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Protest Decision

Matter of: United Way Association of South Carolina, Inc.

Case No.: 2017-130

Posting Date: February 14, 2017

Contracting Entity: SC Department of Health and Environmental Control

Solicitation No.: 5400011659

Description: Call Center Services

DIGEST

Protest of an award claiming awarded vendor is non-responsive and non-responsible is denied. United Way Association of South Carolina, Inc.'s (United Way) amended letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ 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.

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

BACKGROUND

This Request for Proposals was issued by the State Fiscal Accountability Authority on behalf of the South Carolina Department of Health and Human Services to establish a contract for call center services through the competitive process to replace a sole source contract awarded to United Way in 2014 at a cost of \$2.8 million and an emergency contract awarded to United Way in 2015 at a cost of \$2,982,000. Proposals were received from seven offerors including United Way and PGBA, LLC (PGBA) on August 19, 2016. The solicitation included three evaluation criteria:

Technical Approach	55 Points
Price	25 Points
Qualifications	20 Points

Proposals were evaluated and ranked by a panel of four DHEC evaluators. PGBA and United Way were the first and second ranked offerors as follows:

DHEC Score Summary		PGBA	United Way
Evaluator 1	Technical Approach (55 points)	54	55
	Price (25 points)	23	12
	Qualifications (20 points)	18	20
Evaluator 2	Technical Approach (55 points)	45	50
	Price (25 points)	23	12
	Qualifications (20 points)	12	18
Evaluator 3	Technical Approach (55 points)	35	45
	Price (25 points)	23	12
	Qualifications (20 points)	12	15
Evaluator 4	Technical Approach (55 points)	50	55
	Price (25 points)	23	12
	Qualifications (20 points)	10	20
TOTAL:		328	326

The points for price were awarded using a standard mathematical formula:

Pricing	PGBA	United Way
yr 1	2,814,989.00	5,280,858.00
yr 2	2,862,175.00	5,432,575.00
yr 3	2,910,305.00	5,588,844.00
yr 4	2,959,399.00	5,751,800.00
yr 5	3,009,473.00	5,917,584.00
Implementation Costs	\$128,180.00	\$1,082,359.00
total price	14,684,521.00	29,054,020.00
total points	23	12

PGBA was determined to be the highest ranked responsive and responsible offeror on September 19, 2016 and negotiations began on September 30, 2016. An Intent to Award was posted to PGBA on December 19, 2016. United Way filed its initial protest on December 29, 2016 and amended its protest on January 3, 2017.

<i>Event</i>	<i>Date</i>
Solicitation Issued	07/01/2016
Amendment 1 Issued	07/07/2016
Amendment 2 Issued	08/01/2016
Amendment 3 Issued	08/05/2016
Bid Opening	08/19/2016
Ranking Completed	09/12/2016
Negotiations Started	09/30/2016
Intent to Award Issued	12/19/2016
Initial Protest Received	12/29/2017
Amended Protest Received	01/03/2017

ANALYSIS

United Way's initial issue of protest is:

- 1 PGBA was not a responsible vendor, lacking the experience and staffing to perform the contract, based on the facts and arguments set forth in this letter, as well as based on the comments of evaluators who noted such lack of experience and staffing, and the many documents showing such deficit as described herein.

Section 11-35-4210(2)(b) requires:

(b) 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)

This issue of protest does not identify what experience and staffing PGBA is lacking, does not identify what evaluator comments support its argument or what documents reflect the alleged deficiencies. United Way's initial issue of protest does not set forth the grounds of the protest with enough particularity to give notice of the issues to be decided as required by the Code and is dismissed.

United Way next protests:

2 PGBA's proposal was non-responsive to material, essential and mandatory requirements of the RFP in ways that affected price, quality, quantity and delivery of the services sought. United Way asserts that these areas included, specifically, all requirements as to which PGBA's proposal was redacted, because the overly redacted proposal has been improperly withheld and such improper withholding would otherwise preclude United Way from asserting its rights under law. It also includes, specifically, the requirements for training coordinator, staffing, experience, the requirements to provide mandatory information for scoring by evaluators, and all other areas of deficiency described or mentioned herein. Some of the most glaring instances of PGBA's non-responsiveness include:

United Way protests six specific sub-issues which will be addressed below. United Way's initial protest is that PGBA is non-responsive to every solicitation requirement to which PGBA's response included redacted information. Simply because a response includes redacted information does not mean that the response does not meet the material and essential requirements of the solicitation. This blanket assertion lacks the specificity required by the Code and is dismissed. While United Way provides additional arguments supporting its protest of the training coordinator, staffing and experience allegations, the allegations that PGBA failed to

meet requirements to “provide mandatory information for scoring by evaluators, and all other areas of deficiency described or mentioned herein” are vague and lack specificity as required by the Code and are dismissed.

The first of United Way’s six sub-issues protests:

- a PGBA Overtly Stated that it Would Not meet the RFP requirements for Training Coordinator, and therefore, PGBA was non-responsive.

As stated in United Way’s protest, the solicitation requirement is found in paragraph 3.5.10 of the solicitation:

3.5.10. Provide a training coordinator to provide start up and ongoing training throughout the duration of the contract.

3.5.10.1. The training coordinator must be located at the Contractor’s operational facility beginning on day one of the contract.

3.5.10.2. This individual must have two (2) or more years of current training experience related to Call Center activities.

PGBA responded to this section:

3.5.10. Training Coordinator

PGBA Operations Training & Development provides training programs and a certification process for training staff, resulting in highly-qualified and skilled training facilitators. **[Redacted]** Our training staff must complete a series of in-depth classes, seminars and hands on simulated and actual training to **[redacted]**. The current training staff collectively has **[redacted]** customer service training.

PGBA has selected **[redacted]** as our Training Coordinator.**[redacted]**. **[Redacted]** excels in her expertise as a trainer in Customer Service skills. She will lead the training efforts for the DHEC Call Center. **[Redacted]** resume is included as Appendix C.

[PGBA’s proposal, Page 33]

United Way argues that:

This “response” patently talked around, but did not address, the core requirements that “*at a minimum*,” the vendor had to provide “*a training coordinator*,” “*located at the Contractor’s operational facility beginning on day one of the contract*,” “*throughout the duration of the contract*.”

(emphasis in original). United Way’s assertion that in order to be responsive to these requirements, PGBA was required to affirm in the written proposal that “at a minimum,” it would provide “a training coordinator,” “located at the Contractor’s operational facility beginning on day one of the contract,” “throughout the duration of the contract.” PGBA identified a training coordinator in its proposal and included a resume for that person. There is no requirement in the solicitation that the Offeror explicitly affirm the location and duration of the training coordinator. The solicitation and offeror’s proposal together become the contract. In the absence of an explicit rejection of the solicitation requirement, the Offeror is bound by that requirement.

United Way goes on to argue that because this requirement was modified during negotiations, PGBA never intended to comply with the requirement in the first place and should have been determined to be non-responsive. Sections 11-35-1530(7) and (8) authorize negotiations with responsive offerors. Section 11-35-1530(7) provides:

(7) Selection and Ranking. 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 added)

PGBA was responsive at the time proposals were evaluated and ranked as required by the Code.

Section 11-35-1530(8)(a) authorizes the procurement officer to

(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.

The State initiated negotiations on September 30, 2017. The change to the training coordinator's time was the result of the negotiations. This change was within the general scope of the request for proposals. United Way provides no evidence that PGBA would have withdrawn its proposal had the State not agreed to this change during negotiations. United Way failed to meet its burden of proof that "PGBA never intended to meet these requirements" and this issue of protest is denied.

