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W. BRIAN WHITE  
CHAIRMAN, HOUSE WAYS AND MEANS

## Protest Decision

**Matter of:** Long's Closed Door Pharmacy, Inc.  
NCS Healthcare of South Carolina d/b/a Omnicare of Charleston

**Case No.:** 2017-101  
2017-104

**Posting Date:** August 25, 2016

**Contracting Entity:** SC Department of Disabilities and Special Needs

**Solicitation No.:** 5400011300

**Description:** To Provide Pharmacy Services for Whitten Center

### DIGEST

Protests alleging violation of federal anti-kickback statutes are denied.

### AUTHORITY

The Chief Procurement Officer 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.

## **BACKGROUND**

<i>Event</i>	<i>Date</i>
Solicitation Issued	04/21/2016
Amendment One Issued	05/05/2016
Amendment Two Issued	05/18/2016
Amendment Three Issued	05/20/2016
Intent to Award Issued	06/27/2016
Protest of Long Received	07/01/2016
Protest of NCS Received	07/07/2016

The SC Department of Disabilities and Special Needs (DDSN) issued this Invitation for Bids to acquire pharmacy services for Whitten Center. Responses were received from Long's Closed Door Pharmacy, Inc. (Long); Palmetto RX Solutions, Inc. (Palmetto); Genoa, a Qol Healthcare Company, LLC (Genoa); and NCS Healthcare of South Carolina d/b/a Omnicare of Charleston (NCS). DDSN posted its Intent to Award a contract to Palmetto on June 27, 2016, followed by the protests of Long and NCS. Long alleges violation of federal anti-kickback statutes by Palmetto. (Attachment 1) NCS alleges violation of federal anti-kickback statutes by both Palmetto and Long. (Attachment 2)

## **ANALYSIS**

The solicitation requested pricing for four line items:

- A. Pharmaceutical Services
- B. Consultant and Professional Services
- C. Chart Services (to be done monthly)
- D. OTC Services

Palmetto bid zero dollars for each line item. The Intent to Award was posted to Palmetto with \$0.00 for each line item and a comment that:

\*Contractor will earn profits from the sale of prescriptions.

Long and NCS argue that Palmetto's bid of zero dollars to provide over-the-counter (OTC) goods in exchange for prescription referrals which will be billed to and paid by Medicare or Medicaid is a violation of Section 1128B(b) of the Social Security Act (the "Anti-Kickback law"), 42 U.S.C. § 1320a-7b. Section 1128B(b)(2) states:

- (2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—
- (A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or
  - (B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,
- shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

42 U.S.C. § 1320a-7b(b)(2). NCS and Long argue remuneration includes the transfer of anything of value and that Palmetto's offer to provide the OTC medications for \$0.00 in order to receive the award and as a consequence receive prescription referrals estimated in value at \$1,000,000 is a violation of the statute. NCS extends interpretation of the statute to include offering of goods or services at below fair market value in exchange for future referrals of federal healthcare business and argues that Long's bid of \$.0.085 for OTC medications violates the anti-kickback provisions because it is below fair market value and at a rate that was not commercially reasonable.<sup>1</sup>

The Procurement Review Panel dealt with this identical issue several years ago. In *Appeal by Medical Arts Pharmacy, Inc.*, Panel Case No. 1989-22(III), Medical Arts protested an award for pharmacy services to Pee Dee Pharmacy. Pee Dee had bid zero for over-the-counter medications and for consultant services, hoping to recoup the cost of those items by providing prescription medication and supplies. Like protestants here, Medical Arts pointed to 42 U.S.C. § 1320a-

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<sup>1</sup> If Long's and NCS' interpretations are correct—that remuneration means the transfer of anything of value and a bid of \$0.00 or a bid below fair market value violates the anti-kickback provisions—their own bids may suffer from the same infirmity. Long and NCS both bid \$0.00 for Pharmaceutical Services. The solicitation provides a lengthy description of Pharmaceutical Services that includes providing a facsimile machine for each residence nursing station and providing medication cart(s). The equipment alone has value and a bid of \$0.00 is well below fair market value. In addition, NCS bid \$0.00 for Chart Services which are defined as providing computerized chart services for both Medicare/Medicaid reimbursed and non-reimbursed prescriptions. This service also has value. NCS offered to provide the service below cost and below fair market value.

