

STATE OF SOUTH CAROLINA)
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 COUNTY OF RICHLAND)
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 IN RE: Appeal by Carolina Advanced)
 Digital, Inc.)
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 (Carolina Advanced Digital, Inc.,)
 Appellant, v. South Carolina Department)
 of Corrections, Respondent. (Contract)
 Controversy)))
)
 Solicitation No. 5400023232 –)
 Statewide Term Contract to provide HPE)
 Networking Products and Services)

BEFORE THE SOUTH CAROLINA
 PROCUREMENT REVIEW PANEL

RECEIVED
Oct 29 2025
SC Court of Appeals

ORDER

Case. No. 2025-2

This matter is before the South Carolina Procurement Review Panel (the “Panel”) for further administrative review pursuant to sections 11-35-4230(6) and 11-35-4410(1)(a) of the South Carolina Consolidated Procurement Code (the “Procurement Code”). Carolina Advanced Digital, Inc (“CAD”) has appealed the July 21, 2025, written determination of the Chief Procurement Officer (the “CPO”), granting the request for resolution of a contract controversy initiated by the South Carolina Department of Corrections (the “Department”) claiming a right to return conforming goods for reimbursement of the purchase price under the Statewide Term Contract for HPE Networking Products and Services.

All parties were provided an opportunity to submit legal memoranda on the issues presented, and the Panel convened on September 16, 2025, for the purpose of hearing oral argument to aid in its administrative review. CAD was represented by R. Taylor Speers, Esquire, and Matthew Hughes, Esquire; the Department was represented by Michael C. Tanner, Esquire; and Manton M. Grier, Esquire, represented the CPO. The Panel now issues this Order based on the evidence within the administrative record, the legal memoranda filed by the parties, oral argument, and applicable law and precedents.

Findings of Fact

On July 6, 2023, the State awarded a term contract to CAD for HPE¹ networking products and services. PRP00972. On May 23, 2024, Jay Daniel, Network Administrator with the Department, requested a quote for certain HPE products identified in a bill of materials. PRP00061. The bill of materials identified the specific manufacturer, manufacturer part number, quantity, and description of the goods requested for purchase. PRP00179-80. CAD provided an initial quote, but advised a revised quote with additional discounts would be forthcoming. Ultimately, a third quote was provided based on a request by the Department to reduce the quantity of transceivers. PRP00062-64. Each quote provided by CAD included the following statement: “Due to MFR Policies, we cannot accept returns on Hardware/Software.” *Id.*

On June 11, 2024, the Department sent CAD a purchase order with a total value of \$839,697.00. PRP00181-84. Per CAD’s invoice, all products shipped on June 18, 2024. PRP00190-201. On June 25, 2024, Mr. Daniel confirmed via email that the Department received everything ordered. PRP00185. The Department paid the invoice total of \$906,872.76 (the purchase order amount plus sales tax). PRP00065.

On July 10, 2024, Mr. Daniel called CAD requesting the return of the entire order citing issues with “connecting the new CX switches to [the Department’s] Juniper core”. PRP00202. CAD advised that it could not accept a return of the equipment referencing the no return language in its invoice and quotes and offered assistance to resolve any connectivity issues. PRP00205.

The Department through Sandee Sprang, Division Director of Technology asserted that returns are permitted under the state contract citing a provision on Restocking Fees, which states:

¹ Hewlett Packard Equipment

Restocking Fee

If a product is returned to the Contractor within thirty workdays after Acceptance, no restocking fee will be charged. If products are returned to the Contractor after thirty workdays of Acceptance, then a restocking fee of up to but not exceeding ten percent of the unit cost may be charged.

PRP00210; PRP00124. CAD disagreed with the Department’s interpretation, and a series of email exchanges followed. PRP00255-61. On September 12, 2024, the Department filed a request for resolution of a contract controversy with the CPO. PRP289-294. The CPO issued his decision on July 21, 2025, concluding that the Restocking Fee clause permitted the Department to return conforming goods in exchange for a full reimbursement within thirty workdays for any reason, provided the reason is made in good faith. PRP00019-28. CAD appealed to the Panel. PRP0001-18.

