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Protest Decision

Matter of: Sparient, Inc.

File No.: 2026-227

Posting Date: September 1, 2026

Contracting Entity: South Carolina Judicial Branch

Solicitation No.: N/A

Description: Remediate Public-Facing Digital Documents for Compliance with US Department of Justice Regulations at 28 C.F.R. Part 35.200 et seq.

DIGEST

Protest by Sparient, Inc. denied where sole source determination provides justification for awarding a noncompetitive contract that complies with Section 11-35-1560 and the ensuing Regulations.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer (CPO) conducted an administrative review of protests filed by Sparient and the response filed by the South Carolina Judicial Branch. Sparient's protest is attached as Exhibit A. The Judicial Branch's response is attached as Exhibit B. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

In January of 2026, the Judicial Branch contracted Ernst & Young LLP via a job order to an existing state contract "to assess the current state of the digital environment, test compliance of web content with WCAG 2.1 AA standards, advise on remediation priorities and processes for

initial compliance with the new regulations, and develop policies and procedures to support ongoing compliance.” (Exhibit C). As a result of this engagement, Ernst & Young “worked on the Branch’s accessibility assessment, identified deficiencies requiring remediation, evaluated the Branch’s existing systems, developed an understanding of the Branch’s organizational structure, assessed staffing capacity and operational limitations, identified accessibility challenges unique to the Branch, and developed and delivered foundational accessibility training to multiple stakeholder groups.” (Exhibit B) During Ernst & Young’s performance under the job order, the underlying contract expired under its own terms and could not be extended.

On June 23, 2026, The Judicial Branch published notice of its intent to award a sole source contract to Ernst & Young LLP, for digital remediation of its large number of public-facing digital documents to ensure compliance with Department of Justice (DOJ) regulations at 28 C.F.R. § 35.200 et seq, which require compliance with WCAG 2.1 AA requirements.”¹ (Exhibit D) The Judicial Branch considers the work of the sole source contract to be a continuation of the work already underway and not an independent project. (Exhibit B) On July 8, after timely filing a notice of intent to protest, Sparient protested.

DISCUSSION

Sparient sets forth four related grounds of protest: 1) that the Judicial Branch’s determination violates Section 11-35-1560 and Regulation 19-445.2105 because “[d]igital document remediation to WCAG 2.1 AA is a competitive, professional service performed by numerous qualified vendors nationwide, including Sparient and its partner Connectivo” ; 2) the Judicial Branch’s sole source determination acknowledges that there are multiple sources of supply for digital document remediation to WCAG 2.1 AA; 3) [Ernst & Young’s] knowledge of “SCJB's systems, stakeholders, capacity, and accessibility challenges" gained through a pre-existing contractual relationship combined with schedule pressure “cannot justify dispensing with competition,” especially when DOJ published the rule in April 2024; and 4) competition would serve the interest of the State “fostering competition, obtaining maximum value for public funds,

¹ WCAG 2.1 Level AA is a globally accepted digital accessibility standard set by the World Wide Web Consortium (W3C).

and maintaining public confidence in the integrity of state.” See S.C. Code Ann. § 11-35-20 Purpose and Policies.

The State may award a contract without competition when there is only one source that can meet the State’s actual needs provided “the head of a purchasing agency, or a designee ... above the level of the procurement officer, determines in writing that there is **only one source** for the required supply, service, information technology, or construction item.” S.C. Code Ann. § 11-35-1560(A). The written determination must include a “detailed explanation as to why no other [potential vendor] will be **suitable or acceptable** to meet the [State’s] need.” S.C. Code Ann. § 11-35-1560(B) (emphasis supplied). Per Section 11-35-1560(A), the State promulgated Regulation 19-445.2105. This Regulation states:

Sole Source Procurements.

A. Application.

The provisions of this Regulation shall apply to all sole source procurements unless emergency conditions exist as defined in Regulation 19-445.2110.

B. Exceptions.

Sole source procurement is not permissible unless **there is only a single supplier**. The following are **examples** of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) where a sole supplier’s item is needed for trial use or testing;
- (3) [Repealed]²
- (4) [Repealed]
- (5) where the item is one of a kind; and
- (6) [Repealed]

C. Written Determination.

- (1) The written determination as to whether a procurement shall be made to conduct a procurement as a sole source shall be made by either the Chief Procurement Officer, the head of a purchasing agency, or designee of either office above the level of the procurement officer. Any delegation of authority by either the Chief Procurement Officer or the head of a purchasing agency with respect to sole source determinations shall be submitted in writing to the Materials

² Repealed examples were examples that were at a later date exempted from either the purchasing procedures of the Procurement Code or the Code in its entirety.

