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## Protest Decision

**Matter of:** Public Consulting Group, Inc.

**Case No.:** 2018-211

**Posting Date:** July 10, 2018

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

**Solicitation No.:** 5400013926

**Description:** Multi-Vendor Integrator

### DIGEST

Protest alleging proposal should not have been disqualified is granted. Public Consulting Group's (PCG) letter of protest is included by reference. [Attachment 1]

### AUTHORITY

The Chief Procurement Officer (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.

### BACKGROUND

#### Key Events

Solicitation Issued	08/08/2017
Amendment 1 Issued	09/05/2017

Amendment 2 Issued	09/21/2017
Intent to Award Posted	02/23/2018
Protest Received	03/05/2018

This protest is before the CPO on remand from the Procurement Review Panel. The South Carolina Department of Health and Human Services (HHS) issued this Request for Proposals on August 8, 2017, for a Multi-Vendor Integrator to provide project management oversight of third party solution providers and integrate their solutions into the Medicaid Enterprise System to ensure certification by the Center for Medicare and Medicaid Services. HHS received six proposals in response to this RFP. For reasons described *post*, HHS rejected PCG's proposal as non-responsive. Consequently, it was not scored by the evaluation panel. After final ranking and negotiations, HHS determined Cognosante Consulting LLC's proposal the most advantageous to the State. HHS posted its Intent to Award the contract to Cognosante on February 23, 2018. PCG protested the determination that its proposal was non-responsive at 6:56 p.m. on March 5, 2018.

Initially the CPO posted a decision granting PCG's protest on April 2, 2018. A short time thereafter, the CPO sent an e-mail vacating his first protest decision, noting that he had "overlooked that the original protest . . . was submitted after close of business on the tenth day after [DHHS] issued its intent to Award." The CPO posted this e-mail and a new decision dismissing PCG's protest for lack of jurisdiction because the original protest was not timely filed. On April 3, 2018, the Director of the Department of Health and Human Services petitioned the CPO to lift the automatic stay and allow the contract with Cognosante to proceed. The CPO lifted the automatic stay on April 4, 2018. On June 4, 2018, the Panel reversed the CPO's decision that the original protest was untimely filed and remanded the case to the CPO for further consideration.

## **ANALYSIS**

By written determination dated November 13, 2017, the procurement officer had found PCG's proposal to be non-responsive to material requirements of the solicitation. [Attachment 2] The basis for the procurement officer's finding was PCG's failure to respond to her letter requesting "clarifications" to its proposal. [Attachment 3]

Attachment 3 asked PCG to identify where in its offer it had addressed certain bullet points in three subparagraphs of the Scope of Work in the RFP. As this was a solutions-based solicitation, HHS described in paragraph 3.8 the objectives it wished to achieve. The introductory paragraph instructs bidders:

Offeror will outline responsibilities and Deliverables for each requirements strategy section listed below. For further details related to the MES architecture framework, refer to PL 002 TRA. For further details regarding detailed roles and responsibilities of all stakeholders, including SCDHHS, refer to PL 001 SCDHHS Medicaid Enterprise Responsibilities Matrix.

[Solicitation, Page 36]

Each of the twenty-two requirements strategy sections included a brief description of the objective, followed by a bulleted list of specific contractor obligations. Some of the sections included a second list of “Contractor Deliverables.”

The first question in the procurement officer’s letter highlighted five contractor responsibilities in paragraph 3.8.5 of the RFP:

#### 3.8.5 SERVICE MANAGEMENT

Contractor will coordinate with ES to implement processes, guidelines, and ITIL v3.0 best practices related to service design, documentation, management, and improvement; service catalog design, development, and implementation; and MES platform capacity management. Contractor will support information technology service management (ITSM), which includes ITIL v3.0 processes and guidelines.

Contractor responsibilities shall include:

- Provide a process to ensure alignment with ITIL v3.0 Service Management best practices.
- Establish and maintain an engagement model for joint operations of applications and infrastructure, including development, documentation, and management of processes and procedures for an ITIL service catalog. Model must provide enough detail for SPs to leverage, including roles and responsibilities, SLAs, and KPIs.

