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Protest Decision

Matter of: Panorama Education, Inc.

Case No.: 2018-208

Posting Date: February 13, 2018

Contracting Entity: South Carolina Department of Education

Solicitation No.: 5400014237

Description: Student Climate Assessment Survey (SCAS)

DIGEST

Protest alleging errors in the evaluation is denied. Intelligent Imaging System' (IIS) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on a review of the procurement file, applicable law, and precedents.

BACKGROUND

Key Events

Solicitation Issued	10/02/2017
Amendment 1 Issued	11/09/2017
Amendment 2 Issued	11/14/2017
Amendment 3 Issued	12/08/2017
Intent to Award Posted	02/02/2018
Protest Received	02/12/2018

ANALYSIS

The State Fiscal Accountability Authority (SFAA) issued this solicitation on behalf of the South Carolina Department of Education to solicit proposals for a Student Climate Assessment Survey (SCSCAS) to measure the degree to which the school promotes a positive and effective learning environment from the student's perspective. The solicitation was issued on October 2, 2017 and proposals were received on December 8, 2017, and an Intent to Award was posted to Advanced Education, Inc. on February 2, 2018. Panorama Education, Inc. emailed a protest of the award that was received by the Chief Procurement Officer at 11:58 PM on February 12, 2018.

The South Carolina Consolidated Procurement Code authorizes the Chief Procurement Officer to conduct an administrative review of the protest of any actual bidder, offeror, contractor, or subcontractor in accordance with Section 11-35-4210(1)(b) as follows:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added) Protests must be received by the Chief Procurement Officer no later than the close of business on the tenth day or, in this case, 5:00 PM on February 12, 2018. Panorama's protest was not received until 11:58 PM on February 12th and consequently the Chief Procurement Officer lacks jurisdiction to review Panorama's issues of protest.

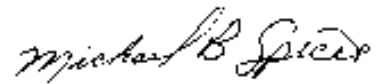
Protest Decision, page 3

Case No. 2018-208

February 13, 2018

For the reasons stated above, the protest of Panorama Education, Inc. is denied.

For the Information Technology Management Office

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

Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Josh Hammell](#)
To: [Spicer, Michael](#)
Cc: [Hancock, Sarah](#)
Subject: Subject: Request for reconsideration/protest re. Solicitation #5400014237, Student Climate Assessment Survey [confidential]
Date: Monday, February 12, 2018 11:58:42 PM

Dear Mr. Spicer:

Good evening! Sarah mentioned there was a fire in the building earlier -- I hope everything is alright for you and your team.

Thank you for the opportunity to respond to Solicitation #5400014237, implementing the Student Climate Assessment Survey (SCAS). We are tremendously excited about the this program and the impact this program will have for South Carolina's students.

I am writing on behalf of Panorama Education, an organization devoted as its primary mission to helping school districts and state agencies run highly effective survey programs. We are known nationally and in South Carolina as the leading provider of high-quality student survey programs (and the largest as well, both nationally, and in the state).

It has been our pleasure to respond to this RFP, and to present and discuss our proposal with the evaluation panel last month. Sarah has been a terrific partner in shepherding us through this process.

We were of course disappointed to learn that we were not identified as the highest scoring Contractor in this process. We have experience responding to student survey RFPs across the country, and I confess we were a bit confused regarding the outcome.

In an effort to learn from this experience, we requested scoring materials and a copy of AdvancED's response. Your team was gracious in responding quickly to our requests. We discovered, as you know, that Panorama's technical proposal and presentation scored highest, and we scored full points for experience -- a strong reflection on the quality of our offering. However, we scored 10/20 on price.

After much consideration, we would like to respectfully request reconsideration/protest of this award. We have never protested an RFP before; however, in this case it appeared to us that there might genuinely be a mistake. We have watched student surveys and student voice blossom across South Carolina, and we are deeply invested this work. Please accept this note in that spirit.

