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| State of South Carolina County of Richland In Re: Determination of Probable Cause to Debar Smart Public Safety Software, Inc., Mr. Robert Sorenson, Mr. Mark DeGroote, and TAC 10, Inc. |) Before the Chief Procurement Officer)) Decision)) Case: 2012-201)) Posted: January 19, 2012) Mailed: January 19, 2012)))) |
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Pursuant to Section 11-35-4220(1) of the South Carolina Consolidated Procurement Code (“Code”), the appropriate chief procurement officer may debar a person for cause from consideration for award of contracts or subcontracts if doing so is in the best interest of the State. The Code defines “debarment” as “the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the State, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.” S.C. Code Ann. § 11-35-310(14).

This matter is before the Chief Procurement Officer (“CPO”) for Information Technology pursuant to a recommendation by the Information Technology Management Office’s (“ITMO”) Procurement Manager for the debarment of the following: 1) Smart Public Safety Software, Inc.¹ (“SMART”); 2) Robert E. Sorenson, President of SMART; 3) Mark DeGroote, Vice President for Development and Acting President for SMART and President of TAC 10, Inc. (“TAC 10”); and 4) TAC 10 (collectively referred to as “the Parties”). This debarment request is based on the breach of contract number 44000000924, for a records management system for the South Carolina Department of Natural Resources (“DNR”).

By way of background, the CPO conducted a suspension hearing on October 26, 2010. Despite being provided with notice, none of the Parties attended the hearing. Representatives of ITMO and DNR were present. The CPO determined that there was probable cause for debarment based

¹ SMART was previously known as Scott Software, Inc. and Scott Software, Inc. is still listed as a fictitious name on the corporate filings with the Iowa Secretary of State. [Ex. 18]

on the evidence presented and an investigation into the matter was warranted. In a Decision dated February 17, 2011, the CPO suspended the Parties from consideration for award of contracts or subcontracts pending the investigation. (See attached Decision.) Subsequently, Mr. DeGroot and TAC 10 requested an administrative review of the Decision. On May 4, 2011, the South Carolina Procurement Review Panel ("Panel") dismissed the appeals for failure to prosecute. In Re: Determination of Probable Cause to Suspend Smart Public Safety Software, Inc., Robert Sorenson, Mark DeGroot, and TAC 10, Inc., Case No. 2011-5.

On August 18, 2011, the CPO held a hearing to consider debarment of the parties.² The following representatives were present at the hearing: Buford S. Mabry, Jr., Esquire on behalf of DNR; Sam Hanvey on behalf of ITMO; E. Wade Mullins III, Esquire, and Matthew Stabler, Esquire, on behalf of Mr. DeGroot and TAC 10; and Mr. Sorenson. This Decision follows.

Findings of Fact

A general timeline of events is as follows:

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|------------|---|
| 3/10/2009 | ITMO issued a solicitation on behalf of DNR. [Ex. 1] |
| 3/10/2009 | ITMO issued Amendment #1. [Ex. 1] |
| 3/31/2009 | ITMO received SMART's bid signed by Mr. Sorenson. [Ex. 2] |
| 4/27/2009 | SMART secured loans for \$1,000,000 (Note # 138746) and \$383,577.26 (Note # 138751) from Lincoln Savings Bank. [Ex. 14] |
| 5/13/2009 | Mr. Sorenson signed the Record of Negotiation on behalf of SMART. [Ex. 3] |
| 5/14/2009 | ITMO issued an intent to award to SMART. [Ex. 1] |
| 6/24/2009 | SMART delivered Runtime COTS, and DNR paid \$281,800. |
| 10/14/2009 | SMART secured a \$140,000 loan (Note # 139473) from Lincoln Savings Bank. [Ex. 14] |
| 10/30/2009 | SMART secured a \$600,000 loan (Note # 139478) from Lincoln Savings Bank. [Ex. 14] |
| 11/13/2009 | DNR paid SMART \$4,000 for services rendered. [Ex. 7.5] |
| 4/30/2010 | Mr. DeGroot was named Acting President of SMART. |
| 5/4/2010 | Lincoln Savings Bank issued a Notice of Maturity and Request for Payment, demanding payment of the four loans totaling \$2,123,577.26 [Ex. 8] |
| 5/11/2010 | DNR demanded performance or refund of monies paid. [Ex. 7.8] |
| 5/26/2010 | TAC 10 incorporated with Mr. DeGroot as President. [Ex. 11] |
| 5/28/2010 | Mr. DeGroot, as Acting President of SMART, surrendered SMART's assets to Lincoln Savings Bank in satisfaction of its |

² On August 9, 2011, DNR filed a Motion for Summary Judgment. That motion is denied.

debts. [Ex. 9]
5/28/2010 Mr. DeGroot, as President of TAC 10, purchased SMART's assets, but not liabilities, from Lincoln Savings Bank for \$2,000,000. [Ex. 10]
6/10/2010 DNR was notified that TAC 10 had purchased all SMART assets but not the DNR contract. [Ex.7.9]

Further, it is undisputed that SMART had a contract with the State of South Carolina to provide and implement a fully integrated law enforcement information and records management system that would provide computer aided dispatch, summons ticket, warning ticket, arrest warrant, bench warrant, privilege suspension, investigations case management; incident reporting, daily and monthly officer activities reporting; and other mission critical law enforcement functions, and an interface to DNR's Oracle database by mid December 2009. [Ex. 2, pp. 54] As part of the contract, SMART had also agreed to place the source code in escrow at its own cost. [Ex. 3]

It is also undisputed that SMART breached its contract with the State by failing to:

- Escrow the source code and notify the State of the acceptable escrow agent as required by the contract; and
- Provide customized software that included:
 - a. Computer Aided Dispatch functionality;
 - b. Forms built that correspond to the SC Law Enforcement forms already in place, incorporating it into the core software and delivering it to SCNDR; and
 - c. The development of a violations program and integrations program into Oracle.

