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## Protest Decision

**Matter of:** Palmetto GBA, LLC

**Case No.:** 2017-125

**Posting Date:** January 31, 2017

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

**Solicitation No.:** 5400011045

**Description:** Member Contact Center

### DIGEST

Protest of an award alleging apparent successful offeror is not responsible or responsive is denied. Palmetto GBA, LLC's (GBA) 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. Eight proposals were received and Xerox State Healthcare, LLC (Xerox) was determined to be the most advantageous, responsible bidder and an Intent to Award was issued to Xerox on November 17, 2016. GBA protested that Xerox was not a responsible or responsive bidder on November 28, 2016.

On December 22, 2016, Xerox moved to dismiss the protest. GBA provided a memorandum opposing the motion on January 23, 2017. Among other things, GBA's memorandum indicated it was abandoning its challenge to Xerox's responsibility, which GBA had originally asserted as its first protest ground

## ANALYSIS

This solicitation was issued under Section 11-35-1530 of the Code and proposals were received from eight offerors. Section 11-35-1530(7) requires that:

Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award must be made in accordance with Section 11-35-1530(9) below.

(emphasis supplied) Xerox was determined to be the highest ranked responsive offeror. Section 11-35-1530(8)(a) authorizes negotiations with the highest ranked offeror as follows:

(a) negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the procurement officer in his sole discretion;

The general scope of the procurement can be found on page four of the solicitation:

**SCOPE OF SOLICITATION**

It is the intent of the State of South Carolina Department of Health and Human Services (SCDHHS), to solicit proposals 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.

(emphasis added)

The Record of Negotiations (Attachment 2) indicates that changes were made to the location of the call center staff, cloud hosting requirements, limitation of liability limits, termination provisions, and compliance with laws provisions. None of the negotiated modifications changed the general scope of the contract which was to obtain a media contact center.

GBA protests that Xerox took exception to mandatory and essential requirements of the solicitation rendering its proposal non-responsive by agreeing to the liquidated and other damages in its proposal and then qualifying and limiting its liability during negotiations.

As GBA acknowledges in its memorandum, Xerox did not object to the damages provisions in Section 3.11 of the solicitation. Thus, its initial proposal was determined to be responsive prior to entering into negotiations and the negotiations were conducted within the parameters established by the Code. The negotiated changes do not render Xerox's proposal non-responsive and this issue of protest is denied.

Next GBA protests that Xerox took exception to a requirement found in paragraph 3.2.7 of the solicitation and modified in Amendment 1 as follows:

Section 3.2.7 states: “The Contractor must locate all operations, to include call center and key staff, within 50 miles of Jefferson Square located at 1801 Main Street, Columbia, SC 2920 1.” In its redacted proposal, Xerox gives no indication that this mandatory requirement of the procurement is accepted. Failure to accept this essential requirement of the solicitation constitutes non-responsiveness. Moreover, the fact that negotiations resulted in a modification of this requirement further indicates Xerox’s original non-responsiveness to this material and essential requirement of the Solicitation.

This requirement is found in Amendment 1 as follows:

**The Original Section 3.2.7 states:**

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.

**Replace Section 3.2.7 with:**

The Contractor must locate all operations, to include call center and key staff, within 50 miles of Jefferson Square located at 1801 Main Street, Columbia SC 29201. As part of the disaster recovery or business continuity plan Disaster Recovery location shall be no less than 150 miles from the Call Center main operation site. This site is subject to SCDHHS approval and calls may be taken in another SCDHHS-approved facility within the United States.

(emphasis in original). Xerox’s un-redacted proposal includes a paragraph responding to this requirement that was highlighted in yellow with a footnote stating “**CONFIDENTIAL (Highlighted Portion Only).**” Section 11-35-410 allows privileged and confidential information to be withheld from public disclosure:

(A) Procurement information must be a public record to the extent required by Chapter 4, Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a request for proposals or any type of bid solicitation that is privileged and confidential need not be disclosed.

(B) Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information include:

- (1) customer lists;
- (2) design recommendations and identification of prospective problem areas under an RFP;
- (3) design concepts, including methods and procedures;
- (4) biographical data on key employees of the bidder.

