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GRANT GILLESPIE
EXECUTIVE DIRECTOR

Protest Decision

Matter of: Enterprise IT Solutions

Case No.: 2023-201

Posting Date: August 31, 2022

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400023328

Description: STC Varonis Products & Services

DIGEST

Protest of Intent to Award is denied. The protest letter of Enterprise IT Solutions (EITS) is included by reference. (Attachment 1)

AUTHORITY

The Deputy Chief Procurement Officer¹ (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.

¹ The Materials Management Officer delegated the administrative review of this protest to the Deputy Chief Procurement Officer.

BACKGROUND

Solicitation Issued	05/03/2022
Amendment 1 Issued	05/16/2022
Opening Date	06/09/2022
Presidio Announces Acquisition of Rove	06/13/2022
Intent to Award Posted	07/13/2022
Intent to Protest Received	07/15/2022
Protest Received	07/26/2022

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids (IFB) on May 3, 2022, for a State Term Contract for Varonis Products & Services. Bids were opened on June 9, 2022. An Intent to Award was posted to Presidio Networked Solutions LLC and Rove LLC on July 13, 2022. EITS filed an intent to protest on July 15, 2022, followed by the formal protest on July 26, 2022.

ANALYSIS

The solicitation included the following Special Standard of Responsibility:

QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)

(a) This section establishes special standards of responsibility. **UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER:**

MUST be the manufacturer or an authorized Platinum Reseller of Varonis. Authorization letter from Varonis MUST be included with offer to validate offeror as an authorized Platinum reseller. Failure to do so shall deem the offeror Non Responsive.

Although EITS included a Letter of Authorization from Varonis confirming EITS as an authorized reseller, the Special Standard of Responsibility required offerors to be a *Platinum Reseller* of Varonis Products. Compliance with a special standard of responsibility is mandatory, and the failure to comply will render a proposal non-responsive. *See* R. 19-445.2125F. The State appropriately rejected EITS's bid for failure to meet the Special Standard of Responsibility.

EITS's protest letter also alleges that "platinum reseller requirement and requirement that manufacturer give permission to bid goes against operating in good faith (this is untimely). The

focus should have been on ensuring the agencies who are or have run Varonis get the level of services support they need to deploy and maintain their Varonis install.” This can be read as a protest to the special standards of responsibility.

Section 11-35-4210(1)(b) provides:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (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)

The special standard of responsibility is found in the original solicitation, which was published on May 3, 2022. This issue could have been raised in the pre-bid conference or as a protest of the solicitation but cannot be now raised as a protest of the award. This issue of protest is dismissed as untimely.

EITS’s protest letter also states:

two companies (Rove and Presidio) were actively merging, bidding on the contract, with the merged out entity bidding higher (bid rigging), at minimum this was not good faith.

By signing the offer, the Offeror is certifying the following

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)

GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.

(a) By submitting an offer, the offeror certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

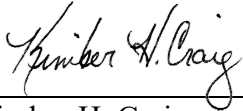
(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

In conclusory and vague fashion, EITS simply alleges “bid rigging” with no specificity or factual support. The solicitation provided for up to three awardees, and nothing in the solicitation *per se* prohibited companies in the same corporate family from submitting bids. Both Presidio and Rove submitted signed copies of their bids, and nothing indicates either will refuse to honor their prices. EITS provides no evidence to support the allegations of bid rigging. Without such evidence, this issue of protest is denied. *See Appeal by Singletary Tax Services*, Panel Case No. 2011-8 (dismissing claims of bid rigging as too vague and insufficient to state a claim).

DECISION

For the reasons stated above, the protest of EITS is denied.

For the Information Technology Management Office

A handwritten signature in cursive script that reads "Kimber H. Craig". The signature is written in black ink and is positioned above a horizontal line.

Kimber H. Craig
Deputy Chief Procurement Officer

Attachment 1

From: Leo Chavez <chavezl@eits.com>

Sent: Tuesday, July 26, 2022 6:58 PM

To: Barr, Randy <rbarr@mmo.sc.gov>; White, John <jwhite@mmo.sc.gov>

Cc: Andrew Bena <benaa@eits.com>; Dustin Shores <ShoresD@eits.com>

Subject: RE: [External] FOIA request AND formal notification of intent to protest Solicitation Number: 5400023328 STC VARONIS PRODUCTS & SERVICES

Mr. Barr/ Mr. White,

I am responding on behalf of EITS regarding Solicitation Number: 5400023328 Description: STC VARONIS PRODUCTS & SERVICES.

