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Decision

Matter of: Request for Resolution of a Contract Controversy by Technology Solutions, Inc.

Case No.: 2020-215

Posting Date: June 30, 2022

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400008056

Description: IT Temporary Staff Augmentation Services

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4230. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

Solicitation Issued	09/02/2015
Amendment One Issued	09/17/2015
Amendment Two Issued	10/02/2015
Amendment Three Issued	10/14/2015
Amendment Four Issued	10/16/2015
Amendment Five Issued	10/30/2015
Amendment Six Issued	11/23/2015

Amendment Seven Issued	12/01/2015
Amendment Eight Issued	12/18/2015
Amendment Nine Issued	12/21/2015
Amendment 10 Issued	05/17/2016
Amendment 11 suspended solicitation	06/01/2016
Amendment 12 Restarted Procurement	06/15/2016
Intents to Award Posted	08/26/2016
Request for Resolution Received	04/24/2020

The South Carolina State Fiscal Accountability Authority (SFAA) issued this Fixed Price Bid on September 2, 2015, to acquire technologists to augment information technology staffing for South Carolina's governmental agencies. After numerous protests and appeals, initial awards were posted on August 26, 2016. In this fixed price bid, the State set the maximum hourly price it is willing to pay for a specific technology related skill set, and any responsible bidder that is willing to provide those services at or below that price is awarded a contract. When an agency, defined in the contract as a using governmental unit or UGU, has need for a technology related skill set, it makes all participating contractors aware of that need through a Managed Service Provider (MSP). The contractors provide resumes of potential candidates through the MSP to the requesting agency. The agency must select at least three candidates for interviews, and the agency determines which candidate is best suited for the position. The candidates must be employed by the contractor submitting their resume. The contractor's employee submits their time worked to the MSP, which invoices the agency, receives payment, and disburses payment to the contractor. The maximum term for temporary positions under this contract is three years. If after three years there is a continuing need, the using agency must reopen the position and consider other candidates. The contract limits communications between the UGU and contractors to the performance of employees placed with the UGU. Direct communication between the agency and contractors regarding new agency requirements is prohibited. All communications regarding new agency requirements must be distributed through the MSP to all contractors simultaneously.

Mr. Michael Burke was employed by TSI in 2014 and was placed in a temporary position with the Department of Health and Human Services (DHHS) under this contract. This position was reopened in 2017 with termination or reposting by May 14, 2020. TSI was again successful at

placing Mr. Burke in the position. DHHS reposted the requirement again on April 18, 2020, with a start date of May 15, 2020. TSI states that during a phone call on or about April 14, 2020, four days prior to the reposting of the position by DHHS, Mr. Burke sought a pay increase. TSI denied Mr. Burke the requested pay increase and, on April 21, 2020, Mr. Burke submitted his resignation effective the end of his current assignment, May 14, 2020. Also, on April 21, 2020, Mr. Burke authorized SunPlus Data Group, Inc. to represent him and submit his resume for the reposted position at HHS. An announcement was made on May 12, 2020, that this position would be awarded to SunPlus and Mr. Burke effective May 15, 2020.

On April 24, 2020, three days after Mr. Burke tendered his resignation, TSI simultaneously filed a protest and this request for resolution of a contract controversy alleging Mr. Burke's change in employment was the direct result of prohibited communications, collusion, a serious ethics violation, and the failure by the State to monitor and prohibit the improper activities of its competitors. (Attachment 1) TSI supplemented its contract controversy complaint on June 1, 2020, with more specific allegations. (Attachment 2) The CPO sought clarification of some of the allegations on May 27, 2021, and TSI provided a response on June 22, 2020. (Attachment 3)

ANALYSIS

TSI asserts that DHHS and favored competitors have conspired to deny it the benefit of Mr. Burke's services through years of unauthorized communications and unfettered access to its facilities, employees, and contractors. In response to a request by the CPO for specifics, TSI only offered alleged hearsay conversations with Mr. Burke, an unconvincing interruption of the sequence of events, and a comparison of the job description and Mr. Burke's resume showing that he is well-qualified to support its allegations. Speculation is not evidence.

TSI also alleges a serious ethics violation involving an again unreported gifting of Apple iPhones to Mr. Burke and DHHS employees during the 2016 or 2017 holidays but offers only alleged conversations with Mr. Burke to support its allegation.

TSI asserts that these unreported violations were common knowledge that now require investigation and retributive action. When TSI finally reported these allegations the State and MSP investigated the transactions involving Mr. Burke and found that:

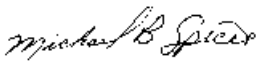
Based upon the details in Beeline, nothing seems out of the ordinary. The contractor finished his 36-month assignment and chose a new supplier to submit him to a new request. The RTR is completed correctly, the bill rate is the same as the previous request. SunPlus Data Group followed the SoSC IT Temp Solicitation timeline guides and submit the candidate within 30-days of current end date.

