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Determination to Waive Potential Organization Conflict of Interest and Accept Organizational Conflict of Interest Mitigation Plan for State Term Contract 4400015301

This matter is before the Chief Procurement Officer (CPO) pursuant to a request to approve an Organizational Conflict of Interest Mitigation Plan for Presidio Networked Solutions LLC (PNS) and Presidio Technical Capital, LLC (PTC), subsidiaries of Presidio, Inc. pursuant to Section 11-35-1840 and Regulation 19-445.2127.

BASIS FOR THE REQUEST

An organizational conflict of interest occurs when, because of other activities or relationships with the State or with other businesses:

- (a) a business is unable or potentially unable to render impartial assistance or advice to the State, or
- (b) the business' objectivity in performing the contract work is or might be otherwise impaired, or
- (c) a business has an unfair competitive advantage.

[Regulation 19-445.2127(A)(1)]

The Regulation provides the following guidance for identifying, evaluating, and resolving organizational conflicts of interest.

The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are

- (a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

- (b) Preventing unfair competitive advantage. Without limitation, an unfair competitive advantage exists where a business competing for award of a State contract possesses (i) proprietary information that was obtained from the State without authorization; or (ii) source selection information (R.19-445.2010C) that is relevant to the contract but is not available to all competitors, and such information would assist that business in obtaining the contract.

PTC provides lease financing for information technology related equipment and software acquisitions by South Carolina state and local governmental entities under state term contract 4400015301. PNS is a provider of information technology related equipment and software and desires to participate in statewide competitive procurements to fulfill the State's needs for such. PNS is currently precluded by the State of South Carolina from participating in its competitive procurements for information technology related equipment and software based on an organizational conflict of interest attributable to the common ownership of PNS and PTC by Presidio, Inc. Specifically this common ownership could result in favorable treatment and/or facilitate the sharing of information by PTC that could give PNS a competitive advantage.

Once an organizational conflict of interest is identified, Regulation 19-445.2127(E)(2) authorizes the award of a contract to that offeror if that conflict can be mitigated:

The responsible procurement officer shall determine whether the apparent successful offeror has an organizational conflict of interest. The responsible procurement officer shall award the contract to the apparent successful offeror unless (i) a conflict of interest is determined to exist that cannot be avoided or mitigated, or (ii) the conflict is not waived as provided in section F.

(emphasis added)

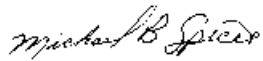
Statewide term contracts are established by the Chief Procurement Officer under Section 11-35-310(37) of the Code. PNS and PTC have submitted the attached plan to mitigate identified organizational conflicts of interest and facilitate participation in competitive procurements to establish certain statewide term contracts. (Attachment 1)

DETERMINATION

Based on the review of the Proposed Organizational Conflict of Interest Mitigation Plan, and considering the information held by Presidio Technical Capital, LLC is public information

subject to FOIA, I find that the plan adequately mitigates any potential organization conflict of interest. Therefore, as long as Presidio Networked Solutions LLC and Presidio Technical Capital, LLC adhere to the mitigation plan, I find it is in the State's interest to waive the potential conflict of interest identified above regarding state term contract 4400015301.

For the Information Technology Management Office

A handwritten signature in black ink, appearing to read "Michael B. Spicer".

Date: 05/25/2021

Michael B. Spicer

Chief Procurement Officer

Attachment 1

Organizational Conflict of Interest Mitigation Agreement

**The State of South Carolina
and
Presidio Networked Solutions LLC**

Date: April 1, 2021

1. Purpose and Scope

This Organizational Conflict of Interest (OCI) Mitigation Plan (the "Plan") describes the Contractors' approach to avoid and to mitigate potential OCI issues or unfair competitive advantages created by the performance of work by, Presidio Technical Capital, LLC ("PTC"), under Contract No. 4400015301 with the State of South Carolina and its affiliated company, Presidio Networked Solutions LLC ("PNS").

The purpose of this Plan is to establish an agreed-upon set of procedures, restraints and limitations that 1) will remove and prevent the potential existence of conflicting roles and 2) will avoid and prevent any unfair competitive advantage (real or perceived). Through the successful implementation of the Conflict of Interest (COI) terms and mitigation procedures outlined in this Plan, both PTC and PNS will remain eligible for future opportunities and contracts with the State of Carolina subject to the Agreement.