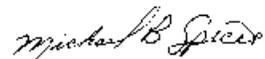
7b(b)(2) as the basis for its claim the Pee Dee bid was illegal. The Panel rejected the appeal<sup>2</sup>, writing:

In the case at bar, Medical Arts is asking the Panel to determine whether the criminal provisions of 42 U.S.C. §1320a-7b(b)(2)(B) apply in order to make Pee Dee's bid illegal and, therefore, not acceptable to the State of South Carolina. A determination whether Pee Dee's conduct is a crime is left by the intent of Congress solely to the United States Attorney General and is not properly raised by a competitor, such as Medical Arts, in a civil administrative proceeding.<sup>3</sup>

## DECISION

For the reasons stated above, the protests of Long's Closed Door Pharmacy, Inc. and NCS Healthcare of South Carolina d/b/a Omnicare of Charleston are denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

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<sup>2</sup> As an alternate holding, the Panel found 1320a-7b(3) created an exception to the anti-kickback statute under certain circumstances. DDSN makes the same argument in defense of its award. In light of the ruling, that Long and NCS cannot raise the criminal statute in an administrative bid protest challenge, the CPO need not address this issue.

<sup>3</sup> Although stated in different terms, this is precisely the approach the Comptroller General has taken in federal bid protests:

The statutory and regulatory scheme at issue provides for the Secretary of Health and Human Services (HHS) to issue advisory opinions regarding whether a given arrangement constitutes a violation of the Act's substantive provisions, and those advisory opinions are binding on the Secretary and the parties requesting the opinion. Detailed regulatory procedures exist for requesting and obtaining such advisory opinions, and determinations regarding what constitutes "prohibited remuneration" are specifically among the matters subject to the Secretary's review.

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Where, as here, Congress has vested oversight and guidance authority in a particular federal official or agency, our Office will not consider protests involving issues which are properly for review by that official or agency, especially where the determinations of the federal official or agency are binding on the parties. Given the comprehensive nature of the regulatory and statutory scheme that exists for obtaining advisory opinions regarding application of the Act, and in light of the binding nature of the Secretary's opinions, we decline to consider this aspect of HMR's protest. This is a matter that the protester instead should address to the Secretary, through the procedures outlined in the governing regulations.

## Attachment 1



Office of Corporate Counsel  
111 Executive Center Drive, Suite 228  
Columbia, South Carolina 29210  
Tel: (803) 254-5884 ext 2309  
Fax: (866) 550-7461  
[aellis@longsrx.com](mailto:aellis@longsrx.com)

July 1, 2016

*VIA EMAIL (protest-mmo@mno.sc.gov) AND FIRST CLASS MAIL*

Chief Procurement Officer, Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201.

**Re: Protest of Intent to Award Solicitation 5400011300; Contract No. 4400013366**

Dear Sir or Madam:

Please allow this letter serve as Long's Drugs formal protest of the Intent to Award for Solicitation 5400011300; Contract Number 4400013366 to Palmetto Rx Solutions Inc ("Palmetto"). The grounds for protest is that the bid selected violates the federal Anti-Kickback law by providing over-the-counter (OTC) goods for free to the state agency in exchange for prescription referrals which will be billed to and paid by Medicare. Section 1128B(b) of the Social Security Act (the "Anti-Kickback law") makes it illegal to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a Federal health care program. Remuneration includes the transfer of anything of value including goods. The Federal Office of Inspector General (OIG) has clearly stated that if the intent of providing free goods is to induce or reward referrals of Federal health care program business, the anti-kickback statute would be violated. In this case, it is clear that Palmetto offered the OTC goods free of charge with the intent to induce the State to award the contract to Palmetto thus inducing prescription referrals which the State has estimated in value at \$1,000,000. The vast majority of the prescriptions to be referred to Palmetto will be paid for by the Federal health care program Medicare Part D. Accordingly, we do not believe the State can legally accept the OTC goods for free in exchange for the prescriptions to be referred under this Solicitation.

The relief requested is for the current award to be rescinded and the next most favorable bid to be selected or, in the alternative, for the solicitation to be re-opened with a requirement that the bid for provision of OTC goods be at a minimum cost of fair market value.

If you should have any questions regarding this protest, please feel free to contact me at (803) 254-5884 ext 2309 or via email at [aellis@longsrx.com](mailto:aellis@longsrx.com)

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley L. Ellis".