[email from Hoyt, Cynthia dated 4/21/2020]

DECISION

Based on the information provided by TSI and the investigation by the State and MSP, there is no evidence to support sanctions against SunPlus or DHHS. The contract controversy by Technology Solutions, Inc. is dismissed.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



April 24, 2020

Michael Spicer
Chief Procurement Officer
SFAA Procurement Services
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Technology Solutions, Inc. Contract Controversy

Dear Mr. Spicer,

It has come to my attention that communications precluded under Solicitation #5400008056 (up to and including potential collusion between vendors and UGU management personnel) has led to the pirating of one of my employees from the position he has occupied (and continues to occupy through 5/14/2020) at the SC Department of Health & Human Services since late 2014, renewed and/or rebid and awarded multiple times under the current contract (see also Section III, items 2, 4, 17 and 25 of the solicitation). It is stated in Amendment 1 to this solicitation, specifically Page 4, questions 6, 7, 9 and 10, that such claims must be investigated by your office, and that if such communications have occurred, the offending vendor must be removed from this contract (see same section III referenced above, under the heading "Supplier contracts may be suspended or terminated for reasons to include, but not be limited to the following: Any direct marketing of Candidates by Supplier to a Business Unit Manager outside of the parameters set forth in the State Term Contract"). There also appear to be violations of the section entitled "Additional Information," which outlines the Responsibilities of Using Governmental Units (UGUs).

TSI has borne the risk of employment of a salaried individual, Michael Burke, with the benefits that accompany that, for the life of this position, and now is being deprived of the right to receive anything for those efforts. TSI is responsible for introducing this employee to DHHS, and even took measures to retain him (i.e. giving him a substantial raise in pay), per DHHS' request, when another company outside the state tried to hire him away a few years ago. Commitments were made by DHHS to adjust his bill rate to cover that cost increase to TSI, but that was only partially fulfilled, restricting TSI's ability to keep pace with the inflated rates being offered by vendors who pay no benefits and offer only hourly positions, masquerading as W2 arrangements, when they are clearly a 1099 relationship, by any definition. I believe that is what has been offered to my employee as well. But DHHS is now attempting to remove TSI's association, and allow a "favored" vendor to reap the benefits, and it appears to be coming along with the rate increase promised to TSI years ago. No wonder they can afford to give him a raise!

I also believe your MSP has culpability in this, as they are responsible for ensuring that relationships such as that between the pirating vendor and UGU management are not established and allowed to continue, as this one has for the life of the contract. While, to a large vendor, adding or losing a single contract assignment means nothing to their overall bottom line, to a small

Michael Spicer
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company such as TSI, with very limited opportunity to work under this contract due to the precluded communications that continue to happen (pre-selected candidates, etc. as we've discussed before), losing a contract assignment can well mean having to close TSI after nearly 31 years in operation. In this case, that would be the end result were this pirating to be allowed without at least our being able to collect a placement fee from the pirating vendor. There is also indication that the naivety of my employee may be a factor, in that it appears he may have been told things that simply are not true, and he is also a victim in the matter.

It appears that Position number 9287-1, currently posted on the Beeline system with a "Desired start date" of 5/15/2020, is the position into which they plan to submit and place him, as the position description is a direct match with my employee's resume. This could have only occurred with the assistance and pre-selection by the UGU manager over that position, working with the vendor that has offered my employee the job (even though they haven't "officially" secured it for him). As mentioned above, the new position also includes an opportunity for a rate increase, which I have tried to achieve for nearly 4 years, but was denied. It makes sense that the new vendor would be able to give my employee a raise, where TSI was not able to.

Please see associated protest filed in accordance with the SC Procurement Code, for that position, or any others into which Mr. Burke has been, or may be, submitted into the Beeline system. If this is not the position they intend to use for this caper, your investigation or my associated FOIA request should bring that to the surface.

For these reasons, I believe this matter warrants your investigation. Thank you for your assistance in this matter.

Respectfully submitted,



Cathy G. Lanier
President

Attachment 2



June 1, 2020

Michael Spicer
Chief Procurement Officer
SFAA Procurement Services
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Technology Solutions, Inc. Contract Controversy

Dear Mr. Spicer,

When I filed my original contract dispute based on the fact that communications precluded under Solicitation #5400008056 (up to and including potential collusion between vendors and UGU management personnel) had led to the pirating of one of my employees from the position he has occupied (and continued to occupy through 5/14/2020) at the SC Department of Health & Human Services since late 2014, renewed and/or rebid and awarded multiple times under the current contract (see also Section III, items 2, 4, 17 and 25 of the solicitation), I was working from the handicapped position of lacking specific information as to the offending vendor and position number. Pursuant to receiving most of the information requested in my FOIA request, I can now be more specific:

On or about Tuesday, April 14, 2020, I received a call from my long-time employee, Michael Burke. We chit-chatted about the usual family matters, as he was taking the week off to help his mother who had fallen in her home (and being paid for it with the leave he has accrued, one of the normal benefits of being a salaried employee of TSI). However, toward the end of our conversation, he basically attempted to pick a fight with me (which is unusual, since I have known Mr. Burke and his family for many years prior to hiring him) and demanded I give him a raise "if he was going to stay with me for the renewal of his position at DHHS." I explained that he was already paid well above the salary range for his position category (DBAs), and as a small company, we were stretched to our limits until we gained more business under this contract. He has witnessed first-hand, and reported to me over the years, the blatant favoritism in not only access, but in contractor selection, shown by agency personnel toward certain vendors, so he understands the chilling effect on competition that this contract encourages, due to lack of real management and policing of its terms and conditions by either the MSP or the State. He then told me that he was being recruited by another vendor, while on DHHS premises, by a vendor representative that is allowed to be in their workspace most days, who was also in communication with DHHS management (specifically Rod Davis) to pave the way for him to "jump ship" to them. He indicated that the arrangement in putting him (Burke) under their contract, and away from TSI's, would allow them to pay him an hourly rate (which appears to indicate an employment status other than W2) to work for them that he perceived as being higher than the salary he was paid by TSI. I explained, as I have to Mr. Burke many times, that being paid hourly, while perhaps resulting in a higher take home pay at the outset, does not usually represent a raise, as it just means that the expenses and tax