Evidence Presented

According to Jim Scurry from the DNR, SMART delivered the run-time version of their COTS software on June 24, 2009, for which DNR paid \$281,800, leaving a balance of \$63,274 for the remaining first year services and warranty. [Ex. 7.3] During this process, Mr. Sorenson visited DNR and spoke with DNR project personnel. Mr. Scurry further testified that Mr. Sorenson had been involved in this project from the beginning and participated in several conference calls. On November 13, 2009, DNR paid an additional \$4,000 for part of the remaining services. [Ex. 7.5] However, Mr. Scurry testified that SMART never delivered the DNR specific customizations, the Oracle database interface or the violations module. Also, none of the report customization was completed according to Mr. Scurry.

Mr. Scurry further testified that DNR began experiencing delays in the project during the Fall of 2009, and it became obvious that the primary portions of system would not be installed by the end of December 2009. [Ex. 2] On January 27, 2010, Mr. Scurry sent an email to Mr. Sorenson expressing his concern about the lack of progress with the project. [Ex. 7.7] Based on a series of emails with Mr. Sorenson, SMART did send a representative to visit DNR that Spring. On April 27, 2010, Mr. Scurry sent an email to SMART for a yet another status report. [Ex. 7.8] Again on May 11, 2010, Mr. Scurry emailed Mr. Sorenson requesting a status update and offering SMART two options: finish the project in full or refund all monies paid to SMART. [Ex. 7.8]

According to Mr. Scurry, during a phone conversation on May 12, 2010, Mr. Sorenson informed him that SMART had secured a loan from a local bank, and pledged all its assets, and the bank had demanded payment in full. Mr. Sorenson told Mr. Scurry that SMART was instructed to discontinue their current projects until further notice and that it would be 10 to 14 days before the issue would be resolved. There is no indication that Mr. Scurry was advised at that time or earlier of any change in management. Mr. Scurry also inquired about whether the software code had been properly placed in escrow. Mr. Sorenson informed Mr. Scurry that the source code was not in escrow yet. During another phone conversation on May 27, 2010, Mr. Sorenson told Mr. Scurry that the escrow was being completed. In addition, Mr. Sorenson informed him on that date that the issues surrounding the bank loan were not yet resolved.

Mr. Scurry also placed a phone call to the telephone number for SMART on June 9, 2010, which was answered as TAC 10. At that time, Mr. Scurry spoke to Mr. DeGroote, who introduced himself as the President of TAC 10. During the call, Mr. DeGroote told him that SMART's software had been sold to TAC 10, that TAC 10 had been formed by about half of SMART's former employees, and that TAC 10 had purchased some, but not all, of SMART's contracts. At that time, Mr. Scurry inquired about completion of DNR contract and he was informed that TAC 10's attorney would respond to his inquiry. On or about June 10, 2010, Mr. Scurry received a letter from David H. Mason, Esquire of Redfern, Mason, Larsen and Moore on behalf of TAC 10 stating that SMART had secured a loan from a local bank, had defaulted on the loan, and had voluntarily surrendered all assets to the bank, including the COTS software it provided DNR.³ The letter further stated that TAC 10 had purchased substantially all of SMART's assets on June

³ The Voluntary Surrender Agreement reflects the date was May 28, 2010. [Ex. 9]

1, 2010, including the software licensed to DNR, but none of SMART's liabilities or the contract between SMART and DNR. [Ex. 7.9]⁴ On June 29, 2010, DNR notified ITMO that SMART had failed to deliver any of the additional functionality or services required by the contract. [Ex. 4] According to Mr. Scurry, the software it received is incomplete and unusable by DNR.

ITMO's file reflects that on July 9, 2010, Michele Mahon, a former procurement manager with ITMO, sent a certified, return receipt requested, letter to SMART and Mr. Sorenson requesting that SMART show cause why it should not be considered in default of this contract and listed several reasons, including the failure to escrow the source code and the failure to complete the required customization. [Ex. 22] On July 19, 2010, Ms. Mahon received a postal receipt indicating that the certified letter was accepted on July 12, 2010. On August 2, 2010, Ms. Mahon advised the CPO that neither SMART nor Mr. Sorenson had responded to her request to show cause and petitioned the CPO to begin suspension and debarment proceedings against SMART and Mr. Sorenson. [Ex. 4] In her letter, Ms. Mahon acknowledged that TAC 10 claims to be the owner of the software sold to DNR by SMART that is supposed to be in the hands of an escrow agent. She also recommended the debarment of Mr. DeGroot and TAC 10 based on the appearance that TAC 10 was an affiliate or successor of SMART because several of TAC 10's employees were former key employees of SMART and obviously aware of the requirements of the DNR contract. Ms. Mahon also sent an amended rule to show cause letter on September 30, 2010. [Ex. 23]

Mr. Sorenson testified and admitted that SMART breached its contract with DNR. He stated that he learned SMART was having financial difficulties between October 2009 and January 2010. According to Mr. Sorenson, the SMART Board of Directors relieved him of his position as President in late April 2010, and SMART quit doing business by the end of May 2010. On cross-examination, Mr. Sorenson testified SMART had contracts with other governmental entities in South Carolina including Charleston County, Dorchester County, the University of South Carolina, and the State Law Enforcement Division, and he admitted those contracts were similarly breached. He also admitted that he had not filed paperwork with the Iowa Secretary of State to dissolve SMART; instead he intended to wait for it to be automatically resolved in two years for failure to file tax returns.