Taking into consideration the provisions of Section 11-35-410 the CPO finds nothing in Xerox's response to this requirement that meets the criteria for redaction, with the possible exception of its disaster recovery site. Xerox's response to paragraph 3.2.7 was improperly redacted and is reproduced below with the CPO's redaction:

Our proposed operations facility is located within 50 miles of Jefferson Square located at 1801 Main Street, Columbia, SC 29201 and is fully staffed and operational within 180-days of the contract start date. Ninety percent of our staff is based at our South Carolina location. Further, we plan to co-locate ten percent of our staff at our DR/BC site in [redacted], which is more than 150 miles from our South Carolina operation site. Both locations will 'golive' simultaneously. We acknowledge that our facility site is subject to your approval

Xerox proposed a fully staffed call center and 90% of its staff located within 50 miles of HHS and 10% of the staff located at the DR site more than 150 miles away. Xerox meets the requirement and this issue of protest is denied.

GBA next protests as follows:

Upon information and belief, redactions contained in the following sections contain information that Xerox fails to meet the material specifications of the solicitation or takes exception to and would fail to comply with essential requirements of the solicitation in the areas of Call monitoring, recording of calls, Disaster recovery, Protecting confidential information, project deliverables, escalation plan, office location, and quality scoring as required by Sections 2.2.1 - 7, 3.0, 3.1, 3.2, 3.3, 3.5,3.6, 3.7 and 3.8 of the solicitation.

Section 11-35-4120(2)(b) requires that protests set forth the grounds of the protest with enough particularity to give notice of the issues to be decided:

A protest pursuant to subsection (1)(b) must be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b). At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b). A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(emphasis added) GBA's protest that a series of solicitation responses are non-responsive simply because portions of the response were redacted lacks the specificity required by the Code and these issues of protest are dismissed.

GBA protests that:

The negotiations as reflected in the record of negotiations violate S.C. Code Ann. §11-35-1530 as the changes to the location of the call center and liability incorporated therein are outside of the general scope of the request for proposals.

The Record of Negotiations (Attachment 2) indicates that changes were made to the location of the call center staff location, cloud hosting requirements, limitation of liability,<sup>2</sup> termination provisions, and compliance with law provisions. This procurement was issued to acquire a member contact center. The award was for a member contact center. None of the negotiated

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<sup>2</sup> GBA's memorandum focuses on the limitation of liability clause. It says

during the solicitation process the Procurement Officer correctly and unequivocally advised the prospective vendors that there would be no adjustment to the limitation of liability clause and the liability to a vendor would be unlimited.

This overstates the import of Amendment 1. Questions 132 and 134 requested a cap on *liquidated damages* at ten percent of each month's invoice. Question 133 requested that the State waive recovery of consequential damages *when liquidated damages were assessed*. There was no request for a general limitation on liability, and therefore no refusal to consider one. The negotiated limitation, as applied to liquidated damages, is meaningless. The Record of Negotiation sets the contract "not to exceed" amount at \$54,705,094. It includes a provision limiting Xerox's liability to "two (2) times the total value of the contract," or \$109,410,188. Section 3.11.7 of the solicitation and its accompanying table of service levels provide for monthly assessments of \$5000 and \$1000. It describes six instances where daily assessments up to \$500 may be imposed. If Xerox completely failed to perform, and the State elected to assess all possible liquidated damages, the total monthly cost to Xerox would be \$96,000. The cap would allow nearly a century of liquidated damages at that rate.

modifications changed the general scope of the contract and consequently were permissible.<sup>3</sup>

This issue of protest is denied.

GBA next protests:

The negotiations as reflected in the record of negotiations violate S.C. Code Ann. §11-35-1530(c) as the procurement officer made changes within the general scope of the request for proposals and failed to provide all responsive offerors an opportunity to submit their best and final offers.

As stated above, the negotiations did not change the general scope of the contract. There is no statutory requirement that once a successful contract has been negotiated the State must make the negotiated changes available to the other bidders through a request for best and final offers. The statutory provision is expressly optional:

[T]he procurement officer *may* make changes within the general scope of the request for proposals and *may* provide all responsive offerors an opportunity to submit their best and final offers.

S.C. Code Ann. § 11-35-1530(8)(c) (emphasis supplied). The Procurement Review Panel addressed this issue in *Appeal by Andersen Consulting*, Case No. 1994-1:

Andersen's assertion that it, as the first ranked offerer, must first be offered the contract negotiated with Unisys, is not based on the law. Section 11-35-1530(11)

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<sup>3</sup> Counsel for GBA cited as authority for its position, and attached to its memorandum, a paper prepared by a staff attorney for the State Fiscal Accountability Authority and presented at an American Bar Association meeting in 2016. He apparently overlooked the disclaimer on the second page of the paper:

[The author] prepared this paper for the American Bar Association Section of Public Contract Law's 11th Annual State and Local Procurement Symposium, held April 7 and 8, 2016. Any opinions expressed in this paper are his own, and do not reflect any official position of the Authority.