liabilities of his employment will now fall to him to pay out of that hourly pay, whereas as a salaried employee of TSI, those liabilities are paid for him, and he receives other benefits as well, such as paid vacation and sick leave, disability, life insurance, etc. (as TSI's employee, he received all benefits available to TSI salaried employees except those he chose to opt out of due to insurance coverage he already had in place).

I then followed up with an email illustrating the actual pay he receives when you monetize the benefits he earns, which I'm fairly certain was equal to, or greater than, whatever hourly rate the other vendor (that I didn't know the identity of at the time) was offering him. I received no response. I also reached out to Mr. Davis by email to inquire as to his plans for Mr. Burke's position renewal, and received no response. It was apparent to me at the time that by the time of that phone call on April 14th, this deal was already done, and no amount of my intervention could stop it.

It is my interpretation that this same vendor was the one who gifted Mr. Burke an expensive iPhone a few years ago, when that vendor was in the DHHS building around the holidays "Handing out iPhones like candy" (a direct quote from Mr. Burke) to the DHHS management and employees. Apparently at least one of those personnel so offered, was ethical enough to turn down this "gift," so the vendor gave that phone, intended as an illegal bribe to DHHS, to Mr. Burke. He, not realizing how unethical that was, accepted the phone, and I believe it is the one he still uses to this day (the cell identifier that show up on caller ID is still the name of its prior owner to whom it was originally registered -- likely the purchaser -- prior to giving it to Mr. Burke). If asked about it, I doubt he would lie about it, because he does not understand just how wrong accepting that gift was. I think it is safe to assume that the cost of an iPhone would, in no way, shape or form, comply with state ethics laws regarding gifts between vendors and agency personnel with decision-making responsibilities on contracts involving the vendor. It is also my belief that this gift of an expensive cell phone may have been assumed to be the front end of a quid pro quo, for which Mr. Burke jumping ship to move his position and therefore the profits from that position, to the gifting vendor, fulfilled the arrangement.

Then, on Saturday, April 18, 2020, position number 9287-1 was submitted into the Beeline system, with a job description that nearly exactly matched Mr. Burke's resume I had written for him awhile back. I later learned he gave that proprietary and trade secret protected document to the vendor who pirated him and was in direct communication with Mr. Davis about doing so, because they submitted that exact same resume to "win" the position. I now know, by virtue of the FOIA information received, this vendor's identity is SunPlus Data Group (SunPlus). It is important to note that Mr. Burke has not reflected accurately his employment history on that resume, as he has changed the fact that he was employed BY TSI on a contract at DHHS, to read that he was actually an employee of DHHS, with no mention of an association with TSI (which likely was the work or "coaching" of Sunplus or Mr. Davis to try to skirt the rules). Not only is that inaccurate, indicating he has lied on his resume, but emphasizes the fact that DHHS allows certain vendors, of which TSI is one, NO access to its employees assigned there or their agency management, for the purpose of managing our employees or learning any information about their work performance. For all intents and purposes, Mr. Burke and every contractor working for a vendor discriminated against by restricting access and communication with DHHS (or other agency) management, work(s) for DHHS (or other agencies), and any court in the land would rule in that manner also, which we all know is illegal, and would place liability on the State to pay back benefits, retirement, etc. as available to all other state employees.

On Tuesday, April 21, 2020, Mr. Burke tendered his resignation to TSI, effective with the end of the current assignment, May 14, 2020. Mr. Burke indicated he had a “better offer,” and would be taking a job with another vendor, in the renewed position he had always occupied, as of May 15, 2020. Clearly, Mr. Burke, who is primarily concerned with earning as much as possible to take care of his family, would not have quit his long-term job with TSI, unless all the arrangements had been made to ensure that he would continue to have a job, in his current position, but with another vendor. This means that Mr. Burke, SunPlus’ representative(s) and DHHS management (likely Mr. Davis), had all communicated and colluded to not only effect this change, but to ensure Mr. Burke it was safe to quit his job. Since this happened well before the time allowed under the contract to keep the position open and accepting resumes, it was clear the preselection of Mr. Burke also damaged other vendors that might be working and expending resources to recruit and submit personnel to this position for which they had no real chance of winning.

On Tuesday, May 12, 2020, TSI received notice that Position number 9287-1 had been filled, which indicates that DHHS pretended to interview others (or actually wasted their time and resources doing so), and went through all the motions to pretend to comply with the “rules” as they do quite often after already pre-selecting a candidate for a soon to be posted or just posted position. I would estimate that still, regardless of the meeting with vendors that occurred prior to the award of the last contract period under this contract, where we were assured that preselections that wasted our time and resources would be more carefully monitored and prevented, that still more than 80% of the positions awarded under this contract, are preselected prior to the posting (indicating a rampant disregard for the precluded communications rule), and the agencies are merely “going through the motions” to appear to be following the rules and giving all vendors a fair chance at awards under this contract.