Ashley L. Ellis  
Corporate Counsel



Omnicare of Charleston  
444 Deanna Lane, Suite D  
Wando, SC 29492

July 7, 2016

Via Email Only ([protest-mmo@mmo.sc.gov](mailto:protest-mmo@mmo.sc.gov))

Chief Procurement Officer  
1201 Main Street, Suite 600  
Columbia, SC 29201

Re: Protest  
Solicitation 5400011300  
To Provide Pharmacy Services

Dear Chief Procurement Officer,

NCS Healthcare of South Carolina, Inc. d/b/a Omnicare of Charleston ("Omnicare") is aggrieved as a result of the Intent to Award<sup>1</sup> issued in the above-referenced solicitation ("the Bid") on June 27, 2016 to Palmetto Rx Solutions, Inc. ("Palmetto") and hereby protests the Intent to Award. For the reasons explained below, Omnicare requests that the Intent to Award to Palmetto be rescinded, that the bids from both Palmetto and Long's Closed Door Pharmacy, Inc. ("Long's") be disqualified<sup>2</sup> for being non-compliant with the specific terms of the Bid, specifically in that both may violate the Federal Anti-Kickback Statute, and that a new Intent to Award and contract be issued to Omnicare.

I. **The Bid's Compliance Requirements and the Federal Anti-Kickback Statute, 42 USC § 1320a-7b(b).**

The Bid<sup>3</sup> expressly required vendors to comply with all applicable laws and regulations. Page 34 of the Bid, in the section entitled "Compliance With Law" states "During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules regulations and tariffs." Additionally, Section 6 on page 41 of the Bid states "Contractor shall comply with all applicable laws and regulations, including HIPAA and the HITECH Act, to the extent applicable, in meeting their obligations under this Agreement."<sup>4</sup>

Generally speaking, the Federal Anti-Kickback Statute ("AKS"), 42 USC § 1320a-7b(b), prohibits the offering of any remuneration intended to induce the referral of federally-funded healthcare business. One area that potentially implicates the AKS is offering goods or services below fair market value in exchange for future referrals of federal healthcare business. As detailed more fully below, the AKS prohibits vendors from offering free or below cost goods or services to a referral source where that vendor could as a consequence of winning the contract receive other

<sup>1</sup> The 6/27/16 Intent to Award is attached and incorporated herein as Exhibit 1.

<sup>2</sup> Palmetto's bid was lowest, followed by Long's with the next lowest bid. Omnicare's bid was third.

<sup>3</sup> The complete Bid, including its three amendments, are attached and incorporated herein as Exhibit 2.

<sup>4</sup> Even if the Bid did not require compliance with applicable laws, Omnicare submits that, where federal healthcare business is involved, compliance with the Federal Anti-Kickback Statute is presumed in every bid submission and would allow rejection of the bid even if not an express condition.

federally funded healthcare business. Here, the Whitten Center is a "referral source" under the AKS because it is offering pharmacies the opportunity to provide services to patients for which it has custodial care and where those services (i.e., prescription medications) will be reimbursed by federal healthcare programs (i.e., Medicaid). The Office of Inspector General of the United States Department of Health and Human Services ("OIG"), the agency charged with enforcing the AKS, clearly stated that government issued RFPs are not immune from this analysis.<sup>5</sup> See OIG Advisory Opinion 11-11, dated July 28, 2011 ("OIG 11-11").<sup>6</sup> The AKS is clearly an applicable law that must be complied with as part of the requirements of the Bid.

The proposed arrangement in OIG 11-11 is very similar to the facts and circumstances here. It involved a request for proposal ("RFP"), issued by the county-operated skilled nursing facility ("SNF"), soliciting bids to become the SNF's exclusive supplier of Medicare Part B-covered medical supplies and equipment, and to supply medical supplies and equipment *not* covered under Medicare Part B at the bid pricing. The vendor offered the non-covered supplies below their cost to acquire those supplies. In exchange, it would likely receive Medicare Part B business where it would make a profit (and presumably at sufficient margin to be profitable on the entire business). OIG 11-11 concluded that the AKS would be implicated under such a scenario because the vendor would be providing items to the SNF at below fair market value (here using the vendor's cost as a proxy) and at a rate that was not commercially reasonable. Importantly, the OIG found that state and county RFPs are not exempt from the AKS.

The Whitten Center, like the facility in OIG 11-11, is a government-owned facility which will pay for only a portion of the services provided by the pharmacy with the bulk of the pharmacy's services being billed to third parties, including federally-funded healthcare programs. By the strict terms of the Bid, potential charges only exist for additional Non-Covered Rx fees, Consultant Services, Chart Services, and OTC Medications. These contract charges billed to the Whitten Center account for a small portion of the overall contract value due to the great majority of the pharmacy's services being billed to third parties, including private insurance, Medicare Part D and South Carolina's Medicaid program.

