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GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICE
(803) 737-0600
FAX: (803) 737-0639

Written Determination

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

Case No.: 2017-205

Posting Date: October 11, 2017

Contracting Entity: South Carolina Public Employee Benefit Authority

Project No.: PEBA0122016

Description: Client Services Vendor to Facilitate and Support Program Activities

DIGEST

Request to Lift Automatic Stay is granted pursuant to S.C. Code Ann. §11-35-4210(7). The agency director's letter requesting this action is included by reference. [Attachment 1]

BACKGROUND

South Carolina Public Employee Benefit Authority (PEBA) awarded this contract to Linea Solutions, Inc., on January 13, 2017. Provaliant Holdings, LLC and Provaliant Retirement, LLC (collectively, Provaliant), a disappointed offeror, timely protested the award. In a decision dated April 19, 2017, the Chief Procurement Officer dismissed the protest. Provaliant appealed the decision to the Procurement Review Panel. Following a hearing on July 20, 2017, the Panel issued its order dated August 4, 2017, affirming the CPO in part and remanding the matter for further proceedings. On August 18 the CPO issued a second decision that denied the remaining protest issues. Provaliant appealed the second decision.

Peggy G. Boykin, CPA, is PEBA's Executive Director. By letter dated September 7, 2017, Ms. Boykin requested the CPO lift the automatic stay pursuant to S.C. Code Ann. § 11-35-4210(7). As required by statute, the CPO consulted with Ms. Boykin and agreed to defer action on the request until after the Panel's decision on Provaliant's appeal. The Panel heard the appeal on October 10, 2017. At the end of the hearing the Panel voted three to one to deny the protest. A written order is expected within thirty days.

DISCUSSION

Ms. Boykin's letter details the problems created by the lengthy delay in awarding the contract. According to the agency, the delay jeopardizes the successful execution of PEBA's long-term plans to replace an aging and near-obsolete benefits management solution. The CPO is convinced that the best interests of the State are served by permitting the award without further delay.

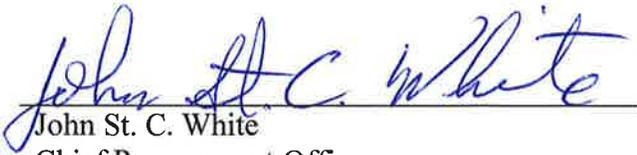
As an additional reason to grant the request, the CPO notes that the stay will terminate as soon as the Panel issues its written order. Regarding the automatic stay, the Consolidated Procurement Code provides:

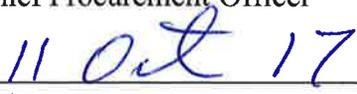
In the event of a timely protest pursuant to subsection [11-35-4210](1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the State.

S.C. Code Ann. § 11-35-4210(7). An appeal from the Panel's order does not automatically stay its decision. S.C. Code Ann. § 11-35-4410(6). Thus, the Panel's written order will terminate the stay as a matter of law. As a practical matter, though, the decision announced at the conclusion of the hearing on August 10 ended the automatic stay.

DETERMINATION

After careful consideration of the request and based on consultation with Ms. Boykin, and in light of the Procurement Review Panel's denial the protest, I find that the award of the contract without further delay is necessary to protect the best interests of the State. Therefore, the automatic stay is lifted, and PEBA may proceed with the award of the contract without delay.



John St. C. White
Chief Procurement Officer


Date

Attachment 1



Serving those who serve South Carolina

September 7, 2017

VIA EMAIL (jswhite@mmo.sc.gov)

John C. White
Chief Procurement Officer
Materials Management Office
State Fiscal Accountability Authority
The Division of Procurement Services
Suite 600
1201 Main Street
Columbia, SC 29201

Re: *Request to Lift the Automatic Stay
In the Matter of Provaliant Holdings, LLC and Provaliant Retirement, LLC; Case No.
2017-205*

Dear Mr. White,

As you are well aware, this matter has been before the Procurement Review Panel (“Panel”) once for a motions hearing and before you twice on the merits—once for your initial decision on Provaliant’s Amended Protest and once on remand from the Panel. PEBA chose not to request to lift the automatic stay during the pendency of those proceedings because we understood a decision would be reached no later than the end of August. While not ideal, such a delay was manageable because we had found ways to make progress with developing the solicitation for the next phase.

PEBA will not be able to mitigate the harmful effects of delay much longer.

If we do not have a Client Services Vendor immediately, the long-term success of this project will be at risk. It is imperative that PEBA be able to move forward with issuing the next solicitation, and the industry expertise of the Client Services Vendor is critical in the development of that solicitation and in the ensuing procurement process.

As it appears, through no fault of PEBA’s, that no hearing date will be scheduled on Provaliant’s appeal until possibly November, I request that you exercise your authority under Section 11-35-4210(7) of the South Carolina Code and find, for the reasons set forth in this letter, that it is in the best interests of the State—and of all the South Carolina citizens who rely upon the benefits PEBA administers on their behalf—to lift the automatic stay in this case and allow PEBA to proceed with the intended awardee.