In any event, procurement policy in this State is set by the Chief Procurement Officers, acting as officials of the Authority, in the first instance. Application of that policy is subject to the appellate jurisdiction of the Procurement Review Panel and, ultimately, the courts. All counsel should be cautious in relying on educational or academic materials, as they are not binding on the CPO's, the Panel, or the courts. For example, *cf.* Keith C. McCook, *Procurement*, in *SOUTH CAROLINA ADMINISTRATIVE PRACTICE & PROCEDURE* 287, 313 (3d ed., Randolph R. Lowell, ed., 2013) (“[T]his statute [§ 11-35-4210(1)(b)] does not grant standing to prospective contractors, subcontractors, or ‘sub-bidders’—an interpretation consistent with the Panel’s precedents”), with *Appeal by Palmetto Traffic Group, LLC*, Panel Case No. 2014-3 (granting standing to prospective subcontractor to protest a contract award under S.C. Code Ann. § 11-35-4210(1)(b)).

[now codified, with some changes, as § 11-35-1530(8)] does not provide that once a contract is negotiated with the second ranked offerer, then it must be offered to the first ranked offerer. The law does not contain any language that could be construed that way. Neither would it be reasonable nor is it a normal business practice to allow a contract negotiated with one party to be offered first to another party. This would certainly put a chilling effect on any negotiations with the State, as an offerer would not wish to negotiate a favorable contract for a competitor.

This issue of protest is denied.

GBA's last issue of protest is as follows:

The determinations made in the negotiations were arbitrary and capricious, and violated the purposes and principles of the Consolidated Procurement Code including express statutory requirements of good faith and fair dealing.

Before allowing a vendor to deviate from the material requirements of the solicitation in negotiation, including relocating portions of the call center out of state where the solicitation required that all operations be conducted within "50 miles of Jefferson Square" in Columbia and before allowing a limitation of liability in the negotiated contract, the Procurement Officer should have acted in good faith and given all offerers an opportunity to submit a best and final offer considering these changes to the solicitation outside of the general scope of the request for proposals. Failing to do so violated *S.C. Code Ann.* §11-35-20(f) and others in that it "failed to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement."

Xerox's proposal was determined to be responsive and was the highest ranked prior to negotiations. The items changed or added during negotiations did not change the general scope of the solicitation. There is no statutory requirement that once a successful contract has been negotiated the State must make the negotiated changes available to the other bidders through a request for best and final offers. All offerers were afforded fair and equal treatment in accordance with the Code. This issue of protest is denied.

## **DECISION**

For the reasons stated above, the protest of Palmetto GBA, LLC is denied.

Protest Decision, page 9  
Case No. 2017-125  
January 31, 2017

For the Materials Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

MONTGOMERY WILLARD, LLC  
ATTORNEYS AND COUNSELORS AT LAW  
1002 CALHOUN STREET  
COLUMBIA, SOUTH CAROLINA 29201  

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November 28, 2016

Via Email to [protest-mmo@mmo.sc.gov](mailto:protest-mmo@mmo.sc.gov) and [protest-mmo@mmo.state.sc.us](mailto:protest-mmo@mmo.state.sc.us)  
and [protest-itmo@itmo.sc.gov](mailto:protest-itmo@itmo.sc.gov) and facsimile 803-737-0102

Mr. Michael B. Spicer  
Chief Procurement Officer  
Information Technology Management Office  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

**RE:** Protest of Notice of Intent to Award to Xerox State Health Care, LLC,  
Atlanta, GA  
**Solicitation:** 5400011045  
**Description:** South Carolina Department of Health and Human Services  
Member Contact Center

Dear Mr. Spicer:

This firm represents Palmetto GBA, LLC ("Palmetto GBA") in connection with the above matter and submits this protest of the Notice of Intent to Award a contract to Xerox State Health Care, LLC ("Xerox") first posted November 18, 2016 and first supplied to BCBSSC on November 18, 2016.

The grounds of this protest are set forth below, and Palmetto GBA reserves the right to timely amend this protest as permitted by law. In accord with applicable law, this protest letter is intended to provide notice of the issues to be decided. For that reason, it does not purport to set forth all facts and evidence supporting the issues protested. Palmetto GBA reserves the right to offer facts, evidence and argument in support of this protest at any time permitted by law. Palmetto GBA requests notice and a hearing to present facts, evidence and argument in support of the protest at any time permitted by law. If, for any reason, a hearing will not be held, Palmetto GBA requests that the CPO advise of any deadlines for the submission of evidence and argument in support of this protest.