We have three concerns, described below in more:

- The AdvancED proposal fails to meet key requirements of the RFP. This is concerned to us because (1) these features are listed as “mandatory features” and are essential to the program’s success, not option, and (2) These features add significant cost and are part of the reason why our proposal was more expensive; it feels unwise to compare the cost of a fully-featured solution against the cost of a solution that misses key requirements (put another way: we would have bid at a lower price if we skipped the features that AdvancED skipped, and would have likely won)
- While the awarded vendor, AdvancED, is a highly regarded organization that provides a variety of other services to school districts, when it comes to the particular services requested by SCDE -- running large-scale, high-quality student survey programs -- AdvancED does not have the level of experience SCDE desires. AdvancED also failed to submit two sets of required documentation about their experience with similar projects, which had the effect of making them look *more* experienced.
- Panorama was deducted points in three instances that we believe were erroneous. In each instance, Panorama was deducted points for proposing something that an Evaluator took issue with, but was required by the original RFP.

Thank you for your consideration. Our hope is that, upon your evaluation, it will be clear that awarding this contract to Panorama represents the best interests of the State of South Carolina and its students, and that Panorama represents the highest value, highest quality, and most responsive bidder. We would be excited to continue our work serving the students of South Carolina.

As a next step, please let me know if it makes sense to discuss this by phone as well -- I realize a conversation may be easier than a long letter. Thank you.

Best,
Josh

Summary of Issues.

Please note: At this time we have only received a redacted copy of AdvancED’s RFP. It appears that their redactions go far beyond trade secrets and privileged information,

and they instead redact a significant number of key RFP responses. We've done our best to ascertain what they are proposing, but please accept our apologies if one or two of the issues addressed here are covered in the redacted portions.

Issue 1: Failure to Meet RFP Requirements

a.

Under "Mandatory Features", SCDE's solicitation includes a clear requirement that "9. The system to be able to disaggregate by student, classroom, grade level, school, and district." (page 24).

AdvancED does not meet this requirement, as they do not provide reporting at the student or classroom level. While they redacted their answer to this question, we can see in their business proposal that they are only budgeting to report at the school and district levels, but not the classroom and student level. (In their business proposal, on page 7 in the budget, AdvancED includes line items for school and district level analysis, but nothing for student or classroom level. On page 5, in the program overview, AdvancED lists school and district reports, but not student or classroom level. Additionally, from our knowledge of AdvancED, we know that they do not support the ability to provide a classroom-level view of school survey data. Also, from the way AdvancED is proposing to run the program, it would be virtually impossible to produce student or classroom level reports.)

This issue is important because providing student and classroom reporting is expensive for contractors. For one, this requires careful data management to link each survey to the correct student, and to the correct classroom, using up-to-date course roster information. Second, this results in a *huge* increase in the number of reports that are produced. With only school and district reports, we are looking at approximately 1250 school reports plus 100 school districts. If we include student and classroom level reports, we are looking at 600,000 student-level disaggregations plus 50,000-200,000 classroom level reports. Third, this is a complex feature to build, and we have spent years perfecting it. It is part of Panorama's special sauce.

Given this is a mandatory requirement, we believe AdvancED should be disqualified because they do not support this functionality.

Also, we built our cost estimate for SCDE against a careful evaluation of SCDE's requirements. This requirement was an important part of our cost. Had SCDE not insisted on this functionality, our bid would have been lower. To be more direct, had this functionality not been listed, or listed as optional, we would

almost certainly have won the RFP.

If SCDE has decided, upon reflection, that this functionality is not required, we believe it would be in SCDE's best interest to request a "best and final offer" from Panorama, taking into account this new information, so that we can update our proposed cost based on the new scope.

It does not seem to be in the state's best interests, or fair, that an organization should be able to win an RFP by omitting a high-cost mandatory requirement.

b.

Under "Mandatory Features", SCDE's solicitation includes an important requirement that the selected system must "4. Utilize a unique SUNS# in the student information system so that it can be disaggregated by sub-group."

AdvancED does not support this requirement. In their words: "Disaggregation of survey results via the eProve survey reporting tool is limited to respondent entered demographic item results, which can be modified based on SCDE requirements." (Page 10).