⁴ The Asset Purchase Agreement reflects the purchase date was instead May 28, 2010. [Ex. 10]

Mr. DeGroot testified before the CPO that he was responsible for development. Stating that he supervised the development of the CAD functionality, but not Oracle portion, and contended he was not part of the DNR contract team. However, he acknowledged that he "might" have reviewed SMART's bid to DNR. He also admitted attending regular staff meetings where the DNR contract was discussed but contended he did not really know about the problems with the DNR contract. He also testified that he had more involvement in the development of SMART's other South Carolina contracts.

Mr. DeGroot contended that he first became aware of problems with the DNR contract in February or March 2010 when he started working with a broker to help sell SMART. According to Mr. DeGroot, the SMART Board of Directors relieved Mr. Sorenson of his position as President of SMART and appointed Mr. DeGroot Acting President in late April 2010. Mr. DeGroot testified that it was Mr. Sorenson, not the Board, who advised him of the Board's action. Mr. DeGroot testified that his authority was limited to matters affecting the dissolution of the company. However, no evidence was presented to indicate when the change in management actually occurred or any limitations the Board placed on Mr. DeGroot's authority as Acting President.⁵ Mr. DeGroot further testified that he participated in a conference call with Mr. Sorenson and Mr. Scurry on May 12, 2010, but did not deny that DNR was not advised of the change in management at that time. On May 4, 2010, Lincoln Savings Bank sent SMART a Notice of Maturity and Request for Payment against all four notes. [Exhibit 8]⁶ Mr. DeGroot also testified that in late April he started working on a plan to buy the company himself. According to Mr. DeGroot, he met with the bank to talk about alternatives and presented the bank with his business plan.

Mr. DeGroot testified a new company, TAC 10, was incorporated on May 26, 2010, with himself as President. [Ex. 11] At that time, Mr. DeGroot was serving as both Acting President of SMART and President of TAC 10.

⁵ The corporate records for SMART at the Iowa Secretary of State still indicate that Mr. Sorenson is the President.

⁶ The CPO notes that this Notice was addressed to Mr. Sorenson as President of SMART, not to Mr. DeGroot, so the evidence does not reflect that Lincoln Savings Bank was advised of a change in management either.

Mr. DeGroot testified that he had no operational control of SMART. However, Mr. DeGroot, as Acting President of SMART, surrendered the assets of SMART to Lincoln Savings Bank on May 28, 2010, and his signature appears on the Voluntary Surrender Agreement. [Ex. 9] Mr. DeGroot also testified that he prepared the Voluntary Surrender Agreement with the assistance of Dave Fitzgerald and legal counsel, David Mason, Esq. [Ex. 9] The Voluntary Surrender Agreement details what SMART assets were to be surrendered and included:

... all accounts and other rights to payment, inventory, equipment, instruments and chattel paper, general intangibles, documents, investment property and deposit accounts. Hereinafter, Borrower's assets subject to Lender's security interest shall be referred to as the "Collateral", which include in addition to all of the aforementioned assets, the list of customer contracts attached hereto as Exhibit "A".
[Exhibit 9, emphasis added]

Mr. DeGroot also testified that he prepared Exhibit A which was attached to the Voluntary Surrender Agreement. The title on Exhibit "A" of the SMART Voluntary Surrender Agreement is: "TAC 10 Customer Account List – By State." Mr. DeGroot explained the criteria he used to determine what customer contracts or accounts to include on Exhibit A to keep as follows:

... any customer that was installed and that our company (TAC 10) could support without having financial exposure in doing so. ... if I would have taken on all of SMART's customer accounts with some projects that weren't even started, some that were in the middle and some that were nearing completion there was no way TAC 10 could have existed. It wasn't a viable business plan.

Exhibit A did not include any customer contracts with which SMART had outstanding obligations, financial or performance, including all of the South Carolina contracts. [Ex. 9]

On this same day, May 28, 2010, Mr. DeGroot, as President of TAC 10, purchased those same SMART assets and customer contracts from Lincoln Savings Bank that he had just surrendered as Acting President of SMART. [Ex. 10] According to Mr. DeGroot, TAC 10 provides the same law enforcement solutions business as SMART did. Mr. DeGroot also testified that TAC 10 bought SMART's equipment, and he stated that TAC 10 used the same phone number as SMART for 10 days and that TAC 10 used SMART's facilities without getting a new lease for two months. [Ex. 12] Mr. DeGroot also testified that TAC 10 has 22 employees, 14 of whom are former employees of SMART and current stockholders in TAC 10. He acknowledged that

some of the 14 held management positions with SMART and currently also hold management positions with TAC 10.

By way of explanation, the contract with the State required SMART, and SMART agreed, to place the software source code in escrow with an independent third party escrow agent and granted the State non-exclusive title to that source code in the event of SMART's "insolvency, liquidation, bankruptcy, or SMART's general ability to perform its obligations under this Agreement." [Ex. 1, 2 and 3] Paragraph 5a of the Voluntary Surrender Agreement granted Lincoln Savings Bank possession of any source code held in escrow on behalf of any customer:

...This surrender shall take place at the Borrower's various places of business, and shall include also those portions of the Collateral presently in the possession of third parties, if any, and wherever located. [Ex. 9]

Moreover, the Asset Purchase Agreement between Lincoln Savings Bank and TAC 10 transferred ownership of the source code "... free and clear of all liens and encumbrances" [Ex. 10]

Conclusions of Law

Debarment of SMART Public Safety Software, Inc. also dba Scott Software, Inc.

