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## Protest Decision

**Matter of:** Total Transit, Inc.

**Case No.:** 2016-133

**Posting Date:** April 18, 2016

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

**Solicitation No.:** 5400008382

**Description:** Transportation Coordinator to Manage the Daily Functions of the South Carolina Non-Emergency Medical Transportation Program

### DIGEST

Protest of the award of a contract for a Transportation Coordinator to Manage the Daily Functions of the South Carolina Non-Emergency Medical Transportation Program alleging protester should have received higher scores, is denied where there is no evidence of clearly erroneous, arbitrary, or capricious evaluation or actual bias.

### AUTHORITY

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

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

## **DISCUSSION**

Total Transit, Inc. (Total) protests an award to Southeastrans, Inc. (Southeast) for a Transportation Coordinator to Manage the Daily Functions of the South Carolina Non-Emergency Medical Transportation Program. Total's letter of protest is incorporated by reference. [Attachment 1]

## **KEY EVENTS**

Solicitation Issued	August 26, 2014
Amendment 1 Issued	October 2, 2014
Amendment 2 Issued	June 2 2015
Amendment 3 Issued	July 24, 2015
Amendment 4 Issued	September 3, 2015
Intent to Award Issued	February 16, 2016
Protests Received	February 26, 2016
Award Suspended	February 26, 2016

## **BACKGROUND**

This solicitation was issued by the South Carolina Department of Health and Human Services (HHS) through a delegation by the CPO to acquire a transportation coordinator to manage the daily functions of the South Carolina Non-Emergency Medical Transportation Program. The South Carolina Non-Emergency Medical Transportation (NEMT) program pays for non-emergency medical transportation services for eligible Medicaid Members to medical care or services, which are covered under the Medicaid program.

## **ANALYSIS**

Total Transit challenges that the \$94,660,696.70 total potential award to Southeastrans is not within a competitive range with Total Transit's bid of \$34,509,867.40. Total notes that the difference of \$60,150,829.30 cannot be supported in terms of the perception that the higher investment will result in an improvement of service, because no research was done to in fact hear the Total Transit story.

Unlike an Invitation For Bid which is awarded to the lowest priced responsive and responsible bidder, award through a Request for Proposals must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals. (Section 11-35-1530(10)) This solicitation included three award criteria with references to applicable sections of the RFP, explanations as to how the criteria would be applied, and assigned weights:

Approach, 55 points;  
Background, Experience and Approach to Staffing, 25 points;  
NEMT Price Proposal, 20 points.

[Solicitation, Page 69]

The solicitation clearly explained what factors would be included in determining the offeror's cost and how points would be awarded. Total submitted the lowest overall cost and received the maximum points allowed for cost. Unlike the Federal Acquisition Regulations, the South Carolina Consolidated Procurement Code does not provide for a competitive range determination to limit competition to the most qualified offerors. When the scores for all three criteria were tallied, Southeastrans was the highest ranked offeror. There was no violation of the Code or the solicitation. This issue of protest is denied.

Total also protests that the RFP lacked a clear method of scoring for the technical aspects, so the evaluation was subjective versus objective. Proposals submitted in response to a RFP that invites bidders to describe various aspects of their offering and explain how their products or services will solve the State's business problem are evaluated with some subjectivity by evaluators from various affected business units and the evaluator's knowledge and experience. For an RFP evaluation to be completely objective, the State would have to define the requirements in such a way as to eliminate any consideration of unique or value-added capabilities or functionality which would result in an award to the lowest priced offer.

Total alleges that the failure of the State to provide evaluators a measurement tool or evaluation guide resulted in capricious evaluations and proposals not being properly evaluated. Total points to the evaluation score sheets which show that there was no consensus among the evaluators as

to the best proposal. There was a wide variation in the scores from different evaluators for the same criteria. Among the five evaluators, three different companies received the highest score for criteria one and two.

There is no requirement in the Code that the evaluation committee reach a consensus.

Section 11-35-1530(7) requires that:

Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals.

In this case, evaluators could award up to 55 points for criteria 1 and 25 points for criteria 2. Some evaluators awarded points on the high end of the available point range while others awarded points on the lower end of the scale. However they were consistently on the high end or on the low end of the scale. There is no indication that evaluators arrived at their scores in a capricious manner. In fact, all five evaluators ranked Total's proposal fourth out of four proposals reviewed.

Section 11-35-1530(9) requires that:

Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals....

Section 11-35-2410 set the standard for review as follows:

The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law: ...Section 11-35-1530(7) Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors); Section 11-35-1530(9) (Competitive Sealed Proposals Award)....

In the absence of evidence that the evaluators were clearly erroneous, arbitrary, capricious or contrary to law, the Chief Procurement Officer will not vacate their evaluations or substitute his judgement for that of the evaluators.