So, it is impossible to conclude anything other than SunPlus Data Group, already afforded far more access to, and ability to communicate with, Mr. Davis and other DHHS management than TSI has ever been afforded over all the years of this contract assignment, worked “behind the scenes” with Mr. Davis and Mr. Burke, well before the position posting, to ensure Mr. Burke that he would not have a break in service, and would be allowed to remain in his same chair, in the same position, and performing the exact same work tasks, without missing a beat, if he agreed to work with SunPlus. He was “selected” from the SunPlus submission and onboarded and started his renewed assignment on May 15, 2020, the day after his final day with TSI. Due to the required stay of activity brought about by TSI’s protest, the fact that Mr. Burke was allowed to start this engagement with the pirating vendor, is currently damaging TSI. This is a clear violation of the contract that states this type of preselection, communication and collusion cannot take place between any vendor and UGU, and goes against the very nature of all such contracts that are supposed to protect vendors from this kind of piracy and collusion with agencies to pull it off. It represents not only ethics violations, but a chilling of competition at its most basic level.

TSI was Mr. Burke’s “representing Supplier” right up until the day he left TSI’s employment, yet information I received via the FOIA, indicates he was submitted for position number 9287-1 by SunPlus, and “selected” (although we all know he was preselected prior to submission of his resume) by DHHS, and onboarded, prior to that date, without his representing Supplier’s knowledge or participation.

As pointed out in my original dispute letter, it is stated in Amendment 1 to this solicitation, specifically Page 4, questions 6, 7, 9 and 10, that such claims must be investigated by your office,

Michael Spicer
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and that if such communications have occurred, the offending vendor must be removed from this contract (see same section III referenced above, under the heading "Supplier contracts may be suspended or terminated for reasons to include, but not be limited to the following: Any direct marketing of Candidates by Supplier to a Business Unit Manager outside of the parameters set forth in the State Term Contract"). There also appear to be violations of the section entitled "Additional Information," which outlines the Responsibilities of Using Governmental Units (UGUs).

TSI has borne the risk of employment of Mr. Burke, a full-time salaried W2 employee, with the benefits that accompany that status, for the life of this position, and now is being deprived of the right to receive anything for those efforts. TSI is responsible for introducing this employee to DHHS (and apparently Sunplus), and even took measures to retain him (i.e. giving him a substantial raise in pay), per DHHS' request, when another company outside the State tried to hire him away a few years ago. Commitments were made by DHHS to adjust his bill rate to cover that cost increase to TSI, but that was only partially fulfilled, restricting TSI's ability to keep pace with the inflated rates being offered by vendors who pay no benefits and offer only hourly positions, masquerading as W2 arrangements, when they are clearly a 1099 relationship, by any definition. I believe that is what has been offered to my employee as well. But DHHS has now removed TSI's association, and allowed a "favored" vendor of theirs to reap the benefits of continued profits from this renewed position.

I also believe your MSP has culpability in this, as they are responsible for ensuring that relationships such as that between the pirating vendor and UGU management are not established and allowed to continue, as this one has for the life of the contract and likely well prior. While, to a large vendor, adding or losing a single contract assignment means nothing to their overall bottom line, to a small company such as TSI, with very limited opportunity to work under this contract due to the precluded communications that continue to happen (pre-selected candidates, etc. as we've discussed before), losing a contract assignment can well mean having to close TSI after nearly 31 years in operation. In this case, that would be the end result were this pirating to be allowed without at least our being able to collect a placement fee from the pirating vendor. There is also indication that the naivety of my employee may be a factor, in that it appears he may have been told things that simply are not true, and he is also a victim in the matter, fueled by a possible association to a quid pro quo over an expensive gift from years ago.

For these reasons, I believe this matter warrants your investigation. Thank you for your assistance in this matter.

Respectfully submitted,

Cathy G Lanier

Cathy G. Lanier
President



June 22, 2020

Michael Spicer
Chief Procurement Officer
SFAA Procurement Services
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Technology Solutions, Inc. Response to Email from Mike Spicer

Dear Mr. Spicer,

I believe you are aware, since the early days of our relationship, of the complaints from (especially locally owned and small) IT Services vendors, of the reality of the difficulty of our ability to compete against the larger international firms, due to their ability to “grease the skids” to do business with certain state agencies here in SC, using inappropriate and illegal gifts and favors. In fact, the entire reason for the existence of a centralized vendor process can be traced back to the “favors and payoffs” that were rampant during and continuing after, Operation Lost Trust that rocked our state government back in the late 1980’s through late 1990’s.

At that time, due to reports of our witnessing extravagant gifts and trips given to well-placed state employees, and billing rates sometimes 5 times the local going rate for highly experienced IT contractors being paid to large vendors for entry-level IT contractors that had to be trained by state personnel to do their jobs, finally led to Mr. Bruce Breedlove, then the procurement agent assigned to oversee such matters, agreeing to sit with we local vendors to hear our complaints and difficulties, and craft a competitive process that rewarded all the right behaviors and sought to eliminate all the wrong ones, in favor of providing the best service for the best price to the State.