As stated previously, the Code authorizes the CPO to debar a firm from consideration for award of contracts or subcontracts. S.C. Code Ann §11-35-4220(1). Section 11-35-310(14) defines "debarment" as "the disqualification of a person to receive...the award of a contract by the State, for a specified period of time commensurate with...the failure or inadequacy of performance."

Pursuant to Section 11-35-4220(2), the causes for debarment include, in relevant part:

- (d) violation of contract provisions, as set forth below, of a character regarded by the appropriate chief procurement officer to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

- (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; except, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered a basis for debarment and
- (f) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor, including debarment by another governmental entity for any cause listed in this subsection.

In order to contract with the State, a contractor must be responsible. S.C. Code Ann. S 11-35-1810. Accordingly, it is neither permitted nor is it in the State's best interest to contract with a non-responsible vendor. The Code defines a responsible vendor as "a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance." Section 11-35-1410(6); Reg. 19-445.2125.

As previously explained, the CPO finds that the evidence clearly reflects that SMART breached its contract with the State by failing to escrow the source code and notify the State of the escrow agent and by failing to provide customized software and reports, all of which were required by the contract. [Ex. 1, 2 and 3] It is also clear that the State has paid SMART \$285,800 and has received nothing functional. Since SMART neither escrowed the source code nor developed the software as required by the contract, DNR has essentially paid taxpayers' dollars for completely unusable software.

SMART simply stopped work and surrendered its inventory, physical assets, and certain customer accounts to Lincoln Savings Bank on May 28, 2010. Lincoln Savings Bank in turn sold these assets and customer accounts to TAC 10 on the same day it acquired them. Any customer accounts that represented any financial or performance obligations, which included all the accounts with South Carolina governmental entities, remained with SMART, which is still an active corporation in the State of Iowa but now apparently has no assets. No evidence was presented that any mitigation was taken to protect the State's interests. Likewise, no evidence was submitted to show that the failure to perform was caused by a force majeure, that is, by some

acts beyond the control of SMART. Accordingly, SMART clearly has a “recent record of failure to perform or of unsatisfactory performance with the terms of one or more contracts...”

Based on the evidence presented, the CPO finds that the debarment of SMART is warranted and that it is in the State’s best interest in order to protect it against this non-responsible vendor. Accordingly, SMART is debarred for three years from the date of suspension, which was February 17, 2011.

Debarment of Robert E. Sorenson

The Code also authorizes the debarring official to extend the debarment decision to any principals of the contractor if they are specifically named and given written notice of the proposed debarment and an opportunity to respond. S.C. Code Ann § 11-35-4220(6). The term ‘principals’ is defined as officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions. S.C. Code Ann. § 11-35-4220(6).

SMART’s Articles of Incorporation reflect that Mr. Sorenson is an officer of SMART. [Ex. 18] The bid response submitted by SMART was signed by Robert E. Sorenson as President. In this capacity, Mr. Sorenson clearly had primary responsibility for the performance of SMART. The evidence shows that Mr. Sorenson was clearly involved with the DNR contract and that he knew that SMART was failing to perform its requirements under the contract. Therefore, SMART’s breach of contract falls squarely on his shoulders. Mr. Sorenson violated the contract provisions and failed to both escrow the source code and customize the software by the stated deadline, rendering the software unusable for DNR. In addition, he continually misled DNR from the Fall of 2009 through late Spring 2010, and failed to advise DNR during multiple phone conversations that he had been relieved of his responsibilities as President in late April of 2010. Mr. Sorenson did not deny his discussions with Mr. Scurry, including that he told him in May 2010 the escrow

“was being completed” when it was in fact never done. Moreover, SMART is still an active corporation with Mr. Sorenson listed as the principal agent.

Based on the evidence presented, the CPO finds that there the debarment of Mr. Sorenson as a principal of SMART is warranted and that it is in the State’s best interests. Accordingly, Mr. Sorenson is debarred a period of three years from the date of the suspension, which was February 17, 2011.

Debarment of Mark DeGroot

As stated previously, the Code authorizes the CPO to suspend a person from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. S.C. Code Ann. § 11-35-4220(1). Moreover, Section 11-35-4220(6) authorizes the debarring official to extend the debarment decision to include any principals of the contractor. Again, the term ‘principals’ is defined as officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions. S.C. Code Ann. § 11-35-4220(6)

The SMART bid response, which Mr. DeGroot did not deny that he had reviewed, included biographical information on a number of key employees including Mr. DeGroot and listed him as the Vice President for Development for SMART. In this capacity, the bid reflects Mr. DeGroot was responsible for the complete development lifecycle of SMART’s complete line of law enforcement software. He also oversaw the staff of software developers and was responsible for system design, code review, testing, and user documentation. [SMART’s Bid - Exhibit 2] Mr. DeGroot acknowledged that he was responsible for part of the software development, but claimed he was not involved directly with the DNR contract and had no responsibility for the Oracle database interface. Mr. DeGroot did acknowledge that he was involved in SMART’s contracts with other South Carolina governmental entities, which were similarly breached.