United Way's next sub-issue alleges:

- b PGBA Specifically Disavowed In Scope Requirements as "Out of Scope" and asked to "prepare a proposal for consideration" to cover that in scope work

United Way cites a September 30, 2016, communication from the procurement officer to PGBA opening negotiations and asking for clarification of PGBA's proposal to include:

9) The State would like PGBA, LLC to provide confirmation in regards to the below statement.

- Provide central appointing services for all individuals receiving WIC services in South Carolina, including 2 non-DHEC primary care centers.

(emphasis added)

PGBA responded:

This request is for a scope of work that was not included in the RFP. While PGBA looks forward to serving DHEC with all of the services you wish to include in the Call Center we will need to evaluate this request. Please provide a written scope of work and associated quantities so PGBA can prepare a proposal for consideration. Is this change to be implemented on the same time schedule as the currently proposed workload? What, if any, system impacts may be involved? What equipment needs are required to handle this work?

United Way argues that this is evidence that PGBA's proposal as submitted was definitively non-responsive. This request for confirmation had two aspects: first that PGBA would provide central appointing services for all individuals receiving WIC services in South Carolina. The second part of this confirmation request was to include 2 non-DHEC primary care centers. There is no question that the solicitation required the Offeror provide appointing services to individuals

receiving WIC services, and PGBA agreed to provide those services in its proposal. See Scope of Work §§ 3.9.1.3 through 3.9.1.6, Solicitation p. 19; and . However, there is no indication in the solicitation or amendments that the Offeror would be scheduling appointments for non-DHEC primary care centers. In fact, the phrase “non-DHEC primary care centers” cannot be found in the RFP or its amendments. This issue was dropped from further consideration during negotiations. PGBA’s proposal was deemed responsive prior to being selected for negotiations and the fact that the State asked for confirmation does not evidence a non-responsive response. This issue of protest is denied.

United Way’s next sub-issue alleges:

- c. PGBA did not provide a specific staffing plan at all, or an adequate staffing plan, as required by the RFP

United Way argues:

PGBA’s staffing as proposed was wholly inadequate. Some evaluators recognized this in written notes. Even so, another evaluator – The “Outlier” – scored PGBA almost perfect (59 out of 60 points) on the factor that included staffing, which is arbitrary and capricious.

United Way’s protest that PGBA did not provide a specific staffing plan is invalidated by its own argument that PGBA’s staffing plan as proposed was wholly inadequate and is dismissed. United Way continues to protest that one evaluator’s technical score (the “Outlier”) was arbitrary and capricious as evidenced by his near perfect score when other evaluators commented about the inadequacy of the staffing plan.²

An outlier is defined by Dictionary.com as:

an observation that is well outside of the expected range of values in a study or experiment, and which is often discarded from the data set:

² United Way identifies the “Outlier,” and consequently the arbitrary and capricious evaluation, as awarding a score of 59 out of 60 points. There was no criteria weighted at 60 points in this solicitation. The technical evaluation criterion was the highest weighted criteria at 55 points and Evaluator # 1 awarded 54 out of 55 points to PGBA so it is assumed that United Way intended that this evaluation to allegedly be arbitrary and capricious.

Reviewing the evaluators' scores for the technical evaluation:

Evaluator #1	54
Evaluator #2	45
Evaluator #3	35
Evaluator #4	50
Average	46

Evaluator #4 awarded PGBA four points less than evaluator #1; evaluator #2 awarded PGBA 9 points less than evaluator #1; and evaluator #3 awarded PGBA 19 points less than evaluator #1. The average score of the four evaluators was 46 points. Evaluator #1 was 8 points above the average and evaluator #3 was 11 points below the average. If there were an outlier, evaluator #3, who awarded PGBA the lowest score, more closely meets the definition. Evaluator #2 is the only evaluator to comment on the staffing plan and he apparently did not consider this a disqualifying response and awarded PGBA 45 points for this criterion.

United Way again points to a request made during negotiations to increase staffing as evidence that the original proposal was non-responsive. United Way also characterizes the negotiations as

... improperly "coaching" PGBA during the ongoing competitive process to substantially change its offer and to maintain its pricing despite the significant change in personnel demanded. Such action on the part of the State is improper, unlawful, arbitrary and capricious and violates the most fundamental principles of competitive sealed proposals.

United Way goes on to allege that the communications between the parties during negotiation are evidence of a PGBA non-responsive proposal and violations of the Code by the State:

This initial response of PGBA to the State's improper coaching, which allowed PGBA to materially amend its proposal after the deadline for proposals to be submitted in regard to the most significant requirements of the contract, ***was also determined by the State to be inadequate***, as shown by subsequent communications, discussed below.

However, the State also on September 30, 2016 revealed further inadequacies in the PGBA proposal which were also handled in an unprecedented manner that violates law and procurement practice.

(emphasis in original). The State had to determine that PGBA's original proposal was responsive prior to entering into negotiations. The Code allows for the negotiation of price, and matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals. Bargaining for enhanced staffing during negotiations is not evidence that the original proposal was non-responsive.

During negotiations the State recommended PGBA hire two team leads working for the incumbent, United Way. The two United Way employees were identified by name in the September 30, 2016, letter from the State opening negotiations with PGBA and the recommendation was included in the Record of Negotiations along with PGBA's response as follows:

6) The State would like PGBA, LLC to provide confirmation in regards to the below statement.

Suggest consider hiring two team leads from previous contractor.

PGBA, LLC Response: PGBA, LLC will consider applications from the two team leads from the previous contractor for any available positions for which they may be qualified. PGBA, LLC is required to follow our documented hiring criteria that include screening, background clearance and qualification confirmation for every position filled.

The State's Response: The State accepts PGBA, LLC's response.

United Way points to this request as evidence of inadequacies in the PGBA proposal indicating that the current United Way key team leads were far superior to any personnel:

The State's letter to PGBA also exposes the obvious thinking on the part of the State that the current United Way key team leads were so far superior to any personnel offered by PGBA that the State would actually take the extreme approach of attempting to broker the poaching of key personnel, and shows that the State knew that PGBA's proposed staff was inferior and unacceptable.

The CPO does not condone any actions by the State appearing to interfere with the employer-employee relationship of bidders during a competitive procurement, regardless of the motivation. However, the fact that the State was well pleased with the performance of these two particular team leads is not evidence that the team leads proposed by PGBA were "woefully inadequate."

In any event, PGBA agreed only to “consider applications from the two team leads from the previous contractor for any available positions for which they may be qualified...” There is no evidence that PGBA engaged in any attempt to “poach” United Way employees to secure the contract.

The evaluation committee reviewed each proposal and scored each proposal against each evaluation criteria. The Procurement Review Panel established the standard for review in these situations. In *In re: Protest of First Sun EAP Alliance, Inc.; Appeal by First Sun EAP Alliance, Inc.*, Panel Case 1994-11, the Procurement Review Panel reaffirmed the standard of review of claims that errors were made by evaluators as follows:

S. C. Code Ann. Section 11-35-2410 provides for the finality of determinations under the RFP process unless “clearly erroneous, arbitrary, capricious, or contrary to law.” First Sun argues that the ratings for the first three award criteria are arbitrary, capricious, and clearly erroneous. First Sun has the burden to prove its issue by a preponderance of the evidence. As the Panel had stated in previous cases, the Panel will not substitute its judgment for the judgment of the evaluators, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

The Panel went on in *In re: Protest of Coastal Rapid Public Transit Authority*, Panel Case No. 1992-16 to state that:

The Panel will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

The evaluators awarded PGBA between 35 and 54 out of a possible 55 points and offered comments and observations about PGBA’s proposal. The evaluations were not clearly erroneous, arbitrary, capricious, or contrary to law. The CPO will not substitute his judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings. This issue of protest is denied.

