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## Protest Decision

**Matter of:** LongView International Technology Solutions, Inc.  
SnapMedTech, Inc. DBA SnapNurse

**Case No.:** 2022-101, 2022-102

**Posting Date:** August 5, 2021

**Contracting Entity:** SC Department of Health and Environmental Control

**Solicitation No.:** 5400021476

**Description:** Turnkey Mobile COVID Vaccination Service

### DIGEST

Protest of responsiveness determination is granted. The protest letters of LongView International Technology Solutions (LTS) and SnapNurse are included by reference. (Attachments 1 and 2 respectively)

### AUTHORITY

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

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

## BACKGROUND

Solicitation Issued:	05/24/2021
Amendment 1 Issued	06/10/2021
Award Posting Notice Issued	06/30/2021
Intent to Award Posted	07/09/2021
LTS Intent to Protest Received	07/19/2021
SN Intent to Protest Received	07/20/2021
LTS Protest Received	07/26/2021

The SC Department of Health and Environmental Control (DHEC) issued this Emergency Request for Proposals (RFP) on May 24, 2021, for turnkey mobile COVID vaccination services. Amendment 1 was issued on June 10, 2021. Bids were opened on June 24, 2021. An Intent to Award was posted to Impact Health and Matrix Clinical Solutions, LLC on July 9, 2021. LTS filed an intent to protest on July 19, 2021 followed by its protest on July 26, 2021. SN filed its protest on July 20, 2021.

## ANALYSIS

LTS and SN protest that they were improperly determined to be nonresponsive for violating a subcontracting prohibition. The solicitation required:

All vaccinators and supporting staff are to be under the direct supervision of the Contractor and shall not be delegated to any additional third party.

[Solicitation, Page 18]

This requirement was clarified in Amendment 1:

**QUESTION 18:** Vaccinators: Page 18 indicates that "all vaccinators and supporting staff are to be under the direct supervision of the Contractor and shall not be delegated to any additional third party." Does "any additional third party" include a named subcontractor?

**STATE'S RESPONSE:** No subcontracting will be allowed.

DHEC determined LTS nonresponsive for the following reason:

*LTS's offer referenced on Page 10 under LTS TEAMING PARTNERS:*

*Firm: Infinity One Corporation*

*Description: Current LTS subcontractor and certified South Carolina MBE providing staffing services*

*Role and Responsibilities: Staffing of site personnel including general support staff and certified medical professionals.*

DHEC determined SN determined nonresponsive for the following reason:

*SnapNurse 's introductory letter referenced:*

*SnapNurse is proud to partner with the following key companies:*

- ***Sharecare** provides cutting edge digital solutions allowing for the registration and check-in of users as well as all the data, documentation and reporting needed by the State regarding these COVID-19 vaccinations*
- ***AArete** - an award-winning consulting firm, has deep experience in large healthcare projects, including assisting Sharecare with similar COVID-19 vaccination efforts in several other states. AArete will assist with program management, run the command center, and provide onsite account management as well as any training which might be needed*

LTS argues:

LTS' Proposal does not indicate that supervision of site personnel will be performed directly by any entity other than LTS. Utilizing Infinity One as a recruiter to find adequately trained medical and support staff does not equate to delegating to an additional third party. Pursuant to an existing agreement with Infinity One, all staff will be hired by LTS, and a recruiting fee paid for that service. Therefore, all staff working at the mobile site clinics will be the workforce of LTS, under the direct supervision, control, and oversight of one or more LTS-employed site managers.

SN argues:

Our understanding is that this statement means anyone performing vaccinations are to be under the direct supervision of SnapNurse. As such, our model provides all clinical and vaccination work will be performed by SnapNurse and under the direct supervision of SnapNurse. SnapNurse is providing **all** clinical and administrative services other than the IT platform. SnapNurse is utilizing IT vendors to facilitate appointments for South Carolina residents through a scheduling platform.

Use of third-party technology or program management services is a typical business set up in these types of programs. To be fully transparent, SnapNurse provided details regarding our IT vendors involvement - all of which will be under the direct control of SnapNurse, and neither of which will affect SnapNurse's clinical and vaccination efforts. Neither Sharecare nor AArete personnel will be providing any clinical function, nor any vaccinations.

