/2014), contained the following questions and answers:

1. The Contractor shall not submit a proposal response for any procurement that results from this contract.

Does this clause prohibit us from submitting a proposal for future project oversight services such as development of solicitations for services defined in the High Level Roadmap, additional project management services if needed, or oversight of the Roadmap implementation?

State Response: Yes. The Contractor shall not respond to any procurement that results from this contract.

18. Will PEBA consider firm(s) hired to perform the assessment services under this RFP for subsequent phases such as future replacement of current technology solutions?

State Response: See response to Question #1.

48. With regard to Section E – General Requirements, Item 3 – Is the contractor allowed to submit a proposal for oversight project management

² The CPO for Information Technology delegated the conduct of this acquisition to PEBA.

³ The first two questions listed here were submitted by Provaliant.

⁴ This is the Assessment Request for Proposals issued in 2014.

work (or similar) that may arise from external or internal development of functionality identified in the plan?

State response: See response to Question #1.

Would the State please confirm that the winner of solicitation number 5400008095 issued on 08/22/2014 is not eligible to bid on this solicitation number PEBA0122016 issued on 09/16/2016?

Response: Change Order #2 to Contract Number 5400008905, issued November 4, 2015, revised the following general requirements statement within the Scope of Work, Section III, Paragraph C – Operational Information Technology Systems Modernization Plan, Phase (III), as follows:

E. General Requirements

Item #3 - ~~The Contractor shall not submit a proposal response for any procurement that results from this contract.~~ This requirement is deleted. The following is revised to the Scope of Work; “The Contractor may submit a proposal response for any future procurements to include: procurement development and support, project management and oversight, and Independent Verification and Validation (IV&V).”

Amendment 2-Item #1 – question and the State’s response is hereby deleted from Amendment 2.

As such, the Contractor awarded a contract as a result of solicitation number 5400008095 is eligible to submit a proposal on this solicitation number PEBA0122016.

2. Can we get the amendment(s) for solicitation 5400008095 that allows Linea to respond to the solicitation PEBA0122016? Also, can you tell us when and how this Amendment was published to the public?

Response: An Amendment means a document issued to supplement the original solicitation document. A Change Order means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. A Change Order to Contract Number 5400008905 was issued to Linea Solutions, Inc. on November 4, 2015 (please see the response to question number 1).

3. Is Linea disqualified to participate in the RFP since they completed the PEBA Operational System Modernization Roadmap?

Response: No. Please see the response to question number 1.

[Amendment 4, pp. 3-4, Exhibit 5 to Linea's motion to dismiss (all emphasis in original)]

Amendment 4 provided all potential offerors with explicit written notice, fifteen days before the deadline for submitting proposals, that Linea could submit an offer in response to the CSV solicitation.

On November 16, 2016, PEBA received proposals from Provaliant, Linea, and LRWL, Inc. On January 13, 2017, PEBA posted a Notice of Intent to Award a contract to Linea. Ten days later, Provaliant protested the intended award and submitted an amended protest on January 30, 2015.

As Provaliant acknowledged in its response to Linea's motion to dismiss, the "South Carolina Consolidated Procurement Code (Code) provides only two entry points for a protest – (1) 15 days after the issuance of a solicitation document that aggrieves a prospective offer and (2) 10 days after an award that aggrieves an actual offeror." The Code states:

(a) A prospective bidder, offeror, contractor, or subcontractor **who is aggrieved in connection with the solicitation** of a contract shall protest to the appropriate chief procurement officer ... within **fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents**, whichever is applicable, or **any amendment** to it, **if the amendment is at issue**.

(b) Any actual bidder, offeror, contractor, or subcontractor **who is aggrieved in connection with the intended award** or award of a contract shall protest to the appropriate chief procurement officer ... within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; **except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award** of a contract.

S.C. Code Ann. § 11-35-4210 (emphasis supplied).

Provaliant's First Ground of Protest – Organization Conflict of Interest

Provaliant's first ground of protest alleges the intended award of a contract to Linea is improper because of an organizational conflict of interest (OCI) arising from the fact that Linea was the

Assessment contractor. The Procurement Review Panel has never addressed the timeliness of a protest based on OCI. “”Under federal⁵ procurement law, generally, an OCI may be protested after award. *REEP, Inc.*, B- 290688 (Comp.Gen.), 2002 CPD P 158. However, a different rule applies where a solicitation is issued on an unrestricted basis, the protester is aware that a potential offeror has participated in developing the project and is participating in the competition, and the protester has been advised by the agency that it considers the potential offeror eligible for award. *International Science and Technology Institute, Inc.*, B- 259648 (Comp.Gen.), 95-1 CPD ¶ 16; *Apptis, Inc.*, B- 299457 (Comp.Gen.), B- 299457.2, B- 299457.3, 2008 CPD ¶ 49; *Abt Associates, Inc.*, B- 294130 (Comp.Gen.), 2004 CPD ¶ 174; *Honeywell Tech. Solutions, Inc.*, B- 400771(Comp.Gen.), B-400771.2, 2009 CPD ¶49; *Raydar & Associates, Inc.*, B- 401447 (Comp.Gen.), 2009 CPD ¶ 180. In addressing the situation where an OCI is disclosed during the question and answer period of a solicitation, the Comptroller General stated:

In our view, any challenge to GEs participation in this procurement should have been raised prior to the time set for the receipt of initial proposals, as required by the timeliness rules of our Bid Protest Regulations. 4 C.F.R. 21.2(a)(1) (2004). The record here shows that the impact of the earlier Proof of Concept demonstration on this competition was discussed at great length by the offerors and the agency. Specifically, a total of 11 questions and answers—questions 9, 22, 25, 26, 39, 40, 41, 42, 43, 44, and 46—dealing with whether GE/BDM would have an unfair advantage in this competition were set forth in amendment 5 to this RFP. The agency expressly advised potential offerors that GE would be allowed to participate in the competition (questions 22, 41), and that it had determined that GE would not have an unfair competitive advantage as a result of the prior demonstration (questions 25, 26, 39). Given that the agency clearly disclosed that GE would be allowed to compete, and would not be viewed as having an unfair competitive advantage, CCI was required to raise any challenge related to an unfair benefit accruing to GE by virtue of its prior participation before the time proposals were submitted.