Conclusions of Law

CAD appeals the decision of the CPO arguing the CPO erroneously interpreted the Solicitation’s Restocking Provision as implicitly granting the Agency a right to return conforming goods for any good faith reason and within a reasonable time, despite there being no express clause allowing such returns in the contract or Solicitation. CAD maintains that the Restocking Provision is merely procedural and related to returns otherwise allowed under manufacturer warranty or the Uniform Commercial Code (UCC), not a freestanding right to return conforming goods. CAD urges the Panel to interpret the absence of language authorizing such returns in the Restocking Provision or elsewhere in the Solicitation as intentional and to find the CPO erred by reading such meaning into the contract.

“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language.” *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). “If the contract's language is clear and

unambiguous, the language alone determines the contract's force and effect.” *Id.* “When a contract is unambiguous a court must construe its provisions according to the terms the parties used; understood in their plain, ordinary, and popular sense.” *Id.*

The Restocking Fee clause in the solicitation states: "If a product is returned to the Contractor within thirty workdays after Acceptance, no restocking fee will be charged". All the parties seem to agree that this language is unambiguous and that the provision does contemplate returns; but the Department and the CPO conclude that the language allows for returns of conforming goods, while CAD interprets the provision to be only related to returns associated with warranty remedies and nonconforming goods. CAD points to the location of the Restocking Fee provision in the Solicitation.² The provision falls under the “Standard Support” subsection of the Scope of Work/Specifications, which outlines sales, repair, and warranty obligations on the Contractor. *See* PRP00123-24. Applying CAD’s reasoning, the Restocking Fee provision would apply to the return of nonconforming goods or warranty claims on goods and serves to motivate the State to timely review products and return them quickly to avoid the restocking fee. While the Panel agrees the restocking fee is an incentive to initiate returns within 30 workdays, the Panel is not persuaded that CAD’s interpretation on what goods are permitted to be returned is correct.

Under the “Warranty” provisions of the Solicitation, the using agency has two options on warranty items. First, the agency can bring the item to an authorized repair center for repair or replacement, or the agency can mail the item to the designated authorized facility for repair or replacement. PRP00123-24. It is impractical that the parties would contemplate that the agency would pay a restocking fee for initiating a repair or replacement under warranty after 30 days or

² The Panel notes that CAD may be putting more weight to the clause headings than the Solicitation allows as the Solicitation states that “CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT.” PRP00112.

that a defective item would be “restocked”. Furthermore, the “Restocking Fee” provision specifically references returns to the Contractor opposed to repair centers or authorized facilities. As it relates to nonconforming goods, a buyer has the right to return a nonconforming good without a specific provision, because it breaches the contract. *See S.C. Code § 36-2-601, REPORTER’S COMMENT.*

The Panel must construe this contract according to its “plain, ordinary, and popular meaning.” *Erie Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 461, 713 S.E.2d 318, 321. “Where one interpretation of a contract makes it unusual or extraordinary and another interpretation, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction prevails. *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 434 (1975). An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided. “*Id.*; *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008)

The concept of a “return” is widely understood in the sales industry. Black’s Law Dictionary defines a “return” as “merchandise which is brought back to the seller for credit or refund.” Black’s Law Dictionary (5th ed. 1983). While the Panel acknowledges, as CAD argues, that this transaction is not a typical consumer transaction, but a commercial transaction between the parties, the contract is clear and unambiguous. The Panel finds that the Solicitation clearly contemplates returns and allows returns for full reimbursement if done within thirty workdays. When comparing the interpretations of the parties, this is the more reasonable and probable agreement of the parties.

CAD argues that this interpretation leads to an absurd result, because it would allow the Department to return products for virtually any reason or no reason at all, at any time after

performance by the Contractor. The CPO addressed this argument by looking to the Uniform Commercial Code (UCC) to fill the gap and found that under S.C. Code Ann. §36-2-309(1), an agency attempting to return an item after thirty workdays must do so within a reasonable time. However, the issue presented in this case is not whether an agency can return products ten years after acceptance. The issue is whether the Department can return ordered products to CAD for reimbursement of the purchase price, where notice of the return was provided well within thirty workdays from delivery. The Panel answers this question in the affirmative.