The solicitation requirement was that all vaccinators and support staff, those providing the service, were to be under the direct supervision of the contractor. The question asked in the

amendment referenced that requirement and DHEC's response that no subcontracting will be allowed is limited to the requirement referenced in the question.

DHEC's determinations of nonresponsiveness expanded the prohibition to include subcontracting unrelated to the provision of the services. If DHEC had intended to prohibit all subcontracting it should have identified the response as a new solicitation requirement. Absent such notification, this interpretation cannot stand.

## **DECISION**

For the reasons stated above, the protests by LongView International Technology Solutions, and SnapMedTech, Inc. DBA SnapNurse are granted. This procurement is remanded to the agency for reevaluation and award in accordance with the Code.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer



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Atlanta, GA  
Charleston, SC  
Charlotte, NC  
Columbia, SC  
Greenville, SC  
Raleigh, NC  
Spartanburg, SC  
Washington, DC

July 26, 2021

***Via Hand Delivery and  
Electronic Mail (protest-mmo@mmo.state.sc.us)***

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

**Re: *Protest of Determination of Non-Responsiveness and of the Notice of Intent to Award re: Turn-key Mobile COVID Vaccination Service – Solicitation No. 5400021476***

Dear Mr. Spicer:

Pursuant to S.C.Code Ann. § 11-35-4210(1)(b), LongView International Technology Solutions, Inc. ("**LTS**") submits this letter in follow up to its initial Notice of Intent to Protest filed with the CPO on July 19, 2021.<sup>1</sup> As set forth in its Notice of Intent to Protest, LTS protests the Determination of Non-Responsive ("**Determination of Non-Responsiveness**"), dated July 8, 2021, which was served on LTS on July 9, 2021<sup>2</sup>, and the Notice of Intent to Award to Impact Health d/b/a Tourhealth ("**Impact Health**") and to Clinical Matrix Clinical Solutions, LLC ("**Matrix**"), which was posted on July 9, 2021.<sup>3</sup>

In its Notice of Intent to Protest, LTS summarized briefly its initial grounds for protest. LTS expands on those grounds below and respectfully requests as relief that (i) the Determination of Non-Responsiveness be reversed as erroneous; (ii) that LTS be declared a responsive offeror; (iii) that the July 9, 2021 Notice of Intent to Award to Impact Health and Matrix be reversed and withdrawn; and (iv) assuming LTS was not initially evaluated, that all proposals submitted by

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<sup>1</sup> The July 19, 2021 Notice of Intent to Protest is incorporated in this follow up letter as if fully restated herein.

<sup>2</sup> The Determination of Non-Responsiveness was not posted.

<sup>3</sup> The Notice of Intent to Award to Impact Health and Matrix was suspended on July 19, 2021, upon the filing of LTS' Intent to Protest.

Mr. Mike Spicer, Chief Procurement Officer  
Materials Management Office  
July 26, 2021  
Page 2 of 6

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responsive offerors, *including LTS*, be re-evaluated in accordance with the process and criteria set forth in the RFP or, in the alternative, assuming that LTS was fully and fairly evaluated in the initial evaluation process that LTS be awarded a contract in accordance with its proposal and the RFP.

#### Background

##### A. The Request for Proposals

On May 24, 2021, the Department of Health and Environmental Control ("**DHEC**") issued an Emergency Request for Proposals ("**RFP**") for turn-key mobile COVID vaccination services on a regional or statewide basis. Under the RFP, proposals were to be evaluated using only the following criteria, which were weighted and defined as indicated:

1. Qualifications and experience in providing the required service – 40 points;
2. Detailed approach for implementing the project, demonstrating reach in geographic and volumetric terms - 30 points; and
3. Cost – Most cost effective for the State of South Carolina – 30 points.

(RFP, Sec. VI, p. 23).