We appreciate your support facilitating the process to protest this award. Our number one objective is the same, to ensure the state agencies consuming off this contract receive the best outcomes for the products and services that will be procured through this mechanism. I have gone through the original email I sent below that had my comments **highlighted in yellow** and added in **additional comments highlighted in green** that I believe further support our case for this protest.

Below is a summary of our three primary objections to this award:

1) two companies (Rove and Presidio) were actively merging, bidding on the contract, with the merged out entity bidding higher (bid rigging), at minimum this was not good faith.

Recommended Remedy: Pull presidio from solicitation and award to Rove/EITS.

2) non-responsiveness was determined prior to bid opening, and never written formally until protest and foia request.

Recommended Remedy: Pull presidio from solicitation and award to Rove/EITS OR cancel and re-solicit.

3) platinum reseller requirement and requirement that manufacturer give permission to bid goes

against operating in good faith (this is untimely). The focus should have been on ensuring the agencies who are or have run Varonis get the level of services support they need to deploy and maintain their Varonis install. With EITS supporting the majority of Varonis installs in the state we are confident our ability to support the agencies Varonis Services needs go far beyond Rove or Presidio.

Recommended Remedy: Pull presidio from solicitation and award to Rove/EITS OR re-solicit changing requirement to any authorized reseller.

Our preferred recommendation for a resolution on this is to remove Presidio from the award and replace them with EITS. If it is an option, EITS is 100% good matching the pricing discounts Presidio responded with to ensure best pricing possible isn't being compromised for the state. Replacing Presidio with EITS on this award creates an advantage to the state through competitive pricing between Rove/EITS and more importantly the Varonis services EITS continues to provide several agencies within the state.

Link to procurement code online:

<https://www.scstatehouse.gov/code/t11c035.php>

SECTION 11-35-30. Obligation of good faith.

Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

We believe it is not good faith to require platinum level of reseller. This is a VERY complicated technical solution to maintain and the most qualified parties to support services required are key to success across the state. Also giving the manufacturer the power to authorize resellers

specifically for this bid gives the manufacturer a level of screening of potential bidders on behalf of the state – not good faith. In this case the manufacturer has steered the state toward two entities that are now one with Rove becoming a subsidiary of Presidio. The acquisition was announcing it June 13th and had been in the works for several months prior.

SECTION 11-35-210. Determinations; exemption.

(A) Written determinations expressly required by the code or regulations must be retained in an official contract file of the governmental body administering the contract. These determinations must be documented in sufficient detail to satisfy the requirements of audit as provided in Section 11-35-1230.

If EITS was deemed non-responsive – that is a determination. There must be enough documentation to satisfy and audit. The requirement of to be a platinum reseller is never justified, so a simply decision that EITS does have it should be enough to satisfy an audit, as it is never explained why that requirement is there or why it is in the best interest of the state. The BID process SHOULD reveal the best price AND service to support the state, not an arbitrary requirement.

I see nothing in the non-responsiveness letter that states ITMO looked at our key personnel's experience and determined that wasn't enough to satisfy the platinum reseller requirement. Certainly not enough to satisfy an audit (which is the baseline for all determinations), determination wasn't in writing until after the award here, meaning the determination wasn't officially made until after award, then we should have been eligible for award. The email we received from Randy indicates he made the conclusion on 6/8 (before bid opening, so he couldn't have reviewed our experience), and no one was notified after the bid opening until 7/15 on the phone, then wrote the determination on 7/18 (looking at the created date in word created 7/18 at 9:45 AM, last modified on 11:34 AM author Randy Barr). It looks like the determination of non-responsibility was created today at 7/18 at 9:45a. This means it wasn't in the file when the awards went out, which means the file wouldn't have been complete, and its record didn't exist when the awards were made. The conversation on June 8th between Randy and Dustin was left with Randy stating we would hear back on this after Dustin communicated the EITS Varonis services depth EITS possessed must be considered in place of the platinum certification. EITS did not hear back after the conversation June 8th until the award

took place. We were never told our inability to possess the platinum cert made us nonresponsive until 7/18 following the actual award.