United Way’s next sub-issue alleges:

d. PGBA did not provide the required information about their Cloud Based Solution IVR as required by the RFP. Even so, one “outlier” evaluator arbitrarily and capriciously scored PGBA high on such factor despite the notable lack of data supplied.

United goes on to argue:

The response on this requirement, on information and belief, is entirely omitted or is wholly inadequate. Evaluator Nicholas Davidson noted about PGBA’s proposal that “No information provided about their cloud-based IVR solution.” Evaluator Billy W. Wiggins, MSN, RN, Client Services Liaison for DHEC, noted that PGBA’s “proposal is vague in the name of the systems to be used to meet the needs of the DHEC call center. It is difficult to determine if proposal is looking to join a system believed to be in DHEC’s possession currently.” Similarly, evaluator Karen McClary, Centralized Appointing Director Client Services for DHEC’s *only note* in her evaluation about PGBA on the Technical Approach factor is that “Information on how technical capability, communications and infrastructure for these are provided (and by whom) is not given.” See Scoring and Selected Evaluator Scoring Comments, Ex. 8.

These notes confirm that PGBA did not provide the required mandatory and essential data on its technical offering, as well as the significance thereof. PGBA’s proposal should never have been scored at all, much less scored highest. It was non-responsive.

(emphasis in original) PGBA published the IVR requirements from the solicitation in its proposal at page 71 and stated:

PGBA will provide DHEC a cohesive, readily accessible customer services solution that includes an interactive IVR, ACD and VOIP that will easily accommodate the estimated 50,000 calls a month DHEC receives. Callers will NEVER receive a busy signal even for peak or after-hours calls. PGBA currently complies with strict call center standards for several government contracts with call volumes exceeding 100,000 calls a month. We are ready to deliver this same performance to meet the requirements for the SC DHEC Call Center contract.

As mentioned in the Quality Monitoring section, PGBA will allow callers who have been in queue for more than 20 seconds and whose anticipated hold time exceeds two minutes the option to hold their place in the queue and receive a callback when the next agent is available. The callback will provide an estimated call back time that is within 30 seconds of the actual callback time as required by DHEC. If the caller continues to wait in queue for an agent, informational messages will be available to support any DHEC activities or current needs.

PGBA's IVR solution will continually be evaluated for additional automation methods to reduce call volume and increase call center operations proficiency.

[Redacted]

This advanced technology solution will allow PGBA to handle inbound & outbound calls, SMS texting, chats and emails all in one location. [Redacted] This will streamline reporting and make managing customer contacts seamless. [Redacted] This will provide another option for contacting a Customer Service Advocate through a secure encrypted portal.

[PGBA Proposal, Page 71]

Mr. Davidson was Evaluator #2 who awarded PGBA 45 points. Mr. Wiggins was Evaluator #3 who awarded PGBA 35 points and Ms. McClary was Evaluator #4 who awarded PGBA 50 points. The evaluators awarded PGBA between 35 and 54 out of a possible 55 points and offered comments and observations about PGBA's proposal. The evaluations were not clearly erroneous, arbitrary, capricious, or contrary to law. The CPO will not substitute his judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings. This issue of protest is denied.

United Way's next sub-issue alleges:

e PGBA did not provide evidence of the type of experience required by the RFP, including appointment scheduling experience, yet this is the primary activity of the contract. On information and belief, PGBA lacks any such experience. Even so, one "outlier" evaluator arbitrarily and capriciously scored PGBA high on such factor despite the notable lack of relevant experience;

United Way cites no specific solicitation requirement or special standard of responsibility mandating that an offeror have a particular type of experience including appointment scheduling. Consequently PGBA cannot be non-responsive or non-responsible for not having a specific type of experience. This aspect of this issue of protest is denied.

United Way asserts again that Evaluator #1's score was arbitrary and capricious because it was higher than the other evaluators. Evaluator #1 awarded PGBA 18 out of 20 possible points, Evaluator #2 awarded PGBA 12 points, Evaluator #3 awarded PGBA 12 points, and Evaluator #

4 awarded PGBA 10 points. All the evaluators provided comments and observations with their scoring. Evaluator #1 provided the following comment about PGBA's experience:

Twelve years of experience with Tricare, 20+ years of call center experience though no details of who with.

The American Heritage Dictionary defines an arbitrary decision as one determined by chance, whim, or impulse, and not by necessity, reason, or principle. Capricious is defined by the American Heritage Dictionary as one that is characterized by, arising from, or subject to caprice; impulsive or unpredictable. Just because one evaluator scores higher or lower than other evaluators does not mean the evaluation was arbitrary or capricious. Evaluator #1's evaluation was not arbitrary or capricious and this aspect of the protest is denied.

United Way's next sub-issue alleges:

f. PGBA did not provide the required information on Technical Capability or Communications; yet even so, one "outlier" evaluator arbitrarily and capriciously scored PGBA high on such items despite the notable lack of data supplied;

Again, United Way points to evaluator comments to support its argument that PGBA should have been disqualified for not providing information that was not required and that Evaluator #1's scores were arbitrary and capricious. Despite their comments about PGBA's technical proposal and qualifications, no Evaluator considered those deficiencies as disqualifying and offered a score for each evaluation criteria. Evaluator#1's scores were not arbitrary or capricious and the CPO will not substitute his judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings. This issue of protest is denied.

United Way next protests:

3. SCDHEC improperly provided to only one competitor the relevant and requested information about current contract staffing and call center volumes and related data. Such data is recognized as "very valuable" for a vendor to provide its plan and pricing. This fact was admitted by PGBA in its private correspondence to SCFFA on November 22, 2016. Vendors specifically asked, but were refused, such relevant data, because vendors were told in Amendment #3 that the requested information was "not available"; however, soon thereafter, such very

data was provided, but to only one vendor, PGBA, who thanked the SCDHEC for providing that information. ...

After obtaining this exclusive, relevant and important data, on November 22, 2016, ***PGBA “revised” and “amended” its proposal to add about twenty five percent more staffing:*** ...

By refusing all vendors access to information that was relevant, and “very valuable” to PGBA and by telling vendors the data was “not available” when in fact it was available at all times, and then providing such important information only to PGBA, the State violated the most fundamental requirements of competitive procurement – equal treatment of vendors. As a consequence, the award must be rescinded.

(emphasis in original) This information was divulged as part of the negotiations which did not affect the competition. It should be noted that as the incumbent, United Way was privy to this information when no vendor received the advantage of this information during the competitive procurement process. If any offeror enjoyed a competitive advantage, it was United Way. Because of its incumbency it had knowledge of all this information. This issue of protest is denied.

United Way next protests:

4. On information and belief, PGBA proposed a number of “key personnel” in its proposal, and proposed for one or more key personnel to be “part time” rather than “full time” as was clearly required by the RFP.

United Way argues:

United Way is informed and believes that the proposed staffing model offered by PGBA provided that one or more of the Technical Coordinator, Training Coordinator, Operations Manager and other “key personnel” identified in PGBA’s Staffing Model in Appendix I, as well as elsewhere, were required to be full time by the RFP at pages 15-17 and 26 (“the key staff and management staff proposed for the project will be those actually assigned. The key employees will remain affiliated with this project full time throughout the term of the Contract as long as the Contractor employs them”.) United Way is informed and believes that such staff were identified as part time in the proposal and in subsequent communications with the State.

The passage United Way quoted in the above paragraph is from the section of the RFP detailing information for offerors to submit for evaluation purposes. There is no requirement expressed in the Scope of Work that key staff be full-time employees. Nevertheless, PGBA states in its Submittal Letter:

PGBA confirms that key staff and management staff proposed for the project will be those actually assigned. The key employees will remain affiliated with this project full time throughout the term of the Contract as long as PGBA employs them. PGBA agrees to replace the key employees that leave PGBA with persons of equal or better qualifications.