2. Plan Term and Applicability

This Plan shall remain effective for the entire term of the PTC Leasing Contract Number 4400015301, including any formal contract extensions issued by the State of Carolina.

This Plan is effective as of 1 October 2020 and shall apply to any current and future bid or contract that is awarded to another Presidio, Inc. subsidiary, specifically PNS.

3. Background and Organizational Conflict of Interest Requirements and Obligations

PTC currently holds Contract No. 4400015301 with the State of South Carolina. The scope of this contract includes the facilitation of the acquisition of information-technology related equipment and software, all of which would be lease financed pursuant to individual lease schedules issued against the master agreement by state agencies and political subdivisions. It is intended that each lease shall be a financing and not a lease for federal income tax purposes and under the Uniform Commercial Code as in effect in the State.

The original Solicitation Number 5400010521 and resultant Contract Number 4400015301 includes the clause, "Disclosure of Conflicts of Interests or Unfair Competitive Advantage (Feb 2015)," which provides for the ability for a Contractor to work with the State to establish a Plan that would avoid or mitigate any OCI concerns, if necessary.

Neither PTC nor the State of South Carolina procurement officials had identified any real or potential conflicts of interest or unfair competitive advantages at the time of bid or award. After award, the record indicates that there were some unspecified concerns identified by the State relative to the PNS leasing contract.

It is the responsibility of all parties to ensure that any South Carolina contract is performed free of any COI, organizational and individual, or bias, actual and perceived. This Plan shall require steps to be taken to ensure there is no unfair advantage and to mitigate any potential conflicts of interests within State business and to allow for PNS, a separate and independently operated subsidiary outside of PTC, to remain eligible for current and future South Carolina contracts and subcontracts.

4. Two (2) Categories for Neutralization, Mitigation and Avoidance of COI

Under this Agreement, the parties have identified two (2) categories of products and services relative to Conflicts of Interest within the State to be addressed.

Category 1 – Restricted List of Presidio Products and Services Leased by PTC (“Restricted Category”). There are a list of identified products and services that are leased under PTC contracts that shall NOT be bid or sold by PNS in any capacity (prime, subcontractor, vendor, supplier). PNS shall NOT engage in any sales activity, marketing or other business development type efforts in SC relative to any Category 1 items until after the expiration of PTC Leasing Contract Number 4400015301. The complete list of Category 1 products is attached as Exhibit A. Exhibit A shall be reviewed periodically, and any updates will be incorporated into the Agreement (subject to Section 8 of this Agreement).

Category 2 – Other Presidio Products and Services Subject to Conflict of Interest Mitigation Procedures (“Other Than Restricted Category”). This category consists of any other products or services not listed and identified under *Category 1 – Restricted Category*. Any product or service sold by PNS that falls under *Category 2- Other Than Restricted* shall be subject to the additional conflict mitigation procedures and measures set forth in Section 5 of this Agreement.

5. COI Neutralization and Mitigation Procedures for Category 2 – Other than Restricted Category

a) Continued Legal and Operational Separation of Presidio Entities

The Plan is implemented on the basis that PTC and PNS subsidiaries under Presidio, Inc. shall continue to remain separate from a legal contracting entity, sales management, and operational perspective.

This Plan recognizes that PTC, a separate Financing entity under Presidio, Inc., is the Prime Contractor under South Carolina Contract 4400015301. Accordingly, PTC shall continue to perform and shall meet all of its contract requirements associated with leasing and financing IT equipment.

This Plan recognizes that PNS is a separate and independently-operated subsidiary of Presidio, Inc. This Plan recognizes that PNS operates within its own organizational budget and employs its own staff and managers within its operational reporting structure.

Presidio Technology Capital, LLC (“PTC”) is a Georgia LLC headquartered at Two Sun Court, Norcross, GA, 30092. Presidio Networked Solutions, LLC (“PNS”) is a Delaware LLC headquartered at One Penn Plaza, Suite 2832, New York, NY 10119. This Plan recognizes that there is physical performance separation between PTC and PNS. In addition to being organized and headquartered in different states, PNS and PTC maintain distinct employees and management, and operate in separate physical locations.