To the extent that Total protests that the RFP lacked a clear method of scoring for the technical aspects of the proposals, the CPO lacks jurisdiction to consider this issue as it relates to the solicitation, could have been raised as a protest of the solicitation and Section 11-35-4210(1)(b) prohibits its consideration as a protest of the award:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; ***except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.***

(emphasis added)

Total also alleges intentional, unsupported low scoring of its proposal in the area of Background, Experience and Staffing Plan.

In one instance for criteria 2, we received a seven-point score by one member of the evaluation committee. While another reviewing the same section scored Total Transit 20-points. We can only interpret that as a purposeful act, as our background, experience, reputation and the fact that we are the only bidder who is currently managing an ASO contract is indisputable.

While one evaluator only awarded Total 7 points for criteria 2, two other evaluators only awarded Total 10 points, and all five evaluators ranked Total fourth out of four proposals against criteria 2.

Total also cites a number of evaluator comments to support its claim of bias:

“Staffing numbers seemed low”  
“Culture different”  
“Staffing numbers seemed low”  
“Sloppy Proposal”  
“Proposal was not very well presented”  
“GPS required but not on the vehicle list”  
“Culture different”

Of the four proposals received, Total’s proposal received the lowest score from each evaluator.

While some evaluators awarded points on the higher end of available range and some evaluators awarded points on the lower end of available range, however they were consistent within their chosen segment of the available range as shown below:

<b>Item 1</b>	<b>Logisticare</b>	<b>MTM</b>	<b>SET</b>	<b>Total</b>
Eval 1	53.00	52.00	54.00	45.00
Eval 2	40.00	50.00	45.00	25.00
Eval 3	35.00	38.00	40.00	30.00
Eval 4	35.00	30.00	50.00	25.00
Eval 5	52.00	40.00	49.00	25.00
<b>Total</b>	<b>215.00</b>	<b>210.00</b>	<b>238.00</b>	<b>150.00</b>

<b>Item 2</b>	<b>Logisticare</b>	<b>MTM</b>	<b>SET</b>	<b>Total</b>
Eval 1	25.00	25.00	24.00	24.00
Eval 2	20.00	19.00	13.00	7.00
Eval 3	18.00	18.00	20.00	15.00
Eval 4	20.00	15.00	23.00	10.00
Eval 5	23.00	12.00	20.00	10.00
<b>Total</b>	<b>106.00</b>	<b>89.00</b>	<b>100.00</b>	<b>66.00</b>

In reviewing the evaluator comment that Total’s “Staffing numbers seemed low,” it appears that four out of five evaluators commented on Total’s staffing with evaluator 2 commenting that the “staffing number in the proposal seemed low.” Evaluator 3 commented that there was “No explanation of how staffing level was determined.” Evaluator 4 commented that the “staffing did not seem adequate for the region.” Evaluator 5 commented that “Total Transit’s approach to staffing was inadequate to (sic) volume SCDHHS has historically reported.” Apparently Total’s proposal did not explain its staffing plans with enough clarity to allay the concerns of the majority of the evaluators. There is no indication of intentional, unsupported low scoring.

Looking at the “Culture different” comment, four out of five evaluators commented on Total’s previous experience in the southwest part of the country and the cultural difference between that region and the south.

Reviewing the “Sloppy Proposal” and “Proposal was not very well presented” comments, the “Sloppy Proposal” comment was actually found in the comments of Evaluator 1 with regard to

the first evaluation criteria. Evaluator 1 awarded Total the most points of any evaluator for that criterion. The “Proposal was not very well presented” comment was found in the comments of Evaluator 4 with regard to the first criteria. Evaluator 4 awarded Total the same number of points as Evaluator 5 for this criterion. There is no indication of intentional, unsupported low scoring.

In reviewing the “GPS Required but not on the vehicle list” comment, Total explains:

In review our 300+ page response, we clearly stated in 25 places throughout the proposal our plan that we would have our network providers’ vehicles GPS-tracked.

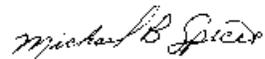
The “GPS Required but not on the vehicle list” comment was found in the comments of Evaluator 1 with regard to the first evaluation criteria. Evaluator 1 awarded Total the most points of any evaluator for that criterion. There is no indication of intentional, unsupported low scoring.

Each evaluator ranked Total fourth out of four proposals. The only clear indication is that all five evaluators felt that Total provided the poorest proposal. There is no evidence that the low scores given for Total’s proposal were unsupported. There is no violation of the Code.

