

On November 7, 2013, the State withdrew its Request for Resolution, thus ending any further action on the document which is the focus of this Motion for Sanctions, namely, the State's contract controversy claim against New Venue.

On November 18, 2013, Chief Procurement Officer Michael Spicer issued an order postponing indefinitely the hearing scheduled to hear the State's Request for Resolution.¹

LAW

Filing a motion for sanctions is governed by §11-35-4330(3), which states:

“Filing. 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. A motion for sanctions pursuant to this section must be filed with the panel no later than fifteen days after the later of either the filing of a request for review, protest, motion, or other document signed in violation of this section, or the issuance of an order that addresses the request for review, protest, motion, or other document that is the subject of the motion for sanctions.”

WITHDRAWAL IS FINAL FOR THE REQUEST FOR RESOLUTION

On November 7, 2013, the State withdrew its Request for Resolution. This is a final action on this document and no further prosecution of this matter can occur. In order for the State to proceed further, a new Request for Resolution would have to be filed.

This Motion for Sanctions is in regard to only one specific document, the Request for Resolution dated September 30, 2013. There is final resolution of this Request for Resolution at the level of the hearing before the Chief Procurement Officer because the State withdrew the document before the hearing could occur.

FILING OF THE MOTION FOR SANCTIONS IS TIMELY

The governing statute states the Motion for Sanctions is to be filed within fifteen days of “the *later of either* the filing of a request for review, protest, motion, or other *document signed in violation of this section, or the issuance of an order that addresses the request for review, protest, motion, or other document that is the subject of the motion for sanctions*” (emphasis added).

¹ After all of these described events, New Venue initiated its own contract controversy as against the appropriate State parties. This claim is independent of, and was not a part of the contract controversy at issue here, that the State filed, then abandoned.

New Venue expected to have the opportunity to file a motion for sanctions after a merits hearing related to the State's Request for Resolution. When it became apparent the State had no intention of prosecuting the Request for Resolution, New Venue filed this Motion for Sanctions within fifteen days of both the withdrawal of the Request for Resolution and Mr. Spicer's Order acknowledging that withdrawal in order to meet the deadlines in the applicable law. In sum, under the circumstances, and the applicable law, there is no more appropriate time for New Venue to have filed this matter with the Panel.

NOVEMBER 18TH ORDER IS RELATED TO THE REQUEST FOR RESOLUTION

The November 25th hearing date for the Request for Resolution was cancelled by Order of Chief Procurement Officer Michael Spicer dated October 18, 2013. This Order directly addresses the Request for Resolution because the Request for Resolution was the only issue scheduled to be heard at that time.

It is important to note the language in Mr. Spicer's email contained in Exhibit A. Mr. Spicer "**repurposed**" (emphasis added) the hearing on November 25th to hear the State's Request for Resolution. Mr. Spicer clearly indicated in his email (Exhibit A) that the hearing concerning the suspension of New Venue Technologies would not occur on November 25th and the only matter before the Chief Procurement Officer would be State's Request for Resolution. Therefore, Mr. Spicer's order on November 18th (Exhibit B) is a final order and an acknowledgement of the State's retraction of the Request for Resolution. Mr. Spicer's Order of November 18, 2013 is the last administrative action taken relative to the Request for Resolution and no other orders have been issued relative the State's Request for Resolution since. This motion for sanctions was filed within fifteen days of Mr. Spicer's Order.

THE WITHDRAWAL IS THE FINAL ACTION IN THE CASE

By placing the withdrawal in the record and on the website, it provides notice of the fate and final outcome of the State's the Request for Resolution. Withdrawal serves as the final order. The withdrawal is the final action in the case. This motion for sanctions was filed within fifteen days of the State's withdrawal of their Request for Resolution.

THE STATUTE DOES NOT REQUIRE A FINAL ORDER

The statute does not require the triggering order to be a final order, but rather states one possible trigger *may be* the filing of a frivolous document or an order related to the document that is the subject of the motion for sanctions. This motion for sanctions was filed within fifteen days of both the withdrawal of the Request for Resolution and Mr. Spicer's Order addressing that withdrawal. This Motion for Sanctions was filed within fifteen days of the last and final action related to the State's Request for Resolution and is timely.

SUMMARY AND CONCLUSION

The Chief Procurement Officer's order dated November 18th was clearly in response to the withdrawal of the Request for Resolution and relative to the Request for Resolution because the State's Request for Resolution was the only matter before the Chief Procurement Officer at the November 25th hearing cancelled in that order.

Withdrawal of the Request for Resolution creates finality and there is no future decision for the Chief Procurement Officer to make relative to the State's Request for Resolution. Mr. Spicer made the final action related to the withdrawal of the State's Request for Resolution when he cancelled, indefinitely, the hearing at which the Request for Resolution was to be heard.

The State's Request for Resolution is the document which is the subject of this Motion for Sanctions. The Motion for Sanctions was filed within fifteen days of both the final action and final order related to the State's Request for Resolution.

For the above stated reasons, the State's Motion to Dismiss should not be granted and we ask that the Procurement Panel proceed with a hearing on the merits.

Respectfully Submitted,



Geoffrey Chambers, Esq.

Counsel for New Venue Technologies, Inc.

December 23, 2013

Exhibit A
Repurpose of November 25, 2013 Hearing

Spicer, Mike <mspicer@mmo.sc.gov>

Oct
25

to Molly, Frank, geoffrey, john.schmidt

Gentlemen,

The parties are already scheduled for a hearing on November 25th of this year to address the State's motion to suspend New Venue for cause from consideration for award of contracts or subcontracts if doing so is in the best interest of the State and there is probable cause for debarment. I will reschedule this hearing since I do not intend to address this matter until after the contract controversy is resolved. If possible, I would like to repurpose the hearing on the 25th to address the contract controversy.

The question I have for the State is whether it can complete its audit and be prepared to proceed with this matter by the 25th of November?

I await your response and comments.

Exhibit B

Text of Mr. Spicer's Order dated November 18th, 2013

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