⁵ While not binding on the CPO, federal decisions can provide guidance in the absence of Panel precedent. The Panel itself has occasionally relied on the reasoning in federal protest decisions. *See, e.g., Appeal by Catamaran*, Panel Case No. 2015-2. And both PEBA and Provaliant have cited federal law in their submittals to the CPO. As PEBA’s counsel observed, “federal procurement law in this area is more developed and helpful.”

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CliniComp, International, B- 294059 (Comp.Gen.), B- 294059.2, 2004 CPD ¶211 at 4 (citing *Central Texas College*, 71 Comp. Gen. 164 (Comp.Gen.), B- 245233, B- 245233.4, 92-1 CPD ¶ 121).

While it has never addressed the timeliness of an OCI protest, the Panel has held that actual notice can trigger the protest period. *Appeal by Otis Elevator Company*, Panel Case No. 2013-8. When notice is given in the solicitation documents, the Panel has required a protest must be made within fifteen days of the publication of the document giving notice:

[W]hen a solicitation's terms indicate that preferences will be applied, then a bidder who disagrees with the application of preferences must protest the solicitation document as provided by Section 11-35-4210. Under the facts of this case, the Panel finds that the solicitations and bidding schedules clearly indicated that SCDOT intended to apply the resident vendor and end product preferences. Because these solicitations specified that the preferences would be applied, this provision of the Procurement Code required Tekna, who disagreed with their application, to protest the solicitation documents as specified in Section 11-35-4210.

Appeal by Tekna Corporation, Panel Case No. 2012-7; see also *Appeal by Short Counts, LLC*, Panel Case No. 2014-4(III) (“...if a vendor does not protest a solicitation's language within fifteen days of its issuance, then the vendor loses the right to protest such language.”); *Appeal by Jones Engineering Sales, Inc.*, Panel Case No. 2001-8.

The Panel has addressed an analogous situation to the present one, holding that actual notice in the solicitation documents triggers the protest period. *Protest of Beaufort-Jasper E.O.C., et al.*, Panel Case No 1993-21. There, the protester complained that the award was in violation of law because the proposed awardee was a for-profit entity and the solicitation indicated that the successful vendor would be provided access to State vehicles in violation of Article X, Section 11, of the South Carolina Constitution. However, during the solicitation’s question and answer period, the protester had asked whether for-profit entities would have access to State vehicles in violation of law. The State responded in Amendment #1 stating:

According to Dept. of Motor Vehicle Management, the vehicle must be used for State business only.

The State subsequently awarded a contract to a for-profit entity and Beaufort-Jasper protested. The awardee and the State moved to dismiss the protest as an untimely protest of the solicitation. The Panel summarized the arguments of the parties as follows:

TMSI and the State argue that Protesters knew or should have known when they received the RFP that facts of their protest that the RFP specification allowing the use of state vehicles by for-profit organizations violates the SC Constitution. TMSI and the State further argue that if Protesters did not know when they received the RFP, the answer to question number five (5) in Amendment #1 to the RFP sufficiently notified Protesters of the facts giving rise to their protest. Protesters argue they were not aggrieved until they knew they did not receive the contract and a for-profit corporation would, which was when they received the Intent to Award. Protesters argue that they timely filed their protest within 10 days of receipt of the Intent to Award.

Finding that the protesters knew or should have known that a provision of the solicitation was allegedly unconstitutional at the time “the RFP was issued, or at least when Amendment # 1 was issued,” the Panel held that the protest was untimely.

In this case, Provaliant knew that Linea was the Assessment contractor well before the PEBA issued the CSV solicitation. Provaliant’s written questions submitted before the October 27, 2016, pre-proposal meeting show that Provaliant, at a minimum, suspected Linea might submit a proposal, was concerned the PEBA might accept such a proposal, and felt that this would be improper. Provaliant’s concerns were confirmed when Linea attended the pre-proposal meeting and PEBA affirmed that Linea would be allowed to submit a proposal. Finally, by November, 1 2016, Provaliant had written notice, in the form of Amendment #4, that PEBA was not going to disqualify Linea from competing for the CSV contract. Rather than protest Amendment #4; however, Provaliant waited until after PEBA posted the intended award before protesting.

The issue of a timely protest is jurisdictional. *Protest of Oakland Janitorial Service, Inc.*, Case 1988-13. If the protest is not filed within the time frame established by S.C. Code Ann. § 11-35-

4210(1), the CPO is without jurisdiction to determine the merits of the protest. With respect to its first ground of protest, Provaliant's protest is sixty-eight days late.

Provaliant's Second Ground of Protest – Evaluator Bias

Provaliant's second ground of protest alleges evaluator bias. Specifically, Provaliant alleges that:

Upon information and belief, these evaluators knew that Linea drafted the specifications for the RFP and that Linea had access to budget and other information regarding the RFP and that such information was not available to other offerors on the RFP. However, these evaluators did not disclose this information, in direct violation of their signed Procurement Integrity Representations and Restrictions document.

Provaliant's claim of evaluator bias is based on Linea's alleged OCI, the evaluators' supposed knowledge of the alleged OCI, and the evaluators' failure to disclose the alleged OCI to PEBA. In other words, Provaliant has simply restated its claim of OCI using different terms. The CPO is without jurisdiction to determine the merits of this ground of protest for the same reason he is without jurisdiction over first ground of protest – it is untimely.

Provaliant also alleges that at least two of the evaluators were biased because they worked with Linea on the Assessment contract and were listed by Linea as references in Linea's proposal. However, the Panel has held that neither the fact that evaluation panel member has worked with a potential offeror on a prior contract nor the fact that that potential offeror has listed the panel member as a reference in its proposal will, by themselves, disqualify an evaluator from severing on an evaluation panel. *In re: Protest of ACMG, Inc.*, Case No. 1990-4. Provaliant has failed to provide any facts to support a bias claim other than the fact that evaluation panel members have worked with Linea on another contract and that Linea listed two of the evaluators as references. Therefore, even if Provaliant's claim were timely, Provaliant has failed to carry its burden of proof.

