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CURTIS M. LOFTIS, JR.
STATE TREASURER
RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
GRANT GILLESPIE
EXECUTIVE DIRECTOR

Determination to Lift Automatic Stay

Matter of: Companion Data Services, LLC

Case No.: 2020-207 LS

Posting Date: January 14, 2020

Contracting Entity: SC Department of Administration

Solicitation No.: 5400014395

Description: Mainframe Services Provider

DIGEST

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

ANALYSIS

The South Carolina Consolidated Procurement Code (the Code) grants any actual bidder the right to protest the award or intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This Request for Proposals was issued by the State Fiscal Accountability Authority (SFAA) on behalf of the South Carolina Department of Administration (Admin) to acquire a Contractor to replace aging mainframe capacity with mainframe services on March 15, 2018. Five amendments to the RFP were issued and initial proposals were received on July 23, 2018. A

Request for Best and Final Offers (BAFO) was published as Amendment 6 on May 5, 2019, followed by Amendments 7 and 8 responding to bidder's questions. Final proposals were received from Tierpoint; Companion Data Services, LLC; Ensono, LP; and International Business Machines on June 19, 2019. An Intent to Award was posted to Tierpoint, LLC on November 1, 2019. Companion filed an Intent to Protest on November 12, 2019 and filed its protest on November 18, 2019.

Section 11-35-4210(7) stipulates that:

In the event of a timely protest pursuant to subsection (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.

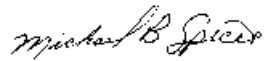
On January 8, 2020, the head of the using agency requested that the CPO lift the automatic stay explaining that the State's current mainframe infrastructure is aged, putting hardware and software support and security updates at risk. A hardware or software failure or security breach would seriously impact operations of state agencies such as the Department of Motor Vehicles, which uses the mainframe to interface with the State Law Enforcement Division to connect driver records and vehicle tags with national and international criminal databases, and the Department of Social Services which uses the mainframe to process transactions from the SNAP and TANF financial assistance programs. The alternative to acquiring mainframe computing as a service is to replace the current equipment and software which is not a financially viable solution. Regardless of the solution, the transition to a new mainframe environment, whether through a service provider or new hardware and software, must begin as soon as possible so the State can avoid the impending security risk to the State's and citizens' data.

Decision

After careful consideration of the request and consultation with the head of the procuring agency, it is my determination that awarding the contract without further delay is necessary to protect the

interests of the State. Accordingly, the automatic stay of the award to Tierpoint, LLC is lifted pursuant to S.C. Code Ann. § 11-35-4210(7), effective immediately.

For the Information Technology Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer
Chief Procurement Officer



Henry McMaster, Governor
Marcia S. Adams, Executive Director
OFFICE of THE EXECUTIVE DIRECTOR

January 8, 2020

Michael Spicer
Chief Procurement Officer
Information Technology Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: Request to Life Automatic Stay of Contract Award for Solicitation Number 5400014395

Dear Mr. Spicer,

Pursuant to South Carolina Code Section 11-35-4210(7), the South Carolina Department of Administration ("Admin") hereby requests that the automatic stay be lifted during the protest period for South Carolina Solicitation Number 5400014395, described as Mainframe Services Provider (the "Mainframe Services Contract"). The State's current mainframe infrastructure is nearly all end of life, necessitating an immediate award of the Mainframe Services Contract. Furthermore, even if Admin were to replace all its current mainframe hardware and software, it would not eliminate the need for a mainframe services contract in the near future. Additionally, Admin believes that the protest presented by Companion Data Services, LLC is without merit and therefore is unlikely to be successful. Admin strongly believes it is necessary to protect the best interest of the State by proceeding with the immediate award of the Mainframe Contract to the highest ranked offeror, Tierpoint LLC.

Current State of the State's Mainframe Infrastructure

Mainframe services had historically been an important part of the State's IT infrastructure. The State's two largest users of mainframe services, the Department of Revenue ("DOR") and the Department of Social Services ("DSS"), have either stopped using the State's mainframe services or cut their use of these services in half in the past year. The future level of demand for the State's mainframe services, therefore, is uncertain.

The current programs that do run on the mainframe include DMV's interface with SLED that connects driver records and vehicle tags with national and international criminal databases. SLED and DMV, though, plan to migrate this application off the mainframe in the next twelve months. DSS uses the mainframe to process transactions from the SNAP and TANF financial assistance programs. This means that the mainframe processes sensitive information on a daily basis.




Table 1 below shows the EOL status of the State's mainframe infrastructure. Though Admin may be able to keep extended support for some of the hardware and software, support will stop for the mainframe's operating system [REDACTED]. If the State continues to use this software after [REDACTED] it presents an unacceptable security risk for citizen data. It does not protect the best interest of the State to keep using the current mainframe hardware and software after [REDACTED].

South Carolina Department of Administration
1200 Senate Street, Suite 460 Columbia, SC 29201
Post Office Box 2825, Columbia, SC 29211

Ph: 803.734.8120
Fx: 803.734.9002
www.admin.sc.gov





[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

First, the State's economic model for mainframe services will not allow these costs to be recuperated. Currently, agencies that consume mainframe services from Admin pay for the entire mainframe program. As discussed above, demand for mainframe services within the State has shrunk and will continue to dwindle. Admin would have to expend these funds for a mainframe infrastructure that may not be used in the very near future. Avoiding the expenditure of these funds, therefore, is necessary to protect the best interests of the State.

Second, even if enough demand for mainframe services in the State were assured (which it cannot be), the status of the mainframe industry would make it very challenging for Admin to keep enough qualified staff to provide mainframe services successfully. Many of the current Admin employees working on the mainframe are nearing retirement. As a forty-year old technology, mainframe does not generate interest among new members of the IT workforce. People with requisite mainframe skills are either aging out of the industry or being hired by the largest mainframe providers.

Mr. Spicer
January 8, 2020
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Admin cannot offer competitive salaries that will attract and keep the necessary talent to continue providing mainframe services. As a result, Admin will eventually need to procure mainframe services from a vendor. Accordingly, even if Admin were to spend at least \$3,422,622 to completely refresh the State's mainframe infrastructure, it would still be necessary to procure mainframe services from a vendor in the near future. The State would be in the exact same position it is now, but it would have spent at least \$3,422,622 unnecessarily in the meantime. This is financially irresponsible. Therefore, it is necessary to lift the automatic stay to protect the best interests of the State.

Admin Believes the Protest is Unfounded and Should Not Be Successful

Finally, Admin finds each ground of the protest brought by Companion Data Services, LLC unfounded. The protest, therefore, is unlikely to be successful.

For the foregoing reasons, it is necessary to protect the best interests of the state by lifting the automatic stay of contract award for the Mainframe Services Contract. Thank you for your prompt review and consideration.

Sincerely,



Marcia S. Adams
Executive Director

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determinations Appeal Notice (Revised June 2019)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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.