- With SCDHHS, establish guidelines and procedures for service reuse, including when service reuse is required and how to request permission to use a service.
- Coordinate with SCDHHS and SPs to ensure maximum sharing of business processes, data, and technologies. Instances where Contractor and/or SPs do not comply will be communicated by Contractor to RMMIS Program.
- Support SPs in conforming service offerings to SCDHHS business processes, recommending business process modifications as needed.
- Establish and maintain comprehensive MES capacity, availability, and security management processes as related to integration hub components for SP systems.
- Ensure SPs use application capacity forecasts to recommend system modifications and issue appropriate change requests.

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[Solicitation, pp. 38-39 (highlighting as in Attachment 3)] Attachment 3 follows the quoted RFP language with this statement:

The Procurement Officer is unable to locate your response to bullets 2, 3, 4, 5, and 7. Please provide the location of this information in your offer.

Section B.5 of PCG's proposal is six pages long, mostly single-spaced text. [Proposal, pp. 42-47] It begins with a general description of how PCG implements the ITIL best practices model:

This section addresses the requirements in RFP *Section 3.8.5*. Public Consulting Group, Inc. (PCG) describes its methodology for implementing processes, guidelines and overall ITIL v3.0 best practices in relation to service design, documentation, management, and improvement; service catalog design development, and implementation; and MES platform capacity management. PCG details the success how we currently utilize the ITIL 3.0 framework to execute the service management deliverables....

On the following page is a table illustrating PCG's approach. While not using the literal text of the highlighted portions of paragraph 3.8.5, the table describes how PCG intends to leverage its experience with the ITIL framework to meet those responsibilities. Finally, PCG describes how

it will accomplish each of the four deliverables specified in the RFP. Nowhere does PCG qualify its response or indicate that it will not perform any of the responsibilities required by the RFP. Its proposal is plainly responsive to paragraph 3.8.5.

Attachment 3 moves next to paragraph 3.8.6, Service Level Management:

Contractor will coordinate with ES to define and implement processes related to SLA and performance management oversight of SPs. Contractor will communicate SLA performance and other performance metrics to RMMIS Program upon request.

Contractor responsibilities shall include:

- Leverage ITIL v3.0 Service Level Management and use SLAs to govern relationships between SPs.
- Evaluate and provide metrics to RMMIS Program related to SLA oversight of SPs, taking into account daily, weekly, and seasonal variations in capacity demands.
- Execute performance management plan and processes for MES.
- Maintain and update performance management processes and policies for the MES while ensuring platform conforms to SCDHHS requirements.

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[Solicitation, p. 39 (highlighting as in Attachment 3)] Again, the letter follows the quoted RFP language with this statement:

The Procurement Officer is unable to locate your response to bullet 4. Please provide the location of this information in your offer.

Section B.6 of PCG's proposal is five pages long. [Proposal, pp. 48-52] It begins:

This section responds to the requirements in RFP *Section 3.8.6*. The following narrative highlights how Public Consulting Group, Inc. (PCG) will define and execute the processes related to [service level agreements] and performance management oversight of [service providers], including the four stages we have identified for implementing [service level management]. Our narrative trails well after *B.5 Service Management*, as we explain how we will leverage ITIL v3.0

Service Level Management and use SLAs to ensure that SPs receive the proper level of oversight....

As recognized by ITIL standards, the monitoring and controlling of a KPI during execution is a key component.

Through the previous, and immediately following sections of this proposal, PCG outlines the multitude of processes, tools, controls, and oversight provided and managed by the PMO in the effort of managing the program through execution, and as the lead role in ensuring the proper controls. These processes are what define the phase; the controls prescribed will be utilized throughout the project's life cycle to control operations, which will lead to the successful outcome of the project effort.

PCG's approach to monitoring and controlling Performance Management activities will focus on four pillars from direct experience....

Throughout this discussion is a description of how PCG will accomplish the two deliverables specified in the RFP. Nowhere does PCG qualify its response or indicate that it will not perform any of the responsibilities required by the RFP. Its proposal is plainly responsive to paragraph 3.8.6.

Finally, Attachment 3 addressed paragraph 3.8.8 of the RFP, Business Architecture:

Contractor will coordinate with SCDHHS PMO to evaluate the business architecture to verify that it supports a multi-vendor environment, and assist SCDHHS in managing changes to policies, processes, and procedures.

Contractor responsibilities shall include:

- Evaluate the solutions provided by SPs and determine the business impact.
- Provide recommendations for changes to the business architecture.

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The letter makes this final request:

The Procurement Officer is unable to locate your response to bullet 2. Please provide the location of this information in your offer.

