

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND	)	
	)	Case No. 2007-10
	)	
	)	ORDER
IN RE:	)	
	)	MOTIONS TO QUASH SUBPOENAS
Protest of Oracle USA, Inc.	)	
Appeal of Oracle USA, Inc.	)	

This case involves a petition for administrative review by Oracle, USA, Inc. (Oracle), regarding an intent to award an information technology contract to SunGard Higher Education, Inc. (SunGard). The University of South Carolina (USC) issued the RFP at issue in this case. Oracle is represented by Michael H. Montgomery, Esquire. SunGard is represented by John E. Schmidt, III, Esquire, and Michael S. Cashman, Esquire. USC is represented by George W. Lampl, III, Esquire. The CPO for Information Technology is represented by Keith C. McCook, Esquire. USC, the recipient of a subpoena *duces tecum* requested by Oracle on November 21, 2007, and executed by the Panel's attorney on that date, filed a Motion to Quash on November 30, 2007. SunGard, whose interests were affected by the subpoena, also filed a Motion to Quash on November 30, 2007. With the consent of the parties, the Panel Chairman conducted a telephonic hearing on the motions on Monday, December 3, 2007, and issued a ruling on behalf of the Panel.

FINDINGS OF FACT

The following facts are relevant to the motions to quash. On November 21, 2007, Oracle requested that the Panel issue a subpoena *duces tecum* to USC. The Panel's attorney executed

the subpoena on November 21, 2007. The subpoena *duces tecum* called for USC to produce the following documents at 9:30 am on the morning of December 3, 2007:

1. All correspondence, communications, notes, e-mails and other documents related to the involvement in or participation by The Gartner Group in the procurement, including any contract between the Gartner Group and USC and any communications between USC and the Gartner Group mentioning or concerning Oracle or Oracle's involvement in the ERP project.
2. All documents, including every non-privileged document, all billing invoices, correspondence, opinions, documents or pleadings involving or related to the involvement of the law firm of Gallitano & O'Connor in the ERP procurement, including any contract with USC and any communications concerning Oracle or Oracle's involvement in the ERP project or any other relationship or involvement with Oracle by Gallitano & O'Connor.
3. All documents related to, transmitted or utilized in USC's negotiations with the proposed awardee, Sungard [sic].
4. Every contract negotiated between USC and Sungard [sic] relating to the ERP Procurement (whether yet signed or unsigned).

The parties resolved a dispute relating to the documents requested in categories 1 and 2 above in a conference call on November 29, 2007. However, USC and SunGard each filed motions to quash or modify the subpoena *duces tecum* with regard to categories 3 and 4 on the afternoon of November 30, 2007. Because production was called for on the morning of December 3, 2007, and the appeal hearing itself was scheduled for December 4, 2007, the Chairman decided to conduct a telephonic conference call on the morning of December 3, 2007, to hear the motions. In addition to the Chairman, all counsel participated in the call. All parties consented to the Chairman conducting the hearing on the Panel's behalf.

#### CONCLUSIONS OF LAW

The Panel has the authority to issue subpoenas at a party's request under S.C. Code Ann. section 11-35-4410(4)(ii) (Supp. 2006). The Panel has also entertained motions to quash or modify a subpoena upon a party's application. S.C. Code Ann. § 11-35-4410(4)(b) (Supp. 2006);

see also *In re: Petition for Administrative Review GTECH Corp.*, Case No. 2002-4 (quashing several subpoenas on grounds of relevance and undue burden). This practice is consistent with Rule 45(c) of the South Carolina Rules of Civil Procedure. "Relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, South Carolina Rules of Evidence.

In its appeal letter, Oracle abandoned as a ground of protest the responsiveness of SunGard's proposal. The Panel finds that the information sought in categories 3 and 4 of the subpoena *duces tecum* to USC could only be relevant to SunGard's responsiveness to the RFP, an issue which Oracle has abandoned on appeal. Therefore, because the information sought in the subpoena *duces tecum* to USC is not relevant to the issues to be decided by the Panel, it is hereby quashed.

#### CONCLUSION

For the reasons stated above, the Panel hereby quashes the subpoena *duces tecum* issued to USC on November 21, 2007.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL  
BY ITS CHAIRMAN

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

J. Phillip Hodges, Jr., Chairman

Columbia, South Carolina

December \_\_\_\_, 2007.