This requirement is complex. So I would like to take the opportunity to explain why this it matters tremendously that AdvancED does not support this option:

When a district or state runs a survey program, one important part of the program is breaking down survey results by subgroups of students. For example, you might want to see how boys respond versus how girls response. You might wish to see how 9th graders respond vs. 10th graders. States in particular must pay close attention to how low-income students respond vs. other kids, and how special education students respond vs. others, etc.

To do that analysis, a survey reporting tool needs some way to know that a particular survey response comes from a 9th grade boy, for example.

One common way to get this information is simply to ask a question on the survey. For instance, you can ask a child, "What is your grade level?" This is what AdvancED supports -- "respondent entered demographic item[s]." In some cases this is a useful feature and Panorama supports this option as well.

But, leading districts and states don't do things that way -- they don't ask these background questions on the survey itself. Instead, when the student takes the survey, the survey program behind-the-scenes pulls up the student's demographic information from the student information system, using the student's id number (the SUNS#).

So, instead of asking the student, "What is your gender?" and "What is your grade level?" on the survey, we can pull that information from the student information system on the backend, so we don't have to ask the student any background questions.

SCDE clearly included a "mandatory feature" that the survey program must support this approach: Rather than asking the demographics on the survey, the survey program needs to be able to pull the demographics from the student information system, and use that information for reporting purposes.

AdvancED does not support this mandatory feature.

From our experience, there are three major reasons why SCDE likely included this requirement, and why it's a problem that AdvancED doesn't support it:

- 1) The survey is shorter if you don't need to ask these background questions.
- 2) The disaggregation data is more accurate if you pull from the student's record, rather than asking on the survey (students skip questions, answer incorrectly, etc.)
- 3) While you can ask students about their gender, their grade, and their race/ethnicity, there are many important details you CANNOT ask on the survey. Specifically, it's really important that states track survey data by economically disadvantaged students (low-income students), English learners (students in special programs to learn English), and students with disabilities (such as special education students). Districts and states keep this information on a student's record, but you can't ask this on a survey. Could you imagine asking a student, "Do you have a disability?" or "Are you economically disadvantaged?" (In some states, that's actually illegal, though I don't know offhand what SC law is here.)

This third reason is a big deal. South Carolina needs to know how their economically disadvantaged students, their English learners, and their students with disabilities are doing. This is a key element of good practice, but with

AdvancED it won't be possible (because you can only disaggregate results by questions asked on the survey)

It's also important to note that South Carolina is now *required by law* to report data by these subgroups: economically disadvantaged, English learners, and students with disabilities. In fact, this requirement was part of the reason why SCDE launched this RFP in the first place. The AdvancED proposal would appear to put South Carolina out of compliance with the law that this RFP was launched to meet.

(Citation: Under the federal Every Student Succeeds Act (ESSA), every state must submit an "ESSA Plan" in which the state describes how it will how its schools accountable for a high level of performance. [Here is South Carolina's plan](#). Under South Carolina's ESSA plan, the State committed to running a "Positive and Effective Learning Environment Survey" that would measure Student Engagement (see page 59 on the ESSA plan linked here). SC's ESSA plan notes that the survey is "under procurement", i.e. it's this RFP. Much of the language in the RFP actually comes directly from the ESSA plan, including this "SUNS#" requirement. For example, Page 59-60: "Use a unique student identification number tied to the student information system so that it can be disaggregated by subgroups."

South Carolina's ESSA plan also explicitly identifies the need for subgroups that you can't ask on a survey and you have to pull from a student information system (underline): "The student engagement survey will be broken down by all students and accountability subgroups. The subgroups reported will be economically disadvantaged, African American, Asian/Pacific Islander, White, Native American, Hispanic, ELs [English learners], and students with disabilities.")

Our concern here is twofold:

First, we believe that AdvancED should not be considered a qualified bidder because they do not support a "mandatory feature" required under this RFP.

Second, this mandatory functionality is expensive to offer and impacted our price. If this requirement is not a mandatory requirement, we would encourage SCDE to allow Panorama to submit a BAFO based on the tweak to scope. We believe Panorama would be the selected vendor in that event.

c.

We would also note that the RFP clearly requires “four levels of authentic student engagement” (page 8, page 20). This requirement comes from South Carolina’s ESSA plan, linked above, because South Carolina must assign every school to one of four level of performance.