At that time, the only vendors that emerged as qualified and competitive enough from a pricing standpoint to do business under the new ethical rules that promoted fair competition, were about eight local vendors, most of us in the small business and/or minority or woman-owned category. The ensuing competitive process we all helped develop was good for the state in many ways: It promoted local small businesses who contributed directly to our economy with our tax dollars (rather than going to some out-of-state corporate entity’s home state); it encouraged open competition which gave our state agencies the “biggest bang for the buck;” and it fostered an environment providing, for likely the first time, a level playing field where any vendor providing a good service for a good price, had a chance to sit at the table and compete on its merits. TSI was the largest vendor to state government for a time under that process, based purely on the skills of our personnel, their suitability for the work needed by the agencies, our competitive billing rates, and our excellent customer-focused service. We may be, to this date, the only vendor that has worked in this space, to be able to boast that we NEVER gave a state employee an inappropriate gift, sent them on a fully-paid fishing or skiing trip, or paid them off in any way as a bribe to select TSI as their business partner.

However, in the year 2000, due to complaints from the large, out-of-state vendors who were no longer getting much of a share of SC's state business (and no doubt pressure from high government officials who counted on campaign contributions from these large companies), everything changed. We returned to a process that was unregulated, unmonitored, and frankly, a free-for-all for any vendor to engage in illegal and unethical behaviors in pursuit of the almighty dollar. Mr. Breedlove, the only state procurement officer in my years of doing business with the state who understood our plight and sought to correct the inequities for the good of the State, was reassigned, and eventually left state government. We were assigned an incompetent procurement officer who didn't understand even the basics of procurement law, and all the years of progress and good for the state that had occurred under Mr. Breedlove's ethical eye, was lost within months.

TSI, seeing the "writing on the wall," of returning to "business as usual," protested the new contract, due to its removing all prior ethical protections of the previous ones, but removed its protest after promises were made in writing (which I believe were signed by you, Mr. Spicer) to put the same safeguards back in place that had served well to protect ethical vendors from the "business as usual" that was still rampant in state government procurement in other areas, but those commitments were ignored, and we never returned to a fair process.

Since that time, it has again been a struggle for anyone except the largest and most well-funded companies (not many of them local still) to compete, because again, the floodgates opened to give tacit approval (which we have to assume is the case, since I and others have continually complained about the ethics of these large companies, who openly bragged about having "x state agency heads in their back pockets") to the unethical gifts, trips, etc. simply by virtue of having no monitoring to prevent it, and the failing of State Procurement to bring these reports to the attention of the State Attorney General for investigation, as is the duty of State Procurement.

Flash forward to our existing contract and its immediate predecessors, which now includes yet another level of bureaucracy, a Vendor Management company, that has not only removed direct responsibility from the State for ensuring that a level playing field exists (which, by the way, is the stated intent for all procurements under the State's Procurement Code of Laws), but has eliminated it completely. As you will no doubt recall, a rather large contingent of vendors, mostly local, protested the offering of the latest contract back in 2016, and brought to light these very concerns that we were again seeing played out in the last contract period. There were numerous promises made (in writing, and again signed by you) so that we would stop our protest and allow the State to go forward, that again, were not kept. That seems to be a disturbing pattern in and of itself, particularly from the long-time Director of State Procurement.

The result is, we are back to the days where anything goes, because no one is minding the store. For certain vendors, it's been a windfall – those with questionable ethics that will "appoint" one of their on-site assigned technical contractors the role of "sales representative" with their respective companies, so that they have constant access to be able to feed information to their corporate personnel to be "in the know" about positions coming available, so that they have advance or "insider" knowledge giving them a competitive advantage. We are also right back to a place where certain vendors are not granted access due to agencies showing blatant favoritism, are not even in a position to manage our own personnel, much less to keep our finger on the pulse of agency activity that might indicate a future need for contractor support. Such has been the case with TSI and our long-term employee, Michael Burke, over whose piracy from a competing vendor has led to my complaint.

During the nearly 6 years Mr. Burke has worked for TSI and has been assigned to the Department of Health & Human Services, I, as his manager, responsible for his performance reviews and supposedly in charge of managing him to keep the required arm's length distance to protect the State from claims of direct employment, has had exactly 3 to 4 conversations with any of his DHHS management (in case you're not doing the math, that's less than one time per YEAR) – once in person and twice or three times on the phone. Any emails exchanged were to set up those few conversations, and those conversations only arose to discuss DHHS convincing me to give Mr. Burke a large raise (10% of his current pay) so he wouldn't accept another job elsewhere three years ago. I was promised TSI would be compensated for the increased cost if I did that, but when all was said and done, TSI was only compensated pennies on the dollar for that huge increase to TSI's operational costs.