Among other issues, due to the Thanksgiving holidays, the State was unable to provide a proper response to Palmetto GBA's FOIA request. This protest is being filed

without the benefit of rudimentary information such as the individual evaluators sheets reflecting the evaluations and values applied to the various criteria considered by the Panel including the relative pricing of the proposers. Additionally, the redacted proposal provided was heavily redacted to the point that it is impossible to determine whether or not Xerox was responsive as it relates to the following material elements of the Solicitation. Call monitoring, recording of calls, Disaster recovery, Protecting confidential information, project deliverables, escalation plan, office location, and quality scoring.

An outline of all protest grounds is particularly difficult here as it appears that Xerox has engaged in what appears to be excessive redaction of its Proposal. As the CPO has previously noted, the Procurement Review Panel in *Protest of Amdahl Corporation and International Business Machines*, Panel Case No. 1986-6, found that:

*When ITMO issues a Notice of Intent to Award there has been a meeting of the minds and the terms of the contract have been determined. Only signature on a document remains to make the contract enforceable against the state. Offer and acceptance have been completed and only payment and performance remain. No material terms of the contract can be varied after the notice of intent to award.*

BCBSSC requests that the CPO revisit the significant redactions in Xerox's proposal and release as soon as possible a version of the proposal that only contains proper redactions.

BCBSSC reserves the right to amend its protest as allowed by law upon receipt of a properly redacted proposal.

The issues of protest as identified to date are set forth below:

**1. Xerox is not a qualified offeror and, therefore, is ineligible for award.**

The solicitation required an Offeror to certify "to the best of its knowledge and belief, that Offeror and/or any of its Principals have not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public entity." This was a mandatory qualification set forth in the solicitation. Xerox's response clearly indicates that "Offeror cannot make the above certification and outlines the reason below pursuant to Section (a)(2)(c) of the RFP, Section II, Page 5." The explanation provided is redacted and, upon information and belief, represents a material deficiency which disqualifies Xerox as a qualified proposer. Moreover, upon information and belief, the explanation is incomplete because it fails to disclose the true extent of performance issues with other states by Xerox State Health Care, LLC. The State has not provided the

full response of Xerox to the RFP that pertains to these issues. As a result, it is impossible for BCSSC to ascertain whether there is additional evidence of non-responsiveness.

Publicly available information reflects that Xerox failed to perform essential requirements of the contract with the Texas Health and Human Services Commission. This resulted in severe sanctions and difficulties which appear to be such that Xerox should have been disqualified from participation in this procurement. Upon information and belief, the redacted explanation failed to adequately disclose the circumstance and in failing to provide a correct and adequate explanation, Xerox demonstrated that it is not a qualified offeror. Additionally, Xerox State Health Care LLC was subject to a contract controversy in the State of Alaska in 2014 which it settled on September 16, 2016. In that settlement, Xerox agreed to forgo collection of \$10,300,000.00 in outstanding change requests through December 31, 2015. Upon information and belief, Xerox may also have had contracts terminated in California and Montana as well as several other states where they have either lost contracts, were sued or forced into contract controversies or were subject to other sanctions or agreements which should have been disclosed in their proposal certification.<sup>1</sup> Upon information and belief, the failure to include a full disclosure constitutes an erroneous certification and disqualifies Xerox from this contract by making its Proposal non-responsive to the solicitation.

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<sup>1</sup> Publicly available information reflects the following performance issues which appear to have been undisclosed by Xerox and not included in the materials available to the evaluators:  
Nevada – cancelled a \$72 million state contract. Per Governor’s office: “The Board was placed in the unfortunate position because Xerox has failed to perform its contractual duties.” Per Board: “We’ve seen so many broken promises from Xerox they are not credible.”

**California** - Xerox paid \$123 million to the State to settle contractual issues and terminate the contract.

**Alaska** – State filed \$46.7 million damages claim for contract failure, ultimately reached settlement in arbitration with ALJ.

**Montana** - State audit concluded \$84 million project would be six years late. State asserted Xerox was in breach of contract. Per State Medicaid Director: “To date, Xerox has delivered on none of the contract’s substantive requirements.”

**New Hampshire** - project completed six years late, per State.

**North Dakota** - “...delays in the program were the result of the vendor, Xerox...” Department of Health Services IT Director.