[PGBA Proposal, Appendix A] Thus, PGBA's proposal is responsive on its face.

United Way does not identify which key employees were identified as part time or where that identification resides. This issue of protest lacks specificity as required by the Code and is denied. To the extent that United Way is protesting alterations made "in subsequent communications" during negotiations, those changes identified above were in made in accordance with the Code and that aspect of the protest is denied.

United Way next protests:

5. The Evaluation was Arbitrary and Capricious in that it Treated PGBAs Response as if it were fully compliant in the above areas, and ignored the above issues, while evaluators recognized the PGBA proposal was in fact not responsive.

United Way argues:

The evaluation was arbitrary, capricious, subject to bias and clearly erroneous. In the evaluation, PGBA was just barely scored the highest of the competitors - by only two points out of 100. PGBA's pricing was so low it was able to overcome its inferior technical scores. PGBA was scored lower on technical matters by all but one "outlier" evaluator, who inexplicably and repeatedly scored PGBA higher in areas in which other evaluators noted serious deficiencies in the PGBA response and proposal. As a result, PGBA was improperly allowed (with a completely non-responsive proposal) to negotiate with DHEC, and to improperly change its proposal materially and unlawfully to more closely resemble that of United Way, and was awarded the contract.

United Way relies on its previous issues of protest where it failed to prove that PGBA's proposal was non-responsive, that modifications to PGBA's proposal during negotiations were in violation of the Code, or that the evaluation was arbitrary or capricious. United Way offers no evidence of bias or that the evaluation was clearly erroneous. United Way correctly observes that its high price, nearly twice that proposed by the second-lowest offeror, was a significant factor in determining the award.³ This issue of protest is denied.

United Way next argues:

6. PGBA was not eligible for discussions or negotiations because its proposal did not provide all required features of a training coordinator, and was also so deficient in the areas of overall staffing, that it could not be lawfully "cured. ...

Details related to PGBA's failure to provide an on-site, full time training coordinator as required by the RFP from day one throughout the contract term are set forth hereinabove.

PGBA's proposal was not modified through discussions. The procurement officer and the evaluation committee determined that PGBA's proposal was responsive to the material and essential requirements of the solicitation and United Way has not provided evidence to the contrary. As the highest ranked responsive proposal, PGBA's proposal was eligible for negotiations in accordance with the Code. This issue of protest is denied.

United Way next protests:

7. The State improperly allowed PGBA so much latitude in its deficient "response" that PGBA was effectively allowed to submit an "amended" proposal long after the deadline for proposal submission. This approach is simply not allowed. ...

Details related to the State's improper process that allowed PGBA so much latitude in its deficient "response" that PGBA was effectively allowed to submit an "amended" proposal long after the deadline for proposal submission are set forth hereinabove.

³ United Way's first year price of \$5,280,858.00 was significantly higher than the \$2,982,000 it charged under an Emergency procurement for 2015.

The evaluation committee determined that PGBA's proposal was responsive to the material and essential requirements of the Code and United Way has not provide evidence to the contrary. As the highest ranked responsive proposal, PGBA's proposal was eligible for negotiations in accordance with the Code. This issue of protest is denied.

United Way next protests:

8. The RFP process was also fatally defective and did not comply with the minimum legal essential requirements and PGBA's contract cannot proceed in light of such defects. ...

Details regarding the failure of the State to provide vendors requested information and to treat vendors equally as well as the State's evident preferential treatment of only one vendor is described in detail above.

As stated above, the evaluation committee determined that PGBA's proposal was responsive to the material and essential requirements of the solicitation and United Way has not provided evidence to the contrary. As the highest ranked responsive proposal, PGBA's proposal was eligible for negotiations in accordance with the Code. United Way does not claim those negotiations resulted in a contract that was not within the general scope of the solicitation. It has failed to provide evidence that the procurement was not otherwise conducted in accordance with the Code. This issue of protest is denied.

United Way next protests:

9. PGBA was improperly, arbitrarily and capriciously scored on its obviously deficient staffing, as well as on the false premise and assumption that it could and would materially change its staffing and even adopt the existing staff and staffing approach of United Way, when PGBA did not and could not promise such staffing. ...

Details regarding this issue are outlined hereinabove.

As stated above, the evaluation committee determined that PGBA's proposal was responsive to the material and essential requirements of the solicitation and United Way has not provided evidence to the contrary. As stated above, the evaluation was not arbitrary or capricious. As the

highest ranked responsive proposal, PGBA's proposal was eligible for negotiations in accordance with the Code. This issue of protest is denied.

United Way next protests:

10. All evaluators save one - the "outlier" - scored PGBA much lower than United Way on technical structure. The score of the outlier was arbitrary and capricious because it is improper to score a competitor nearly as well, as well, or even better for not providing required information. ...

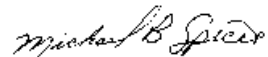
For the above reasons and such other reasons as may be offered in an amended protest, the award to PGBA must be stayed, and cancelled, and the award must be issued to United Way, the highest ranked responsive and responsible vendor.

As explained above, United Way failed to prove that Evaluator #1's scoring was arbitrary or capricious. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of United Way Association of South Carolina, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



Attorneys and Counselors at Law

John E. Schmidt, III
803.348.2984
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Melissa J. Copeland
803.309.4686
Missy.Copeland@TheSCLawfirm.com

January 3, 2017

Via Email to protest-itmo@itmo.sc.gov

Chief Procurement Officer
State of South Carolina
State Fiscal Accountability Authority
Information Technology Management Office
Division of Purchasing
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: AMENDED Protest of Notice of Intent to Award to PGBA LLC
Solicitation **5400011659**
Description: SCDHEC Call Center Services

Dear Chief Procurement Officer:

This firm represents United Way Association of South Carolina, Inc. ("United Way") in connection with the above matter and submits this AMENDED protest of the Notice of Intent to Award a contract to PGBA LLC, ("PGBS"), first posted December 19, 2016. The grounds of this protest are set forth below.

In accordance with applicable law, this amended protest letter is intended to provide notice of issues to be decided as required by law and as such it does not purport to set forth all facts and evidence in support of the protest issues.

United Way has been, to date, precluded from viewing under its open records requests all proposals and procurement materials it has requested. Specifically, the proposal of PGBA has been unlawfully and extensively redacted beyond the extent permitted by law. Therefore, United Way asks that the CPO immediately require that the entire procurement file be provided to the undersigned on behalf of United Way as required by S.C. Code § 11-35-410, the South Carolina Consolidated Procurement Code and under the S.C. Freedom of Information Act. United Way also asks that all such records, un-redacted, be made a part of the Record for review. United Way asks that the CPO permit it to examine the actual full responses of PGBA to the proposal protested herein, and herewith makes such request, formally, under all relevant records laws.

Post Office Box 11547 Columbia, South Carolina 29211
Capitol Center, 1201 Main Street, Suite 1100 Columbia, South Carolina 29201
803-748-1342 (phone) 803-748-1210 (fax)
www.TheSCLawfirm.com

United Way reserves the right to offer new issues, facts, evidence and argument in support of the protest at any time as may be permitted by law. United Way requests due notice and a hearing at which it will present facts, evidence and argument on these issues and any others as may be properly raised under law. If for any reason a hearing will not be held, United Way requests that the CPO advise of any deadlines for the submission of evidence and argument in support of this protest.