Executive Director Peggy G. Boykin, CPA
803.737.6800 | 888.260.9430 | www.peba.sc.gov
202 Arbor Lake Dr., Columbia, SC 29223

It is necessary for PEBA to move forward urgently with this mission-critical, time-sensitive, major project to replace our aging legacy information technology systems with an updated system. The current systems used to perform PEBA's core functions are outdated and written in archaic programming languages. This systems modernization project is crucial to ensure the agency can continue to meet the needs of the many thousands of South Carolina state employees and retirees who rely on us for their retirement and insurance benefits.

The protest filed with you on January 23, 2017, relates to a solicitation process that has been on-going since early 2014, when PEBA issued an RFP that included three phases of work for the entirety of the consulting services required for this systems modernization project. PEBA withdrew the solicitation after proposals were received, and ITMO broke the 2014 solicitation into several smaller solicitations. We are now in the second of three stages of that solicitation process, which involves procuring a Client Services Vendor that will act as a consultant for the agency and assist in procuring our Implementation Vendor. The Implementation Vendor will provide PEBA with the new benefits system sorely needed.

PEBA expects the modernization to take at least five years once a Client Services Vendor has been contracted. Accordingly, PEBA requested authorization from the General Assembly for the additional funds necessary for the project in each of those five years. The General Assembly, recognizing the importance of this undertaking, generously granted PEBA's request and authorized a total of \$50 million for the project—\$10 million per fiscal year for five years, beginning on July 1, 2017. We are now more than two months into our first year of authorization, eight months behind on our project, and are no closer to having the needed Client Services Vendor in place.

Because we will need to work with a Client Services Vendor for several months before issuing the Implementation Vendor solicitation, we are concerned about losing the entire first year of authorization due to the length of time it is taking to resolve Provaliant's protest and appeal. Fortunately, the authorized funds are recurring and actual dollars will not be lost due to these delays in the project. The valuable time those funds represent, however, cannot be recaptured.

The real danger to PEBA—and to the thousands of people who rely upon PEBA's smooth functioning for their essential retirement and insurance benefits—is the loss of key personnel that will occur over the next five years. Much of PEBA's workforce will be retiring or eligible for retirement within the next five years. Half of the programmers upon whom PEBA relies for the daily maintenance and operation of its existing systems are either working retirees or imminently eligible to retire.

This modernization project was scheduled with an eye towards capturing that institutional knowledge and transitioning away from the archaic existing platforms before the employees with experience maintaining those systems retire. Timing is critical to a project of this nature. The eight month delay we have already experienced jeopardizes the success of the project. Any further delay may fundamentally and irrevocably alter the outcome of the modernization project, to the detriment of the State and the hundreds of thousands of state employees, retirees, and their families who rely daily upon the effective and efficient functioning of this vital state agency.

Had PEBA been able to proceed with the award as scheduled, we would have had a Client Services Vendor in place in late January. As it stands now, we have lost over eight months to a protest by the third-ranked offeror and stand to lose many more months awaiting the resolution of that offeror's appeal. Lifting the stay will mitigate the harm that has been—and will continue to be—caused to PEBA and the State by this delay. Provaliant has had its day in court, so to speak. Given the dearth of evidence presented to you over the past eight months in support of its protest, there is little likelihood that Provaliant will prevail on its appeal. The best interests of the State and its citizens must prevail in this matter.

We understand that the procurement review process exists for good reasons, and the requirements of the Procurement Code must be followed. The Code does not exist solely to protect private business interests, however. The Code also is intended to provide the State and its agencies with a fair procurement process that is most advantageous to the State. Repeatedly, the Code instructs Chief Procurement Officers and the Panel to take the best interests of the State into consideration and to act accordingly. Section 11-35-4210(7) recognizes that the best interests of the State must take precedence over private business interests and notions of profit.

PEBA must be able to work towards contracting with an Implementation Vendor to ensure the long-term viability and effectiveness of the agency's core processes. A Client Services Vendor is crucial in this years-long process. The beneficiaries of the improved system are the State's employees, retirees, and their families. The General Assembly has recognized the importance and critical nature of PEBA's systems modernization project and has authorized \$10 million per fiscal year to help us implement this much-needed improvement to one of the State's most essential functions. A continued delay in this matter serves only to disadvantage those hundreds of thousands of South Carolina citizens who have dedicated their careers—and sometimes their lives—to the service of our state.

Accordingly, we believe it is in the best interests of the State to lift the stay and allow the award of the contract to proceed without further delay. We request that you exercise your authority under Section 11-35-4210(7) and lift the stay in this case. PEBA urgently needs to move forward with the systems modernization project that will allow us to better serve those who serve South Carolina.

With best regards, I am

Sincerely,



Peggy G. Boykin, CPA
Executive Director

cc: Dixon Robertson (via email)
Melissa J. Copeland (via email)
Liz Crum (via email)
Pam Baker (via email)
Wade Mullins (via email)

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determinations Appeal Notice (Revised July 2017)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
(b) requests for review of other *written determinations*, decisions, *policies*, and *procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) See generally *Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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 367, 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.