

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

IN RE: Rule to Show Cause

DECISION

2017-211

Mr. Bobby Batts,

POSTING DATE: May 9, 2018

Respondent.

MAILING DATE: May 9, 2018

The South Carolina Consolidated Procurement Code (the “Code”) authorizes the Chief Procurement Officer (CPO) to debar or suspend persons from contracting with the State:

After reasonable notice to the person or firm involved, and a reasonable opportunity for that person or firm to be heard, the appropriate chief procurement officer has the authority to debar a person for cause from consideration for award of contracts or subcontracts if doing so is in the best interest of the State and there is probable cause for debarment. The appropriate chief procurement officer also may suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. The period of debarment or suspension is as prescribed by the appropriate chief procurement officer.

S.C. Code Ann. § 11-35-4220(1).

Background

Mr. Bobby Batts was on-boarded at the South Carolina Department of Revenue (SCDOR) on Monday, September 19, 2016, as a Network Engineer at an hourly rate of \$94.00, through the state term contract for IT Temporary Services. Mr. Batts was sponsored on the contract by Softpath System LLC. Mr. Batts was to perform his work at SCDOR’s primary and warehouse facilities. Mr. Batts was provided credentials that allowed access and egress from SCDOR’s primary facilities through a card swipe system. SCDOR’s warehouse did not provide access by card swipe, but was monitored by closed circuit cameras. The state term contract required Mr. Batts to complete time sheets for hours worked through the Tapfin vendor manager system. After receiving complaints from several employees that Mr. Batts would leave early or work unusual hours, SCDOR reviewed the time logs from its card swipe system and warehouse camera footage and compared the findings to the time sheets submitted by Mr. Batts. SCDOR determined that

for the months of September 2016 through February of 2017, Mr. Batts had billed the Department 309.93 hours, or \$29,133.42, for time he actually had not worked. Mr. Batts did not have permission to work from home and there was no evidence that he ever conducted any work on behalf of SCDOR out of the office, other than one time when he worked for 5 minutes at the SCDOR Warehouse.

Softpath indicated that Mr. Batts claimed that he did in fact work those hours and it was within the scope of his duties to work at the office, which has the swipe capability, and at the warehouse, where swipe is not available.

On May 24, 2017, the CPO attempted contact Mr. Batts, via certified mail, at two addresses provided by Softpath, to provide a copy of the information provided by SCDOR and an opportunity to respond. Both letters were returned unopened. On July 17, 2017, the CPO scheduled a hearing for August 24, 2017, to consider debarment of Mr. Batts. Mr. Batts was notified of the hearing via certified mail at the only addresses available and an advertisement was placed in the South Carolina Business Opportunities publication. The SCBO ad ran from July 18th through July 24th. Mr. Batts did not appear at the hearing. Mr. Batts made no attempt to contact the CPO regarding this matter.

Determination

Section 11-35-4220(2) sets out the causes for which a person or firm may be debarred:

The causes for debarment or suspension shall include, but not be limited to:

- (f) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor, including debarment by another governmental entity for any cause listed in this subsection.

S.C. Code Ann. Regulation 19-445.2125 sets forth the State's Standards of Responsibility. Among other things, the regulation requires that a contractor have a satisfactory record of integrity. Integrity is the quality of being honest and fair. The intentional falsification of time sheets is dishonest and fraudulent. The CPO finds that probable cause exists for suspension or debarment.

Section 11-35-4220(1) also requires the CPO find that the best interest of the State will be served by suspension or debarment. Because of the serious nature of debarment and suspension, these sanctions should be imposed for the State's protection, and not for purposes of punishment.

The Federal Acquisition Regulations are not binding in any way on the CPO, nor applicable to proceedings under the Code. They may, however, provide some guidance, particularly in areas where the CPO and the Procurement Review Panel have published little in the way of decisional authority.¹ FAR § 9.406-1(a) provides in part:

It is the debarring official's responsibility to determine whether debarment is in the Government's interest.... The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

Mr. Batts has not acknowledged an offer to respond the allegations. He made no attempt to cooperate with the State. He made no offer of restitution. There is no indication whatsoever that he recognizes the seriousness of his misconduct. Accordingly, the Chief Procurement Officer finds that it is in the best interest of the State that Mr. Bobby Batts, be DEBARRED for a period of two years after he makes full restitution to the State for the amount he fraudulently billed.

¹ The panel has published two substantive debarment decisions since its establishment in 1981: *Appeal by Megg Corp. of Greenville*, Panel Case No. 1994-7; and *Appeal by TAC 10, Inc.*, Panel Case No. 2012-2.

For the Information Technology Management Office

Michael B. Spicer

Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Suspension and Debarment Appeal Notice (Revised July 2017)

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

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

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

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

FILING FEE: Pursuant to Proviso 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

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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.