AdvancED proposals to offer three levels of engagement, which does meet the RFP’s requirement. Granted, this is less significant than issues (a) and (b) above, but it is still a major issue. (Unlike issues (a) and (b), two Evaluators did notice this issue as well. It appears that where AdvancED lost points, it was for this issue, not the two issues above, which are hard to catch.)

Issue 2: Awarded Vendor’s Experience

While we believe the issues in #1 are sufficient to merit an award to Panorama, there is a further issue we would like to address:

AdvancED is a widely-respected organization known for its school accreditation programs. We have great respect for AdvancED’s work. However, we were surprised to discover that each rater gave AdvancED 10/10 for Qualifications and Experience (“The Contractor’s qualifications and experience must provide evidence of its depth and breadth of experience, and evidence of successful past performance with projects of similar size and scope.”).

We were surprised because AdvancED has very limited experience with projects of similar size and scope. They are a large organization that provides many services at the expert level, but their survey work is limited. To our knowledge they have not executed survey projects of this similar size and scope.

We believe there may be a misunderstanding regarding AdvancED’s experience:

A.

In the “experience and qualifications section”, AdvancED lists serve to Alabama, Kentucky, Michigan, and North Dakota. On the surface, this would appear to be extremely credible evidence of projects of similar size and scope.

For example, Evaluator 4 listed AdvancED’s experience in these four states specifically as key evidence of their experience with similar projects. Reading the RFP, it’s easy to make that inference, but it’s not correct.

To our knowledge, only in North Dakota does AdvancED manage a statewide survey program. That survey program launched a few months ago and is still in

progress. It is also much, much smaller than SCDE's proposed program: 80,000 surveyed students, vs. South Carolina's 600,000 surveyed students. (For example, Panorama runs more than a dozen survey programs that are larger than this North Dakota project, as listed in the RFP, including multiple projects larger South Carolina.)

In the other three states listed, AdvancED conducted different work. It is our understanding that they do not run statewide survey programs there. In Kentucky, the state runs their own student survey program. In Michigan and Alabama, there is no statewide survey program -- instead, the largest districts (like Detroit, MI, and Huntsville, AL) contract with Panorama for their survey programs.

So it is concerning to see evaluators cite these four states as similar projects, when in fact it appears that only one is similar, and that one is just 15% of the size.

B.

On Page 3 of its technical proposal, AdvancED writes that they serve nearly 95% of school districts and 98% of schools in South Carolina. That sounds like credible evidence, and Reviewer 4, for example, includes the 95% statistic as evidence of AdvancED's "projects of similar size and scope". However, it is important to note that these districts work with AdvancED on other projects, and -- in fact -- virtually all of those South Carolina districts cited have chosen to **NOT** run surveys with AdvancED.

(We know this because AdvancED writes on page 5 that in the year 2017, AdvancED administered only 18,470 surveys across the entirety of South Carolina. That is in fact less than 3% of the state -- very far from the 95% figure cited. To put this perspective, last year Panorama administered more surveys than that in Richland One alone -- just one of our districts.)

C.

We appreciated that your team specifically wrote this RFP very well to protect against this concern. In two places, the RFP asks contractors to discuss not just their qualifications broadly, but to specifically discuss their qualifications with projects of similar size and scope.:

["Experience and Qualifications", page 37]

"Contractors shall provide specific examples of the proposed staff's experience,

and shall provide resumes of staff that will actually perform the work. Contractors shall include a list of all projects within the past five (5) years where the individual has utilized the knowledge and skills of implementing a Student Climate Assessment Survey.”

[Qualifications - Required Information, page 39]

“(a) The general history and experience of the business in providing work of similar size and scope. (b) Information reflecting the current financial position. Include the most current financial statement and financial statements for the last two fiscal years. If the financial statements have been audited in accordance with the following requirements, provide the audited version of those statements. [Reference Statement of Financial Accounting Concepts No. 5 (FASB, December, 1984), as amended.] (c) A detailed narrative statement listing the three most recent, comparable contracts (including contact information) which have been performed. For each contract, describe how the supplies or services provided are similar to those requested by this solicitation, and how they differ. (d) A list of every business for which supplies or services substantially similar to those sought with this solicitation have been provided, at any time during the past three years.”