In addition to the general instructions and contract terms, the RFP in this case included a Scope of Work/Specifications section that identified the four individual regions for which an offeror could submit a proposal as the Upstate, Midlands, Pee Dee, and Lowcountry regions of South Carolina. The RFP also allowed an offeror to submit a state-wide proposal covering all four regions. (RFP, Sec. III, p. 18). The RFP further indicated that "the number of awards will be determined by DHEC based on the responses received and the offeror's stated capacity. Multiple awards are anticipated." (RFP, Sec. 1, p. 8). Section IV of the RFP contained a list of information that offerors were required to submit in or with their proposals, including a section in which offerors could identify their commitment to support minority owned businesses. (RFP, Sec. IV, p. 20-21).

On June 10, 2021, DHEC issued Amendment One ("**Amendment 1**") to the RFP to incorporate DHEC's responses to questions from potential offerors. Among the revisions to the RFP made by Amendment 1 was the clarification of the requirement in the original RFP that "[a]ll vaccinators and supporting staff are to be under the direct supervision of the Contractor and shall not be delegated to any additional third party." (RFP, Sec. III, p. 18). In response to a vendor question whether "any additional third party" included a named subcontractor, DHEC responded "No subcontracting will be allowed." (Amendment 1, Q. 18, p. 9).<sup>4</sup>

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<sup>4</sup> DHEC also amended the RFP to include a specific term that provided "Award may be made to more than one Offeror." (Amendment 1, p. 6).

Mr. Mike Spicer, Chief Procurement Officer  
Materials Management Office  
July 26, 2021  
Page 3 of 6

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On June 24, eleven offerors submitted proposals. Of the eleven offerors, DHEC eventually determined nine to be not responsive, including LTS. Five offerors were declared non-responsive because they failed to meet the minimum qualifications requirement that offerors be enrolled as vaccine providers.<sup>5</sup> (RFP, p. 22, Sec. V.). Four of the eleven offerors, including LTS, were determined to be not responsive because of the “no subcontractor” clarification of Amendment 1. All of the determinations with regard to responsiveness are dated July 8, 2021.

Based on documents provided by DHEC, five evaluators undertook to evaluate proposals on June 29, 2021. As of the date of this letter, LTS was not provided with any evaluator score sheets other than those for Matrix and Impact Health. Given that the formal determinations of non-responsiveness did not occur until July 8, 2021, LTS is unsure whether its Proposal or any proposals other than Matrix and Impact Health were actually evaluated by the five evaluators prior to being declared not responsive.

On July 9, 2021, DHEC posted a notice of intent to award statewide contracts to Impact Health and Matrix, who were the only two offerors left at that point in the process, at a contract unit price of \$50.00.

#### B. LTS Proposal

On June 24, 2021, LTS submitted both its Technical Proposal and Price Proposal (collectively “LTS Proposal”), offering to provide turn-key mobile COVID vaccination services on a state-wide basis. The LTS Proposal addressed every requirement of the RFP in detail.

For example, in the Executive Summary, LTS sets out a summary of its experience and qualifications and lists among its services and responsibilities “program management of vaccination services” and “staffing and operational management.” (LTS Proposal, pp. 3-4). Under the heading “LTS Experience”, the Proposal contains Table 2, which re-states every material requirement of the RFP, paired with an affirmation by LTS that it will comply. (LTS Proposal, p. 4). Among the affirmations made by LTS are that “LTS will adhere to and follow DHEC guidance and requirements specific to RFP herein” and “LTS will provide and is experienced in providing [COVID-19] vaccination mobile clinic staffing and oversight.” (LTS Proposal, Table 2, pp. 4-5).

In Section 6.8 of the its Proposal, LTS addresses directly the RFP requirement contained in Section IV.F, that “Offeror shall submit a detailed operational plan that explains their capacity and outlines how they will provide COVID-19 vaccination mobile clinic staffing and oversight.” (RFP, Sec. IV, p. 20). In its response to this specific requirement, LTS confirms that it “will meet all clinical staffing and oversight requirements of the contract to provide turnkey COVID-19 mobile vaccination services” and sets for the names of individual LTS employees who will be responsible for oversight of the clinic staff. Finally, in Section 7 of its Proposal, LTS offers numerous

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<sup>5</sup> Although DHEC determined these offerors to be not *responsive* for failure to enroll as vaccine providers, the RFP indicates that such minimum qualification is a special standard of *responsibility*. (RFP, p.22, Sec. V).