In this competitive Request for Proposals process, *United Way's total score was 326, only two points less than that of the selected vendor, PGBA*. United Way's calculated average score was only ½ point lower than PGBA's. United Way's technical scores were the highest overall on every factor. Below, we show that PGBA was given extensive and unlawful advantages in this process, and the process was anything but regular. In fact, at one point, DHEC and ITMO personnel actually encouraged PGBA to hire away two active key employees of United Way during this very ongoing competition. Letter of Romano to PGBA dated September 30, 2016, item 6, copy attached as Exhibit ("Ex.") 1. If these advantages had not been bestowed on PGBA by the State, PGBA's proposal would have been rejected outright. At a minimum, United Way's score would have easily exceeded any properly awarded, non-arbitrary score of PGBA.

BACKGROUND

This protest concerns the procurement of the State of South Carolina Department of Health & Environmental Control ("DHEC") to solicit proposals for a Call Center. DHEC is an agency within the executive branch of state government that provides principal advisory to the state on matters of public health and environmental protection. DHEC carries out its duties pursuant to authority granted by numerous statutes related to protection of the health of all South Carolina citizens. Currently, DHEC maintains a central office in Columbia and operates its programs, services and regulatory functions in all 46 counties through four public health regions. Client services are provided in all 46 counties in one or more sites per county. Approximately 70% of the clients served in DHEC clinics receive Medicaid. The majority of services are provided thru the Women, Infants, and Children's Program (WIC), and Preventive Health and Immunization programs.

Prior to August 2014, the four DHEC health regions scheduled appointments for the services provided at their locations. A centralized appointing system was determined to be the most efficient way to handle an increasing number of calls and to assure appointments were made to the appropriate clinic in the client's location or preference.

In late 2014, the centralized appointing from each region was transferred to a contractor to provide statewide appointment services. The services include the DHEC Care Line, which is an information helpline for parents and others to access information about health and health-related providers and practitioners, and for the general public during Public Health Emergencies (e.g., TB, flu, Hepatitis A).

The Intent of Solicitation Request for Proposal **5400011659** ("RFP") is for DHEC to solicit proposals to obtain a Statewide Call Center contract to provide comprehensive customer service to support a Central Appointing System and the Care Line Program, including but not limited to inbound/outbound calls, voicemail, texting, web chat interactions and other telephone applications. The objective of the RFP process was to obtain a qualified contractor that can meet the requirements for centralized appointing and the Care Line while providing DHEC with cost-effective and proven results.

ISSUES OF PROTEST

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

1. **PGBA was not a responsible vendor, lacking the experience and staffing to perform the contract, based on the facts and arguments set forth in this letter, as well as based on the comments of evaluators who noted such lack of experience and staffing, and the many documents showing such deficit as described herein.**

2. **PGBA's proposal was non-responsive to material, essential and mandatory requirements of the RFP in ways that affected price, quality, quantity and delivery of the services sought. United Way asserts that these areas included, specifically, all requirements as to which PGBA's proposal was redacted, because the overly redacted proposal has been improperly withheld and such improper withholding would otherwise preclude United Way from asserting its rights under law. It also includes, specifically, the requirements for training coordinator, staffing, experience, the requirements to provide mandatory information for scoring by evaluators, and all other areas of deficiency described or mentioned herein. Some of the most glaring instances of PGBA's non-responsiveness include:**

- a. **PGBA Overly Stated that it Would Not meet the RFP requirements for Training Coordinator, and therefore, PGBA was non-responsive.**

The RFP specifically required at page 16:

3.5. ACCOUNT MANAGEMENT

The Contractor ***must provide the following services at a minimum:***

*

*

*

3.5.10. Provide a training coordinator to provide start up and ongoing training ***throughout the duration of the contract.***

3.5.10.1. *The training coordinator must be located at the Contractor's operational facility beginning on day one of the contract.*

RFP at 16. This requirement is explicit; a training coordinator is required, onsite throughout the duration of the contract, from day one forward. Thus, the requirement is regarding a dedicated person, their location, and the duration of the requirement. Such requirements are clearly matters affecting price, quantity, quality and delivery of the services sought.

PGBA's initial response to this mandatory and essential requirement of the RFP was to avoid addressing these specific elements of the requirement entirely:

PGBA Operations Training & Development provides training programs and a certification programs and a certification process for training staff, resulting in highly-qualified and skilled training facilitators. [REDACTED]
Our training staff must complete a series of in-depth classes, seminars and hands on simulated and actual training to [REDACTED]The current training staff collectively has [REDACTED] customer service training.
PGBA has selected [REDACTED] as our Training Coordinator. [REDACTED] She will lead the training efforts for the DHEC Call Center. [REDACTED] resume is included as **Appendix C**.

PGBA Proposal at 33. This "response" patently talked around, but did not address, the core requirements that "*at a minimum,*" the vendor had to provide "*a training coordinator,*" "*located at the Contractor's operational facility beginning on day one of the contract,*" "*throughout the duration of the contract.*"

PGBA's response avoided addressing the actual RFP requirements because PGBA never intended to meet these requirements. This is clear because when PGBA was confronted by the State with its inadequate staffing plan, PGBA responded, among other things, that:

"a Training Coordinator resource will be assigned to this contract, but will only be required one-half the time after implementation based on our historical experience."

Letter of Dee A. Yurko of PGBA to SFAA's Sarah Romano, ITMO Procurement Manager, November 22, 2016, copy attached as Ex. 2. This simply does not meet the RFP's clear requirements. Standing alone, this failure disqualifies PGBA entirely.

Thus, PGBA's proposal was plainly non-responsive to the essential, material and non-waivable requirements of the RFP as to the Training Coordinator, and PGBA's proposal should have been rejected. Further, by attempting to modify the State's requirements clearly set out regarding the Training Coordinator as quoted above, PGBA's proposal unlawfully sought to impose conditions on the State, including limiting the State's rights with regard to Training Coordinator.

b. PGBA Specifically Disavowed In Scope Requirements as "Out of Scope" and asked to "prepare a proposal for consideration" to cover that in scope work

In an Ex. 1 the September 30, 2016 letter from Sarah Romano of SFAA to Dee Yurko of PGBA, Romano, on behalf of DHEC, asked PGBA to confirm that under its proposal it would "Provide central appointing services for all individuals receiving WIC services in South Carolina, including 2 non-DHEC primary care centers."

In PGBA's October 12, 2016 response letter to the State (Ex. 3), at page 5, PGBA falsely asserts regarding this very item that it is out of scope, and offer to prepare a proposal to price it:

This request is for a scope of work that was not included in the RFP. While PGBA looks forward to serving DHEC with all of the services you wish to include in the Call Center we will need to evaluate this request. Please provide a written scope of work and associated quantities so PGBA can prepare a proposal for consideration. Is this change to be implemented on the same time schedule as the currently proposed workload? What, if any, system impacts may be involved? What equipment needs are required to handle this work?

PGBA is wrong. Its assertion that the services in question are out of scope, and its plain demand for a change order so it could "prepare a proposal for consideration" as to this work shows that PGBA's proposal as submitted was definitively non-responsive.

In the RFP at page 29 item 3.1, Background, the State provides the governing description of WIC Services and taking appointments:

3.1. Background RFP Requirement The South Carolina Department of Health and Environmental Control (DHEC) is an agency within the executive branch of state government that provides principal advisory to the state on matters of public health and environmental protection. DHEC carries out its duties pursuant to authority granted by numerous statutes related to protection of the health of all South Carolina citizens. Currently, DHEC maintains a central office in Columbia and operates its

programs, services and regulatory functions in all 46 counties through four public health regions. Client services are provided in all 46 counties in one or more sites per county. Approximately 70% of the clients served in DHEC clinics receive Medicaid. The majority of services are provided thru the Women, Infants, and Children's Program (WIC), and Preventive Health and Immunization programs. Prior to August 2014, the four DHEC health regions scheduled appointments for the services provided at their locations. A centralized appointing system was determined to be the most efficient way to handle an increasing number of calls and to assure appointments were made to the appropriate clinic in the client's location or preference. In late 2014, the centralized appointing from each region was transferred to a contractor to provide statewide appointment services. The services include the DHEC Care Line, which is an information helpline for parents and others to access information about health and health related providers and practitioners, and for the general public during Public Health Emergencies (e.g., TB, flu, Hepatitis A).

