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EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

MICHAEL B. SPICER  
INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

## Written Determination

**Matter of:** Cancellation of Award to Layer 3 Communications, LLC

**Case No.:** 2017-218

**Posting Date:** July 6, 2017

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400013452

**Description:** Palo Alto Network Products and Services

This matter is before the Chief Procurement Officer for Information Technology (CPO) pursuant to a request from the South Carolina State Fiscal Accountability Authority (SFAA). [Ex. 1] SFAA asks the CPO to cancel an award to Layer 3 Communications, (Layer 3) for the provision of Palo Alto Network Products and Services under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code) and Regulation 19-445.2085(C).

### BASIS FOR THE REQUEST

SFAA issued solicitation 5400013452 for Palo Alto Network Products and Services on May 18, 2017. The solicitation established a special standard of responsibility:

Offerors must submit a Letter of Authorization with their response to this solicitation. The Letter of Authorization must be on Palo Alto Networks letterhead, reference this solicitation number, certify that the Contractor is an authorized manufacturer's representative, be dated within thirty (30) days of the date of the Contractor's solicitation response (or solicitation anniversary) and is

able to supply the manufacturer's line of products and services to the State of South Carolina.

Layer 3 submitted a letter from Palo Alto dated June 9, 2017, indicating that it was an authorized reseller. (Ex. 2) An Intent to Award was posted to Layer 3 on June 20, 2017. (Ex. 3) After award but prior to performance, Palo Alto advised the procurement manager that Layer 3 was not authorized to sell its products under the solicited contract, nor to supply the manufacturer's line of products and services to the State of South Carolina. (Exhibit 4) In light of this communication, it appears the procurement officer's determination that Layer 3 met the special standard of responsibility was wrong.

SFAA requests cancellation of the award prior to performance due to an administrative error by the purchasing agency in accordance with Regulation 19-445.2085(C), which provides in part:

**Cancellation of Award Prior To Performance.**

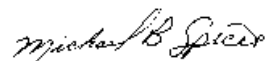
After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

(7) Administrative error of the purchasing agency discovered prior to performance, or

(8) For other reasons, cancellation is clearly in the best interest of the State.

**DETERMINATION**

For the foregoing reasons the award to Layer 3 Communications, LLC is cancelled.



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Michael B. Spicer  
Chief Procurement Officer for Information Technology

## Exhibit 1

**From:** [Hutto, Kristen](#)  
**To:** [Spicer, Michael](#)  
**Cc:** [Potts, Donna](#)  
**Subject:** Award Cancellation Request  
**Date:** Tuesday, June 27, 2017 2:01:13 PM  
**Attachments:** 4400016411 - Layer3 ITA.pdf  
Layer 3 Communications - NonResponsible Determination.pdf  
Authorization Letters Submitted.pdf  
**Importance:** High

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Good Afternoon,

I am requesting the cancellation of the award to Layer 3 Communications, LLC for the statewide term, fixed price bid contract number 4400016411 under the solicitation for Palo Alto Networks Products & Services (5400013452) pursuant to §19-445.2085(C)(7) of the South Carolina Code of Regulations. The solicitation required a letter as described below as a 'Special Standard of Responsibility'.

Offerors must submit a Letter of Authorization with their response to this solicitation. The Letter of Authorization must be on Palo Alto Networks letterhead, reference this solicitation number, certify that the Contractor is an authorized manufacturer's representative, be dated within thirty (30) days of the date of the Contractor's solicitation response (or solicitation anniversary) and is able to supply the manufacturer's line of products and services to the State of South Carolina.

The letter submitted with the Layer 3 Communication, LLC offer did not meet all of the criteria; specifically it failed to reference the solicitation number and specify that the [Offeror] is able to supply the manufacturer's line of products and services to the State of South Carolina. I failed to identify these shortcomings in the initial review of the offer and it was brought to my attention by the manufacturer after publishing the intent to award statement. As this oversight results in Layer 3 Communications being a non-responsible offer, I've attached a justification for determination of non-responsibility and respectfully request approval to cancel the award due to an administrative error of the purchasing agency discovered prior to performance.

