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## Determination to Lift Automatic Stay

**Matter of:** Public Consulting Group, Inc.

**Case No.:** 2018-211 LS

**Posting Date:** April 4, 2018

**Contracting Entity:** South Carolina Department of Health and Human Services

**Solicitation No.:** 5400013926

**Description:** Multi-Vendor Integrator

### 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 South Carolina Department of Health and Human Services (DHHS) is acquiring a Replacement Medicaid Management Information System. Its procurement strategy is based on “modular” contracting:

SCDHHS’ Replacement Medicaid Management Information System (RMMIS) will not be a single monolithic system. Rather, the MES will disperse legacy MMIS functions and initiatives among multiple subsystems implemented and operated by specialized teams—a distributed RMMIS comprised of the multiple, integrated solutions. Solutions may be referred to as “components,” “subsystems,”

or “modules” throughout this Request for Proposals (RFP). These terms are synonymous.

[Solicitation, p. 10] DHHS contemplates awarding separate contracts for at least six modules:

- Administrative Services Organization (ASO)
- Business Intelligence System (BIS)
- Pharmacy Benefits Administrator (PBA)
- Third Party Liability (TPL)
- Dental ASO (DASO)
- Care Call (CC)

Some of these contracts have already been awarded. Additionally, DHHS will need to integrate all these modules so that finance and accounting functions can be accomplished using the State’s current enterprise resource platform, SCEIS. [Solicitation, p. 11]

DHHS issued the protested solicitation under a delegation from the Chief Procurement Officer. It seeks to retain a Multi-Vendor Integrator (MVI) to provide project management oversight of third-party solution providers for multiple, integrated components, subsystems, and modules that will comprise the Replacement Medicaid Management Information System (RMMIS). The Multi-Vendor Integrator (MVI) will:

- Perform project management oversight of third-party solution providers (SP) as they:
  - Design, develop, and implement solutions that meet South Carolina Department of Health and Human Services (SCDHHS) business and technical requirements to replace its Medicaid Management Information System (MMIS).
  - Integrate those solutions into the Medicaid Enterprise System (MES) according to SCDHHS architecture standards and technical requirements. The MES is the system (hardware, software, and services) designed to meet the demands of South Carolina’s Medicaid beneficiaries, stakeholders, and appropriate staff.
- Perform project management oversight of SP solution implementation and MES integration activities by utilizing SCDHHS project governance standards and processes. (PL 006, ATTM 009)
- Align all project activities (MVI, SP, and MES) with MITA 3.0 framework to ensure CMS certification as soon as possible. See Section 3 for more details.

[Solicitation, p. 10] As several of the third party solutions have already been competitively procured and are under implementation, the need for the MVI is immediate. DHHS Director Joshua Baker contends that proceeding with this contract for the MVI without further delay is necessary to protect the best interests of the State. Accordingly, he has requested that the automatic stay of procurement during protests be lifted.

Regarding the automatic stay, the Consolidated Procurement Code reads:

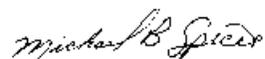
In the event of a timely protest pursuant to subsection [11-35-4210](1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review 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).

## **DETERMINATION**

After careful consideration of the request and consultation with the head of the procuring agency, and based upon my administrative review and decision in connection with the protest, my historical experience with major IT acquisitions like the RMMIS, and the extraordinary project management and coordination requirements for modular contracting, it is my determination that award of the MVI contract without further delay is necessary to protect the best interests of the State. Accordingly the automatic stay of 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

**From:** [Joshua D. Baker](mailto:Joshua.D.Baker@scdhhs.gov)  
**To:** [mspicer@mmo.sc.gov](mailto:mspicer@mmo.sc.gov)  
**Cc:** [iswhite@mmo.sc.gov](mailto:iswhite@mmo.sc.gov)  
**Subject:** In the protest matter of Solicitation Number 5400013926  
**Date:** Tuesday, April 03, 2018 5:23:30 PM

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As the Director of the Department of Health and Human Services, I request that the Chief Procurement Officer award the Contract to Cognosante Consulting LLC without further delay to protect the best interest of the State for the reasons stated below.

On March 5, 2018, Public Consulting Group, Inc. filed an untimely protest of Solicitation Number 5400013926 with the Chief Procurement Officer. Since that date, the Department has observed an automatic stay of the award to Cognosante Consulting LLC. On April 2, 2018, Protest Decision 2018-211 of Solicitation Number 5400013926 declared the March 5, 2018 protest of Public Consulting Group, Inc. untimely. While the Department believes that this decision renders the automatic stay provision of §11-35-4210(7) inapplicable to this protest, as the provision applies only to timely protests, the Department nonetheless and out of an abundance of caution respectfully requests that the Chief Procurement Officer lift or otherwise forego any automatic stay in place and allow the Department to proceed with the award to Cognosante Consulting, LLC as designated in the Intent to Award dated February 23, 2018.

The Multi-Vendor Integrator (MVI) was solicited to acquire business operations services needed to support the Department as it operates the State's Medicaid program. These services will provide integration for the numerous third party solution modules of the Replacement Medicaid Management Information System (RMMIS) project into the Medicaid Enterprise, perform project management oversight of solution provider deliverables utilizing Departmental governance and certification standards, and modify and enhance project management processes of the Medicaid Enterprise to accommodate the needs of the RMMIS. As several of the third party solutions have already been competitively procured and are under implementation, the need for the MVI is immediate, and proceeding with this contract for the MVI without further delay is necessary to protect the best interests of the State.

Best,

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**Joshua D. Baker**  
*Director*  
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803-898-2504  
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**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Written Determinations Appeal Notice (Revised July 2017)*

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).

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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 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**

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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.**