Moreover, Mr. DeGroot claimed he was unaware of problems with the DNR contracts until February or March 2010 when he started working to try to sell SMART. However, this claim conflicts with his testimony that he participated in regular staff meetings in which the DNR contract was discussed. Both Mr. Scurry and Mr. Sorenson acknowledged there were problems with the DNR contract beginning in the Fall of 2009.

Never-the-less, in late April of 2010, Mr. DeGroot was appointed Acting President of SMART. As Acting President of SMART, Mr. DeGroot became responsible for the performance of SMART with regard to the DNR and other South Carolina contracts. He even participated in a May 12, 2010, phone conversation with Mr. Sorenson and Mr. Scurry, all the while working on his own business plan to buy SMART. Therefore, DeGroot constitutes a principal of SMART, and he also was aware of the problems with the DNR contract.

In addition, despite his claim that he had no operational control over SMART, Mr. DeGroot, as Acting President of SMART, determined which SMART assets and customer contracts would be surrendered, and he surrendered those to Lincoln Savings Bank. Then Mr. DeGroot, as the President of TAC 10, purchased those SMART assets and customer accounts from Lincoln Savings Bank on the same day. As stated previously, Mr. DeGroot testified that any SMART contracts that had any financial liability, which included all SMART's contracts with South Carolina governmental entities, were determined to be liabilities of SMART and not transferred to Lincoln Savings Bank and consequently not be acquired by TAC 10. During testimony before the CPO, Mr. DeGroot stated that it would be a bad business plan for TAC 10 to assume those liabilities of SMART. Therefore, Mr. DeGroot was looking out for his interests, not the State's, and this does not constitute a mitigating factor. Further, he admitted that he is currently negotiating new contracts for TAC 10 with the same South Carolina governmental entities mentioned previously.

Based on the evidence presented, the CPO finds that the debarment of Mr. DeGroot as a principal of SMART is warranted and that it is in the State's best interests. Accordingly, Mr. DeGroot is debarred for a period of three years from the date of the suspension, which was February 17, 2011.

Debarment of TAC 10

In addition to the above, Section 11-35-4220(6) of the Code also authorizes the debarring official to extend the debarment decision to include any affiliates of the contractor. This Section reads, in relevant part:

Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

TAC 10 was incorporated on May 26, 2010, at the same address and using the same phone number as SMART. [Exhibit 11]⁷ Mr. DeGroot, TAC 10's President, was involved in the DNR contract and made the determination to not surrender DNR's contract to Lincoln Savings Bank because it was a liability that it did not make sense for him to purchase. However, TAC 10 admitted that it is currently negotiating for new contracts with some of the same governmental entities whose contracts with SMART were breached. Mr. DeGroot was the Acting President of SMART and President of TAC 10 when SMART's assets and inventory were effectively transferred from SMART to TAC 10. Additionally, the evidence before the CPO is that SMART and TAC 10 shared facilities and had interlocking management or ownership for some period of time. No certain time period is required by the Code. S.C. Code Ann. § 11-35-4220(6). Moreover, the evidence presented reflects that TAC 10 has the same or similar management and principal employees.

Based on the evidence provided, the CPO finds that TAC 10 constitutes an affiliate of SMART and its debarment is warranted. Moreover, it is necessary in order to protect the State's best

⁷ The record also reflects that TAC 10 was incorporated by the same law firm that handled the corporate filings for SMART.

interests. Accordingly, TAC 10 is debarred for a period of three years from the date of the suspension, which was February 17, 2011.⁸

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

⁸ The CPO notes that Section 11-35-4220 of the Code, which applies to this Decision, permits a broader imputation of conduct than is permitted by the Federal Acquisition Regulations. For example, in federal procurements the conduct may be imputed only where the person knew or had reason to know of the conduct. 48 C.F.R. 9.406-5. Since the Code contains no such requirement, federal cases analyzing debarments based on a “reason to know” standard are not controlling. *See, e.g., Caiola v. Carroll*, 851 F.2d 395 (Ct. App. 1988)(finding debarment could not be imputed to president and secretary of an affiliate corporation because they did not have reason to know the original corporation was submitting false laboratory test results). However, out of an abundance of caution, the CPO also analyzed this matter under the higher “reason to know” standard.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Suspension / Debarment Appeal Notice (Revised July 2011)

The South Carolina Procurement Code, in Section 11-35-4220, subsection 5, states:

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). 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 why the person disagrees 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 any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.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 83.1 of the General Appropriations Act for Fiscal Year 2011-2012, "[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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, an incorporated business must retain 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).

Findings of Fact

On March 10, 2009, ITMO issued an Invitation for Bids (IFB), on behalf of DNR, seeking a vendor to provide and implement a fully integrated law enforcement information and records management system that would provide computer aided dispatch; summons ticket, warning ticket, arrest warrant, bench warrant, privilege suspension, investigations case management; incident reporting; daily and monthly officer activities reporting; and other mission critical law enforcement functions, and an interface to DNR's Oracle database. [IFB - Exhibit 6, p. 15.] Vendors were also required to place the software source code in escrow so DNR could access it if necessary. [IFB – Exhibit 6, p. 25.] SMART submitted an offer, and its solution included modifications to its Commercial-Off-The-Shelf (COTS) software along with custom built software and interfaces. [SMART's Bid - Exhibit 11] Following negotiations which included SMART agreeing to place the source code in escrow at its cost, ITMO awarded a contract to SMART on May 15, 2009. The cost of the software, custom programming, installation, training, and first year's warranty was \$345,074. Maintenance for years 2 through 5 totaled \$238,049, for a total contract value of \$583,123. [Record of Negotiations – Exhibit 6, response 9; Award Statement – Exhibit 5.] Based on SMART's bid, the custom programming, installation and training was to be completed by December 11, 2009. [Exhibit 11, Page 54]