Section B.8 of PCG's proposal treats its approach to paragraph 3.8.8. Its two single-spaced pages include:

PCG will evaluate the MITA Roadmap and concept of operations and any other business architecture documentation to ensure these are not only aligned with SCDHHS' business processes and data flows, but also with CMS' MITA Business Processes.

[Proposal, p.63] Immediately following this sentence is a subsection titled "Providing Recommendations for Changes." As in the previous sections, nowhere does PCG qualify its response or indicate that it will not perform any of the responsibilities required by the RFP. Its proposal is plainly responsive to paragraph 3.8.8.

The solicitation specifically addresses clarifications:

#### 1.1 CLARIFICATION (NOV 2007)

Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your Offer or the requirements of the solicitation. **Such communications may be conducted only with Offerors who have submitted an Offer which obviously conforms in all material aspects to the solicitation.** Clarification of an Offer must be documented in writing and included with the Offer. Clarifications may not be used to revise an Offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

[Solicitation, p. 31 (emphasis supplied)] The procurement officer necessarily—and correctly—concluded that PCG's offer was responsive, or she could not have requested a clarification under this provision.<sup>1</sup> Despite this implicit conclusion, though, she subsequently disqualified the offer because PCG never replied to her letter. Since PCG's proposal was, in fact, responsive, this was error and PCG's protest is granted.

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<sup>1</sup> Even if PCG's proposal were non-responsive, the procurement officer could have engaged in discussions, provided the offer was "potentially acceptable." S.C. Code Ann. Reg. 19-445.2095(I)(1). Discussions afford the offeror an opportunity to revise its proposal, including modifications for the purpose of resolving an issue of responsiveness. Clarifications, on the other hand, allow only resolution of ambiguous provisions in an offer. Clarifications do not permit proposal revisions.

## REMEDY

The Intent to Award to Cognosante was in violation of the Code. Normally, the CPO's decision to grant the protest would include canceling the Intent to Award to Cognosante and remanding the procurement to HHS for further proceedings in accordance with the Code. However, when the CPO lifted the automatic stay, contract formation occurred. HHS directed Cognosante to begin performance. Under these circumstances, the Code provides only two possible remedies: ratification of Cognosante's contract; or termination of that contract, payment of damages, if any; and resolicitation. *Appeals by ACT, Inc.*, Panel Case No. 2014-16, and *South Car. Budget and Control Bd.*, Panel Case No. 2014-17; *Appeal by American Specialty Office Products, Inc.*, Panel Case No. 2002-3.

Section 11-35-4310 provides in part:

(1) Applicability. The provisions of this section apply where it is determined by either the appropriate chief procurement officer or the Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of the law. The remedies set forth herein may be granted by either the appropriate chief procurement officer after review under Section 11-35-4210 or by the Procurement Review Panel after review under Section 11-35-4410(1).

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(3) Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law;

- (a) the contract may be ratified and affirmed, provided it is in the best interests of the State; or
- (b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.

Regulation 19-445.2015 includes additional, albeit similar, provisions:

A. Upon finding after award that a State employee has made an unauthorized award of a contract or that a contract award is otherwise in violation of law, the appropriate official may ratify or affirm the contract or terminate it in accordance with this section. The contract may be terminated and reasonable termination



costs, if any, may be awarded as provided in this section. The contract may be ratified and affirmed only if it is in the best interests of the State....

C. Except as provided in subsection D,<sup>2</sup> if a contract is terminated pursuant to subsection A, the State shall, where possible and by agreement with the supplier, return the supplies delivered for a refund at no cost to the State or at a minimal restocking charge. If a termination claim is made, settlement shall be made in accordance with the contract. If there are no applicable termination provisions in the contract, settlement shall be made on the basis of actual costs directly or indirectly allocable to the contract through the time of termination.

Read together, the statute and regulation express a preference for termination, so long as the cost to the State is minimal. Otherwise, and “only if it is in the best interests of the State,” the contract may be ratified and affirmed. Determining which remedy is appropriate requires the CPO to find what are the State’s best interest in these circumstances. Apparently no case has treated the ratification option in S.C. Code Ann. § 11-35-4310(3)(a), and thus there is no direct guidance on the factors to be considered in determining the best interests of the State.