As far as we can tell, AdvancED did not submit either set of required information (it is not included in the technical proposal we received).

This is problematic because we believe this information could have highlighted AdvancED's lack of experience with similar projects. Their RFP response looks better without this information. (Points A and B above are also an even bigger deal in the context of this information missing.)

And indeed, without this information, from the scorecard notes it appears that some reviewers inferred -- incorrectly -- that clients cited by AdvancED in their proposal were conducting similar work, when in fact they were not.

In reading their proposal, without this required information, I understand. We were initially confused about how AdvancED had so much survey experience that we hadn't heard of, until we figured out where the confusion lay.

Paradoxically, by omitting some or all of this information, they made themselves look more qualified. For example, if each resume had included a "similar projects" section, and the list was very short, that would have made the Contractor look less qualified.

--

In light of the points raised above, we would encourage that AdvancED's Qualifications and Experience score be reconsidered. In reading their proposal, it is unclear how they could have scored a perfect 10/10 for all three reviewers, given that they only cite one similar project cited in their proposal, and two sets of required qualification information missing. We specifically see at least one Evaluator who was confused by this information, and led to believe that AdvancED had more similar experience than they in fact do.

To be clear, we know that this scoring is somewhat subjective -- however our concern is not that we disagree on subjective scoring, but rather that reviewers misinterpreted AdvancED's experience, and based their scoring on the wrong facts.

Issue 3: Missing Panorama Points

In reviewing the scoring sheets, we noticed three instances where Panorama lost points, in what appear to be mistakes. We understand that these 4 points won't make a difference by themselves, of course. However, we are noting them here because they might make a difference in conjunction with the issues cited above.

A.

[1 point] Evaluator 2 scored Panorama a 44/45 on the Proposed Solution, docking one point because our proposed program uses a SUNS#, which the Evaluator believes is not a good solution for grades 3-5. To be clear, we agree with the evaluator's concern about the use of a SUNS number -- that's valid. However, the RFP specifically says that we must "Utilize a unique SUNS#..." (page 23, #4), and our proposal was written to match that approach. In other words, it looks like we were docked a point for describing an approach that was specifically required ("mandatory") in the RFP. That seems incorrect.

[3 points] Evaluator 1 scored Panorama a 23/25 on Phase II: Demonstration. We lost two points over a specific feature that was not mentioned in the RFP, but this Evaluator wished we would include: "My only concern is in the lack of response caching." Evaluator 4 scored Panorama a 24/25 on Phase II: Demonstration, noting the same issue.

We understand very much the question raised by these evaluators. We would note that this specific feature was not specified in the RFP, and our understanding is that neither of the other two finalists would support this either. Regardless --

However, our concern is different: The issue is that it would be impossible to offer this functionality within the scope of the RFP as posted.

The question was (approximately), "Does Panorama save student responses, so that if there is a power outage, a student can log back in and get their answers back, and finish the survey?" This is a completely reasonable wish. However, the RFP specifies strict confidentiality rules that make us unable to offer this feature.

The reason is that the RFP specifies that students should access the survey via their SUNS#, i.e. a student logs in with their ID number. The RFP also specifies that we need to ensure privacy and confidentiality of a student's responses.

The issue is that if we save a student's incomplete survey (to protect against a power outage, etc.), that means an adult could log in with the student's SUNS# and see how that student responded on the survey, if the student had not yet hit "submit." For example, while students are taking a survey, a teacher could enter a student's id number and immediately see a student's survey responses. That would break the confidentiality rules. So it's impossible to meet the RFP's confidentiality requirements and also let a student pull up their responses to an incomplete survey, as requested.

In practice, we do have a setting that saves incomplete responses, so a student can pick up later. We would be happy to turn that on for SCDE. However, in our demonstration, we were going strictly by the RFP requirements, which would prohibit that. We hope those three points can be reconsidered.

Josh Hammell
Outreach Operations Manager
@ Panorama Education

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STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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.

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

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.