According to Jim Scurry at DNR, SMART delivered the run-time version¹⁰ of their COTS software on June 24, 2009, for which DNR paid \$281,800, leaving a balance of \$63,274 for the remaining first year services and warranty. During this process, Mr. Sorenson and Mr. DeGroot visited DNR and spoke with DNR project personnel. On November 13, 2009, DNR paid an additional \$4,000 for part of the remaining services. DNR began experiencing delays in the project during the Fall of 2009. On January 27, 2010, Mr. Scurry sent an email to Mr. Sorenson expressing his concern about the lack of progress with the project. Again on May 11, 2010, Mr. Scurry emailed Mr. Sorenson requesting a status update and offering SMART two options: finish the project in full or refund all monies paid to SMART. [Series of Emails – Exhibit 4]

¹⁰ The Run-Time version of software is provided in machine readable form which cannot be modified or tailored to meet the unique needs of the agency. The source code is required in order to make any modifications.

According to Mr. Scurry, during a phone conversation on May 12, 2010, Mr. Sorenson informed him that SMART had secured a loan from a local bank, pledging all its assets, and the bank had demanded payment in full. Mr. Sorenson told Mr. Scurry that the company was instructed to discontinue their current projects until further notice and that it would be 10 to 14 days before the issue would be resolved. Mr. Scurry also inquired about whether the software code had been properly placed in escrow. Mr. Sorenson informed Mr. Scurry that it was not in escrow yet as of May 17, 2010. During another phone conversation on May 27, 2010, Mr. Sorenson told Mr. Scurry that the escrow was being completed. In addition, Mr. Sorenson informed him on that date that the issues surrounding the bank loan were not yet resolved.

Despite this contention, TAC 10 was incorporated on May 26, 2010, with Mr. DeGroot as President according to its Articles of Incorporation. [TAC 10 Articles – Exhibit 14] The official address for TAC 10 was the same as SMART. The Director of Business Development for TAC 10 is Mark Wooderson who previously served as Vice President of Finance for SMART. [SMART Website - Exhibit 8] David Fitzgerald, who was a Director at SMART, is also employed with TAC 10. It is believed that TAC 10 has approximately 21 employees.¹¹ It is unknown how many more of those employees were formerly employed by SMART.

Mr. Scurry also placed a phone call to the telephone number for SMART on June 9, 2010, which was answered as TAC 10. At that time, Mr. Scurry spoke to Mr. DeGroot, who introduced himself as the President of TAC 10. Also present on the call and identified as members of TAC 10 were Mr. Wooderson and Mr. Fitzgerald, who previously were with SMART as stated above. During that call, Mr. DeGroot acknowledged that SMART's primary staff was now at TAC 10. At that time, Mr. Scurry inquired about completion of the contract and he was informed that TAC 10's attorney would respond to his inquiry. On or about June 10, 2010, Mr. Scurry received a letter from attorney David H. Mason of Redfern, Mason, Larsen and Moore on behalf of TAC 10 stating that SMART had secured a loan from a local bank (the "Bank"), defaulted on the loan, and voluntarily surrendered all assets, including the COTS software it provided DNR, to the "Bank". The letter further stated that TAC 10 had purchased substantially all of SMART's assets on June 1, 2010, including the software licensed to DNR, but none of

¹¹ www.linkedin.com

SMART's liabilities or the contract between SMART and DNR. [June 10, 2010 Letter to Mr. Scurry – Exhibit 3]¹²

On June 29, 2010, DNR notified ITMO that SMART had failed to deliver any of the additional functionality or services required by the contract. [Series of Emails – Exhibit 4] SMART's website was active at least until June 30, 2010. [Exhibit 8] Therefore, on July 9, 2010, Michele Mahon, procurement manager with ITMO, sent a certified, return receipt requested, letter to SMART and Mr. Sorenson requesting that SMART show cause why it should not be considered in default of this contract for the following reasons:

1. SMART failed to escrow the source code and notify the State of the acceptable escrow agent as required by the contract; and
2. After the partial install, SMART failed to provide customized software that would include the following:
 - a. Computer Aided Dispatch functionality;
 - b. Forms that correspond to the SC Law Enforcement forms already in place, incorporating it into the core software and delivering it to SCNDR; and
 - c. A violations program and integrations program into Oracle.

The letter to show cause also requested the name and location of the escrow agent in possession of the software source code as required by the contract. A response was requested by July 16, 2010. [Ms. Mahon's July 9, 2010 Letter – Exhibit 3] On July 19, 2010, Ms. Mahon received a postal receipt indicating that the certified letter was accepted on July 12, 2010. On August 2, 2010, Ms. Mahon advised the CPO that neither SMART nor Mr. Sorenson had responded to her request to show cause and petitioned the CPO to begin suspension and debarment proceedings against SMART and Mr. Sorenson. In her letter, Ms. Mahon acknowledged that TAC 10 claims to be the owner of the software sold to DNR by SMART that is supposed to be in the hands of an escrow agent and recommended the debarment of TAC 10 as well based on the appearance that TAC 10 was an affiliate or successor of SMART because several of TAC 10's employees were

¹² None of the parties, including Mr. Sorenson, SMART, TAC 10, and Mr. DeGroote, have identified the "Bank" or provided any documentary evidence of the alleged bank loan, voluntary surrender of the assets, or purchase of assets from the "Bank" by TAC 10.