This Plan recognizes that PNS is a separately registered entity in South Carolina who is independently authorized to conduct business within the State subject to the implementation of this Plan and its procedures.

The parties recognize that any change to the current relationship and separation between PTC and PNS would require a new assessment under this Plan. As a result, the Contractor shall be required to notify the South Carolina Contracting Officer under Contract 4400015301 within 10 calendar days of any event or organizational change that would alter the legal and operational separation of entities outlined and recognized above.

b) No Teaming, Subcontracting, or Internal Work Orders between PTC and PNS under South Carolina State Proposals or Contracts

Unless a separate waiver is granted by a SC contract official, PTC and its employees shall be restricted from bidding or participating (in any capacity) with PNS as part of any proposal in response to any South Carolina solicitation. This includes, but is not limited to, acting as a subcontractor, supplier, teaming partner, or consultant to PNS. In the event PNS is awarded a statewide term contract and receives an order from a Using Governmental Unit that desires to finance that purchase through PTC, PTC will be prohibited from providing any favorable treatment of that transaction than afforded to other statewide term contract holders.

c) Restriction Relative to Non-Public or Proprietary Information Sharing

As part of this plan, PTC and PNS shall not share any information related to South Carolina contracts or contracting opportunities between the two entities. Neither entity shall be provided insight or access to contract pricing, potential or actual customers, or quotes and offers of the other entity.

d) COI Administrators Designated

This Plan identifies the individual (and delegated backup) responsible for monitoring, oversight and administration of the Plan. The following individuals are designated as the COI administrators:

Shawn Alba, PNS, Director, Public Sector Vector, salba@presidio.com

Keith Strohman, PNS, Senior Director, Public Sector Vector, kstrohman@presidio.com (PNS Back-up)

The COI Administrators will make COI determinations, coordinate and conduct audits, monitor performance, and report data and findings to the Senior Director of Contracts, the Presidio, Inc. Assistant General Counsel, and the responsible South Carolina procurement official simultaneously. The individuals above will also be the South Carolina procurement office points of contact relative to this Plan.

e) Individual Transaction Reviews: 100% COI Reviews, Determinations and Documentation for Category 2- Other Than Restricted Category Proposals and Contracts

To ensure ultimate compliance, the Contractor shall maintain, conduct and document organizational-wide COI avoidance and mitigation program ("OCI Program") procedures to include COI monitoring and assessment of individual sales and contract transaction (at a minimum, this includes new proposals, contracts, subcontracts, supplier agreements, and teaming agreement).

The OCI Program will implement a process within PNS as part of its COI procedures to conduct and document OCI transactional level assessments prior to submitting 100% of its proposals in response to South Carolina state solicitations. This assessment will be reviewed by the COI Administrator and, if there is no conflict or unfair advantage identified, signed off at a PNS Director Level or above.

The Senior Director of Contracts and OCI Administrator(s) will coordinate to conduct periodic audits and to ensure on-going compliance no less than once a calendar year. The Presidio Assistant General Counsel will participate and act in an oversight and advisory capacity and review the findings of the audits (and offer advice for any adverse findings and/or any corrective actions).

PNS shall be subject to independent 3rd party assessments or compliance audits relative to this Agreement and any associated transactions for the duration of this Agreement. These 3rd party assessments or audits will be initiated at the discretion of SC procurement officials but never more than twice over any 12-month period. PNS shall provide reasonable access and shall be responsive to any sanctioned requests for relevant documentation. The results and findings of any 3rd party audits shall be made available to both PNS and South Carolina procurement officials. PNS will have an opportunity to comment and to establish a corrective action plan in response to any adverse findings or claims.

f) Team Member/Subcontractor Organizational Conflict of Interest (OCI) Flow Downs and Certifications

All relevant organizational team members and potential subcontractors are required to have written documentation to certify the absence of any conflicts and adherence to the procedures and policies for the avoidance and mitigation of conflict of interest similar to those contained in this Plan. When applicable, the COI language contained in the prime contract shall flow down to any subcontracts issued under the prime contract.

