



## Discussion

In its motion, Renew Data asserts that Mr. Conner “had primary responsibility for working with personnel in the SCAG to develop the request for bids, award of the contract, and ultimately, the decision to cancel the award prior to performance” and that he has information relevant to Renew Data’s claim that the award was canceled in error. Thus, Renew Data asks permission for its counsel to have direct communications with Mr. Conner. In response, the CPO argues that Renew Data’s request effectively seeks an order from the Panel compelling Mr. Conner’s employer, the State Budget and Control Board, to make Mr. Conner available for a deposition. The CPO objects to Renew Data’s taking Mr. Conner’s deposition, and urges the Panel to follow its precedent limiting the issuance of deposition subpoenas, absent consent, to contract controversy cases.

Under the Procurement Code, the Panel “is vested with the authority to: (i) establish its own rules and procedures for the conduct of its business and the holding of its hearings; [and] (ii) issue subpoenas.” S.C. Code Ann. § 11-35-4410(4)(a) (2011). The Panel has issued subpoenas over party objection for the taking of depositions in contract controversy cases (i.e., appeals brought pursuant to sections 11-35-4230(6) and 11-35-4410(1)(a) of the Procurement Code) where the taking of such depositions is likely to focus the issues on appeal and to identify those witnesses whose testimony is necessary at the Panel hearing. *See Sodexo Operations, LLC v. Francis Marion University (Contract Controversy)*, Panel Case No. 2014-1(I) (June 4, 2014) (wherein the Panel authorized the depositions of potential witnesses to determine whether their testimony would be required for the Panel’s hearing on the merits of the case); and *Appeals by New Venue Technologies, Inc.*, Panel Case Nos. 2014-7(I) and 2014-9(I) (Sept. 29, 2014) (wherein the Panel found that “allowing depositions to take place may obviate the need to call all

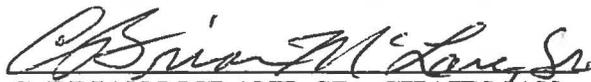
of the potential witnesses during the Panel's hearing and may help to narrow the issues on appeal" and limited its holding to contract controversies). In addition, the Panel has apparently allowed the taking of depositions in connection with protests under sections 11-35-4210 and 11-35-4410(1)(a) where the parties have done so by consent. *See Appeal by Cannon Construction Co.*, Panel Case No. 2012-4 (June 16, 2012) (wherein the Panel referenced deposition testimony taken by consent prior to CPO hearing); and *Appeal by Compusult, Inc.*, Panel Case No. 1994-20 (March 17, 1994) (wherein the Panel received video deposition testimony without objection). However, there is only one reported Panel decision addressing depositions in the context of a review under section 11-35-4410(1)(b), and in that case, the Panel quashed the deposition subpoenas requested by the petitioner and issued by the Panel's lawyer on the grounds of relevance or undue burden. *Petition for Administrative Review by GTECH Corp.*, Panel Case No. 2002-4(I) (May 3, 2002).

In the instant case, Renew Data has identified Mr. Conner as a necessary witness because of his involvement with both the solicitation and the decision to cancel the intended award prior to performance. In addition, the CPO has acknowledged that Mr. Conner's testimony is likely necessary to Renew Data's claims before the Panel. Moreover, the CPO has indicated that Mr. Conner would appear to testify at the Panel's hearing – either voluntarily or under subpoena. The Panel finds that the issue in Renew Data's request for review is already narrowly focused and that Mr. Conner's testimony will be required at the Panel's hearing regardless of whether his deposition is taken. Thus, the purposes of compelling a deposition stated in *New Venue* and *Sodexo* are not served under the circumstances of this case. Furthermore, to the extent Renew Data alternatively sought an order allowing an informal interview with Mr. Conner, the Panel finds that there is no procedural mechanism through which it may compel such a meeting.

Therefore, for the reasons stated herein, the Panel declines to issue an order allowing *ex parte* communications.

**IT IS SO ORDERED.**

**SOUTH CAROLINA PROCUREMENT REVIEW PANEL**

BY:   
C. BRIAN MCLANE, SR., CHAIRMAN

This 21<sup>st</sup> day of October, 2014.

Columbia, South Carolina