RFP at 29. This statement in the RFP shows that the scope of services requested did in fact include the very work which PGBA clearly stated was not within the scope of its proposal. Further, PGBA clearly stated that it intended to charge extra for such services, in direct violation of the RFP and law. As a consequence, PGBA's proposal should have been declared non-responsive and excluded.

- c. PGBA did not provide a specific staffing plan at all, or an adequate staffing plan, as required by the RFP

PGBA's staffing as proposed was wholly inadequate. Some evaluators recognized this in written notes. Even so, another evaluator – The "Outlier" – scored PGBA almost perfect (59 out of 60 points) on the factor that included staffing, which is arbitrary and capricious.

Indeed, PGBA's proposed staffing was so deficient, that in a letter sent to PGBA *after the evaluator scoring, the State said:*

5) The State would like PGBA, LLC to provide confirmation in regards to the below statement.

· *Set initial CSR staffing level at a minimum of 50* to insure smooth transition, *at no additional cost* to DHEC. Reduce staffing

later if feasible without negatively impacting service levels.

Ex. 1, Letter of SFAA to PGBA, September 30, 2016 (emphasis added). As can be seen, the State's letter was improperly "coaching" PGBA during the ongoing competitive process to substantially change its offer and to maintain its pricing despite the significant change in personnel demanded. Such action on the part of the State is improper, unlawful, arbitrary and capricious and violates the most fundamental principles of competitive sealed proposals.

Note, if PGBA's staffing (the core aspect of the service at issue) as proposed had been acceptable, the State would not have had any reason to coach PGBA to increase its staffing proposed by almost double – from 32.35 to 50 Full Time Equivalent employees or "FTEs".

PGBA's initial response to the State's "coaching" was as follows:

o PGBA Response: PGBA proposed to set the initial staffing level for CCSRs at 32.35 FTEs. We committed to seed 100% of this staff with fully trained and qualified personnel who are effectively and efficiently performing in PGBA call centers today. We are highly confident that this staff will achieve the service levels required by the contract on the first day of the contract. However, to provide DHEC with additional assurance that the required service levels will be met at contract start, PGBA will increase our staffing levels by 10% or 3.24 for a total of 35.59 at the start of the contract for six months at no additional cost to DHEC. The additional staff will be phased out as service levels are met and maintained at acceptable levels.

Ex. 3, Letter of PGBA to SFAA October 12, 2016.

This initial response of PGBA to the State's improper coaching, which allowed PGBA to materially amend its proposal after the deadline for proposals to be submitted in regard to the most significant requirements of the contract, *was also determined by the State to be inadequate*, as shown by subsequent communications, discussed below.

However, the State also on September 30, 2016 revealed further inadequacies in the PGBA proposal which were also handled in an unprecedented manner that violates law and procurement practice. In its letter, (Ex. 1), the State actually named two key employees of United Way – PGBA's active competitor for the very job at issue – and specifically asked PGBA to poach, and employ those individuals:

6) The State would like PGBA, LLC to provide confirmation in

regards to the below statement.

Suggest consider hiring two team leads from previous contractor. (Reina Buenrostro and Nadia Coleman).

Ex. 1, Letter of SFAA to PGBA, September 30, 2016 (emphasis added.) The “two team leads from previous contractor” named by the State in its letter to PGBA are *current employees of United Way who were specifically proposed by United Way to serve this very contract on behalf of United Way*. United Way objects to the State’s misconduct in this competitive environment asking one of United Way’s competitors to poach key employees of United Way. Under no circumstances is it proper for the State to attempt to broker employee poaching of contractors competing for a public contract.

The State’s letter to PGBA also exposes the obvious thinking on the part of the State that the current United Way key team leads were so far superior to any personnel offered by PGBA that the State would actually take the extreme approach of attempting to broker the poaching of key personnel, and shows that the State knew that PGBA’s proposed staff was inferior and unacceptable.

The woefully inadequate staffing plan of PGBA – even after it was improperly coached and “enhanced” as of October 12, 2016, was revealed as even still inadequate by the next communications on the issue.

On November 3, 2016, SCDHEC provided to SFAA Procurement Manager Sarah Romano details on current contract staffing and call center volumes (information that vendors had requested in the Q and A process, but were denied, because such information was purportedly “not available.”)

Hi Sarah,

Please see the attached document that provides details about normal staffing and call volume for central appointing with our current vendor. We would like clarification from PGBA regarding whether or not coordinators, team leads, trainers, monitors, etc. are included in their proposed staffing level.

Thanks.
Karen

Karen McClary Centralized Appointing Director
Client Services

S.C. Dept. of Health & Environmental Control

E-mail of Karen McClary, DHEC of November 3, 2016 to Sarah Romano of ITMO, Ex. 4. McClary was an evaluator. Sarah Romano of the State then e-mailed to PGBA the same day this information showing the current staffing of the contract by United Way, and the call volume data that had been refused to vendors in the Q and A process (see Issue 3, *infra.*) This information was provided to PGBA in an obvious attempt to get PGBA to further, and unlawfully, amend its proposal after evaluations and scoring in an effort to “help” and “coach” PGBA to materially change its proposal to overcome its obvious inadequacy and non-responsiveness:

From: Romano, Sarah [<mailto:sromano@mms.sc.gov>]
Sent: Thursday, November 03, 2016 10:45 AM
To: DEE YURKO
Cc: MIKE GURRERA; MIKE SKARUPA
Subject: Call center staffing

Hi Dee:

Per our negotiation meeting from Tuesday, DHEC had provided a list of current staffing. DHEC would like for PGBA to provide clarification regarding whether or not coordinators, team leads, trainers, monitors, etc. are included in their proposed staffing level.

Also, can you provide a list of key members that would be a part of the site visits that we would need to coordinate. I will need their names, and availability times. In return I will provide the names and availability from DHEC.

Thank you,
Sarah Romano | Procurement Manager
Division of Procurement Services | SC State Fiscal Accountability
Authority

E-mail of Romano to PGBA's Yurko dated November 3, 2016 (Ex. 5). PGBA replied to this information – *provided only to PGBA and not to the other competitors* – as follows:

From: DEE.YURKO@bcbsc.com
[\[mailto:DEE.YURKO@bcbsc.com\]](mailto:DEE.YURKO@bcbsc.com)
Sent: Thursday, November 10, 2016 2:12 PM
To: Romano, Sarah
Cc:
MIKE.GURRERA@bcbsc.com; MIKE.SKARUPA@bcbsc.com;

MARK.MACDOUGAL@pgba.com; KAY.ANDREWS@pgba.com;
LORELEI.PUTHUFF@bcbsc.com; DEE.YURKO@bcbsc.com

Subject: RESPONSE: Call center staffing

Sarah,

Thank you for the information you provided in follow-up to the negotiation meeting on November 1, 2016. *This information is very helpful in reviewing the staffing PGBA proposed for the DHEC Call Center. As requested, we are confirming that management and support staff positions are included in our proposed staffing levels.*

Key members from PGBA who will attend the DHEC Appointing System Demonstration:
Mark MacDougal
Kay Andrews
Lorelei Puthuff

Availability:

PGBA staff members are available to participate in site visits on the morning of November 17th or all day November 18th.
If these dates and times are not convenient, please let me know and I will provide other options.

