

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 BLUE CROSS BLUE SHIELD OF)
 SOUTH CAROLINA,)
)
 PETITIONER,)
)
 V.)
)
 SOUTH CAROLINA PROCUREMENT)
 REVIEW PANEL, SOUTH CAROLINA)
 BUDGET AND CONTROL BOARD,)
 DIVISION OF GENERAL SERVICES)
 ADMINASTAR SOLUTIONS, PUBLIC)
 CONSULTING GROUP, INC., AND)
 SOUTH CAROLINA DEPARTMENT)
 OF HEALTH AND HUMAN FINANCE)
 SERVICES (SIC))
)
 RESPONDENTS.)

IN THE COURT OF COMMON PLEAS

Case No.: 96-CP-40-1664

ORDER DENYING MOTION
 FOR TEMPORARY INJUNCTION
 AND STAY

96 JUN 11 AM 10:29
 BARBARA A. SCOTT
 C.C.C. & G.S.
FILED

Blue Cross Blue Shield of South Carolina ("BCBS") seeks
 Temporary Injunction and Stay of the Order of the South Carolina
 Procurement Review Panel ("Panel") affirming the decision of the
 Chief Procurement Officer ("CPO") of the Division of General
 Services ("DGS") that Request for Proposal ("RFP") No. B600258 be
 canceled and reissued. The motion is denied.

WPK
#1

FINDINGS OF FACT

1. The state solicited proposals regarding verification procedures and benefit recovery accounting processes related to Medicaid. DGS awarded the contract to AdminaStar Solutions, and BCBS protested the award pursuant to the South Carolina Consolidated Procurement Code [S.C. Code Ann. §11-35-4210 (Supp. 1995)].

2. After hearing the protest, the RPF was canceled and

resolicited. BCBS appealed only the decision to cancel and resolicit. On appeal, the Panel affirmed the CPO's decision. The Panel then refused to stay its Order during the pendency of its appeal, and BCBS brought this appeal of the Panel's final agency decision pursuant to the South Carolina Administrative Procedures Act ("APA"), S.C. Code Ann § 1-23-380 (Supp. 1995).

3. The DGS is the state agency charged by law with administering the Procurement Code. The Panel is the state agency charged by law with reviewing and determining all procurement protest appeals from the CPO.

4. The CPO and the Panel both found that the RFP should be canceled and resolicited pursuant to 23 S.C. Code Ann., Reg. 19-445.2085(C) because: i) the RFP contained inadequate and ambiguous specifications concerning an essential part of the contract; ii) there was administrative error on the part of the procuring agency; and iii) it is in the State's best interest. The Panel's Order does not specify a time within which the RFP must be resolicited.

WPK
#2

5. BCBS is the current provider of the services related to the proposal. The contract was for a three-year term with two one-year options. The South Carolina Budget and Control Board has exempted this contract from the normal five year term limitation until such time as a new contract is awarded and implemented. The existing contract creates an obligation to provide services until a new contract is awarded and implemented. The reissuance of the RPF is not a high priority to the state

agency and is not expected to issue for at least several months.

6. The contracts and course of dealing seem to indicate that BCBS will continue to be the contractor throughout the appeal and the resolicitation without the issuance of a stay or injunction.

CONCLUSIONS OF LAW

1. The filing of an appeal under the APA does not stay enforcement of the agency decision. The Panel may stay its own order or this court may order an appellate stay upon appropriate terms. S.C. Code, Ann. § 1-23-380(A)(2) (Supp. 1995). The burden of proof is upon BCBS to show that a stay is warranted. Midlands Utility, Inc. v. South Carolina Department of Health and Environmental Control, 287 S.C. 483, 339 S.E.2d 862, 864 (1986).

2. For an appellate stay to be issued after the Panel has already passed on the merits of the case and has denied a discretionary stay of its decision, BCBS has to establish a likelihood of success on the merits of its appeal. Blackwelder Furniture Company of Statesville, Inc. v. Seilig Manufacturing Company, 550 F.2d 189, 194 (1976).

3. Great weight should be given to an agency's interpretation of its own statutes and regulations and should not be overruled without cogent reasons. Byerly Hospital v. SC St. Health and Human Services Finance Comm., ___S.C.____, 4670 S.E.2d 383 (1995). BCBS has not carried its burden of proof, because it certainly has not been demonstrated that BCBS is likely to prevail on the appeal, especially in light of the APA standard of

review set forth in S.C. Code Ann. § 11-23-380(C).

4. In order for the injunction and stay to be issued, BCBS must prove that it has shown a threat of irreparable injury for which there is no adequate remedy at law. Greenwood County v. Shay, 202 S.C. 16, 23 S.E.2d 825, 828 (1943). BCBS has not carried its burden of proof. It appears that the status quo will be maintained, without any intervention by the court. BCBS asserts that it has no adequate remedy under the statutory provisions, but the court finds that the legislature has addressed the issue and provided an adequate and exclusive remedy at law under S.C. Code Ann. § 11-35-4310 (Supp. 1995).

THEREFORE, IT IS ORDERED that Petitioner BCBS's Motion for Temporary Injunction and Stay of Award is denied.

William P. Keesley

William P. Keesley
Presiding Judge, Fifth Judicial Circuit

#4
June 10, 1996

Columbia, South Carolina

IN THE COURT OF COMMON PLEAS

CASE NO. 96 -CP-40- 1664

Blue Cross Blue Shield of
S.C.

S.C. Procurement Review Panel,
et al.

PLAINTIFF(S)

DEFENDANT(S)

FILED
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CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other- _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Other- _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at COLUMBIA, South Carolina, this _____ day of _____, 19____.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 19____, and a copy mailed first class this 11 day of June, 1996 to attorneys of record or to parties (when appearing pro se) as follows:

Daniel T. Brailsford

Susan K. White - M. Elizabeth Croom
John E. Schmidt III
Delbert H. Singleton
Deirdra T. Singleton

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Barbara G. Scott 1 Aug
CLERK OF COURT