That single action has colored my ability to offer anything more to Mr. Burke, because we were already far behind our cost vs. revenue requirements for his position. Those are matters for which small companies have to micro-manage. We don't have 5000+ employees world-wide over which to spread out overhead, allowing any "loss-leader" type of assignments, or to pay contractors more than the going rate just to steal them from other companies. With small companies, any increase in cost must be met with an increase in revenue to large extent, just to keep the books balanced. In our case, that situation is exacerbated by the fact that the State of SC requires insurance coverage beyond any of our other customers, and that particular insurance coverage required does not even apply to the type of work we do – it is a complete waste of money for us! So, just because some State-employed lawyer attended a seminar once, convincing them the State needs this coverage, small companies like TSI are laying out nearly \$1000 a month for coverage that would not even pay off were any of the infractions it covers committed. In order for this insurance to apply, we would have to be in 100% control of the day-to-day management of our employees, and since, in TSI's case at least, we're not even allowed to discuss work performance with the agency personnel because we're not one of the "favorites," that is certainly not the case. TSI also cannot spread the cost concerns of that insurance coverage among our other employees' costs, because their companies don't require such impacts to our overhead, and it would unfairly penalize those employees when it comes time for reviews too. Additionally, due to the limited State of SC-assigned employees, due to the chilling of competition this contract represents, we have fewer and fewer employees over which to spread the ridiculous cost of this unnecessary insurance.

So, with this history in mind, and in hopes you will finally decide to take it seriously and do something about it, I will attempt to address the questions from your email concerning the blatant favoritism and illegal gifts going on between DHHS and at least one vendor, although I suspect there are many more, and it is likely the rule, rather than the exception:

ITEM 1

Mr. Spicer: I am reviewing your request for resolution of a contract controversy and your letter of June 1, 2020, raises some issues that I would like to explore further and get a little more detail. Your June 1, 2020 letter states that Mr. Burke reported to you that few years ago during the holidays, a contractor, that you now believe was SunPlus Data Group, was "Handing out iPhones like candy" to DHHS management and employees. The acceptance of gifts of significant value by a state employee is a very serious violation that could result in termination. Consequently, this is not a charge we can make without some evidence. Is there anything you can offer other than your statement that Mr. Burke told you this happened? Can you tell me when this occurred? Did you report this to anyone at the time Mr. Burke told you about it?

Ms. Lanier: I am not certain the vendor that Mr. Burke reported was “handing out iPhones like candy” was SunPlus, and stated that this was assumption of mine, but furthered the assumption that if they were the same vendor that committed the piracy, the piracy that occurred could well be the closure of a “quid pro quo.” The iPhone incident happened years ago during the holidays. It may have been as far back as 2016 or 2017 even, but Mr. Burke called me to tell me that his cell phone number had changed (I believe, if my recollection is accurate, that was the primary reason for the call) because “one of the vendors at DHHS gave him a new phone.”

I asked him to repeat that, and he reported, and I paraphrase: “Yeah, one of the vendors showed up with a stack of new iPhones, and was handing them out to DHHS management like candy. One of the guys didn’t want one, so they gave it to me.” I questioned him enough to realize that he had no earthly idea how illegal it was for this vendor to be doing this, and pondered for more than a few days, whether or not to report this activity. After considering all the times that unethical vendors and state employees had gotten away with this or similar activities, and I or others had reported it, only to find that somehow, we had to bear the brunt of the problem, I decided to just keep it to myself. I realized that the likely result would be that the offending vendor and employees would deny everything, and get a slap on the wrist, but my employee who would not have lied about it, would likely have lost his job over it, and since naivety is not a direct crime, I chose to protect him.

Mr. Burke is a very honest person generally. I would recommend that you interview him about this matter, because, unless someone has gotten to him and tipped him off that it would be in his best interest to lie, he won’t, and likely won’t anyway, if pressed. He thought it was quite amazing and entertaining, as when he tried to turn down this expensive gift, the vendor kept pushing it, telling him he had no one else that would use it and he may as well accept it. He eventually capitulated.

If it is of any help to you investigating this matter, the name that appears in caller ID when Mr. Burke calls, is “Derek” somebody. I have to assume that is likely the name of the person who initially purchased and registered the phone, so perhaps that can be matched up with a vendor who was providing services to DHHS at the time. Unless something has changed since Mr. Burke and I spoke on the phone in mid-April, he is still using this same phone.

ITEM 2

Mr. Spicer: Your letter also states that Mr. Burke told you that:

He has witnessed first-hand, and reported to me over the years, the blatant favoritism in not only access, but in contractor selection, shown by agency personnel toward certain vendors, so he understands the chilling effect on competition that this contract encourages, due to lack of real management and policing of its terms and conditions by either the MSP or the State.

Is there anything more that you can offer beyond your statement that Mr. Burke told you this happened? When did it happen? Who was involved? Is there anything that could serve as proof of these events? Did you report any of this at the time Mr. Burke told you about it?

Ms. Lanier: During the nearly six years Mr. Burke has been assigned to DHHS, he has reported continually to me that certain vendors (he rarely knows any more than the names of the people there – not the names of the vendors) who are the favorites of (insert name of whoever is the CIO or department manager at the time), are “in and out of their offices” almost on a daily basis. This would naturally provide them (and clearly has provided them) far more insider knowledge than TSI

has enjoyed, since it has been like pulling teeth to even get a phone call or email returned, except for that one time when it was in DHHS' best interest to actually talk to me. That sort of access is specifically restricted by the terms of the contract, and it is our Vendor Management company's responsibility to monitor such contacts and interactions, and ensure that an unfair advantage is not allowed to develop between any vendor and agency. They have failed mightily in this pursuit.

