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December 9, 2013

VIA EMAIL Christie.Emanuel@prp.sc.gov AND US MAIL

Christie M. Emanuel
South Carolina Procurement Review Panel
1105 Pendleton Street, Suite 202
Columbia, SC 29201

Re: State of South Carolina v New Venue Technologies, Inc. (Contract Controversy)
New Venue Technologies'; Motion for Sanctions Pursuant to SC Code
§11-35-4330
Case No: 2013-11
Our File No: 2135598

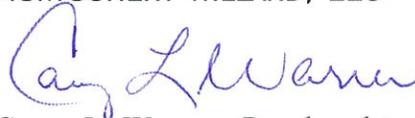
Dear Ms. Emanuel:

Please find enclosed an original Motion to Dismiss in the above-referenced matter. By copy of this letter Geoffrey K. Chambers is being provided with a copy of same.

Please do not hesitate to call if you have any questions or concerns. With kind regards,
I am

Very truly yours,

MONTGOMERY WILLARD, LLC



Carey L. Warren, Paralegal to
Michael H. Montgomery

\clw

enclosure

cc w/enc: Geoffrey K. Chambers, Esquire (via email Geoffrey @cperlgroup.com and US Mail)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

IN RE: State of South Carolina v New Venue)
Technologies, Inc. (Contract Controversy)

New Venue Technologies'; Motion for Sanctions)
Pursuant to South Carolina Code§ 11-35-4330)

MOTION TO DISMISS
CASE No. 2013-11

The Budget and Control Board, (the "Agency") by and through its undersigned counsel moves for an Order dismissing New Venue Technologies' Motion for Sanctions pursuant to *S. C. Code Ann.* §11-35-4330 on the grounds that the mandatory prerequisites enumerated in the statute have not been met such that the Panel lacks jurisdiction to hear the matter. Additionally, even were there a jurisdictional basis for the motion, it is untimely and therefore fails jurisdictionally on that basis.

The Agency makes this motion on the grounds more specifically enumerated herein, in any memoranda filed by the Agency subsequent to the filing of this motion in support thereof and on the arguments of counsel to be heard by the Panel and on such law as is appropriate.

FACTS

The Budget and Control Board's Information Technology Management Office filed a Request for Resolution (referred to as Case No. 2014-205) (Initial Record pp PRP12-PRP20) on September 30, 2013. The filing sought certain relief against New Venue Technologies, Inc. ("New Venue") alleging that it had breached its contract with the State. On or about October 28, 2013 the Agency requested, and the CPO granted, a continuance of a hearing scheduled October 31, 2013.

(Initial Record p. PRP11). Thereafter, on November 7, 2013 the Agency withdrew its Request for Resolution (Initial Record PRP 10). On November 22, 2013 New Venue filed its lengthy motion for sanctions pursuant to *S.C. Code Ann.* §11-35-4330. (Initial Record PRP2 – PRP9). In paragraph 41 of its Motion, New Venue refers to a hearing notice (referred to as an Order by New Venue) issued on November 18, 2013. That notice of postponement is not contained in the record. The Agency attaches a copy of this notice to this motion as Exhibit A. That notice relates to another matter before the CPO, to wit, 2013-206 and is therefore irrelevant to the matter before the Panel.

ARGUMENT

The Panel Lacks Jurisdiction to Hear New Venue's Motion.

Section 11-35-4330 authorizes the imposition of sanctions for frivolous filings. Paragraph (3) provides that “[a] motion regarding a matter that is not otherwise before the panel may not be filed until after a final decision has been issued by the appropriate chief procurement officer.”¹ New Venue neither alleges nor can it point in the record to any final decision relating to the request for resolution about which it complains. Since it is evident that the chief procurement officer (CPO) issued no final decision below, the Panel lacks jurisdiction to hear New Venue's motion. In the absence of jurisdiction, the Panel should dismiss this matter without a hearing solely on that basis.

¹ Emphasis Added. Previously, the Panel has only addressed a motion for sanctions in a case where the CPO has issued a final decision. See, e.g., In Re: Caption Colorado, LLC v. Office of Regulatory Staff (Contract Controversy) Case No. 2010-7 (This matter came before the South Carolina Procurement Review Panel . . . On September 13, 2010, the Chief Procurement Officer (the CPO) issued an order in which he ruled in favor of the South Carolina Office of Regulatory Staff (ORS) in a contract controversy filed by Caption Colorado, LLC. No appeal was taken from this order, but ORS filed a motion with the Panel to recover the attorney's fees and costs it incurred defending itself in the contract

Important Policy Considerations

The statute clearly provides that a motion for sanctions cannot be filed “until after a final decision has been issued by the appropriate chief procurement officer.” S.C. Code Ann. §11-35-4410(3). Emphasis added. The purpose of requiring a “final decision” is to avoid any rulings on the merits – or any other part thereof – before the CPO has had an opportunity to fulfill his statutory obligations regarding the matter. To do otherwise would allow a party to leap-frog over the CPO, *i.e.*, to drag the Panel into a matter the CPO has yet to resolve.