Provaliant's Third Ground of Protest – Non-Responsiveness and Non-Responsibility

For its third ground of Protest, Provaliant asserts that Linea is both non-responsive and non-responsible “in that it does not meet the mandatory minimum qualifications set forth in the RFP.”

Part 4 of the CSV solicitation contained the following special standard of responsibility:

Offeror must have been in the business of **supporting and augmenting** client resources during implementation of new **benefits administration systems for public sector retirement and insurance benefit clients** for a minimum of ten (10) years.

While PEBA believes that an Offeror who does not meet this minimum qualification cannot successfully and fully perform the contract, Offerors are cautioned that the existence of this factor does not constitute a finding that an Offeror is responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

Part 5 of the CSV solicitation further provided:

Offerors should provide detailed information to establish that the Offeror meets the mandatory minimum qualification outlined in Part 4, Mandatory Minimum Qualification. Offerors should include this detailed information in their Executive Summary. Any Offeror not meeting the mandatory minimum qualification will not be considered for award, and therefore will not be evaluated.

Linea's response to this requirement contained in the executive summary to its proposal, states in part: “Linea meets the mandatory minimum proposal response qualification. Linea has been in the business of supporting **public sector retirement and benefit administration** clients for over 17 years.” Provaliant contends that because Linea's words in the second sentence of these two sentences are not identical to the words PEBA used in the solicitation, Linea is both non-responsive and non-responsible.

Failure to provide responsibility information in a proposal does not render that proposal non-responsive even when the State asked for that information to be submitted with the proposal. *E.g., Appeal by Triad Mechanical Contractors*, Panel Case No. 2006-7. Even if Linea's proposal, though, were required to demonstrate that Linea met the special standards of responsibility, it is responsive. While Provaliant argues that Linea is non-responsive because Linea uses the term "benefit administration" rather than "insurance benefits," Provaliant concedes that "benefit administration is an umbrella term." As an umbrella term, "benefit administration" includes insurance benefits.⁶ Moreover, Table 1 to Linea's proposal list public sector retirement system clients and services provided to those clients going as far back as 2003. Additionally, elsewhere in its proposal, Linea asserts experience supporting insurance benefits administration. [See pages 3 and 4 of Linea's proposal]. Finally, Linea provided an extensive list of public sector references for itself and each of the employees that would be working on the project. Therefore, Linea is clearly responsive to the requirements of Parts 4 and 5 of the CSV solicitation.

Based solely on select statements in Linea's proposal, Provaliant alleges that Linea is not responsible. However, a determination of responsibility is not limited to what is on the face of a proposal. As noted in the CSV solicitation, the State may ask for information regarding responsibility at any time prior to award. Moreover, the State may rely on information from any source in determining responsibility. S.C. Code Ann. Reg. 19-445.2125(B). As noted above, Linea provided a list of public sector clients going back to 2003. This list identified at least twenty-five of these clients as public retirement benefit clients. While there is no question that one of these clients, PEBA, is also provides insurance benefits, a simple internet search shows that some of the other public retirement benefit clients also provide insurance benefits to their members. Therefore, the record contains ample evidence that Linea has been in the "business of **supporting and augmenting** client resources during implementation of new **benefits administration systems for public sector retirement and insurance benefit clients** for a minimum of ten (10) years."

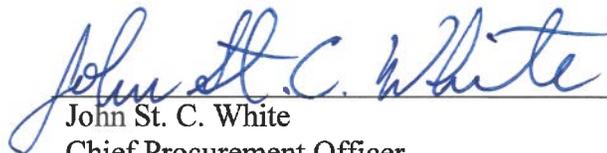
⁶ Provaliant states: "benefit administration is an umbrella term that could include the administration of many kinds of benefits, but not necessarily insurance benefits."

Provaliant’s Fourth Ground of Protest – Violation of the RFP Prohibition on Communications

Provaliant protest states “Upon information and belief, because of the work Linea performed on the Assessment RFP, Linea had communications regarding this RFP with PEBA employees other than the Procurement Officer during the prohibited period in violation of the RFP requirements.” Provaliant’s claim is presented in the form more as an assumption with no presentation of facts to support its claim.⁷

DECISION

The CPO does not have jurisdiction to consider Provaliant’s first, second, and fourth grounds of protest because they are untimely. With respect to Provaliant’s third ground of protest, the CPO finds that Linea’s proposal was responsive and that the record contains sufficient evidence to support PEBA’s determination that Linea met the special standard of responsibility set forth in the CSV solicitation. For the forgoing reasons, Provaliant’s protest is denied.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

⁷ To the extent Provaliant’s fourth ground of protest is based on its claim of an OCI, it is untimely.

Attachment 1



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January 30, 2017

Via Hand Delivery and Email to protest-itmo@itmo.sc.gov

Chief Procurement Officer
Information Technology Management Office
1201 Main Street, Suite 601
Columbia, South Carolina 29201

RE: AMENDED Protest of Intent to Award to Linea Solutions, Inc.
Solicitation Number PEBA0122016 ("RFP")
Client Services Vendor to Facilitate and Support Program Activities
Purchasing Agency: Public Employee Benefit Authority ("PEBA")

Dear Chief Procurement Officer:

This firm represents Provaliant Holdings, LLC and Provaliant Retirement, LLC¹ (collectively referred to herein as "Provaliant") in connection with the above referenced matter and submits on behalf of Provaliant this Amended protest of the Notice of Intent to Award a contract to Linea Solutions, Inc. ("Linea") first posted January 13, 2017. The grounds of this protest are set forth below.

In accordance with applicable law, this protest letter is intended to provide notice of issues to be decided as required by law and as such it does not purport to set forth all facts and evidence in support of the protest issues.

Provaliant requests due notice and a hearing at which it will present facts, evidence and argument on these issues. If for any reason a hearing will not be held, Provaliant requests that the Chief Procurement Officer ("CPO") promptly provide to the undersigned a copy of all materials submitted or provided to the CPO for consideration and a copy of all materials (other than any submitted by Provaliant) reviewed by the CPO as a part of his review as they are submitted or reviewed, so that Provaliant may review and comment on them as appropriate. Provaliant also asks that the CPO advise Provaliant of any deadlines for the submission of evidence and argument regarding this matter and in reply to the protest, in advance of the issuance of a decision on the protest.