South Carolina’s procurement code is based on the ABA Model Procurement Code. S.C. Code Ann. § 11-35-4310(3) follows Section 9-203 of the Model Code. In 2002, the ABA published recommended model regulations for jurisdictions adopting the Model Code. ABA Regulation R9-203.01.2 is titled “Ratification and Affirmation.” It reads:

- (a) If the violation can be waived without prejudice to the [State] or other bidders or offerors, the preferred action is to ratify and affirm the contract.
- (b) If the violation cannot be waived without prejudice to the [State] or other bidders or offerors, if performance has not begun, and if there is time for resoliciting bids or offers, the contract shall be terminated. If there is no time for resoliciting bids or offers either formally, or informally under the emergency authority, the contract may be amended appropriately, ratified, and affirmed.
- (c) If the violation cannot be waived without prejudice to the [State] or other bidders or offerors and if performance has begun, the Chief Procurement Officer or the head of a Purchasing Agency shall determine in writing whether it is in the

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<sup>2</sup> Subsection D applies only where the recipient of the contract is found to have acted fraudulently or in bad faith. No party has suggested that Cognosante has acted improperly with respect to the contract, and subsection D is inapplicable.

best interest of the [State] to terminate or to amend, ratify, and affirm the contract. Termination is the preferred remedy. The following factors are among those pertinent in determining the [State's] best interest:

- (i) the costs to the [State] in terminating and resoliciting;
- (ii) the possibility of returning supplies delivered under the contract and thus decreasing the costs of termination;
- (iii) the progress made toward performing the whole contract; and
- (iv) the possibility of obtaining a more advantageous contract by resoliciting.

(emphasis supplied) The ABA's four factors primarily reflect financial considerations. In several decisions, the Panel has recognized that cost savings are in the State's best interests. *E.g.*, *Appeal by Analytical Automation Specialists, Inc.*, Panel Case No. 1999-1 (significantly lower cost associated with change in requirements "appears to be in the best interest of the State." (affirming CPO determination to cancel pursuant to S.C. Code Ann. Reg. 19-445.2085(C)); *Protest of Primesouth, Inc.*, Panel Case No. 1991-8 (low bid exceeding agency's budget makes Reg. 19-445.2085(C) cancelation in best interests of the State).

Other cases, however, require something more than simple economy. *Appeal of Petroleum Traders*, Panel Case No. 2006-6 ("Since the provisions of the regulation [19-445.2085(C)] were not met at the outset, a lower cost cannot be used to fulfill 'best interest.'" (the regulation was amended after this decision was published.)) In the same decision the Panel also wrote:

It is difficult to argue that a lower cost would not be in the best interest of the state. However, the State must strive above all else to keep the bidding arena fair and impartial and act according to statute and regulation.

*Id.*; see *Protest of Wometco Food Services, Inc.*, Panel Case No. 1991-14 (right to reject all proposals "when it is in the best interest of the State," provided for in § 11-35-1710, is limited by the State's obligation to exercise that right in good faith as required by § 11-35-30).

These authorities teach that, while considerations of cost are appropriate, the State's best interest may be somewhat different from the acquiring agency's interest. The former includes encouraging fair and impartial competition, conducted in accordance with law.

To assist in making this determination, the CPO asked all parties to provide arguments in support of their preferred solution and estimates of the cost consequences for either action. The CPO derives the following from those responses:

- The contract with Cognosante was awarded on April 4, 2018. The monthly budget for this contract is \$511,300 per month. The total potential value of this contract is \$22,061,965.99. Cognosante began performance and has invoiced HHS \$822,717.47 as of June 12, 2018.
- The multi-vendor integrator is to provide project management oversight of third-party solution providers and integrate their solutions into the Medicaid Enterprise System to ensure CMS certification as soon as possible. Third-party contracts awarded to date include a Business Intelligence System, a Pharmacy Benefits Administration, a Third Party Liability System, and a Dental Administrative Service Organization. Negotiations are underway for the two largest solution provider contracts, a Medicaid Enterprise Systems Integrator and a Medical Administrative Service Organization. HHS anticipates an October 2018 start date for these two contracts.
- Cognosante began coordinating the definition of data subsystems and workflow processes necessary to manage provider, member, claims, and finance activities and is working with HHS to establish a consolidated governance framework to ensure consistent definition and delivery of business and technical services across the entire system and data integration efforts of the Medicaid Enterprise Systems Integrator. If its contract is cancelled, Cognosante estimates its termination costs at \$2,534,500. PCG argues that Cognosante's estimate consists mostly of "staff re-deployment termination costs" that are not permitted under the contract. PCG does not dispute that fact that Cognosante would be entitled to termination costs if the contract is terminated.
- HHS estimates that total monthly impact would be \$8,549,135 with an additional \$1,334,017 in sunk cost if the contract with Cognosante terminated and a resolicitation is ordered. HHS estimates that, "given the budget assumptions, the time required to re-

