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EXECUTIVE DIRECTOR

## Protest Decision

**Matter of:** TPUSA, Inc. dba Teleperformance USA

**Case No.:** 2017-123

**Posting Date:** January 3, 2017

**Contracting Entity:** South Carolina Department of Health and Human Services

**Solicitation No.:** 5400011045

**Description:** Member Contact Center

### DIGEST

Protest of an award made following competitive sealed proposals, claiming resident vendor preference and lowest cost, is denied. TPUSA, Inc. dba Teleperformance USA's (TPUSA) letter of protest is included by reference. [Attachment 1]

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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<sup>1</sup> The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

## BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	02/18/2016
Amendment 1 Issued	03/29/2016
Amendment 2 Issued	04/05/2016
Intent to Award Posted	11/17/2016
Protest Received	11/28/2016

This Request for Proposals was issued by the South Carolina Department of Health and Human Services (HHS) to obtain a Member Contact Center vendor to provide comprehensive customer service to Medicaid applicants and members in the most efficient and cost effective delivery model available.

## ANALYSIS

TPUSA's initial issue of protest alleges:

Teleperformance USA is a native South Carolina bidder in accordance with the definitions of South Carolina Consolidated Procurement Code SECTION 11-35-1524. As a resident vendor with over 1,100 people currently working in a local facility located in Columbia, South Carolina, Teleperformance USA asserts Resident Vendor Preference and further asserts that the winning bidder did not meet the Resident Vendor Preference requirement and does not intend to employ its service center fully in the state of South Carolina as specified in the Request for Proposal Section 3.2.7.

This was a Request for Proposals issued in accordance with Section 11-35-1530 of the Code. Section 11-35-1524(F)(5) stipulates:

This section does not apply to an acquisition of motor vehicles as defined in Section 56-15-10 or an acquisition of supplies or services relating to construction. This section does not apply to a procurement conducted pursuant to Section 11-35-1550(2)(a) or (b), Section 11-35-1530, or Article 9, Chapter 35.

(Emphasis added) The resident vendor preference is not available for solicitations issued under Section 11-35-1530, Competitive Sealed Proposals. This issue of protest is denied.

TPUSA's second issue of protest alleges:

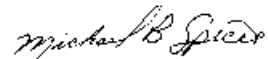
Teleperformance USA, the highest ranked South Carolina resident bidder who presented a plan for 100% of agents employed for the project to be present in Columbia, South Carolina, presented a cost saving to the state in excess of \$9.6M. This is substantially less than the winning bidder. Teleperformance USA presented a 21% cost discount for technically equivalent services and offered a 100% in-state solution.

This issue of protest alleges no violation of the Code. Proposals received were evaluated in accordance with evaluation criteria published on Page 36 of the solicitation. Cost was one of four evaluation criteria. TPUSA alleges no violation of the Code and this issue of protest is denied.<sup>2</sup>

## **DECISION**

For the reasons stated above, the protest of TPUSA, Inc. dba Teleperformance USA is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

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<sup>2</sup> Even if this ground of protest stated a claim under Section 11-35-4210, the only relief Teleperformance requested was re-evaluation taking into account the resident vendor preference described in Section 11-35-1524. Since the latter section is inapplicable to competitive sealed proposals, the CPO cannot grant the requested remedy.

## Attachment 1



Teleperformance Government Solutions  
T +1 (617) 480 8737 | F +1 (866) 585-1057  
Washington, D.C.  
peter.schnorr@teleperformance.com  
www.teleperformance.com

28 November 2016

Michael Spicer  
Chief Procurement Officer  
Information Technology Management Office  
State of South Carolina

Subject: Protest ICO Solicitation #5400011045 – Member Contact Center

Pedagogy:

This protest is filed by TPUSA, Inc. dba Teleperformance USA, a qualified bidder for the solicitation highlighted above and an employer of over 1,100 people in the City of Columbia, state of South Carolina.

Basis of Protest:

- **BOP #1 - SECTION 11-35-1524.** Resident vendor preference.
  - o Teleperformance USA is a native South Carolina bidder in accordance with the definitions of South Carolina Consolidated Procurement Code SECTION 11-35-1524. As a resident vendor with over 1,100 people currently working in a local facility located in Columbia, South Carolina, Teleperformance USA asserts Resident Vendor Preference and further asserts that the winning bidder did not meet the Resident Vendor Preference requirement and does not intend to employ its service center fully in the state of South Carolina as specified in the Request for Proposal Section 3.2.7.
  - o Evidence – Intent to Award - Posting Date: November 17, 2016
- I. In order to obtain a cost savings, SCDHHS agrees to allow no more than forty percent (40%) of the call center staff to be housed outside of the State of South Carolina at Henderson, North Carolina. The total value of the cost savings is: \$1,046,234.00. The original contract not to exceed amount was \$55,751,328.00 with a cost savings of \$1,046,234.00 the new contract not to exceed amount is \$54,705,094.00.
  - o Specific language from the Request for Proposal
- 3.2.7 The Contractor must locate its main operations within Richland or Lexington County. As part of the disaster recovery or business continuity plan and subject to SCDHHS approval, calls may be taken in another SCDHHS-approved facility within the United States.
  - 3.2.7.1 The Contractor must develop, implement and maintain a facility security plan that details all elements of security, to include reception area procedures, security for equipment, controlled access to all contact center areas and measures to safeguard the confidentiality of Medicaid information.
- **BOP #2 – Cost Advantage**
  - o Teleperformance USA, the highest ranked South Carolina resident bidder who presented a plan for 100% of agents employed for the project to be present in Columbia, South Carolina, presented a cost saving to the state in excess of \$9.6M. This is substantially less than the winning bidder. Teleperformance USA presented a

CONFIDENTIAL MEMORANDUM – RELEASE CLEARANCE REQUIRED



21% cost discount for technically equivalent services and offered a 100% in-state solution.

Remedy Requested:

- Teleperformance USA requests that Technical scores be re-evaluated to take into account and reflect domestic workforce preference.

Very respectfully submitted,

Peter Schnorr  
Senior Vice President Government Operations  
Teleperformance USA

Administrative instructions:

PROTEST – CPO ADDRESS – ITMO: Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing

- (a) by email to [protest-itmo@itmo.sc.gov](mailto:protest-itmo@itmo.sc.gov),
- (b) by facsimile at 803-737-0102, or
- (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201  
SAP

**Deadline: 29 November 16 - 0800**

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised November 2016)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). 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 for disagreement 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 an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.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 111.1 of the 2016 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 financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by 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); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1205 Pendleton Street, Suite 473, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

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1. What is your/your company's monthly income? \_\_\_\_\_

2. What are your/your company's monthly expenses? \_\_\_\_\_

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

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To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**