## **DECISION**

For the reasons stated above, the protest of Total Transit, Inc. is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

# Attachment 1



February 25, 2016

Chief Procurement Officer  
Materials Management Office  
South Carolina State Fiscal Accountability Authority  
1201 Main Street, Suite 600  
Columbia, SC 29201

via email to protest-mmo@mmo.state.sc.us

**Re: Protest - Solicitation 5400008382: Transportation Coordinator to Manage the Daily Functions of the South Carolina Non-Emergency Medical Transportation Program**

Attn: Chief Procurement Officer,

This letter constitutes a formal protest of the intent to award for Solicitation 5400008382: Transportation Coordinator to Manage the Daily Functions of the South Carolina Non-Emergency Medical Transportation Program to Southeastrans. Total Transit's protest is centered on three factors:

1. Fiscal Responsibility - Total Transit's proposed cost is over \$60 million less than that of the selected offeror;
2. Strong Evidence of Subjectivity - scoring methodology was undefined, capricious and improperly evaluated;
3. Intentional Low Scoring for Total Transit - in the area of Background, Experience and Staffing Plan, low scoring was unsupported.

The evidence we present in this letter illustrates that the process used to award a Transportation Coordinator was subjective and fell short of identifying sufficient understanding of the offers. These together suggest that the process used was contrary to a fair and successful procurement decision, and the resulting choice can thereby be deemed random and not in the best interest of the State.

The following data supports our position that all parties were sufficiently harmed due to these errors in the analysis process. The only appropriate remedy is for South Carolina Department of Health and Human Service (SCDHHS) to rescind the award intention and re-release the Transportation Coordinator RFP with a more stringent set of guidelines established for the evaluation of offers.

### Fiscal Responsibility

**Total Transit submitted a proposal and plan that provided the lowest overall cost option to SCDHHS.** In both the best and final and the original proposal evaluation phases, Total Transit provided SCDHHS the most advantageous pricing model to serve the needs of the State's Medicaid population. The original scores were assigned based on non-disputable calculations:

Total Transit	Southeastrans	LogistiCare	MTM
20.00	9.17	8.61	5.68

Being asked to participate in the BAFO, we assumed we were a strong candidate for SCDHHS, so we worked to identify additional efficiencies and reduced our cost proposal even more. We were able to do so without conditioning any of our RFP response commitments or reducing the level of service. The result was a best and final price that is nearly 1/3 that of the bidder the State intends to contract with, Southeastrans. Total Transit challenges how spending \$94,660,696.70, the contract cost proposed by Southeastrans, is in any way within a competitive range with Total Transit's bid of \$34,509,867.40. At a minimum, the evaluation team had the responsibility to request an audience with Total Transit to investigate whether our plan would in fact meet with the requirements of SCDHH.

Below is a year-by-year comparison:

Item	Description	Southeastrans Unit Price	Southeastrans Total	Total Transit Unit Price	Total Transit Total	Difference (overspending)
			Total		Total	
1	Transportation Services Year 1 (6 months)	\$ 0.92	\$6,278,304.48	\$ 0.35	\$2,388,485.40	\$ 3,889,819.08
2	Transportation Services Year 2	\$ 0.94	\$13,214,463.60	\$ 0.35	\$4,920,279.00	\$ 8,294,184.60
3	Transportation Services Year 3	\$ 0.96	\$13,900,492.80	\$ 0.35	\$5,067,888.00	\$ 8,832,604.80
4	Transportation Services Year 4	\$ 0.97	\$14,466,645.96	\$ 0.35	\$5,219,923.80	\$ 9,246,722.16
5	Transportation Services Year 5	\$ 0.99	\$15,207,873.12	\$ 0.35	\$5,376,520.80	\$ 9,831,352.32
6	Transportation Services Year 6	\$ 0.94	\$14,872,995.84	\$ 0.35	\$5,537,817.60	\$ 9,335,178.24
7	Transportation Services Year 7	\$ 0.94	\$15,319,187.52	\$ 0.35	\$5,703,952.80	\$ 9,615,234.72
8	Transportation Services Implementation (6 months)		\$1,400,733.38		\$ 295,000.00	\$ 1,105,733.38
<b>Total</b>			<b>\$94,660,696.70</b>		<b>\$34,509,867.40</b>	<b>\$ 60,150,829.30</b>

This difference of \$60,150,829.30 cannot be supported in terms of the perception that the higher investment will result in an improvement of service, because no research was done to in fact hear the

Total Transit story. The high fees proposed by the vendor to be awarded, as well as with LogistiCare and MTM, do not necessarily indicate a better understanding of the needs of the State, but rather could highlight their inability to efficiently manage a network and call center while performing at a high quality level.

Total Transit conducted an exhaustive investigation of the needs of the State. Our ability to utilize technology in ways that our competition is simply unable allows us to comfortably bid this project at our proposed price. We offer a high-performance operational model to South Carolina without sacrifice in quality and safety to members, while saving the taxpayers and Department over \$60 million over the life of the contract. Total Transit is the only offeror who is currently managing a state contract as a coordinator in a manner that SCDHHS is expecting, and any due diligence by SCDHHS would have illustrated that in our costs, we did not underestimate operational and staffing needs, but that we are both experienced and high performing in such contracts. Specifically, our State of Colorado reference attests to that.