Agencies like SCDOR, SCHHS, SCSOS, and SCDMV can continue obtaining Varonis support from EITS. If we are not on this contract, we lose our ability to provide the support for several SC State agencies who have relied on EITS for Varonis support.. We believe it would be prudent of the state to reach out to agencies currently running Varonis OR who have procured it in the past to ask them which organization they believe is best suited to support them between EITS, Rove, and Presidio. We are confident the majority of agencies who are or who have ran Varonis would attest to EITS depth on the product and infinitely being more qualified to support them with their Varonis needs over Rove/Presidio. The agencies who have and will consume off this contract will ultimately be most impacted by it. We have been made aware that several of the agencies who are or have run Varonis notified ITMO prior to this bid being posted of the need to ensure a services qualified partner, such as EITS be a requirement of this solicitation.

SECTION 11-35-1520. Competitive sealed bidding.

(5) Bid Opening. Bids must be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids and in the manner prescribed by regulation of the board. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to public inspection at that time.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with regulations promulgated by the board. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

Presidio has purchased Rove and Rove is now a subsidiary of Presidio. If Presidio and Rove bid different prices, due to their current merger, they had two chances to bid. Our primary objection on this award is related to the two companies (Rove and Presidio) merging and potential collusion. Rove bid discount that surpass standard levels of discount Varonis offers partners, even with deal registration. Rove's bid would basically be at a loss to their organization but they were able to do this knowing all future Varonis business would feed through their acquiring party Presidio following the acquisition. We believe this created an unfair advantage to Rove/Presidio that will ultimately introduce a disadvantage to the state and other bidding parties. An award to strictly Presidio and Rove introduces a sole source at this point.

(11) Request for Qualifications.

(a) Before soliciting bids, the procurement officer, may issue a request for qualifications from prospective bidders. The request must contain, at a minimum, a description of the scope of work to be solicited by the invitation for bids, the deadline for submission of information, and how prospective bidders may apply for consideration. The request must require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications must be given in the manner provided in Section 11-35-1520(3).

Please reference the email attached send by Dustin Shores on our team June 8th as I believe it directly relates to the item above.

(b) After receipt of the responses to the request for qualifications from prospective bidders, the rank of the prospective bidders must be determined in writing from most qualified to least qualified on the basis of the information provided. Bids then must be solicited from at least the top two prospective bidders by means of an invitation for bids. The determination regarding how many bids to solicit is not subject to review under Article 17.

Rove being a subsidiary of Presidio also contradicts "at least the top two prospective bidders".

SECTION 11-35-2420. *Reporting of anticompetitive practices; privileged communications.*

(A) When any information or allegations concerning anticompetitive practices among any bidders or offerors, come to the attention of any employee of the State, immediate notice of the relevant facts shall be transmitted to the Office of the Attorney General.

We believe Rove being a subsidiary of Presidio, and ONLY these two parties being selected creates anticompetitive practices.

(B) Communications to the Office of the Attorney General and any testimony relating to the

matters described in Section 11-35-2420(A) are privileged and may not be disclosed without prior approval of the Office of the Attorney General. A person required or permitted to report pursuant to Section 11-35-2420(A) or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is a rebuttable presumption.

The merger/acquisition of the two bidding companies would be one such instance.

11-35-4210 (1) (b) Any **actual bidder**, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

We are evoking the terms outlined in the paragraph above and plan to execute this process in accordance with South Carolina procurement law.