Thank you,



**Kristen M. Hutto | Procurement Manager**  
**Division of Procurement Services | SC State Fiscal Accountability Authority**  
1201 Main Street, Suite 600 | Columbia, SC 29201 | Phone: (803) 737-7685 | [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov)

## Exhibit 2

State of South Carolina

Response to Fixed Price Bid: 5400012590



**June 9, 2017**

To Whom It May Concern:

On behalf of the Global NextWave Partner Programs team at Palo Alto Networks, this is to inform you of the partnership between Palo Alto Networks, Inc. and:

**Layer 3 Communications**  
**1450 Oakbrook Dr, Ste 900**  
**Norcross, GA 30093-6239**  
**USA**

**Layer 3 Communications** is classified as a **Platinum** level partner in the Palo Alto Networks NextWave Partner Program and is an Authorized Reseller

Thank you,

Karl Soderlund  
VP, America's Channels  
Palo Alto Networks

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Palo Alto Networks, Inc.  
3300 Olcott Street  
Santa Clara, CA 95054



### Exhibit 3

STATE OF SOUTH CAROLINA  
SFAA, DIV. OF PROCUREMENT SERVICES, ITMO  
1201 MAIN STREET, SUITE 600  
COLUMBIA SC 29201

**Intent to Award**  
Posting Date: June 20, 2017

**Solicitation:** 5400013452  
**Description:** PALO ALTO NETWORKS PRODUCTS & SERVICES  
**Agency:** Statewide Term Contract

The State intends to award contract noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **July 1, 2017 at 8:00 am**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

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

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

**Contract Number:** 4400016411  
**Awarded To:** LAYER 3 COMMUNICATIONS LLC (7000043855)  
1450 OAKBROOK DR SUITE 900  
NORCROSS GA 30093

**Total Potential Value:** \$ 1,245,750.00  
**Initial Contract Term:** July 01, 2017 through June 30, 2018  
**Maximum Contract Period:** July 01, 2017 through June 30, 2022

Item	Description	Discount
00001	Category A - Hardware	28 %
00002	Category B - Subscriptions	28 %
00003	Category C - Frontline Support	10 %
00004	Category E - Professional Services	0 %
00005	Category 0% - LAB	0 %

Item	Description	Hourly Rate
00006	Installation Hourly Rate	\$225.00
00007	Consulting Hourly Rate	\$225.00
00008	Training Hourly Rate	\$225.00

*Note: As an indefinite delivery, indefinite quantity contract the total potential value is an estimated amount and may be adjusted as needed. This award statement does not guarantee the Contractor will receive any amount of work under this contract.*

**Procurement Officer**  
KRISTEN HUTTO

## Exhibit 4

**From:** [Hutto, Kristen](#)  
**To:** [Spicer, Michael](#)  
**Subject:** FW: Layer 3 Award  
**Date:** Wednesday, June 28, 2017 10:50:34 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Please see the email below from Palo Alto Networks regarding the Letter of Authorization submitted by Layer 3 Communications, LLC.

Thanks,



**Kristen M. Hutto | Procurement Manager**  
**Division of Procurement Services | SC State Fiscal Accountability Authority**  
1201 Main Street, Suite 600 | Columbia, SC 29201 | Phone: (803) 737-7685 | [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov)

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**From:** Kin Wong [<mailto:kwong@paloaltonetworks.com>]  
**Sent:** Wednesday, June 28, 2017 10:46 AM  
**To:** Hutto, Kristen  
**Subject:** Re: Layer 3 Award

Hi Kristen,

We opt for #1 – we, Palo Alto state that the Letter of Authorization submitted by Layer 3 Communications, LLC does not meet the criteria of the solicitation and that Layer 3 is not authorized to sell under the contract at this time.

Please let me know what else you need from us at this moment. Thanks for your help w/ this.  
Thanks,

Kin

**Kin Wong, CISSP**  
Named Account Manager - SLED  
Direct: 704.284.9333 | Mobile: 215.740.8811



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**From:** Kristen Hutto <[khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov)>

**Date:** Wednesday, June 28, 2017 at 9:59 AM  
**To:** Kin Wong <[kwong@paloaltonetworks.com](mailto:kwong@paloaltonetworks.com)>  
**Subject:** Layer 3 Award

Good Morning Kin,

I submitted the request for award cancellation yesterday and after discussing with the CPO, he feels the argument to cancel the award is too weak to legally withstand a potential protest. In his opinion, the letter's failure to reference the solicitation number and specify the State of SC should be waived as a minor informality under [§11-35-1520 \(13\)](#) since a letter was submitted with their offer identifying them as an authorized reseller. So we have two options on moving forward:

1. Palo Alto can submit in writing that the Letter of Authorization submitted by Layer 3 Communications, LLC does not meet the criteria of the solicitation and that Layer 3 is not authorized to sell under the contract at this time. This would not prevent them from being awarded a contract under any subsequent review period but would allow us to proceed with a cancellation.
2. The State allows the award to proceed, waiving the letter's deficiencies as minor informalities.

Please let me know which option works best for you.

Thanks,



**Kristen M. Hutto | Procurement Manager**

**Division of Procurement Services | SC State Fiscal Accountability Authority**

1201 Main Street, Suite 600 | Columbia, SC 29201 | Phone: (803) 737-7685 | [khutto@mmsc.gov](mailto:khutto@mmsc.gov)

## 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

- 
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.**