**Subjectivity**

**The RFP lacked a clear method of scoring for the technical aspects, so the solicitation was subjective versus objective.** There is strong evidence that scores for the qualitative criteria were highly influenced by subjectivity versus the actual RFP responses themselves. The implications in communication with SCDHHS was that evaluations would be conducted objectively, and that best practices for procurement would be followed. It is clear, however, that the inconsistency of the scores, the range of score results, and the difference in rankings from one evaluator to the next all suggest a high degree of subjectivity in these evaluations. Below is a table illustrating the swing in scores for RFP criteria one and two.

	Highest Score	Lowest Score	Range	High Vendor
<b>Evaluator 1</b>	78	69	9	Log/SET
<b>Evaluator 2</b>	69	32	37	MTM
<b>Evaluator 3</b>	60	35	15	SET
<b>Evaluator 4</b>	73	35	38	SET
<b>Evaluator 5</b>	75	35	40	Log

The above highlights the following realities:

- a) Five evaluators scoring three distinctly different companies at the highest level for criteria one and two.
- b) A range in scoring that differs from 9 to 40 points.
- c) For the evaluators who had the greatest range of scores (37+), three different organizations received the highest score.

With no measurement tool or evaluation guideline, scoring became random. In our experience, when evaluations of RFPs are truly objective, that a common theme develops among the evaluation team.

What is most disturbing is that the three evaluators whose scores indicate the highest degree of subjectivity also pick three different companies. Pre-conceived opinions about the bidding companies prevailed. Further evaluation of the integrity of the scoresheets are warranted before accepting the outcome.

#### **Intentional Low Scoring**

**Intentional and artificially low scores were assigned to Total Transit to prevent our being awarded.** In one instance for criteria 2, we received a seven-point score by one member of the evaluation committee. While another reviewing the same section scored Total Transit 20-points. We can only interpret that as a purposeful act, as our background, experience, reputation and the fact that we are the only bidder who is currently managing an ASO contract is indisputable.

In reviewing evaluation committee comments, this subjectivity is further emphasized. Comments made by the evaluators we take issue with include:

- “Staffing numbers seemed low”  
Total Transit prides itself on innovations that improve efficiency, including the FTEs required to manage the scope of work. If there was concern for our contract history, a reference check would have revealed and demonstrated Total Transit’s experience with the state of Colorado. We are confident in our ability to exceed South Carolina’s contract requirements with a small but effective staff of team members.
- “Culture different”  
From the first pages of our response, we begin detailing our commitment. We spent several man days on the ground throughout the state, investigating SCDHHS’ current transportation challenges, talking to stakeholders, and building relationships. To date, we have identified over 420 transportation providers in South Carolina, representing nearly 1,470 vehicles, and heard over and over again how frustrated they were with the current broker. In addition, reading the exact same proposal, another committee member’s evaluation comments were: “impressive analysis of need”.
- “Sloppy Proposal” and “Proposal was not very well presented”  
As we reviewed the RFP, we utilized the exact format suggested by SCDHHS. Our proposal did not contain an inordinate amount of pictures or illustrations, but we did provide exactly what was needed to explain our proposed service and respond to each and every question.
- “GPS Required but not on the vehicle list”  
In review our 300+ page response, we clearly stated in 25 places throughout the proposal our plan that we would have our network providers’ vehicles GPS-tracked.

These comments were obviously not based on fact but rather on an unsubstantiated opinion that Total Transit could not deliver on the RFP.

Looking back now on these dramatic swings in scoring and an obvious subjectivity in the evaluations, it is concerning to Total Transit that SCDHHS never elected to conduct discussions with our company (or other respondents) with regard to our approach and methodology, or for clarification to our claims for significant cost savings, all pursuant to S.C. Regulation 19-445.2095 (l)(1)(a) and (b).

As stated at the onset of this letter, the remedy Total Transit suggests is a retraction of the award, and a re-release of the RFP for a Transportation Coordinator. We are not requesting an audience with SCDHHS



or a rescoring of the RFP responses. Until substantial guidelines are established enabling the evaluators to follow an objective approach to scoring, we believe that the process that is in place is flawed.

For communication, please contact:

Bill Blair  
Director of Operations  
Total Transit, Inc.  
4600 W Camelback Road  
Glendale, AZ 85301  
Office: 602-200-5500  
Cell: 480-204-4026  
bblair@totaltransit.com

Sincerely,

Bill Blair  
Director of Operations

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised September 2015)*

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 2015 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  
1105 Pendleton Street, Suite 209, Columbia, SC 29201**

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

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

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

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

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

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

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

Sworn to before me this

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

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

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

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

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

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

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

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