## **II. Palmetto's Bid of \$0.00 Implicates the AKS and Must Be Disqualified.**

Palmetto's offer to charge precisely \$0.00<sup>7</sup> for the facility-billed portion of its services to the Whitten Center is the essence of an inappropriate kickback which violates the AKS. Both Palmetto and the Whitten Center are aware that the vast bulk of services to be provided by the winning bidder will be paid for by third parties, including federal payers. In a public bid, all bidders have an appropriate incentive to provide the Whitten Center with the best price it can on the services paid for by the Whitten Center. However, the AKS does set a floor to this pricing. Palmetto is using the no-charge items as a loss leader to obtain the other business associated with Whitten Center's residents.

<sup>5</sup> This is not to suggest that the State of South Carolina is subject to prosecution under the AKS; however, private businesses doing business with the state are subject to the AKS.

<sup>6</sup> OIG 11-11 is attached and incorporated herein Exhibit 3.

<sup>7</sup> Palmetto's bid sheets are attached and incorporated herein as Exhibit 4.

Putting aside the service based items (Non-Covered Rx fees, Consultant Services, Chart Services), which may have variable cost inputs or be services that are more broadly included in pharmacy services and not traditional separate line items, OTC Medications have an unavoidable underlying cost basis that cannot be consolidated with other services. Palmetto buys its OTC supplies from a wholesaler or manufacturer, and that cost is greater than zero. Palmetto's offer of free OTC products was expressly in exchange for the State referring its other pharmacy business to Palmetto. Stated another way, if non-facility paid business, including federal healthcare business, weren't included as part of the Whitten Center's pharmacy services contract, Palmetto would *never* offer its services for no charge as it would lose money on every drug and service provided to the facility. This means that the \$0 bid for OTC products likely constitutes illegal "remuneration" under the AKS because it is below what two arms-length business actors would negotiate. In short, Palmetto is offering the Whitten Center "remuneration" in the form of free OTC medications where Whitten Center would otherwise have to bear that cost and that offer is *in exchange for* the federal healthcare referrals.

This plainly violates the AKS, therefore violating the specific terms of the Bid, and Palmetto's bid must be disqualified in the totality. Palmetto's business rationale in offering this inducement to Whitten Center is clear: The Whitten Center's third party payment referrals, including federally funded healthcare business, are so substantial that Palmetto's Whitten Center service will still be profitable overall, even though Palmetto will be losing money on any items that aren't billed to third party pay sources and are paid for directly by Whitten Center. The State appears to be aware of Palmetto's overall business plan as the Intent to Award, after reciting Palmetto's \$0.00 price for all four bid lots, states, "Contractor will earn profits from the sale of prescriptions." The State clearly understands that while it will never receive a bill from nor make a payment to Palmetto, that the pharmacy will still profit from that portion of its services which are billed to third party pay sources. This is the essence of a "swapping" arrangement that OIG has repeatedly stated violates the AKS. See, e.g., OIG Advisory 99-2, 99-13, 10-26, 11-11, 12-09. While the exact specifics of what constitutes an impermissible "swap" as opposed to aggressive, but fair market pricing, is not always clear, there is no question that a below-cost or \$0 bid for medications will always implicate this concern.

This is an understandably enticing business arrangement to Whitten Center or any other facility, but it is exactly the sort of arrangement the AKS prohibits. The Intent to Award must therefore be rescinded.

### III. Long's OTC Medication Rate Implicates the AKS and Long's Bid Must Be Disqualified.

The Bid's second place vendor, Long's, while not offering a completely no-cost bid like Palmetto, is nonetheless problematic. At issue is Long's offer for Line Item 0004, OTC Medications, which was \$0.086 per patient day<sup>8</sup>. While greater than zero, for the reasons stated below, this rate almost certainly is significantly below Long's cost to provide these medications, rendering Long's bid equally flawed and non-compliant with the Bid terms.

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<sup>8</sup> Long's bid sheets are attached and incorporated as Exhibit 5.

As an initial matter, Amendment No. 3 to the Bid provided each potential bidder with an estimated yearly external OTC products used by the Whitten Center for purposes of modeling a proposed response to Line Item 0004. The Bid also instructed the bidder to assume 5,775 patient days per month for proposing an OTC per diem. Thus, in order to determine the cost baseline for any OTC per diem response, a bidder would need to conduct a relatively simple calculation. Specifically, the bidder determines its cost for the total products in Amendment No. 3 (e.g., the cost of 16 tubes 2 gm Abreva Pump 10% Cream (G) plus cost of each other line item). The bidder would divide that number by 12 to reach a monthly cost baseline. The bidder would then divide that number by 5,775 patient days per month to reach a per diem cost baseline. This calculation leads to the absolute floor under which any vendor could conceivably bid an OTC per diem in a manner consistent with the AKS.<sup>9</sup>