Mr. Mike Spicer, Chief Procurement Officer  
Materials Management Office  
July 26, 2021  
Page 4 of 6

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confirmations and assurances with regard to staffing, including the assurance of "compliance with all requirements of the contract." (LTS Proposal, p. 26).

The original RFP stated that "Contractor is responsible for providing sufficient staffing of healthcare providers licensed or authorized in South Carolina to provide vaccinations. All vaccinators and supporting staff are to be under the direct supervision of the Contractor and shall not be delegated to any additional third party." (RFP, Sec. III, p. 18). In Amendment 1, DHEC indicated that this provision prohibited the use of mobile clinic medical and support staff, who are under the supervision of third party subcontractors. (Amendment 1, Q. 18, p. 9). Although, DHEC simply indicated, "no subcontractors allowed," the context of the question compels the conclusion that the issue is the delegation to subcontractors of the authority to supervise clinic staff.

In its Proposal, LTS identifies two businesses that it will partner with to obtain resources for use in performing the RFP contract. One resource partner, SEKO, was to provide all PPE supplies for use at clinic sites. The other resource partner, Infinity One Corporation, was described as providing staffing services. (See LTS Proposal, Sec. 4, p. 6). Infinity One Corporation is a Columbia, South Carolina-based, minority-owned staff recruiting agency, which LTS indicates is currently contracted to provide staff recruiting services to LTS. (See RFP, pp. 20-21; LTS Proposal, pp. 6-7). Based on LTS' identification of this resource partner, DHEC found LTS' Proposal not responsive to the requirements of the RFP, as clarified in Amendment 1.

#### Grounds for Protest

Nowhere in its Proposal does LTS indicate that supervision of site personnel will be performed directly by any entity other than LTS. To the contrary, LTS indicates numerous times that it will comply with all of the requirements of the RFP, including the supervision and oversight requirements.

Utilizing a recruiter to find adequately trained medical and support staff does not equate to a delegation of the obligation to directly supervise such staff in the performance of their duties. Pursuant to an existing agreement with LTS, Infinity One will recruit and recommend persons to LTS for consideration. LTS will consider and hire all staff it determines are necessary to operate the mobile clinic sites. LTS will pay Infinity One a recruiting fee for its recruiting services.

Under the arrangement proposed by LTS, all clinical and administrative staff working at the mobile site clinics will be the workforce of LTS, employed by LTS and under the direct supervision, control, and oversight of one or more LTS site managers. Therefore, LTS protests DHEC's Determination of Non-Responsiveness as erroneous, arbitrary, capricious and contrary to law.

Furthermore, in this case, LTS submitted a fully compliant Proposal that addressed all of the requirements of the RFP, and its Proposal should have been evaluated in the same manner as all other responsive and responsible offerors' proposals. LTS' Proposal demonstrates that LTS is an experienced provider of the services being solicited, and that it currently provides related COVID services to the State of South Carolina. (LTS Proposal, pp. 3-6). LTS also provides a



PARKER POE ADAMS & BERNSTEIN LLP

Mr. Mike Spicer, Chief Procurement Officer  
Materials Management Office  
July 26, 2021  
Page 5 of 6

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detailed operational plan, based in part on its similar plans for mobile COVID vaccination services provided in other states. (LTS Proposal, pp. 7-24). Moreover, LTS submitted a Price Proposal with price quotes that are substantially below those accepted by the State from Impact Health and Matrix.<sup>6</sup>

Thus, LTS is a responsive and responsible offeror whose Proposal was reasonably susceptible of being accepted for award in this case, and it should have been evaluated as such. If fully and fairly evaluated, LTS should have been among those contractors awarded a statewide contract.

To the extent that DHEC did not include LTS' Proposal in the full evaluation process, DHEC failed to properly evaluate and consider LTS' Proposal. Therefore, assuming LTS' Proposal was never fully evaluated, LTS protests the evaluation process in this case as being flawed and affected by error. LTS asserts that correction of the flawed evaluation process requires that all responsive and responsible offers, including LTS, be re-evaluated.

To the extent that LTS was fully and fairly evaluated prior to being declared not responsive, LTS asserts the Determination of Non-Responsiveness should be overturned as erroneous and LTS be awarded a statewide contract in accordance with the full and fair evaluation and in accordance with its proposal and the RFP.