¹ Provaliant Holdings, LLC is the sole member manager of Provaliant Retirement, LLC.

Background

PEBA issued a request for proposals for assessment services in 2014 that clearly precluded the awardee from bidding on subsequent scopes of work arising out the Assessment RFP.

In 2014, PEBA issued Solicitation Number 5400008095, titled "Business Process and Operational Systems Assessment" ("Assessment RFP") a solicitation for an assessment that would result in a subsequent procurement for a contractor to provide oversight project management, program management, detailed requirements definition, testing support, data bridging support, data conversion support, and change management activity for a new computerized system. A highlighted copy of the Assessment RFP, including amendments, is attached as **Exhibit A** (Note: the highlighting on Indemnification and Information Use & Disclosure and the red-line edits were in the original documents).

Under the Assessment RFP, the Contractor was required to perform a current and comprehensive assessment of PEBA's Operational Information Technology System "to be used as a basis for defining the target future Operational Information Technology Systems." Assessment RFP, p. 24 of 47. The Contractor under that RFP was also to define the best future operational solutions for the PEBA which included a list of projects needed to accomplish the successful transition to the future operational information technology system solutions along with project charters for each of the proposed projects to include scope, objective, deliverables, timelines, and estimated costs. Assessment RFP, p. 25 of 47.

The Assessment RFP also provided that "[t]he Contractor shall not submit a proposal response for any procurement that results from this contract." Assessment RFP, p. 26 of 47 (emphasis added).

Amendment No. 2 of the Assessment RFP clarified this prohibition further:

1. The Contractor shall not submit a proposal response for any procurement that results from this contract.

Does this clause prohibit us from submitting a proposal for future project oversight services such as development of solicitations for services defined in the High Level Roadmap, additional project management services if needed, or oversight of the Roadmap implementation?

State Response: Yes. The Contractor shall not respond to any procurement that results from this contract.

* * *

18. Will PEBA consider firm(s) hired to perform the assessment services under this RFP for subsequent phases such as future replacement of current technology solutions?

State Response: See response to Question #1.

* * *

48. With regard to Section E – General Requirements, Item 3 – Is the contractor allowed to submit a proposal for oversight project management work (or similar) that may arise from external or internal development of functionality identified in the plan?

State response: See response to Question #1.

Assessment RFP, Answers to Questions 1, 18, and 48.

The rules of the first procurement were very clear, and were reiterated in writing by PEBA numerous times, that the contractor who was awarded the first procurement would not be allowed to bid on the resulting second procurement. This is a standard “best practice” in procurements so that contractors cannot perform assessments or write procurement documents to favor themselves. Provaliant read, understood, abided by, relied on, and acted in reliance on those clearly stated rules at all times.

Provaliant spent time and resources to complete and deliver a proposal in response to the Assessment RFP. Provaliant had to retract its bid from FedEx² when PEBA released answers to bidder questions, **stating that the winner of the bid would not be allowed to bid on the resulting procurement** to provide oversight project management or similar services arising out of the work performed under the Assessment RFP.

The State’s actions resulted in a contract award for Solicitation Number 5400008095 to Linea in the amount of \$669,410 that Provaliant would have had the opportunity to win if PEBA had not precluded the winning vendor from bidding on the subsequent procurement for related services. Provaliant was unaware, and had no way to know, that the procurement restriction barring the winner of Solicitation Number 5400008095 from being eligible to bid on Solicitation Number

² The original bid due date was 10/2/2014. Amendment 1 was issued on 9/30/2014 and changed the bid due date to 10/21/2014. Amendment 2 containing the answers to questions was issued on 10/1/2014. Provaliant had already shipped its bid before 9/30/2014 in order to meet the original bid due date of 10/2/2014.

PEBA0122016 was going to be *removed* by PEBA as a no-cost cardinal change to the resulting contract.

Unbeknownst to all offerors, except Linea, in November 2015, PEBA issued a no-cost change order allowing Linea to bid on scopes of work arising out of Linea's work on the Assessment RFP.

Apparently, on November 14, 2015, PEBA issued a no-cost change order to Linea specifically allowing Linea to bid on the very scope of work that it was drafting as part of its work on the Assessment RFP – the same work the Assessment RFP had precluded it from bidding on:

E. General Requirements

Item #3 - The Contractor shall not submit a proposal response for any procurement that results from this contract. This requirement is deleted. The following is revised to the Scope of Work; "The Contractor may submit a proposal response for any future procurements to include: procurement development and support, project management and oversight, and Independent Verification and Validation (IV&V)."

See RFP, Amendment 4, attached as **Exhibit B**. No other offerors were aware of this Change Order until it was mentioned in response to the offerors' questions in the current RFP on November 1, 2016. This action by the State raises a number of concerns.

First, it does not appear that any legal consideration existed for that Change Order. In order for a change order to be valid, there has to be legal consideration. Here, the State received nothing from the change order which only released Linea from an obligation of the agreement, as such the change order is void. See *Dyncorp Info. Sys., L.L.C. v. United States*, 58 Fed. Cl. 446, 455 (2003) ("...there was no new consideration and no benefit to the Government for entering into the change order, the modification was invalid and given no effect."); see also *MacDonald v. United States*, 113 Ct. Cl. 300, 314-15, 83 F. Supp. 702, 703 (1949) ("...the Government received from the plaintiff no more than it was entitled to receive and, therefore, that the change order allowing plaintiff more than it was entitled to under the contract was without consideration and, therefore, is unenforceable.").

Second, that change appears to be a cardinal change, which is prohibited. See *CESC Plaza Ltd. P'ship v. United States*, 52 Fed. Cl. 91, 93 (2002) ("Modifying the contract so that it materially departs from the scope of the original procurement violates [the Competition in Contracting Act] by preventing potential bidders from participating or competing for what should be a new procurement.... To determine whether a modification is within the scope of the original solicitation the court must compare the modified contract with the scope of the competition

conducted to achieve the original contract. The court should look to see "whether the modification is of a nature which potential offerors would reasonably have anticipated.") Here, there is evidence that if that change in the specifications had been made prior to the bid opening on the Assessment RFP, Provaliant would have submitted a bid. Offerors could not have anticipated that such a change in scope would have occurred as PEBA specifically reiterated the change would not be made. Further, since it is in keeping with sound principles of public procurement not to allow that change, reasonable offerors could not have anticipated such a change.