Again, thank you for the information and we look forward to the systems demonstration and continued negotiation discussions.

Dee Yurko
PGBA, LLC
Director, Contract Administration
Mail Code: AG-790
P: (803) 763-6611
F: (803) 870-8626
E: dee.yurko@pgba.com

Email of PGBA's Yurko to ITMO's Romano dated November 10, 2016 (Ex. 6). PGBA's response confirms that it got and used this exclusive information provided to it by the State to improperly "coach" PGBA to further change its proposal materially and significantly in the area of staffing, in which it was so inadequate that even its first revision adding ten percent was

unacceptable.

Not surprisingly, on November 22, 2016, PGBA did further “amend” its proposal to add twenty five percent more staffing:

Thank you for providing the data regarding staffing levels and productivity factors for the current call center, and for demonstrating the SC DHEC Appointing System. This information was very valuable in *re-evaluating the staff proposed for the South Carolina DHEC Call Center*. After considering this additional information in conjunction with PGBA’s expected work hours and historical experience, we are revising our proposed staff model as follows:

Position	Original Proposal Base Year – Option IV	Revised Proposal Base Year – Option IV	Variance
Customer Service Advocate	32.35	40.87	8.52
Quality Assurance Analysts	2.76	1.0	1.76
Project Assistant	1.0	1.0	-
Training Coordinator	1.0	.50	0.50
Technical Support Coordinator	1.0	1.0	-
Operations Manager	1.0	1.0	-
Operations Manager – Part Time	0.50	.50	-
Total	39.61	45.87	6.26

The revised model increases the number of advocates who answer telephone calls by 8.52. PGBA will also continue to increase our staffing levels by 3.24 at the start of the contract for up to six months. The additional staff will be phased out as service levels are met and maintained at acceptable levels. PGBA continues to commit to staff the original proposed customer service advocates (32.35) with experienced advocates and staff the additional proposed staff (8.52 permanent and 3.35 transition period) with new hires. This approach still ensures over 70% of staff at start of contract are experienced Customer Service Associates.

Quality Analyst positions were reduced by 1.76 as the Project Assistant and Operations managers will also be responsible for performing quality review of telephone calls.

Letter of Dee A. Yurko of PGBA to SFAA's Sarah Romano, ITMO Procurement Manager, November 22, 2016, Ex. 1. This material and significant change to the proposal of PGBA – arrived at after much unlawful coaching by the State – was finally minimally acceptable to State personnel, as stated in an e-mail from DHEC's Billy Wiggins to Sarah Romano of ITMO, of the same date

Sarah, I feel these numbers are much more in line with what we were anticipating our need to be. I am encouraged by the proposed increase in staffing. I have copied Nick and Darbi on the email also so they can provide any additional feedback they may have. I know several individuals out of the office on leave this week. Hopefully others will get you their feedback as soon as possible next week so we can continue to move this process forward.

Billy W. Wiggins, MSN, RN
Client Services Liaison
S.C. Dept. of Health & Environmental Control

E-mail of Wiggins, DHEC evaluator to Romano of ITMO dated November 22, 2016 (Ex. 7). United Way protests the entire iterative, "coaching" process that brought about this result, as violative of fundamental principles of competitive procurement. It is obvious from this sequence of communications that PGBA's proposal was inadequate and non-responsive and should have been rejected; that it was ineligible for negotiation and clarifications; and that clarifications and negotiations were improper and violated procurement laws, rules, regulations, processes and principles.

- d. PGBA did not provide the required information about their Cloud Based Solution IVR as required by the RFP. Even so, one “outlier” evaluator arbitrarily and capriciously scored PGBA high on such factor despite the notable lack of data supplied.

The response on this requirement, on information and belief, is entirely omitted or is wholly inadequate. Evaluator Nicholas Davidson noted about PGBA’s proposal that “No information provided about their cloud-based IVR solution.” Evaluator Billy W. Wiggins, MSN, RN, Client Services Liaison for DHEC, noted that PGBA’s “proposal is vague in the name of the systems to be used to meet the needs of the DHEC call center. It is difficult to determine if proposal is looking to join a system believed to be in DHEC’s possession currently.” Similarly, evaluator Karen McClary, Centralized Appointing Director Client Services for DHEC’s *only note* in her evaluation about PGBA on the Technical Approach factor is that “Information on how technical capability, communications and infrastructure for these are provided (and by whom) is not given.” See Scoring and Selected Evaluator Scoring Comments, Ex. 8.

These notes confirm that PGBA did not provide the required mandatory and essential data on its technical offering, as well as the significance thereof. PGBA’s proposal should never have been scored at all, much less scored highest. It was non-responsive.

- e. PGBA did not provide evidence of the type of experience required by the RFP, including appointment scheduling experience, yet this is the primary activity of the contract. On information and belief, PGBA lacks any such experience. Even so, one “outlier” evaluator arbitrarily and capriciously scored PGBA high on such factor despite the notable lack of relevant experience;

Indeed, from its response, it appears that PGBA pointed to no appointment scheduling experience, but only to claims handling and other irrelevant experience. *Every evaluator actually noted such deficiency on the part of PGBA.* Billy W. Wiggins, MSN, RN, Client Services Liaison for DHEC, noted about PGBA’s proposal “There is no clear evidence of any kind of history related to making specific client appointments.” And like evaluator Wiggins, evaluator Karen McClary, Centralized Appointing Director Client Services for DHEC made *only one note* in her evaluation about PGBA’s Qualifications: “The response does not list experience with making appointments. While there is more than adequate experience for other areas, setting appointments in public health clinics for clients is the primary function of the call center.” Evaluator Nicholas Davidson worried in his notes on PGBA: “Some concern that there is no evidence of a healthcare related appointment-based call center.” Even “The Outlier” noted that PGBA’s claimed “20+ years of call center experience though no details of who with.” See Scoring and Selected Evaluator Scoring Comments, Ex. 8.

It is noteworthy that on the Qualifications factor, the three of four evaluators (excluding “The

Outlier”) scored PGBA an average of 11.3 out of 20. “The Outlier” irrationally scored PGBA 18 of 20, despite the patent deficiencies. Clearly, the statistically significant anomalies in The Outlier’s scoring of PGBA were the only reason PGBA was selected to negotiate as the highest ranked vendor overall by a mere two points out of 100.

As evaluator McClary wisely stated, this service is not just for “a call center” of any type, but for very personal and confidential kinds of appointment scheduling. Actual experience in the type of work to be done is essential, and PGBA lacks that. These notes confirm that PGBA did not possess or provide the required mandatory and essential experience, as well as the significance thereof. PGBA’s proposal should never have been scored at all, much less scored highest. It was non-responsive.

- f. PGBA did not provide the required information on Technical Capability or Communications; yet even so, one “outlier” evaluator arbitrarily and capriciously scored PGBA high on such items despite the notable lack of data supplied;

Evaluator Nicholas Davidson noted about PGBA’s proposal that “No specific staffing plan, to include staffing numbers, is included.” Evaluator Billy W. Wiggins, MSN, RN, Client Services Liaison for DHEC, noted about PGBA’s proposal that “The proposal does not provide a specific # of goal/target agents to work the call center; a “formula” is provided instead.” See Scoring and Selected Evaluator Scoring Comments, Ex. 8.

Evaluator Nicholas Davidson noted about PGBA’s proposal that “No information provided about their cloud-based IVR solution.” Similarly, evaluator Karen McClary, Centralized Appointing Director Client Services for DHEC’s *only note* in her evaluation about PGBA on the Technical Approach factor is that “Information on how technical capability, communications and infrastructure for these are provided (and by whom) is not given.” See Scoring and Selected Evaluator Scoring Comments, Ex. 8.