As to why I haven't reported it, after reading the history of promises made and not kept, might I ask why you would think I would waste my time? So far, in my 35+ years of attempting to do business with the state, except for that brief, shining 5-year period in the late 90's when Mr. Breedlove made the effort to clean up state procurement, at least in the area of IT services, there has been nothing done in response to any complaints or reports from TSI or other vendors. In fact, there has been more of a "shoot the messenger" approach, and I simply grew weary of being the messenger. The only thing that pulled me back towards it this time is the sheer lunacy of a process that allows the blatant pirating of a long-time employee from a vendor intentionally kept in the dark, by an unethical vendor, an unethical agency, and a procurement process that has nothing in place to protect vendors from these unethical, and likely illegal, activities. It's likely too late for TSI to benefit from anything done about this, but perhaps it might result in systemic change that will protect other unwitting small vendors from wasting a lot of time and resources, either by exposing that this goes on as a normal process (thereby informing them not to waste their time by applying for approved vendor status), or to be aware that unless they are going to "play the game" by constantly being inside these agencies to gain favor in whatever way they define that, they won't get much business.

In fact, Mr. Burke has reported to me in just recent months that this particular agency is changing all its systems and embarking on a new and untested software platform (and putting private, federally protected, data at risk), because of some relationship the current CIO has with a "vendor from NC." I guess we'll just have to wait for the fallout from the feds for that, since it may result in SC not being able to process Medicare and Medicaid claims. So, it appears that these instances of favoritism stretch beyond just which vendor gets the most contractors assigned, and may well be impacting business decisions that could result in SC having to pay huge fines. I dare say, they would deserve it.

ITEM 3

Mr. Spicer: In your request for resolution you state of Mr. Burke:

He then told me that he was being recruited by another vendor, while on DHHS premises, by a vendor representative that is allowed to be in their workspace most days, who was also in communication with DHHS management (specifically Rod Davis) to pave the way for him to "jump ship" to them.

Is there anything you can offer, other than your statement that Mr. Burke told you that the SunPlus recruitment occurred in the DHHS workplace with the assistance of DHHS manager Rod Davis?

Ms. Lanier: The mere dates of events leading to Mr. Burke being onboarded by SunPlus to DHHS for the same position in which he was sitting, provides all the information you should need to determine how this came to pass. As of Tuesday, April 14, 2020, Mr. Burke already had an offer in hand from another vendor, and called me to basically "pick a fight" over his perception that the hourly rate they were offering him was far higher than the salary he was receiving from TSI. (As you know, I believe he is misinformed in this matter, and had simply been misled by this vendor,

who we now know to be SunPlus.) His intent was to either force me to match their offer (which I explained I was already doing and offered to change him to hourly pay so it would be more directly apparent in each paycheck), or to agree to releasing him to go work for another vendor. When I pointed out that another vendor could not just steal him away from TSI without going through some sort of procedure that included me releasing him, he said he didn't believe that because "those guys at DHHS do that all the time, and the vendor offering me the position has already worked all that out with Rod (Davis)." So, apparently, TSI is not the only vendor who has had employees pirated.

Maybe to these large companies, that doesn't matter, but it means the difference between survival and not for a small company like TSI that has been unfairly restricted from providing its services to the State for years, due to the bias and pre-selections that are the norm under the current contract.

I explained to Mr. Burke that a few years ago, we were approached by management at another agency, asking if we might consider hiring a contractor who had been assigned to them for a long time and was performing valuable work for them, but whose company had not been able to make payroll for more than a month, and was clearly about to go out of business. When I inquired with procurement and the MSP as to the procedure to effect that change, I was chastised for communicating with the agency who called ME, and told that it was not possible, and the result was that the innocent contractor's position was terminated immediately, and he was barred from even applying to a state contract position for 6 months. In retrospect, considering the way this current situation has been handled, I guess I should have just kept my mouth shut and pirated the employee, and he would likely still have a job, and the agency wouldn't have lost a valuable contractor! But, at that time, just for my asking the question about how to effect a logical resolution for all, both parties lost, and TSI was given some ridiculous warning to boot!

Nonetheless, I assumed that was the way things were still done, and indicated that while I was open to having a discussion with the vendor who was offering him this opportunity, I believed it was not possible, regardless of what had been "worked out" with Mr. Davis, for this to happen without my involvement, and could result in Mr. Burke's losing his job altogether.

As is part of the record, all this had taken place well prior to the posting date of the position, April 18, 2020, clearly indicating that SunPlus had advance knowledge that this position was about to be posted, and it had already been pre-selected for Mr. Burke to partner with them, with Mr. Davis' collaboration. At the time of the posting, Mr. Davis had not responded to my email asking if there even WOULD BE a new position posted to keep Mr. Burke employed. It was a constant worry of Mr. Burke's and mine that the decision to move away from Oracle to the new platform, might soon result in Mr. Burke's dismissal, since he had no prior experience with the new platform, so there was a distinct possibility, at least in my mind, that this contract may not be continued, and I needed time to market Mr. Burke elsewhere. But SunPlus knew not only knew that there would be a new position at DHHS earmarked for Mr. Burke, but had made arrangements to the extent that they had offered Mr. Burke the opportunity to come work for them as they were assured they would "win" the position. It would be impossible for all that to have taken place without involvement and agreement from Mr. Davis.

