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## Determination to Lift Automatic Stay

**Matter of:** Executive Information Systems, LLC

**Case No.:** 2019-205LS

**Posting Date:** June 4, 2019

**Contracting Entity:** South Carolina Department of Education

**Solicitation No.:** 5400015940

**Description:** Education Value Added System

### DIGEST

Request to Lift Automatic Stay is granted pursuant to S.C. Code Ann. § 11-35-4210(7). The written request from the head of the using agency is included by reference. [Attachment 1]

### ANALYSIS

The State Fiscal Accountability Authority (SFAA) issued a Request for Proposals on behalf of the South Carolina Department of Education (DOE) to retain a vendor to develop value-added and growth measures of school, teacher and principal effectiveness, and create associated reporting mechanisms, to be used for the State growth portion of school accountability and, in districts that opt-in, teacher and principal evaluations. Proposals were received from Education Analytics, Inc. (EA) and EIS on August 30, 2018. An Intent to Award was posted to EA on November 16, 2018. EIS filed its initial letter of protest on November 26, 2018 and amended its

protest on December 3, 2018. The CPO posted a decision denying EIS' protest on February 15, 2019. EIS appealed the CPO's decision to the South Carolina Procurement Review Panel on February 25, 2019. The Panel held a hearing on the matter on May 29, 2019. At the end of the hearing, the Panel announced its decision to affirm the decision of the CPO to deny EIS's protest. The Panel has ten working days to post its written decision.

Section 11-35-4210(7) requires the suspension of the award until a decision is rendered by the Panel unless the CPO, after consultation with the head of the using agency, determines to lift the stay:

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).


This contract was solicited to allow DOE to comply with S.C. Code Section 59-18-1960, which requires roster verification when school districts opt to use the value-added system for teacher evaluation. Roster verification is a process that verifies which students were in a teacher's class for how long. Roster verification ideally should be done while the teachers are at the school (i.e., before the last day). Most school districts have the last day of school on May 31, or later.

Considering the late date in the school calendar, the State Superintendent of Education has requested the CPO to lift the automatic stay in order to serve the best interest of the State and to expedite roster verification without further delay.

## **DETERMINATION**

After careful consideration of the request and consultation with the head of the procuring agency, and based upon my administrative review and decision and the Panel's announced decision in connection with the protest, it is my determination that award of the Education Value Add System contract without further delay is necessary to protect the best interests of the State. Accordingly the automatic stay of this procurement is lifted pursuant to S.C. Code Ann. § 11-35-4210(7), effective immediately.

For the Information Technology Management Office



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Michael B. Spicer  
Chief Procurement Officer

Attachment 1



**STATE OF SOUTH CAROLINA**  
**DEPARTMENT OF EDUCATION**

**MOLLY M. SPEARMAN**  
*STATE SUPERINTENDENT OF EDUCATION*

May 31, 2019

Michael Spicer  
Chief Procurement Officer  
State of South Carolina  
State Fiscal Accountability Authority  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201

Dear Mr. Spicer:

The South Carolina Department of Education (SCDE) submitted a request for solicitation for an Education Value Added System, which was awarded in November 2018, and protested. A protest decision was announced on February 15, 2019, and subsequently appealed. Yesterday, the Procurement Review Panel upheld the decision of the Chief Procurement Officer to deny the appeal of EIS.

We anticipate it will take time to complete the formal decision and we understand that there is an appeal process to the PRP decision, since S.C. Code Ann. Section 11-35-4410(6) provides that "the decision of the Procurement Review Panel is final as to administrative review and may be appealed only to the circuit court. The standard of review is as provided by the provisions of the South Carolina Administrative Procedures Act."

However, we must respectfully request authorization to move forward with the current award, Contract# 4400020055 with Education Analytics, Inc, effective immediately.

Section 11-35-4210(7) states in part, "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."

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Mr Spicer  
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May 31, 2019

The value-added measure is required by § 59-18-1960 to be an indicator on school report cards, which under § 59-18-900(E) must be published by October 1, 2019. Further delay impedes and burdens this agency's ability to comply with the law. The value-added measure is also used by schools, teachers, and education preparation programs as one of multiple measures of effectiveness that must be addressed timely. In addition, the funds for this contract do not have carry forward authorization. We are ready to begin the work. Please consider our request to move forward.

Sincerely,

A handwritten signature in blue ink that reads "Molly M. Spearman". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Molly M. Spearman  
State Superintendent of Education

MMS/esm

cc: Cathy Hazelwood  
Elsie Montgomery

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2018)*

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.

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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 2018 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**

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\_\_\_\_\_  
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: \_\_\_\_\_

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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.**