solicit the MVI contract would represent a negative impact to the State of \$64,118,512.50.” PCG argues that these numbers are hyperinflated, exaggerated and without support. PCG does not argue that there will be no financial impact if a re-solicitation is ordered.<sup>3</sup>

While the parties disagree about how much, there is no dispute that Cognosante would be entitled to termination costs in the event the contract is terminated. Similarly, while the exact effect may not be known, there is no question that resoliciting the MVI contract will impact and delay to some degree the four third-party contracts that have already been awarded. Finally, there is no serious argument that the delay attendant to resolicitation of the MVI contract will impact the overall RMMIS project schedule. While the parties can argue about the details of the financial consequences of a delay, no one can deny that there will be a financial impact. Accordingly, consideration of the cost and delay militates for ratification.

The State must also be concerned with the competitive arena. HHS received six responses to the original solicitation, and evaluated five of them. Clearly there was adequate competition. It is true that PCG’s proposal was improperly disqualified from consideration.<sup>4</sup> There is no allegation

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<sup>3</sup> PCG also argues that the fact that its proposal was \$5.5 million dollars less than the award to Cognosante should weigh in this determination. However, even though PCG’s proposal should have been evaluated there is no guarantee that it would have received the award. There were five other proposals evaluated. PCG did not submit the lowest priced offer. Cognosante was the highest scored proposal by 22 percent over its nearest competitor, despite having the highest overall price. Consequently the \$5.5 million dollar savings touted by PCG is by no means assured. The CPO is also unpersuaded by PCG’s argument that the work performed so far by Cognosante is preliminary and perfunctory, the loss of which would not seriously jeopardize the overall project schedule.

<sup>4</sup> PCG fails to acknowledge its contribution to this contractual conundrum. The procurement officer’s request for clarification was sent to the address specified in PCG’s proposal for notifications. The request for clarification was sent on November 9, 2017 with a required response date of November 13, 2017. Realizing that there was a typo in the original email address, the procurement officer resent the request for clarification on November 13, 2017 with a required response date of November 15, 2017. The clarification letter clearly states:

Please provide your response no later than Monday, November 15, 2017 at 3:00 PM ET. Failure to provide a timely response may deem your Offer non-responsive.

(emphasis added)

PCG acknowledges that it failed to monitor the email account it designated, did not respond to the request for clarification, and did not realize that it had been disqualified until after the Intent to Award was posted. PCG protests that it was unjustifiably prejudiced by the procurement officer’s failure to notify it of the disqualification and argues that, having received no response from PCG, the procurement officer should have attempted to elicit the clarifications through alternate addresses or by telephone in order to maintain the fairness and competitiveness of the

that the overall process was unfair or impartial, or that agency staff maliciously excluded PCG from the competition. Rather, the State obtained robust competition and acted fairly and in good faith. Regrettably—especially for PCG—the procurement officer erred by disqualifying PCG’s offer. However, this error cannot outweigh the additional costs, disruption, and delays that would attend termination and resolicitation of the MVI contract. For the reasons stated herein, the Chief Procurement Officer finds that it is in the best interest of the State to ratify the contract with Cognosante.

PCG argues that if the CPO ratifies the Cognosante contract, he should award PCG its bid preparation costs and attorney’s fees. PCG estimates bid preparation costs of \$145,780 and attorney’s fees of \$212,955.04 for a total of \$358,735.04. Section 11-35-4310 stipulates:

In addition to or in lieu of any other relief, when a protest submitted under Section 11-35-4210 is sustained, and it is determined that the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror may request and be awarded a reasonable reimbursement amount, including reimbursement of its reasonable bid preparation costs.

(emphasis added) While PCG’s proposal was improperly disqualified from consideration, there were five other proposals that were evaluated, and PCG was not the lowest priced proposal. The CPO cannot conclude that even had PCG’s proposal been evaluated, it would have been awarded the contract. Consequently, PCG is not entitled to recover bid preparation costs or attorney’s fees.