Management Officer. Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. (2) The written determination must include a purchase description that states the using agency's actual needs, which shall not be unduly restrictive. In cases of reasonable doubt, competition should be solicited. Any request by a governmental body that a procurement be restricted to one potential contractor shall be accompanied by an **explanation as to why no other will be suitable or acceptable to meet the need**. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision and must be accompanied by market research that supports the decision. The determination must be authorized prior to contract execution.

[emphasis supplied]

Under both the Section 11-35-1560 and this Regulation the State may make a sole source procurement when there is only "one source," i.e. "single supplier," for the service which is suitable or acceptable to meet the State's need. The purchasing agency's determination is final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law. S.C. Code Ann. §11-35-2410. The protestant bears the burden of proving upon a preponderance of the evidence that the purchasing agency's determination is "clearly erroneous, arbitrary, capricious, or contrary to law."

The Judicial Branch asserts that it is not claiming that Ernst & Young is the only vendor who can remediate documents to WCAG 2.1 AA standards but that under the circumstances the Judicial Branch finds itself in today, Ernst & Young is the only vendor who is "suitable or acceptable" to the meet its need.

The Judicial Branch considered several concerns in making its decision, all of which ultimately tie to the April 26, 2027, compliance deadline imposed by 28 C.F.R. Part 35.200 et seq. The Judicial Branch does not believe that:

another vendor could reasonably assume responsibility for this phase of the project without requiring the State to incur unnecessary duplication of work, disrupt an ongoing compliance initiative, expend additional State resources educating a replacement vendor regarding months of completed assessment work, coordinate overlapping responsibilities between two independent contractors, introduce inconsistencies between assessment and remediation methodologies, and **jeopardize compliance with mandatory federal deadlines**.

(emphasis supplied)

In its protest, Sparient observes that the “DOJ rule was published in April 2024 and that “[h]aving allowed more than two years to pass since the rule was published in April 2024, the Agency cannot invoke a schedule compressed by its own inaction as a reason to bypass competition.” However, the CPO notes that while the federal rule was published in April 2024 with a compliance deadline of April 2026, perhaps due to its decentralized nature, many South Carolina agencies did not become aware of the requirement until late 2025.³

The CPO finds that, under Section 11-35-1560, so long as the circumstances are not caused by a lack of advance planning, an agency may be justified in making a sole source award “where the agency reasonably concludes that only one known source can meet the governments needs within the required time.” *Data Transformation Corp.*, B-220581 (Comp. Gen. 1986) In that case, the FAA issued without competition a limited, interim contract to its incumbent to continue providing computer maintenance and operational services. While the protestor argued that it and other contractors were available to immediately continue performance, the Comptroller General found that the protester failed to show that FAA’s assessment of the required level of experience and expertise to meet its needs was unreasonable. Further, the issue was not caused by a lack of advance planning. FAA had believed that it could procure necessary services under a general DOT procurement, but later learned it needed to handle its own procurement.

Here, the Judicial Branch’s deadline is not one of the Judicial Branch’s own choosing but one imposed by federal regulation. Moreover, there is no evidence the Judicial Branch’s sole source determination is the result of a lack of advance planning. As pointed out by the Judicial Branch, “[t]he publication date of a federal regulation does not establish when the Branch possessed the resources, funding, personnel, or completed assessment information necessary to initiate remediation.” Additionally, this is not the type of service that is routinely procured. Ensuring ADA compliance is a new requirement for almost all agencies.

The Judicial Branch’s need “to remediate a large number of public-facing digital documents to ensure compliance with Department of Justice regulations at 28 C.F.R. § 35.200 et seq, which

³ The State Fiscal Accountability Authority was one such agency, which found itself scrambling earlier this year to comply as best it could with the April 24, 2026, deadline when it received word that DOJ had extended the compliance deadline.

require compliance with WCAG 2.1 AA requirements” is not clearly erroneous, arbitrary, capricious, or contrary to law.” The need is in fact based on federal regulations. Moreover, the Judicial Branch provides a rational basis for concluding that only Ernst & Young, based on its experience with and knowledge of the agency and its digital documents, could meet its need within the federal deadline. Even if the CPO disagreed with the Judicial Branch’s assessment of its needs, including its assessment of the required level of knowledge and experience for the performance of the contract, the CPO will not substitute his judgment of the Judicial Branch’s “actual minimum needs unless there is clear showing that the determination is unreasonable.” *Data Transformation, supra*. In this case, there is no such showing.

Finally, the CPO cautions agencies that, in almost all circumstances, advance planning will prevent a situation where only one supplier can meet the State’s needs within a required amount of time. A sole-source procurement should not be used to remedy the State’s lack of foresight. This situation, however, was unusual due to new federal guidelines. The CPO’s conclusion, therefore, is limited to the unique facts and circumstances of this case.

DECISION

For the foregoing reasons, the CPO denies the protest of Sparient.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2026)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2026 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 Globals, 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 366, 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.