Third, the timing of the Change Order further shows the unfair competitive advantage that Linea possesses in this RFP. Linea knew ten months before the RFP was issued that it would be allowed to bid on the RFP. It had this knowledge at the time it was drafting the scope of work and budget that would serve as the basis of the RFP. Linea further knew that this was information that was not known by its competitors.

Fourth, the post contract change to allow only one bidder to bid on both the Assessment RFP and the subsequent scopes of work treated vendors unequally.

Such an unfair competitive advantage and unequal treatment cannot be tolerated.

After PEBA issued a subsequent solicitation resulting from the work of the assessment contractor, a month and a half after it was issued and days before the due date, PEBA reversed its public position and stated that it would allow Linea to submit a proposal on the very solicitation which Linea drafted.

On September 26, 2016, PEBA issued a procurement that resulted from the assessment done by the contractor, Linea, who was awarded the first procurement - Solicitation Number PEBA0122016, Client Services Vendor to Facilitate and Support Program Activities ("RFP").

In the initial solicitation document, PEBA still **did not** disclose to all offerors that it had reversed its position from the Assessment RFP that Linea could not submit on a bid on the RFP. It was not until November 1, 2016, just days before proposals were due in response to the RFP, and in response to offerors' questions that PEBA finally advised all offerors that it had reversed its previous position and stated that the contractor that was awarded the first procurement (assessment) **would** be allowed to bid on the second procurement:

1. Amendment 2 (issued on 10/01/2014) to SC PEBA Solicitation number 5400008095 (issued on 08/22/2014), contained the following questions and answers:

1. The Contractor shall not submit a proposal response for any procurement that results from this contract.

Does this clause prohibit us from submitting a proposal for future project oversight services such as development of solicitations for services defined in the High Level Roadmap, additional project management services if needed, or oversight of the Roadmap implementation?

State Response: Yes. The Contractor shall not respond to any procurement that results from this contract.

18. Will PEBA consider firm(s) hired to perform the assessment services under this RFP for subsequent phases such as future replacement of current technology solutions?

State Response: See response to Question #1.

48. With regard to Section E General Requirements, Item 3 Is the contractor allowed to submit a proposal for oversight project management work (or similar) that may arise from external or internal development of functionality identified in the plan?

State response: See response to Question #1.

Would the State please confirm that the winner of solicitation number 5400008095 issued on 08/22/2014 is not eligible to bid on this solicitation number PEBA0122016 issued on 09/16/2016?

Response: Change Order #2 to Contract Number 5400008905, issued November 4, 2015, revised the following general requirements statement within the Scope of Work, Section III, Paragraph C – Operational Information Technology Systems Modernization Plan, Phase (III), as follows:

E. General Requirements

Item #3 - The Contractor shall not submit a proposal response for any procurement that results from this contract. This requirement is deleted. The following is revised to the Scope of Work; “The Contractor may submit a proposal response for any future procurements to include: procurement

development and support, project management and oversight, and Independent Verification and Validation (IV&V).”

Amendment 2-Item #1 – question and the State’s response is hereby deleted from Amendment 2.

As such, the Contractor awarded a contract as a result of solicitation number 5400008095 is eligible to submit a proposal on this solicitation number PEBA0122016.

2. Can we get the amendment(s) for solicitation 5400008095 that allows Linea to respond to the solicitation PEBA0122016? Also, can you tell us when and how this Amendment was published to the public?

Response: An Amendment means a document issued to supplement the original solicitation document. A Change Order means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. A Change Order to Contract Number 5400008905 was issued to Linea Solutions, Inc. on November 4, 2015 (please see the response to question number 1).

3. Is Linea disqualified to participate in the RFP since they completed the PEBA Operational System Modernization Roadmap?

Response: No. Please see the response to question number 1.

RFP, Amendment #4, attached as **Exhibit B**.

Importantly, because the RFP was a government solicitation, Provaliant could not know whether Linea would submit a proposal at all, or whether its submission would be a “no bid” or an actual proposal, or whether Linea would be responsive, or whether Linea would be issued a notice of award until after the process was completed. Accordingly, Provaliant’s protest is timely.

In effect, the fact that PEBA initially would not allow bidders on the first solicitation to bid on the second solicitation, limited competition on the first solicitation because most bidders were more interested in the second solicitation that would result in much bigger contract. So, the

winner of the first solicitation did not have to compete against more qualified contractors in the first solicitation.

Moreover, when the second procurement was issued, the contractor who, as an output from the first procurement, wrote the "scope of work" and estimated the budget for the second procurement, was allowed to bid on it--giving them an unfair advantage again.

Provaliant was denied the opportunity to fairly compete for the \$9 million contract resulting from Solicitation Number PEBA0122016.

Grounds of the Protest

1. **Linea is a non-responsible and non-responsive offeror as a matter of law and is further precluded from an award due to a clear conflict of interest.**
 - a. Linea had a clear conflict of interest which precludes it from being awarded any contract resulting from the RFP.

Linea drafted the specifications for the RFP. Linea had access to PEBA budget information related to this RFP. Because of Linea's work and because they actually participated in drafting this RFP, Linea had access to the RFP months before any other vendor.

The CPO has discussed a conflict of interest as follows:

An organizational conflict of interest, either real or apparent, may arise when a relationship or situation exists whereby an offeror, subcontractor or consultant has past, present or currently planned personal, financial, contractual, organizational or other interests that either directly or indirectly may:

- 1) *diminish the consultant's ability to give impartial, objective assistance to the State; or,*
- 2) *result in the consultant being given an unfair competitive advantage by virtue of its access to non-public State information regarding the State's program plans and actual or anticipated resources.*

*In the matter of: Complex for Industrial and Economic Development-Phase III State Project H59-9851-PG Trident Technical College, 2003 SC CPO Lexis 20, *7-8 (CPO 2003) (emphasis added).*

The CPO has recognized Organizational Conflicts of Interest (OCIs) encompass three categories: unequal access to information cases, biased ground rules cases, and impaired objectivity cases. *In*

Matter of Protest of Coastal Carolina University, Case No. 2013-109, 2013 CPO Lexis 35 (CPO 2013).