Then, on April 21, 2020, Mr. Burke was certain enough of the outcome of this prearranged caper to be confident in tendering his notice of resignation to TSI. I urge you to meet with and interview Mr. Burke. You will learn that holding onto his job is his first priority, and he never would have

tendered his notice of resignation without concrete assurance that he would remain employed without a break in service.

Mr. Burke's contract period and employment with TSI continued through May 14, 2020, but on May 12, 2020, fully 2 days prior to his current contract's end, the notice that the position into which he was onboarded to begin work on May 15, 2020, came to TSI via email.

ITEM 4

Mr. Spicer: In your letter you state that the job description posted with position 9287-1 nearly exactly matched Mr. Burke's resume you had written for him awhile back. Can you send me a copy of the job description and the resume?

Ms. Lanier: Assuming you have access to the same FOIA information I received, those documents are part of the record. If this is not the case, I will be happy to provide. The resume is attached in response to another later item here.

ITEM 5

Mr. Spicer: Concerning Mr. Burke's resume you also state:

I later learned he gave that proprietary and trade secret protected document to the vendor who pirated him and was in direct communication with Mr. Davis about doing so, because they submitted that exact same resume to "win" the position.

How did you become aware that Mr. Burke provided the resume to SunPlus and was in direct communication with Mr. Davis about doing so? Is there anything that that would serve as proof that Mr. Burke provided the resume to SunPlus and that Mr. Davis was involved in this action?

Ms. Lanier: Please see **ATTACHMENT 1**, which is the 2017 version of the resume I wrote for Mr. Burke in 2014, and updated in 2017 to submit to the Beeline system, that resulted in the renewal of his assignment at DHHS at that time. Also, compare with **ATTACHMENT 2**, the resume provided via my FOIA request, as the resume submitted by SunPlus to the Beeline system that resulted in the award to them for the position in question. As you can see, the bulk of the resume is exactly the same in both versions, with only a few updates or reordering of data.

Please also note the change in **ATTACHMENT 2** that makes it appear he has been employed by DHHS, rather than TSI during the period between November 2014 and present, when, in fact, he was employed by TSI that entire time, rendering this resume inaccurate. If Mr. Burke represented that information to SunPlus, it is an inaccurate representation from him. If SunPlus made that change, they have intentionally made false representations in an attempt to downplay Mr. Burke's relationship to TSI in the exact same role into which they placed him, with Mr. Davis' assistance. I believe the contract states that both these actions would result in immediate termination of either Mr. Burke or SunPlus from the contract.

If you have a need to see the original resume submitted to me in 2014 by Mr. Burke, and the version I wrote for him back then, I believe I also have both in the archives and can produce them, showing clearly the value of my work product and how it has benefited him being able to find employment. Properly representing one's work record is one of the benefits of working through a vendor like TSI, as we custom-write each resume we use in our work, giving the best opportunity for success. It is one of our protected trade secrets and work products for which we earn compensation, and is

Michael Spicer
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not available for reproduction by anyone without our express permission. That trade-secret and work product has also been pirated by SunPlus.

ITEM 6

Mr. Spicer: In your letter you state that before the time allowed under the contract to keep the position open and accepting resumes, Mr. Burke, SunPlus' representative(s) and DHHS management (likely Mr. Davis), had all communicated and colluded to not only effect this change, but to ensure Mr. Burke it was safe to quit his job. Can you offer anything that would serve as proof of these improper communications and collusion?

Ms. Lanier: The dates related to the events that transpired resulting in Mr. Burke not missing a day to move from TSI's employment on May 14, 2020 to SunPlus' employment on May 15, 2020, explained thoroughly in **ITEM 3** above, should serve to bring you to the same conclusions as the ones at which I arrived.

ITEM 7

Mr. Spicer: Finally, in your letter you state:

TSI was Mr. Burke's "representing Supplier" right up until the day he left TSI's employment, yet information I received via the FOIA, indicates he was submitted for position number 9287-1 by SunPlus, and "selected" (although we all know he was preselected prior to submission of his resume) by DHHS, and onboarded, prior to that date, without his representing Supplier's knowledge or participation.

Can you provide me with a any documentation that would indicate that Mr. Burke was submitted by SunPlus while he was still employed by TSI?

Ms. Lanier: Again, I will refer you to the detailed explanation of dates in **ITEM 3**, as well as the FOIA information that was provided to me, which indicates that Mr. Burke signed his "Right to Represent" naming SunPlus as his "representing Supplier" on April 21, 2020 (see **ATTACHMENT 3**) the same day he tendered his notice of resignation to TSI, and the position was awarded to SunPlus, for Mr. Burke on May 12, 2020. I requested all information surrounding the submission and only received a partial response, but these events are adequate to determine that Mr. Burke was submitted into the Beeline system for the position in question at some point between April 21 2020 and May 12, 2020, and the position was awarded WHILE Mr. Burke was still employed by TSI, his "representing Supplier," still sitting in his same chair at DHHS, on May 12, 2020. He was still employed full-time with benefits by TSI at DHHS through close of business on May 14, and is still being paid by TSI through July 1, 2020, due to the leave time he accrued while working for us.

I trust this will provide you the information you need to put a stop to this unethical and likely illegal behavior, and see that TSI is adequately compensated for the damages it has incurred.

Sincerely,

Cathy G Lanier

Cathy G. Lanier
President

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.

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**

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.