While neither Omnicare nor the Whitten Center know Long's actual costs to acquire the OTC medications, based on publically available data, it is not credible that Long's can acquire the OTC medications listed in Amendment No. 3 at an average cost of \$0.086 per patient day. The National Average Drug Acquisition Cost ("NADAC") is an index of drug acquisition costs compiled by the Centers for Medicare & Medicaid Services ("CMS"). CMS arrives at the NADAC price by surveying community retail pharmacies regarding each pharmacy's cost to acquire a particular medication, with the NADAC rates updating on a weekly basis. It is one of the current acceptable cost models that form the basis of state Medicaid reimbursement pricing. For a fuller explanation of NADAC, see <https://www.medicare.gov/medicaid-chip-program-information/by-topics/benefits/prescription-drugs/ful-nadac-downloads/nadacmethodology.pdf>.<sup>10</sup> While every pharmacy will likely buy certain products at lower or higher rates than the published NADAC, in all likelihood, NADAC functions as a good indicator of an average pharmacy's costs to obtain drugs it dispenses to patients.

Considering only the Amendment No. 3 products for which there is a current NADAC price<sup>11</sup> and using a calculation similar to the one above (available NADAC x units per year / 12 months / 5,775 patient days per month), a pharmacy would need to charge an OTC per diem of approximately \$0.32 just to cover the costs of 50% of the items. Long's bid of \$0.086 per day is approximately one quarter that number, without accounting for the acquisition cost of all the products without a NADAC price.<sup>12</sup> Omnicare, the largest long term care pharmacy in the country and a subsidiary of CVS Pharmacy (one of the largest pharmacies in the world), has considerable buying power, but it cannot acquire the listed medications at a price that even approaches the \$0.086 per diem rate proposed by Long's. While Omnicare does not know

<sup>9</sup> This is without taking into consideration any profit on those medications. Omnicare does not believe the State needs to reach that issue to disqualify Long's.

<sup>10</sup> Information regarding current and historical NADAC rates is available at <https://www.medicare.gov/Medicare-CHIP-Program-Information/By-Topics/Benefits/Prescription-Drugs/Pharmacy-Pricing.html>.

<sup>11</sup> For a variety of reasons, not every medication, particularly in the OTC space, has an available NADAC. Currently, there appears to be a NADAC for approximately 50% of the OTC products in Amendment No. 3.

<sup>12</sup> For your convenience, Exhibit 6 is an Excel file supporting Omnicare's calculation. It contains: (1) all of the products in Amendment No. 3; (2) the 4/28/16 NADAC information for each Unit of Measure for those products (Omnicare does not have the current NADAC electronically available in its systems; however, on information and belief, there is no substantial difference between current NADAC and 4/28/16 NADAC); and (3) calculations of a per product per diem and total NADAC per diem utilizing the 5775 patient days per month. The file also identifies those products for which no NADAC was available.

Long's actual acquisition cost, it is beyond belief that Long's can acquire OTC medications at significantly less than one quarter the price of the national average.

Long's was obligated to follow the Bid parameters. This included consideration of the patient days in the original solicitation and the medications listed in Amendment No. 3. To the extent Long's priced its per diem without consideration of those factors, it failed to follow the Bid requirements. To the extent that Long's did consider those factors and is offering a per diem OTC rate that is below its cost of acquiring the medications, that offer can only be considered an impermissible swapping arrangement under the AKS and Long's must be disqualified.

#### IV. Conclusion

The AKS and relevant OIG interpretation require healthcare services, including the services offered by both Palmetto and Long's to Whitten Center as part of the Bid, to be provided for fair market value to remove any potential risk of inducement for the referral of federally-funded healthcare business. As explained above, both pharmacies' OTC per diem is problematic, whether obvious through a \$0 bid or requiring an examination of available data.

As a result, either Palmetto and Long's violated the Bid by failing to consider the patient days and utilization data when responding or the bids from both Palmetto and Long's violate the Bid's requirement that all applicable laws and regulations must be followed. The end result is that the Intent to Award must be rescinded, the bids from both Palmetto and Long's must be disqualified in their entirety, and a new intent to award and contract must be issued to Omnicare as the next lowest responsive and responsible bidder.

We look forward to your review.

Sincerely,



Matthew Lerner  
Sales Director – Government Accounts  
(414) 486-3100 Ext. 63513  
[matthew.lerner@omnicare.com](mailto:matthew.lerner@omnicare.com)

**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.**