As part of the procedure, organizational team members are required to execute and submit a formal certification in writing to confirm the absence of any conflicts at the inception of their involvement in the project.

g) Individual Non-Disclosure Agreements (NDA) and COI Certifications

The Contractor requires all employees supporting the contract with COI considerations to read the Plan in its entirety and sign legal instruments to acknowledge their OCI mitigation responsibilities. All sales employees and managers working on any South Carolina Public Sector Vector in PNS shall receive a copy of this Plan and shall complete an i) Individual Employee COI Certification, ii) a Non-Disclosure Agreement that obligates the employee to not disclose any state proprietary pricing data to any other subsidiary within Presidio.

The COI Plan Administrator shall conduct on-going training and reviews of individual COI Certifications. Furthermore, the COI will maintain records of the associated documentation.

h) Organizational Conflict of Interest (OCI) Annual Certification

The Presidio Network Solutions LLC COI administrator (Director or above) will certify as often as an annual basis in accordance with this Plan:

To the best of our knowledge, based on my participation and review of audit findings and other documented results, no facts exist relevant to any past, present, or currently planned interest or activity (financial, contractual, personal, organizational, or otherwise) which relate to the work, and suggest that the respective contracting parties (PTC or PNS) have a possible conflict of interest with respect to the current Agreement in place with South Carolina. Further, there is no known conflicts of interest relative to (1) being able to render impartial, technically sound, and objective assistance or advice; or (2) being given an unfair competitive advantage. Should this situation change, appropriate steps will be taken as prescribed by the contract, and the appropriate Contracting Officer will be notified.

6. Training

The COI Plan Administrator distributes a copy of this Plan, general training slides associated with the COI topic; the COI Plan Acknowledgment Form upon inception of his or her involvement in the contract to fill out and sign; and the COI Certification are not required from individuals who have already filled them out under a previous distribution (including of an earlier revision) of the Plan. The individual certifies on the COI Plan Acknowledgment Form that he or she understands the provisions of the Plan and his or her specific responsibilities under the Plan. This process constitutes COI training.

7. COI Notification and Reporting

Despite all of the precautions described above to avoid both organizational and individual COI, there is always the possibility that a situation could arise that involves a potential COI or perception of bias leading to some form of unfair competition. All individuals assigned to South Carolina state business are to report any known incidences of potential COI, either organizational or individual, to the COI Plan Administrator, who then confer with the Assistant General Counsel.

The COI Plan Administrator will review the circumstances and obtain additional information that may inform their decision on whether a particular situation that occurred might represent a COI. Should they conclude that the reported circumstances involve an actual or perceived COI, the COI Plan Administrator (or other company contracting official) shall notify the Contracting Officer within 10 calendar days. At that time, Presidio will work with the Contracting Officer to assess the situation and to ensure that any conflicts of interest or unfair advantages are addressed, avoided, mitigated or neutralized, as necessary. Accordingly, any new steps or terms to be introduced to mitigate any potential conflicts or unfair advantage may require an update and bi-lateral modification to this Plan.

In responding to any solicitation, if PNS or PTC is aware of an actual or potential OCI, then PNS and/or PTC should identify the existing of an OCI and reference this mitigation plan.

8. Acknowledgement and Acceptance of the General Plan

The parties acknowledge and agree to the terms and provisions of this Plan. Modifications to the Plan can be made based on mutual agreement of parties in writing.

(See attached signature pages for execution)

[These can be broken up to individual signature pages]

Signature Officials for Presidio Networked Solutions LLC

_____	_____
Shawn Alba, Director of SLED Sales (South Carolina)	Date

_____	_____
Keith Strohman, Senior Director Public Sector	Date

Signature Officials for Presidio Technology Capital LLC

_____	_____
Chuck O'Connor, Senior Vice President, Presidio Technology Capital	Date

Signature South Carolina State Official(s)

_____	_____
Name and Title	Date

Exhibit A

Category 1 – Restricted List of Presidio Products and Services to be Sold to SC by PNS ("Restricted Category").

September 17, 2020

The following products and services are leased under PTC contracts that shall NOT bid or sold by PNS in a prime or subcontractor/vendor capacity:

- Multifunction Devices,
- Mail Equipment,
- Printers, Laptops,
- Desktops,
- Monitors,
- Tablets,
- Mail Machine,
- Laptop Bags

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determinations Appeal Notice (Revised May 2020)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
(b) requests for review of other *written determinations*, decisions, *policies*, and *procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) See generally *Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2020 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 367, 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.