Although the CPOs in South Carolina have recognized the existence of OCIs in the very circumstance at issue here, federal law in this area is much more developed and is helpful to be considered here:

An OCI must be established by "hard facts" that indicate the existence or potential existence of a conflict. These "hard facts" do not need to show either an actual conflict or a negative impact from a conflict. See *Lucent Techs. World Servs., Inc.*, B-295462 (Comp. Gen., Mar. 2, 2005), at 10 ("[T]he facts necessary to establish an OCI are those that pertain to the existence of the conflict, rather than its precise impact."). ***The Federal Circuit has been absolutely unambiguous in ruling that a bidder may be disqualified if the mere appearance of impropriety is indicated by hard facts.*** See *NKF Eng'g, Inc. v. United States*, 805 F.2d 372, 377 (Fed. Cir. 1986) ("Though the Claims Court erroneously limited [a contracting officer's authority to disqualify bidders] to cases involving actual, but not the appearance of, impropriety, we do not repeat that mistake here."). The "hard facts" that indicate the existence or potential existence of impropriety stand opposed to inferences based upon "suspicion and innuendo." ... If "hard facts" establish the appearance of impropriety, it is not irrational for a reviewing body to overturn an award. The Federal Circuit's decision in *NKF Engineering* is instructive in this regard. In that case, a Navy employee worked extensively on an RFP but then took a job with NKF Engineering, one of the bidders for the contract. *NKF Eng'g*, 805 F.2d at 373—74. When the Navy requested final offers, NKF submitted a proposal that was 33 percent less expensive than their initial proposal. *Id.* at 374. After NKF was awarded the contract, Navy employees raised concerns about potential OCIs, and the CO reviewed the situation. *Id.* at 374—75. The Federal Circuit found that it was not irrational for that CO to conclude that ***"this appearance of and potential for an unfair competitive advantage so tainted the procurement process that the integrity of the process had been damaged" and that NKF must be eliminated from competition.*** *Id.* at 375 (emphasis added). The hard facts of the movement of an employee who was a "major cog in the bid process, with access to much relevant information" combined with the "drastic bid reduction" created a

"certain aroma that is hard to purify." *Id.* at 377. The Federal Circuit held that *where facts show that a potential conflict of interest may exist, the mere "appearance of impropriety" is enough for a CO to disqualify a bidder, regardless of "whether or not inside information was actually passed . . ."* *Id.* at 376 (emphasis added).

Turner Constr. Co., Inc. v. United States, 94 Fed. Cl. 561, 573 (2010)(emphases added; some internal citations omitted). All federal cases cited herein, attached as **Exhibit C**.

Clearly, the hard facts here inescapably and irrefutably show an actual conflict of interest. Linea drafted the specifications at issue; that was the work they were engaged to perform under the earlier Assessment RFP. *See* Exhibit A, Assessment RFP, Scope of Work, pp. 24-26 of 47. Linea's work formed the basis of the RFP and documents Linea prepared were attached to the RFP. *See* RFP, p. 20. Linea was initially (and properly so) precluded from performing any subsequent scopes of work arising out of that work. However, inexplicably in November 2015, a contract change order was issued to Linea removing that restriction. Because of this change, PEBA provided Linea the opportunity to write the scope of work in a manner that favored Linea only, to the detriment of all other competitors. In addition, it allowed Linea more time to prepare its proposal because it knew what was in the scope of work before the RFP was released to other vendors. Apparently, Linea was aware in November 2015 that it would be allowed to bid on future solicitations, ten months before the RFP was issued. Linea's proposal references "PEBA's goal of limiting scope to only legacy system functionality and technical extensions ..." Linea Proposal, P. 36, attached as Exhibit D. However, a review of the RFP does not indicate that such a goal was stated by PEBA further evidence of the unequal treatment and unfair competitive advantage. Nothing in the RFP or in Linea's prior contract, or in any other issuance changes the fact that as a matter of law, a competitor with a clear conflict of interest cannot receive an intent to award.

This conflict of interest had a clear, direct, material impact on the evaluation, scoring, and award in this case. Linea touted its experience working with PEBA for the past 18 months in its proposal:

We know PEBA (business, systems, and people): *Linea has had an opportunity to work with PEBA for the past 18 months. During this period, we have gained considerable knowledge of PEBA's vision, service orientation, people, and culture. We have also attained an in-depth knowledge of PEBA's business operations and the goals and strategy for this project. We know and understand the systems, technology, and business processes that support the PEBA operations that will need to transition to*

something new. We know the To-Be vision and the importance of an on-time, on-budget, and risk-managed project. *Our knowledge and relationships are invaluable and cannot be attained solely through document reviews and interviews.* Our PEBA experience is an asset that PEBA should leverage, since the combined Linea/PEBA team has the ability to immediately “pick-up where we left off” to continue to support PEBA’s vision. Selecting Linea will avoid the risk of costly delays and lost project momentum that could otherwise occur if a client service vendor was selected and were a bad fit for PEBA.

Linea Proposal, Section 5.1.2., Executive Summary (emphases added), relevant excerpts from proposal attached as part of collective Exhibit D. Linea listed PEBA as part of the experience for its proposed staff, based on the work performed under the Assessment RFP. See Exhibit D, Linea Proposal, pp. 139, 147, 154, 163. Linea listed evaluators as the references for its proposed staff. See Exhibit D, Linea Proposal, pp. 141, 149, 165. PEBA was also listed as a reference for Linea providing the contact information for two of the evaluators, Phipps and Hilslop. See Exhibit D, Linea Proposal, p. 196.