Finally, as noted in LTS' Notice of Intent to Protest letter, with regard to the authority of the Chief Procurement Officer under S.C.Code Ann. § 11-35-4210(3) to attempt to settle protests, LTS welcomes any efforts to resolve this matter. LTS believes that clarification discussions, such as those that are allowed pre-award under the Consolidated Procurement Code and contemplated by the RFP, could have avoided the erroneous disqualification of LTS in this procurement, to the benefit of both the State and LTS. (S.C. Code Ann. § 11-35-1530(6); S.C.Code Regs. §19-445.2095(l); RFP, Sec. VI, p. 23). LTS stands ready to engage in any discussion or negotiations at this stage of the proceedings as well.

Relief Requested

For the above reasons, LTS respectfully requests that the CPO order that (i) the Determination of Non-Responsiveness be reversed as erroneous, arbitrary, capricious, and contrary to law; (ii) that LTS be declared a responsive offeror; (iii) that the July 9, 2021 Notice of Intent to Award to Impact Health and Matrix be reversed and withdrawn; and (iv) that, assuming LTS was not initially evaluated, all proposals submitted by responsive offerors, *including LTS*, be re-evaluated in accordance with the process and criteria set forth in the RFP or, in the alternative, assuming that LTS was fully and fairly evaluated, that LTS be awarded a contract in accordance with its proposal and the RFP.

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<sup>6</sup> At \$37 per unit cost, with a minimum of 35 vaccines per day, LTS offered the lowest price of any proposal.

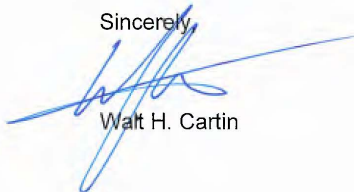
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Mr. Mike Spicer, Chief Procurement Officer  
Materials Management Office  
July 26, 2021  
Page 6 of 6

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With best regards, I am

Sincerely,



Walt H. Cartin

cc: Rebecca Nichols, Procurement Officer (NICHOLRJ@dhec.sc.gov)

## Attachment 2

To: The Chief Procurement Officer, Materials Management Office  
RE: Solicitation 5400021476, Turnkey Mobile COVID Vaccination Service

Good afternoon,

Thank you for your recent correspondence regarding both the Intent to Award and the Determination of Non-Responsive notice for the Turnkey Mobile COVID Vaccination Service, solicitation 5400021476. This letter serves as our timely notice of intent to protest.

We want to provide you with our understanding and clarification regarding the Determination of Non-Responsive notice.

The RFP and related Question 18 discuss "all vaccinators and supporting staff are to be under the direct supervision of the Contractor and shall not be delegated to any additional third party." The RFP did not prohibit subcontracting of any kind, merely subcontracting the performance of vaccinations.

Our understanding is that this statement means anyone performing vaccinations are to be under the direct supervision of SnapNurse. As such, our model provides all clinical and vaccination work will be performed by SnapNurse and under the direct supervision of SnapNurse. SnapNurse is providing **all** clinical and administrative services other than the IT platform. SnapNurse is utilizing IT vendors to facilitate appointments for South Carolina residents through a scheduling platform.

Use of third-party technology or program management services is a typical business set up in these types of programs. To be fully transparent, SnapNurse provided details regarding our IT vendors involvement - all of which will be under the direct control of SnapNurse, and neither of which will affect SnapNurse's clinical and vaccination efforts. Neither Sharecare nor AArete personnel will be providing any clinical function, nor any vaccinations.

- SnapNurse clinicians will utilize Sharecare's Platform for registration and check in of users as well as all the documentation needed by the State regarding the COVID-19 vaccinations.
- AArete IT Support will assist SnapNurse by providing IT & Help Desk Program Support services which are nonclinical in nature.

We would like the opportunity to resolve this with the agency further to ensure the panel understands our intent was to follow the requirements of the RFP and that only SnapNurse will be providing clinical and vaccinations to the residents of South Carolina.

Thank you,

Cherie Kloss

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised May 2020)*

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>

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**

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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.**