CAD also takes issue with the CPO finding that the right to return for any reason under the Restocking Fee clause requires good faith, arguing that the CPO has unreasonably relied upon an implied covenant of good faith and fair dealing to create a new contractual duty. This is untenable for two reasons. First, the Procurement Code explicitly provides that “*every contract* or duty within this code imposes an obligation of good faith in negotiations, performance, or enforcement. ‘Good faith’ means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing” S.C. Code Ann. §11-35-30. (emphasis added). Second, “[t]he covenant may not be relied on to create new contractual duties *not expressly stated or fairly implied in the contract itself.*” *Road, LLC c. Beaufort Cnty.*, 443S.C. 11, 24, 902 S.E.2d 366, 372 (2024). (emphasis added). While the contract may not expressly state returns of any kind are permitted, it is fairly implied in the contract itself.

There is no question that this interpretation creates a harsh result for CAD, but it is fair based upon the terms of the agreement. Offerors are put on notice:

IMPORTANT NOTICE: IF THE TERMS AND CONDITIONS [OF THE SOLICITATION] ARE OBJECTED TO, QUALIFIED, OR SUPPLEMENTED IN YOUR OFFER, YOUR OFFER MAY BE DETERMINED NON-RESPONSIVE AND NOT CONSIDERED FURTHER.

PRP00111. (emphasis in original). This means the Offerors are making the conscious choice to contract with the state based on the terms and conditions provided.³ Offerors are also notified of their duty to inquire, and the failure to do so is at the Offeror's risk. PRP00115. The Solicitation allows Offerors to submit questions for further explanation or clarity, and often, those questions result in amendments to the Solicitation.⁴ PRP00151-53.

The fact that CAD's quotes and invoice stated CAD cannot accept returns, does not impact the outcome. First, the Solicitation's "Contract Documents and Order of Precedence" clause makes clear the additional term has no force or effect, which CAD concedes. PRP00131. Second, as the Department points out, if CAD asserted a no return policy in its initial offer, it likely would have been nonresponsive to the Solicitation.

For the foregoing reasons, the Panel concludes the CPO's decision correctly interpreted the Restocking Fee clause to allow returns for any reason, provided they are made in good faith (and within a reasonable time, if after thirty workdays). The Department's reasons for return, although varied, were not contradictory or indicative of bad faith. CAD's argument that allowing returns for any reason would lead to absurd results is unpersuasive. The Restocking Fee clause, when read in

³ The Panel recognizes, as CAD argued, this outcome could have a chilling effect on robust participation in state procurement, especially in a case like this, where the Department has provided an itemized list of products it wants, receives what it ordered, pays the \$900,000 plus invoice, only to request a return a few days later. Without taking away that this is permitted under this contract, the Panel cautions the Department and using agencies from conducting procurements in this manner. Here, the Department offered that there were compatibility issues, that a new standard was being developed, that the Chief Networking Engineer was not aware of the purchase, among other reasons. To avoid the consequence of negatively impacting future state procurement participation, it is important for agencies to have clear communication on what the agency needs are prior to placing orders of this magnitude for the sake of maintaining good relationships with its Contractors and preserving a good reputation.

⁴ This Solicitation was amended based upon the questions submitted by Offerors, including the "Restocking Fee" provision. See PRP00151-53. The Solicitation provides that only the State's Response forms part of the contract, and the "[q]uestions do not form a part of the contract." PRP00151. The CPO noted in FN2 of his decision that his interpretation was "bolstered by Vendor Question and Answers," citing Vendor Question #6 and Vendor Question #14. These Vendor Questions are not part of the contract and should not have been considered in this instance as the contract is unambiguous. *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct.App.2008)("When such contract is clear and unequivocal, its meaning must be determined by its contents alone."). For this reason, the CPO comparing the "Restocking Fee" clause in this case to other GSA contracts in FN3 was also improper.

conjunction with the good faith requirement, provides a reasonable framework for returns without leading to absurd consequences.

Conclusion

Therefore, for the reasons set forth herein, the Panel denies the appeal of CAD and affirms the decision of the CPO, consistent with this Order. The Department is entitled to return the conforming goods to CAD and receive a full reimbursement of the purchase price. The Panel orders the Department to return the goods to CAD as soon as practicable, and CAD shall accept the returned goods and reimburse the Department the full purchase price of \$906,872.76 within 30 days upon receipt.

IT IS SO ORDERED.

SOUTH CAROLIN PROCUREMENT REVIEW PANEL

BY: *Willie D. Franks*
WILLIE D. FRANKS, CHAIRMAN

This 29th day of September, 2025

Columbia, South Carolina