The unfair advantage that Linea received due to its work on the Assessment RFP was directly reflected in the evaluation and scoring based on the written notes of the evaluators regarding Linea:

- “Talked a lot about past PEBA work – governing structure, specific names. Very knowledgeable of organization.” See Notes of Evaluator Nichols, attached as part of collective Exhibit E.
- “Know PEBA well good qualifications. relevant experience advantage” See Notes of Evaluator Nichols, attached as part of collective Exhibit E.
- “Very clearly understands scope of work” See Notes of Evaluator Phipps, attached as part of collective Exhibit E.
- “Clear indication of staff working on areas of work needed by PEBA.” See Notes of Evaluator Phipps, attached as part of collective Exhibit E.
- “Very clear understanding of PEBA process, systems, staff” See Notes of Evaluator Buie, attached as part of collective Exhibit E.

Linea has a clear conflict of interest, it received access and information and performed services for PEBA that gave it an unfair competitive advantage that had a direct impact on scoring here. Accordingly, the award to Linea must be rescinded.

- b. Linea was non-responsive to the requirements of the RFP that required it to disclose unfair competitive advantages.

The RFP provided as follows:

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015): You warrant and represent that Your Offer identifies and explains any unfair competitive advantage You may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from Your participation in this competition or Your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If You have an unfair competitive advantage or a conflict of interest, the State may withhold award. Before withholding award on these grounds, an Offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, You represent that Your Offer identifies any services that relate to either this solicitation or the work that has already been performed by You, a proposed subcontractor, or an affiliated business of either.

RFP, § 1.12. Linea's proposal did not disclose its unfair competitive advantage; it did not detail the work that Linea had done under the Assessment RFP; it did not disclose that it had drafted the scope of work, nor did it disclose that it had access to and assisted in setting the budget for the solicitation. The RFP required this disclosure and the failure to disclose this information is a violation of the above requirement. This requirement is material, mandatory, and non-waivable. As such, Linea's proposal should have been rejected as non-responsive.

- c. The State is required by law and the terms of the RFP to rescind the intent to award to Linea.

The underlying purposes and policies of the Procurement Code are defined in § 11-35-20 and include:

- (f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote public confidence in the procedures followed in public procurement;
- (g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process;

S.C. Code Ann. § 11-35-20. The RFP requires the disclosure of conflicts of interest and the State is required to analyze those conflicts of interest to make sure that the integrity of the competitive bidding system is maintained. See *Netstar-1 Gov't Consulting, Inc. v. United States*, 101 Fed. Cl.

511, 522 (2011) (“The relevant FAR provisions and the case law construing them expect more – they do not permit agency officials to sit passively by, waiting to be alerted to the potential existence of an OCI by contractors bidding on a solicitation, when the agency’s own records (not to mention its daily operations) readily disclose the existence of potential problems.”) Upon information and belief, no such analysis was completed by the State. Basic principles of competitive bidding law clearly prohibit an award to Linea under these circumstances and the State must rescind the award.

2. The evaluators were actually biased and failed to abide by the procurement integrity disclosures.

As shown above, two of the evaluators were listed as references by Linea and, on behalf of PEBA, worked with Linea as Linea performed as Contractor under the Assessment RFP. Upon information and belief, these evaluators knew that Linea drafted the specifications for the RFP and that Linea had access to budget and other information regarding the RFP and that such information was not available to other offerors on the RFP. However, these evaluators did not disclose this information, in direct violation of their signed Procurement Integrity Representations and Restrictions document, which provided as follows:

To the best of my knowledge, and except as otherwise noted (see “Exceptions” heading below), I make the following representations by signing this agreement.

* * *

Organizational Conflict of Interest/ Unfair Competitive Advantage:
I am not aware of any offeror having provided or having been provided information, directly or indirectly, that would provide them an unfair competitive advantage....

Procurement Integrity Representations and Restrictions, attached as Exhibit F. None of the evaluators took exception to this representation, *although they had direct knowledge to the contrary.*

In the Coastal Rapid Public Transit Authority case, the Panel established the basic framework for review of challenges to evaluators’ conduct:

The determination by the State who is the most advantageous offeror is final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law... The burden of proof is on [the protestant] to demonstrate by a preponderance of the evidence that

the determination in this case has such flaws. . . . The Panel will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

*In re Protest of Santee Wateree Regional Transportation Authority, Case No. 2000-5, 2000 SC CPO LEXIS 9, *6-7 (CPO 2005).* Although there is only a small window within which to challenge evaluator conduct, this case falls squarely within it. The evaluators here did not follow the requirements of the Code – as they failed to disclose the known conflict of interest; did not fairly consider all proposals – as they failed to acknowledge and consider the unfair competitive advantage that Linea had over other offerors; and they were actually biased – as at least two evaluators worked with Linea on the Assessment RFP project and were listed as references for Linea in its proposal. Accordingly, the results of the scoring must be overturned and the award to Linea must be rescinded.

3. Linea is a non-responsive and non-responsible offeror in that it does not meet the mandatory minimum qualifications set forth in the RFP.

The RFP provided as follows:

PEBA believes that a Contractor does not have the capability of successfully and fully performing the contract unless it meets the mandatory minimum qualification outlined below. Thus, in order to be qualified to receive an award, offerors must meet the following mandatory minimum qualification:

- Offeror must have been in the business of supporting and augmenting client resources during implementation of new benefits administration systems for public sector retirement and *insurance benefit clients* for a minimum of ten (10) years.

While PEBA believes that an Offeror who does not meet this minimum qualification cannot successfully and fully perform the contract. Offerors are cautioned that the existence of this factor does not constitute a finding that an Offeror is responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply

information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

RFP, Part 4 (emphasis added). The RFP further provided as follows:

Mandatory Minimum Qualification: Offerors should provide detailed information to establish that the Offeror meets the mandatory minimum qualification outlined in Part 4, Mandatory Minimum Qualification. Offerors should include this detailed information in their Executive Summary. Any Offeror not meeting the mandatory minimum qualification will not be considered for award, and therefore will not be evaluated.

RFP, § 5.1.2., Executive Summary.

Linea in its proposal in the Executive Summary stated as follows regarding its qualifications:

Linea meets the mandatory minimum proposal response qualification. Linea has been in the business of supporting public sector retirement and *benefit administration* clients for over 17 years.