**2. Xerox is not a responsive offeror. Its Proposal took exception to and rejected mandatory and essential requirements of the RFP which were not determined to be minor informalities or irregularities.**

Section 3.11 of the Solicitation sets forth liquidated damages and other damages provisions are contained in the Solicitation which provide for an unlimited liability to the Offeror. In responding to vendor questions, the State reiterated the fact that there was to be no limitation of liability given to the ultimate successful proposer. Xerox acknowledged that it would be subject to liquidated, consequential damages and any other remedy to make SCDHHS whole, yet qualifies this in its negotiations to limit its liability which constitutes taking exception to a mandatory and essential requirement of the RFP.

Section 3.2.7 states: “The Contractor must locate all operations, to include call center and key staff, within 50 miles of Jefferson Square located at 1801 Main Street, Columbia, SC 29201.” In its redacted proposal, Xerox gives no indication that this mandatory requirement of the procurement is accepted. Failure to accept this essential requirement of the solicitation constitutes non-responsiveness. Moreover, the fact that negotiations resulted in a modification of this requirement further indicates Xerox’s original non-responsiveness to this material and essential requirement of the Solicitation.

Upon information and belief, redactions contained in the following sections contain information that Xerox fails to meet the material specifications of the solicitation or takes exception to and would fail to comply with essential requirements of the solicitation in the areas of Call monitoring, recording of calls, Disaster recovery, Protecting confidential information, project deliverables, escalation plan, office location, and quality scoring as required by Sections 2.2.1 -7, 3.0, 3.1, 3.2, 3.3, 3.5,3.6, 3.7 and 3.8 of the solicitation.

As a result of its non-responsiveness in these areas, Xerox should be disqualified as non-responsive to the essential requirements of the solicitation, the award should be vacated and the procurement resolicited.

3. **The negotiations as reflected in the record of negotiations violate S.C. Code Ann. §11-35-1530 as the changes to the location of the call center and liability incorporated therein are outside of the general scope of the request for proposals.**
4. **The negotiations as reflected in the record of negotiations violate S.C. Code Ann. §11-35-1530(c) as the procurement officer made changes within the general scope of the request for proposals and failed to provide all responsive offerors an opportunity to submit their best and final offers.**

When the Procurement Officer acted to negotiate in a way that changed or removed material requirements from the contract as to the location where the services were to be provided which was specifically enumerated in Amendment 1 and the unlimited liability of a proposer to the State, she changed the overall nature and intent of the contract.

It is indisputable that every other proposer may have offered a different solution and different pricing had they been afforded the opportunity to propose on the terms as amended. Unlike the situation in *In Re: Protest of Andersen Consulting, Appeal by Andersen Consulting*, Case No. 1994-1, the changes made in negotiations here were more than “clarifications and redefinitions” of contract terms. The changes made in the negotiations changed where a substantial portion of the contract was to be performed – the “location of performance” and the ultimate potential liability of a proposer, which is clearly an element of responsibility. Each portion of the amendment changed the overall nature and intent of the contract. For that reason, the State erred in not requiring a “best and final” offer from each proposer incorporating the new contract requirements.

Because the negotiations failed to comply with statute, the award should be cancelled and the procurement should be resolicited with a form that addresses the changed nature and intent of the contract.

5. **The determinations made in the negotiations were arbitrary and capricious, and violated the purposes and principles of the Consolidated Procurement Code including express statutory requirements of good faith and fair dealing.**

Before allowing a vendor to deviate from the material requirements of the solicitation in negotiation, including relocating portions of the call center out of state where the solicitation required that all operations be conducted within “50 miles of Jefferson Square” in Columbia and before allowing a limitation of liability in the negotiated contract, the Procurement Officer should have acted in good faith and given all offerors an opportunity to submit a best and final offer considering these changes to the

solicitation outside of the general scope of the request for proposals. Failing to do so violated *S.C. Code Ann.* §11-35-20(f) and others in that it “failed to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement.”

Based on the grounds set forth herein, Palmetto GBA requests that the CPO honor the award’s automatic stay, cancel the intent to award the contract, and mandate re-solicitation under the governing authority set forth in the South Carolina Consolidated Procurement Code and Regulations. Palmetto GBA also requests a hearing in this matter. If the CPO determines that he will not hold a hearing, Palmetto GBA requests that the CPO provide Palmetto GBA access to the evaluators and Procurement Officer to take their recorded statements, and set a deadline by which Palmetto GBA may provide evidence for the CPO to consider in reaching a decision on this matter.