former key employees of SMART and obviously aware of the requirements of the DNR contract. [Ms. Mahon's August 2, 2010 letter - Exhibit 2]. Out of an abundance of caution, Ms. Mahon also sent an amended rule to show cause letter on September 30, 2010. [Ms. Mahon's September 30, 2010 letter – Exhibit 16]

Motions to Dismiss

Mr. DeGroot, on behalf of TAC 10, filed a motion to dismiss on August 13, 2010, on the grounds that TAC 10 purchased the software, but not this contract with DNR or any of SMART's liabilities, from the "Bank", TAC 10 has no contractual relationship with the State of South Carolina (the State), and consequently any consideration of suspension or debarment should be dismissed. The motion to dismiss did acknowledge that TAC 10 was in negotiations with the South Carolina Law Enforcement Division (SLED) and University of South Carolina (USC) to support the SMART software it had acquired from the "Bank". (Mr. DeGroot's Motion to Dismiss is attached and incorporated herein by reference.)

Mr. Sorenson also filed a motion on September 24, 2010 to dismiss based on the grounds that SMART had voluntarily surrendered the assets to the "Bank", ceased doing business, that neither he nor SMART had access to the software, and consequently any consideration of suspension or debarment should be dismissed. (Mr. Sorenson's Motion to Dismiss is attached and incorporated herein by reference.)

Based on the information currently before the CPO, these motions are denied.

Conclusions of Law

Suspension of SMART Public Safety Software, Inc.

As stated previously, the Code authorizes the CPO to suspend a firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. Section 11-35-4220(1). Pursuant to Section 11-35-4220(2), the causes for debarment or suspension include, but are not limited to:

- (e) violation of contract provisions, as set forth below, of a character regarded by the appropriate chief procurement officer to be so serious as to justify debarment action:
- (ii) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; except, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered a basis for debarment and
- (f) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor, including debarment by another governmental entity for any cause listed in this subsection.

It is undisputed that SMART breached its contract with the State by failing to:

- Escrow the source code and notify the State of the acceptable escrow agent as required by the contract; and
- Provide customized software that would include:
 - a. A Computer Aided Dispatch functionality;
 - b. Forms built that correspond to the SC Law Enforcement forms already in place, incorporating it into the core software and delivering it to SCNDR; and
 - c. The development of a violations program and integrations program into Oracle.

It is also undisputed that the State has paid SMART \$285,800 and has received nothing functional. Since SMART neither escrowed the source code nor developed the software as required by the contract, DNR received and paid taxpayers' dollars for completely unusable software, which the CPO considers very serious. If SMART had fulfilled either of these contract

requirements, DNR would not be in such a dire situation. Moreover, despite Mr. Sorenson's contention to the contrary in his motion, evidence before the CPO reflects that SMART is still listed as an active corporation in the State of Iowa as of this date. [Exhibit 15] Specifically, in his motion to dismiss Mr. Sorenson alleged:

During the course of its operation, SMART obtained an operating line of credit from a local bank (the "Bank"). SMART pledged all of its assets to the Bank as collateral for the loan. SMART defaulted on the loan and the Bank demanded immediate payment in full on the loan. SMART was financially unable to comply with the Bank's demand for payment.

However, it is unclear to the CPO whether SMART in fact simply ceased doing business by surrendering its assets and walking away from its liabilities, filed bankruptcy or exercised some other option. Neither SMART nor Mr. Sorenson has shed any light on this situation. What is known is that as of this date, SMART is still listed as an active corporation in the State of Iowa.

SMART did breach its contract with the State of South Carolina. SMART claims to have surrendered its assets to the "Bank," but there is no probative evidence to support this claim. SMART claims to have ceased doing business, but there is no probative evidence to support this claim. Based on the evidence presented, the CPO finds that there is probable cause for debarment of SMART. Accordingly, in order to protect the State's best interests, the suspension of SMART is warranted until such time as an investigation into potential debarment is completed, a debarment hearing is held, and/or an order is issued either lifting this suspension order or concluding that debarment is warranted.

Suspension of Robert E. Sorenson

The Code authorizes the CPO to suspend a person from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. Section 11-35-4220(1) Moreover, the Code also authorizes the debarring official to extend the debarment decision to include any principals of the contractor if they are specifically named and given

written notice of the proposed debarment and an opportunity to respond. Section 11-35-4220(6). The term 'principals' is defined as officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions. Section 11-35-4220(6)

SMART's Articles of Incorporation reflect that Mr. Sorenson is an officer of SMART. [Exhibit 15] In addition, the bid response submitted by SMART was signed by Robert E. Sorenson as President and Chief Executive Officer. [SMART's Bid - Exhibit 11] In this capacity, Mr. Sorenson clearly had primary responsibility for the performance of SMART; therefore, SMART's breach of contract falls squarely on his shoulders. As President, Mr. Sorenson violated the contract provisions and failed to both escrow the source code and customize the software by the stated deadline, rendering the software unusable for DNR. In addition, he continually misled DNR from the Fall of 2009 through late Spring 2010, according to Mr. Scurry. During a phone conversation on May 27, 2010, Mr. Sorenson told Mr. Scurry that the escrow "was being completed" yet there is no evidence that it was done. In this same conversation, Mr. Sorenson also claimed that the issues surrounding the bank loan were not resolved when in fact Mr. DeGroot had already presumably purchased the bank loan since TAC 10 was incorporated on May 26, 2010 at the same address and using the same phone number as SMART. It is unclear to the CPO if, and when, SMART has actually ceased doing business.