See Exhibit D. Linea Proposal, § 5.1.2 (emphasis added). Although the requirement is to have experience with public sector retirement AND insurance benefit clients, Linea modified this mandatory requirement and failed to demonstrate any experience with insurance benefit clients and instead changed the requirement to “benefit administration” clients. This change is significant because benefit administration is an umbrella term that could include the administration of many kinds of benefits, but not necessarily insurance benefits. The RFP specifically requires a minimum of 10 years of experience providing the requested services to insurance benefit clients.

Linea’s proposal further provides that:

In 2016 alone, we are working with 18 different benefit clients that are engaged with vendors (of various systems and for data conversion) that PEBA will likely consider.

Linea Proposal, p. 6, attached as Exhibit D. However, when Linea lists their client experience, they only include eleven clients from 2013 to 2016. See Linea Proposal, pp. 8-9, Table 1, attached as Exhibit D.

Linea should have been rejected as non-responsive and non-responsible.

4. Upon information and belief, Linea violated the RFP prohibition on communications.

The RFP provided as follows:

1.21 PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015): Violation of these restrictions may result in disqualification of Your Offer, suspension or debarment, and may constitute a violation of law. (a) During the period between publication of the solicitation and final award, you must not communicate, directly or indirectly, with the South Carolina Public Employee Benefit Authority or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer. [R. 19-445.2010] (b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. You represent that Your Offer discloses any gifts made, directly or through an intermediary, by You or your named subcontractors to or for the benefit of the South Carolina Public Employee Benefit Authority during the period beginning eighteen months prior to the Opening Date. [R. 19-445.2165]

RFP, § 1.21. Although Provaliant had submitted a public records request for vendor communications contained “in the contract file” for this RFP, Provaliant has submitted a further request for any such communications regardless of whether they are contained “in the contract file” for this RFP. Upon information and belief, because of the work Linea performed on the Assessment RFP, Linea had communications regarding this RFP with PEBA employees other than the Procurement Officer during the prohibited period in violation of the RFP requirements. Therefore, Linea’s proposal should have been rejected.

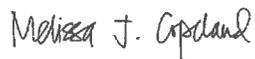
Conclusion and Relief Requested

Based on the grounds set forth herein, Provaliant requests a hearing and that the State honor the automatic stay, cancel the intent to award the contract to Linea, and re-solicit under the governing authority set forth in the Procurement Code and Regulations.

Chief Procurement Officer
Page 17 of 17

If the CPO determines that he will not hold a hearing, Provaliant requests that the CPO promptly provide to the undersigned a copy of all materials submitted or provided to the CPO for consideration, and a copy of all materials (other than those submitted by Provaliant) reviewed by the CPO as a part of his review as they are submitted or reviewed. Provaliant asks that it be permitted to review and comment on such materials and submissions as appropriate. Provaliant also asks that the CPO provide all interested parties a deadline by which to provide evidence for the CPO to consider in reaching its decision, and the date on which the CPO's review will be completed.

Very truly yours,



Melissa J. Copeland

cc: David Quait, PEBA

Attachment 2

	<p>State of South Carolina</p> <p>Change Order #2</p>	<p>Contract Number 5400008095</p>
		<p>Procurement Officer Michael Thomas, CPPO Phone (803)8965232 E-Mail Address MThomas@mmo.sc.gov Address 1201 Main Street, Suite #600 Columbia, SC. 29205</p>

DESCRIPTION: Business Process and Operational System Assessment
 USING GOVERNMENTAL UNIT: South Carolina Public Employee Benefits Authority
 CONTRACTOR'S NAME AND ADDRESS: Linea Solutions, Inc.
 2701 Ocean Park Blvd. Suite #251
 Santa Monica, CA. 90405

TYPE OF CHANGE:

- Change to Contract Scope of Work
- Change to Contract Pricing Pursuant to Existing Contract Clause.
 Clause Name _____ Clause No. _____
- Administrative Change to Contract (such as changes in paying office, name of Agency Contract Administrator, etc.)
- Other Change

IMPORTANT NOTICE:

- Change Order: Contractor is required to sign this document and return ___1___ copies to the procurement officer named above by the following date: **Friday, November 6, 2015.**
- Contract Modification: Contractor is required to acknowledge receipt of this document in writing by the following date: _____ Contractor does not indicate agreement with change simply by acknowledging receipt.

DESCRIPTION OF CHANGE / MODIFICATION:

Within the Scope of work, Section III, Paragraph C- Operational Information Technology Systems Modernization Plan, Phase (III), the following requirements statement is revised as follows:

E. General Requirements

Item #3- ~~The Contractor shall not submit a proposal response for any procurement that results from this contract.~~ This requirement is deleted. The following is revised to the scope of work; " The Contractor may submit a proposal response for any future procurements to include: procurement development and support, project management and oversight, and Independent Verification and Validation (IV&V)".

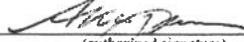
Amendment 2-

Item #1 -question and the State's response is hereby deleted from Amendment 2.

Except as provided herein, all terms and conditions of the Contract referenced above remain unchanged and in full force and effect.

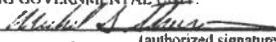
CONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA: The Contractor certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, by the Contractor to the Procurement Officer in support of this change order are accurate, complete, and current as of the date this change order is signed. [Procurement Officer must initial here MTS if Certificate inapplicable to this Change Order]
(See "Pricing Data - Audit - Inspection" provision) (Reference § 11-35-1830 & R. 19-445.2120)

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE THIS CHANGE ORDER & CERTIFICATE ON BEHALF OF CONTRACTOR:

By: 
(authorized signature)
AKIO TAGAWA
(printed name of person signing above)

Its: PRESIDENT
(title of person signing above)
 Date: NOVEMBER 4, 2015

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE / ISSUE THIS CHANGE ORDER / CONTRACT MODIFICATION ON BEHALF OF USING GOVERNMENTAL UNIT:

By: 
(authorized signature)
Michael S. Thomas, CPPO, C.P.M.
(printed name of person signing above)

Its: Procurement Officer
(title of person signing above)
 Date: 11/4/15

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised November 2016)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). 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 for disagreement 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 an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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 111.1 of the 2016 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 2, 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
1205 Pendleton Street, Suite 473, 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.