We will await instructions from the CPO as to the scheduling of a hearing and deadlines for the submission of evidence. Thank you in advance for your fair consideration of this protest.

With kind regards, I am

Very truly yours,

**MONTGOMERY WILLARD, LLC**



Michael H. Montgomery

MHM:mkf

Enclosures

## Attachment 2

	<b>State of South Carolina</b> <b>RECORD OF NEGOTIATIONS</b>	<b>Solicitation Number</b> : 5400011045 <b>Procurement Officer</b> : Michele Mahon, CPPB <b>Phone</b> : 803-898-1863 <b>E-Mail Address</b> : Michele.mahon@scdhhs.gov <b>Address</b> : 1801 Main Street, Ste. 622 Columbia, SC 29201
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DESCRIPTION: Member Contact Center

USING GOVERNMENTAL UNIT: SC Department of Health and Human Services

OFFEROR'S NAME AND ADDRESS: Xerox State Healthcare, LLC  
9040 Roswell Road  
Atlanta, GA 30350

### IMPORTANT NOTICE:

Offeror is required to sign this document and return one copy to the procurement officer named above by the following date: \_\_\_\_\_.

DESCRIPTION OF NEGOTIATED CHANGES:	(attach additional pages if necessary)
The following are modifications agreed upon by both parties pursuant to negotiations conducted under South Carolina Code Section 11-35-1530(8)(a):	
<ol style="list-style-type: none"><li>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.</li><li>II. Xerox agrees to the addition to the SaaS and Cloud Hosting language as outlined in Attachment A below, and these clauses shall be included as part of Section 7B of the Solicitation document.</li><li>III. The State agrees to modification of specific clauses as outlined below:<ol style="list-style-type: none"><li>1. <u>Limitation of Liability</u>: SCDHHS agrees to the addition of the Limitation of Liability Clause as follows:<p>Except as otherwise provided herein, Contractor's maximum liability, if any, to the State for all direct, indirect, incidental, punitive, consequential, or special damages, including without limitation contract damages and damages for injuries to persons or property, whether arising from Contractor's breach of this Contract, breach of warranty, negligence, strict liability, or other tort, or otherwise with respect to the supplies, services, or software provided under this Contract shall in no event exceed two (2) times the total value of the contract.</p><p>The limitations of the preceding paragraph shall not apply to (i) any claim governed by the clauses entitled "Indemnification – Third Party Claims - General", "Indemnification – Third Party Claims – Disclosure of Information", "Indemnification - Intellectual Property" or "Intellectual Property Infringement"; or(ii) any claims arising out of violation of the clause entitled "HIPAA Compliance/Confidentiality".</p></li><li>2. <u>Termination</u>:<ol style="list-style-type: none"><li>a. <u>Default</u>: The current contract allows for 10 days to cure any default before the State has the right to terminate the contract. The State agrees to change this requirement to allow a 30 day cure period.</li></ol></li><li>3. <u>Compliance with Laws</u>:</li></ol></li></ol>	

Each party agrees that it shall comply with current federal, state and local laws, statutes, and regulations in effect on the date of contract award and which are either referenced in the solicitation or otherwise applicable to the specific services and/or products that are provided under this Contract.

There are no other changes.

Except as provided herein, all terms and conditions of the Offer and the Solicitation remain unchanged and remain in full force and effect.

OFFEROR'S CERTIFICATE OF CURRENT COST OR PRICING DATA: The Offeror certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, by the Offeror to the Procurement Officer in support of the proposed contract are accurate, complete, and current as of the date this record of negotiations is signed. [Procurement Officer must initial here \_\_\_\_\_ if Certificate inapplicable to this Record of Negotiations]  
(See "Pricing Data - Audit - Inspection" provision.) (Reference § 11-35-1830 & R. 19-445.2120)

SIGNATURE OF PERSON AUTHORIZED TO SUBMIT BINDING OFFER TO ENTER A CONTRACT ON BEHALF OF OFFEROR:

By: Lauretta Sechrest  
(authorized signature)

Lauretta Sechrest  
(printed name of person signing above)

Its: Group President  
(title of person signing above)

Date: 09/09/2016

SIGNATURE OF PERSON AUTHORIZED TO APPROVE NEGOTIATED MODIFICATIONS ON BEHALF OF USING GOVERNMENTAL UNIT:

By: Michele P. Mahon  
(authorized signature)

Michele Mahon, CPPB  
(printed name of person signing above)

Its: Procurement Manager  
(title of person signing above)

Date: 9/9/2016

**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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.**