The fifteen-day time requirement is applied after a “final decision” is issued by a CPO. Thus, a movant has fifteen days to file its motion for sanctions after a decision brings the matter to a conclusion before the CPO. Otherwise, the filing of a protest would constitute immediate grounds for the filing of a motion for sanctions and, unless both the CPO and the Panel were to both hear the issue – creating the potential for inconsistent rulings, the filing of the motion would delay a hearing by either the CPO or the Panel - resulting in the kind of delay that the statute is designed to prevent.

CONCLUSION

New Venue cannot establish jurisdiction for the Panel to hear its motion. The prerequisites required by the applicable code simply do not exist. Even a strained reading of the section does not create jurisdiction, as the record here is void of any evidence of any filing or order that might arguably create jurisdiction within the required fifteen-day timeline. New Venue’s motion is without jurisdictional foundation – and even if it had a jurisdictional foundation, it is untimely.² The Panel

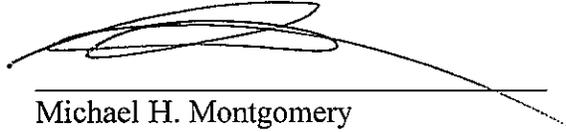
controversy. Ultimately, the panel found Caption Colorado’s claims not frivolous if either the facts or law are subject to interpretation. (Citing In re: Protest of Three Rivers Solid Waste Authority, Panel Cases No. 1996-4 and 1996-5.)

² If the Panel disagrees and concludes that this matter can be brought before the panel in the absence of any final order by the CPO, which the State denies, then the time to file a motion for sanctions must run - as the statute requires - from the

should dismiss this motion.

Respectfully Submitted.

MONTGOMERY WILLARD, LLC



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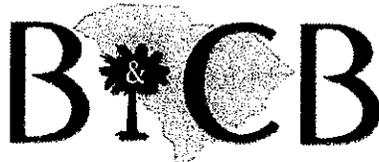
Columbia, South Carolina
December 9, 2013

date the document complained of was first filed. The Request for Resolution at issue was filed with the CPO on September 30, 2013. New Venue filed its motion for sanctions on November 22, 2013, far in excess of the fifteen days allowed by statute. See, generally, § 11-35-310(13) (regarding calculation of time under the Procurement Code). Untimely requests must be dismissed for lack of jurisdiction. See, generally, In re: Protest of Oakland Janitorial Services, Inc.; Case No. 1988-13; In re: Protest of National Cosmetology Ass'n, Case No. 1996-17; In re: Protest of Jones Engineering Sales, Inc., Case No. 2001-8.

NIKKI HALEY, CHAIRMAN
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



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CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

Hearing Notice

November 18, 2013

In Re: Suspension / Debarment of NewVenue Technologies, Inc.. – Breach of
Contract No. 4400003161, Software Acquisition Manager - Case No. 2014-206

To: John E Schmidt, Esquire
Schmidt & Copeland LLC
1201 Main Street, Suite 1100
Columbia, SC 29201
P.O. Box 11547
Columbia, SC 29211

C: Debbie Lemmon, ITMO
Norma Hall, ITMO
Shawn Lavery DeJames, Assistant General Counsel
William Dixon Robertson, Assistant General Counsel
Keith McCook, Assistant General Counsel, MMO/ITMO

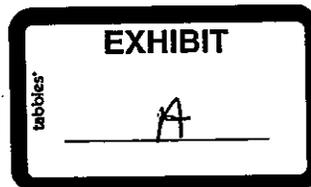
Please be advised that the hearing of this matter is postponed indefinitely.

Please be advised that based on the breach of contract 4400003161 for a Software Acquisition Manager, a hearing in regards to the possible suspension of. New Venue Technologies, Inc.; Terris S. Riley, Chief Executive Officer and President of New Venue Technologies, Inc.; and Jacque P. Riley, Vice President of New Venue Technologies, Inc., will be held on Monday, November 25, 2013, at 10:00 AM, in the Information Technology Management Office conference room, 1201 Main Street, Suite 600, Columbia, South Carolina, 29201.

Exhibits and evidence will be accepted at the hearing. The Information Technology Management Officer shall issue a decision in writing within ten days after the completion of the administrative review. The decision shall state the reasons for the action taken and shall be based on the evidence presented or available at the hearing that is specifically related to the issues.

Sincerely,

Michael B. Spicer
Chief Procurement Officer



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

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Pursuant to South Carolina Code§ 11-35-4330)
_____)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Carey L. Warren, an employee of the law firm of Montgomery Willard, LLC, attorneys for the State of South Carolina, do hereby certify that I have served a copy of the foregoing *Motion to Dismiss* on the parties in the above-captioned matter, by delivering a copy of the same via First Class Mail with proper postage affixed thereto to the addresses below:

Christie M. Emanuel
South Carolina Procurement Review Panel
1105 Pendleton Street, Suite 202
Columbia, SC 29201
E-mail: Christie.Emanuel@prp.sc.gov

Geoffrey K. Chambers, Esq.
Consumer Protection, Environmental, and Regulatory Law Group, LLC
1201 Main Street, Suite 985
Columbia, South Carolina 29201
E-mail: Geoffrey@cperlgroup.com

Columbia, SC
December 9, 2013


Carey L. Warren