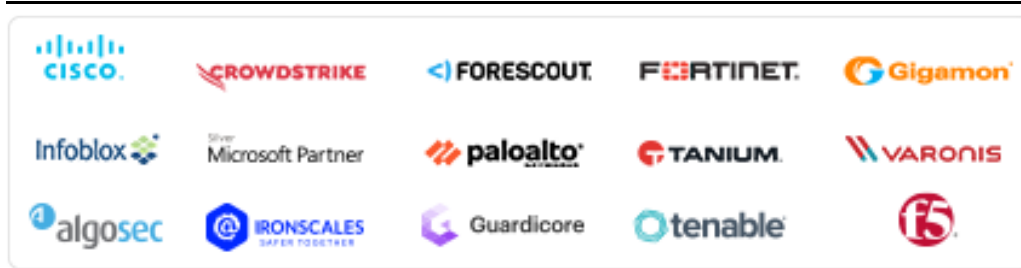
Thank you,

Leo Chavez



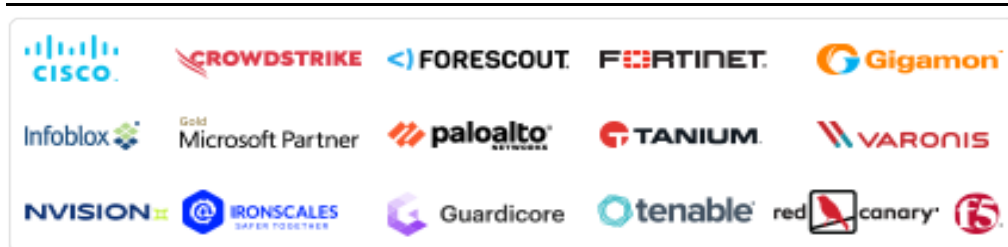
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From: Barr, Randy <rbarr@mmo.sc.gov>
Sent: Friday, July 15, 2022 4:58 PM
To: Andrew Bena <benaa@eits.com>
Cc: Dustin Shores <ShoresD@eits.com>
Subject: Re: [External] Solicitation Number: 5400023328 Description: STC VARONIS PRODUCTS & SERVICES RFx Response Number 5500081134

Corrected email... not meeting versus "meeting"

Hi Andrew as per our discussion over the phone today and my conversation with Dustin on June 8th that your offer is non-responsive, due to not meeting the requirements that the reseller **must** be a platinum reseller. As I explained that was a solicitation requirement that would have to been brought up or protested within the first 15 days of issuing the solicitation. It was not mention at the pre bid or during questioning and answering period. So the timeframe has passed for that and there is nothing we could do to take the requirement out at this point.

I would respectfully request that you wou

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From: Barr, Randy

Sent: Friday, July 15, 2022 4:40:39 PM

To: Andrew Bena <benaa@eits.com>

Cc: Dustin Shores <ShoresD@eits.com>

Subject: RE: [External] Solicitation Number: 5400023328 Description: STC VARONIS PRODUCTS & SERVICES Rfx Response Number 5500081134

Hi Andrew as per our discussion over the phone today and my conversation with Dustin on June 8th that your offer is non-responsive, due to meeting the requirements that the reseller **must** be a platinum reseller. As I explained that was a solicitation requirement that would have to been brought up or protested within the first 15 days of issuing the solicitation. It was not mention at the pre bid or during questioning and answering period. So the timeframe has passed for that and there is nothing we could do to take the requirement out at this point.

I would respectfully request that you would withdraw your intent to protest.

Randy Barr, Sr.

Randy Barr, Sr., CPPO | Procurement Manager – Team Lead Information Technology |

State Term Contracting Team Office of State Procurement | Division of Procurement Services

| SC State Fiscal *Accountability* Authority

1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896 – 5232 | rbarr@mso.sc.gov



From: Andrew Bena <benaa@eits.com>

Sent: Friday, July 15, 2022 3:45 PM

To: itmo, protest <protest-itmo@itmo.sc.gov>

Cc: Dustin Shores <ShoresD@eits.com>

Subject: [External] Solicitation Number: 5400023328 Description: STC VARONIS PRODUCTS & SERVICES Rfx Response Number 5500081134

Chief Procurement Officer/Information Technology Management Office,

We Intend to Protest award for Solicitation Number: 5400023328 Description: STC VARONIS PRODUCTS & SERVICES

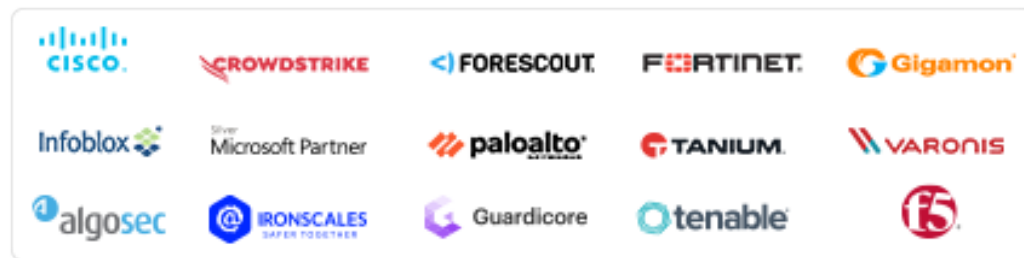
RFx Response Number 5500081134

Thanks



Andrew Bena

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Enterprise IT Security
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Ste. 1600 Charlotte NC 28202
<https://www.EITS.com>



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.

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.