Based on the evidence presented, the CPO finds that there is probable cause for debarment of Mr. Sorenson. Accordingly, the suspension of Mr. Sorenson, as a principal of SMART, is warranted until such time as an investigation into potential debarment is completed, a debarment hearing is held, and/or an order is issued either lifting this suspension order or concluding that debarment is warranted.

Suspension of Mark DeGroot

As stated previously, the Code authorizes the CPO to suspend a person from consideration for award of contracts or subcontracts during an investigation where there is probable cause for

debarment. Section 11-35-4220(1). Moreover, Section 11-35-4220(6) authorizes the debarring official to extend the debarment decision to include any principals of the contractor. Again, the term 'principals' is defined as officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions. Section 11-35-4220(6)

The SMART bid response included biographical information on a number of key employees including Mr. Mark DeGroot, Vice President for Development for SMART. In this capacity, Mr. DeGroot was responsible for the complete development lifecycle of SMART's line of law enforcement software. He also oversaw the staff of software developers and was responsible for system design, code review, testing, and user documentation. [SMART's Bid - Exhibit 11]

SMART's contract with the State required the delivery of customized software for a computer aided dispatch program, a violations program, forms that correspond to the South Carolina law enforcement forms, and integration to the existing DNR Oracle database, all by December 11, 2009. These customizations were to be modifications to SMART's core software. According to Mr. Scurry, Mr. DeGroot, who as Vice President of Development had the primary management responsibility for the customization, traveled to South Carolina to develop this project but did not complete it by the contract deadline. Moreover, none of the customized software for which Mr. DeGroot had primary responsibility was delivered prior to the purported sale of the core software by the "Bank" to TAC 10 on June 1, 2010.¹³ In addition, there is no evidence that the source code was escrowed.

The evidence presented regarding his title of Vice President for Development and his involvement in the DNR contract reflect that Mr. DeGroot constituted a principal of SMART, as defined in Section 11-35-4220(6); therefore, debarment can be extended to him. As stated previously, it is undisputed that SMART breached its contract with DNR. Moreover, Mr. DeGroot is now the President of TAC 10, which provides the same customized software and is

¹³ SMART has claimed in its motion that the core software was surrendered to the "Bank" and subsequently sold to TAC 10.

seeking contracts with at least two other governmental bodies in South Carolina. (See Mr. DeGroot's Motion to Dismiss.) Therefore, the CPO finds that there is probable cause for debarment of Mr. DeGroot. In order to protect the State's best interests, the CPO finds that the suspension of Mr. DeGroot is warranted until such time as an investigation into potential debarment is completed, a debarment hearing is held, and/or an order is issued either lifting this suspension order or concluding that debarment is warranted.

Suspension of TAC 10

In addition to the above, Section 11-35-4220(6) of the Code also authorizes the debarring official to extend the debarment decision to include any affiliates of the contractor. This Section reads, in relevant part:

Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

If and when SMART went out of business is unknown and conflicts with the Iowa Secretary of State's records. Regardless, TAC 10 was incorporated on May 26, 2010 at the same address and using the same phone number as SMART. [Exhibit 14]¹⁴ As of today's date, SMART is still listed as an active corporation in the State of Iowa. Mr. DeGroot, was the former Vice President of SMART and is now President of TAC 10, which offers the same software. The evidence before the CPO is that SMART and TAC 10 shared facilities and equipment and had interlocking management or ownership for some period of time. Moreover, the evidence presented reflects that TAC 10 has the same or similar management and principal employees.

¹⁴ According to Mr. Scurry, TAC 10 originally used the same business address and phone number as SMART. However, by the time of the suspension hearing, TAC 10 had a different suite number for its address and had formed a separate website. Further, the record reflects TAC 10 was incorporated by the same law firm that handled the corporate filings for SMART. [Exhibits 8 and 15]

There is also an indication that other former SMART employees are employed by TAC 10.¹⁵ Further, TAC 10 is presently seeking to enter into agreements with other South Carolina governmental bodies concerning the same software. (See Mr. DeGroote's Motion to Dismiss.)

Based on the evidence provided, the CPO finds that TAC 10 constitutes an affiliate of SMART and thus there is probable cause for debarment of TAC 10. In order to protect the State's best interests, the suspension of TAC 10 is warranted until such time as an investigation into potential debarment is completed, a debarment hearing is held, and/or an order is issued either lifting this suspension order or concluding that debarment is warranted.

Determination

For the reasons stated above, Smart Public Safety Software, Inc., Robert E. Sorenson, President of Smart Public Safety Software, Inc., Mark DeGroote, formerly Vice President for Development for Smart Public Safety Software, Inc. and presently President of TAC 10, Inc., and TAC 10, Inc. are suspended until such time as an investigation into potential debarment is completed, a debarment hearing is held, and/or an order is issued either lifting this suspension order or concluding that debarment is warranted.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

¹⁵ Although it is unnecessary for a determination of whether TAC 10 constitutes an affiliate, the CPO notes that no probative evidence was presented to support TAC 10's claim that it owns this software, which was contractually obligated to be held in escrow on behalf of the State, or to justify it was not obtained by fraudulent means.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Suspension / Debarment Appeal Notice (Revised October 2010)

The South Carolina Procurement Code, in Section 11-35-4220, subsection 5, states:

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). 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 why the person disagrees 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 any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.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 83.1 of the 2010 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2010 S.C. Act No. 291, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain 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).