It is noteworthy that evaluator Wiggins scored PGBA only 35 out of 50 on the “Technical Approach” factor and only 12 of 20 on the Qualifications factor, recognizing these deficiencies. Three of the four evaluators scored PGBA’s Technical Approach factor an average of 43.3. By contrast, “The Outlier” irrationally scored PGBA 54 for this factor – only one point less than United Way - despite these plain and extraordinary deficiencies.

Clearly, the statistically significant anomalies in The Outlier’s scoring of PGBA were the only reason PGBA was selected to negotiate as the highest ranked vendor overall by a mere two points out of 100.

3. SCDHEC improperly provided to only one competitor the relevant and requested information about current contract staffing and call center volumes and related data. Such data is recognized as “very valuable” for a vendor to provide its plan and pricing. This fact

was admitted by PGBA in its private correspondence to SCFFA on November 22, 2016. Vendors specifically asked, but were refused, such relevant data, because vendors were told in Amendment #3 that the requested information was “not available”; however, soon thereafter, such very data was provided, but to only one vendor, PGBA, who thanked the SCDHEC for providing that information.

Amendment #3 provided:

8) Question: General n/a What is the current staffing model for this call center?

The State's Response: This information is unavailable.

* * *

58) Question: Section III.3.5 page 15- Can the State please provide the current contractor's staffing plan or estimated staff count by role?

The State's Response: No, the State will not be able to provide the current contractor's staffing plan or estimated staff count by role.

* * *

117) Question: Section 3.11.1 on page 22- Please provide historical weekly or monthly reports that detail the following metrics for both the Central Appointing and Care Line:

The State's Response: This information is not available.

118) Question: Section 13.11.2 on page 22- Please provide historical weekly or monthly reports that detail the following metrics for the Central Appointing Service:

The State's Response: This information is not available.

119) Question: Section 14.3.11.3 on page 22 Please provide historical weekly or monthly reports that detail the following metrics for the Care Line:

The State's Response: This information is not available.

RFP, Amendment 3. Although the State replied, as shown above, that none of the requested data was available, such very relevant data was soon thereafter actually provided by the State – but only to PGBA - at a meeting on November 1, 2016 and via a November 3, 2016 e-mail from Sarah Romano to Dee Yurko (Ex. 5), providing “details on current contract staffing and call center volumes.”

On November 10, 2016 (Ex. 6), Dee Yurko of PGBA sent an e-mail to Sarah Romano thanking her for this information, and stating:

This information is very helpful in reviewing the staffing PGBA

proposed for the DHEC Call Center. As requested, we are confirming that management and support staff positions are included in our proposed staffing levels.

After obtaining this exclusive, relevant and important data, on November 22, 2016, *PGBA “revised” and “amended” its proposal to add about twenty five percent more staffing:*

Thank you for providing the data regarding staffing levels and productivity factors for the current call center, and for demonstrating the SC DHEC Appointing System. This information was very valuable in re-evaluating the staff proposed for the South Carolina DHEC Call Center. After considering this additional information in conjunction with PGBA’s expected work hours and historical experience, we are revising our proposed staff model....

Ex. 1, Letter of Dee A. Yurko of PGBA to SFAA’s Sarah Romano, ITMO Procurement Manager, November 22, 2016.

By refusing all vendors access to information that was relevant, and “very valuable” to PGBA and by telling vendors the data was “not available” when in fact it was available at all times, and then providing such important information only to PGBA, the State violated the most fundamental requirements of competitive procurement – equal treatment of vendors. As a consequence, the award must be rescinded.

4. On information and belief, PGBA proposed a number of “key personnel” in its proposal, and proposed for one or more key personnel to be “part time” rather than “full time” as was clearly required by the RFP.

United Way is informed and believes that the proposed staffing model offered by PGBA provided that one or more of the Technical Coordinator, Training Coordinator, Operations Manager and other “key personnel” identified in PGBA’s Staffing Model in Appendix I, as well as elsewhere, were required to be full time by the RFP at pages 15-17 and 26 (“the key staff and management staff proposed for the project will be those actually assigned. The key employees will remain affiliated with this project full time throughout the term of the Contract as long as the Contractor employs them”.) United Way is informed and believes that such staff were identified as part time in the proposal and in subsequent communications with the State.

5. The Evaluation was Arbitrary and Capricious in that it Treated PGBA’s Response as if it were fully compliant in the above areas, and ignored the above issues, while evaluators recognized the PGBA proposal was in fact not responsive.

The evaluation was arbitrary, capricious, subject to bias and clearly erroneous. In the evaluation, PGBA was just barely scored the highest of the competitors - by only two points out of 100. PGBA's pricing was so low it was able to overcome its inferior technical scores. PGBA was scored lower on technical matters by all but one "outlier" evaluator, who inexplicably and repeatedly scored PGBA higher in areas in which other evaluators noted serious deficiencies in the PGBA response and proposal. As a result, PGBA was improperly allowed (with a completely non-responsive proposal) to negotiate with DHEC, and to improperly change its proposal materially and unlawfully to more closely resemble that of United Way, and was awarded the contract.

6. PGBA was not eligible for discussions or negotiations because its proposal did not provide all required features of a training coordinator, and was also so deficient in the areas of overall staffing, that it could not be lawfully "cured."

Details related to PGBA's failure to provide an on-site, full time training coordinator as required by the RFP from day one throughout the contract term are set forth hereinabove.

7. The State improperly allowed PGBA so much latitude in its deficient "response" that PGBA was effectively allowed to submit an "amended" proposal long after the deadline for proposal submission. This approach is simply not allowed.

Details related to the State's improper process that allowed PGBA so much latitude in its deficient "response" that PGBA was effectively allowed to submit an "amended" proposal long after the deadline for proposal submission are set forth hereinabove.

8. The RFP process was also fatally defective and did not comply with the minimum legal essential requirements and PGBA's contract cannot proceed in light of such defects.

Details regarding the failure of the State to provide vendors requested information and to treat vendors equally as well as the State's evident preferential treatment of only one vendor is described in detail above.

9. PGBA was improperly, arbitrarily and capriciously scored on its obviously deficient staffing, as well as on the false premise and assumption that it could and would materially change its staffing and even adopt the existing staff and staffing approach of United Way, when PGBA did not and could not promise such staffing.

Details regarding this issue are outlined hereinabove.

10. All evaluators save one - the "outlier" - scored PGBA much lower than United Way on technical structure. The score of the outlier was arbitrary and capricious because it is

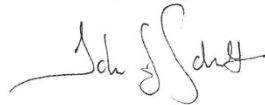
improper to score a competitor nearly as well, as well, or even better for *not* providing required information.

For the above reasons and such other reasons as may be offered in an amended protest, the award to PGBA must be stayed, and cancelled, and the award must be issued to United Way, the highest ranked responsive and responsible vendor.

CONCLUSION

Based on the grounds set forth herein, United Way requests a hearing and that the State honor the automatic stay, cancel the intent to award the contract to PGBA, and award the contract to United Way. Alternatively, United Way requests that the CPO grant this protest, cancel the intent to award and mandate re-solicitation under the governing authority set forth in the Procurement Code and Regulations. **United Way also asks that the CPO immediately require that the entire procurement file be provided to the undersigned on behalf of United Way as required by S.C. Code § 11-35-410, the South Carolina Consolidated Procurement Code and under the S.C. Freedom of Information Act.** If the CPO determines that it will not hold a hearing, United Way requests that the CPO provide United Way a deadline by which United may provide evidence for the CPO to consider in reaching its decision.

Very truly yours,



John E. Schmidt, III

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.

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

Name of Requestor

Address

City

State

Zip

Business Phone

-
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: _____

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.