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procurement. The State has every right to expect a responsible bidder to monitor the notification addresses it specifies in its proposal. The CPO can’t help but speculate that this entire exercise could have been avoided if PCG had timely responded to the procurement officer’s request.

Protest Decision, page 14

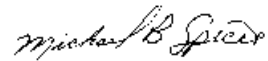
Case No. 2018-211

July 10, 2018

## **DECISION**

For the reasons stated above the protest of Public Consulting Group, Inc. is granted, the contract with Cognosante is ratified, and PCG is denied bid preparation costs and attorney's fees.

For the Information Technology Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1



Public Focus. Proven Results.™

March 5, 2018

**SENT VIA E-MAIL (protest-itmo@itmo.sc.gov)**

Chief Procurement Officer  
Information Technology, Management Officer  
1201 Main Street  
Suite 601  
Columbia, SC 29201

RE: Solicitation # 54000013926 (Multi-Vendor Integrator)  
Protest of Intent to Award

Dear Chief Procurement Officer:

Pursuant to South Carolina Code § 11-35-4210, Public Consulting Group, Inc. (“PCG”) submits this Protest in response to the Intent to Award the contract under Solicitation No. 5400013926 to Cognosante Consulting LLC (“Cognosante”) on the grounds that (a) PCG was prejudiced through an unjustified (and previously unknown) disqualification and (b) it is not in the State’s best interest to proceed with the intent to award under these circumstances.

In brief, the State intends to award a \$22.1 million contract to Cognosante notwithstanding that PCG is ready, willing, and able to perform these services for \$16.6 million – ***saving the State \$5.5 million.***

PCG was disqualified from the procurement for inadvertently failing to view and respond to the State’s November 2017 emailed request for clarification relating to PCG’s proposal, in which it asked how PCG would satisfy certain specifications of the RFP. However, PCG was not timely notified about the disqualification and has been unjustifiably prejudiced as a result. Rather, it learned of the disqualification only after the Intent to Award was posted: specifically, the disqualification was contained in documents provided by the State only *after* PCG submitted a public records request relating to the procurement. Had it received notice of the proposed disqualification, PCG would have explained the circumstances surrounding its delay and would have responded in full to the substantive request.

Critically, in no manner was the PCG proposal defective. And in fact, the RFP specifically states that proposals did not need to respond to each individual specification in the RFP. *See* RFP Section 4.6.1 (“SCDHHS is not requesting a requirement-by-requirement description of how

every requirement is being met.”). Moreover, the State was prohibited from contacting a bidder for clarification unless its offer “obviously conform[ed] in all material aspects to the solicitation.” See RFP Section 2.34. Ultimately, disqualification of PCG deprived the State of full and fair competition.

PCG does acknowledge that it failed to see and open the November 2017 emailed request for clarification. However, to address that oversight by disqualifying PCG violates the norms of fundamental fairness that underlie the procurement process – **and could cost the State millions of dollars**. Ultimately, the State could have exercised other means to ensure PCG responded to its communication. For example, the award notification was sent on February 23, 2017, to Info@pcgus.com, an alternative e-mail address that the State could have availed themselves. The State could have also called either of two telephone numbers listed in the proposal documents. Any of these actions would have addressed the oversight and maintained the fairness and competitiveness of the procurement.

PCG respectfully requests that the Intent to Award be cancelled and that PCG’s proposal be evaluated. Alternatively, PCG requests that the procurement be reopened and new bids be solicited.

Sincerely,

A handwritten signature in black ink, appearing to read "John Shaughnessy". The signature is fluid and cursive, with a large loop at the end.

John Shaughnessy  
Practice Area Director



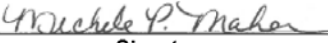
**JUSTIFICATION FOR DETERMINATION OF NON-RESPONSIVENESS**  
**5400013926 Multi-Vendor Integrator (MVI)**

**PUBLIC CONSULTING GROUP, LLC (PCG):**

In accordance with Regulation Section 19-445-2095 Competitive Sealed Proposals, J., Rejection of Individual Proposals (1)(b), of the Regulations of the South Carolina Consolidated Procurement Code, Public Consulting Group (PCG) is determined non-responsive.

In order to obtain clarification to PCG's Offer, the procurement officer emailed P Buckley, PCG's Point of Contact, as found on Cover Page 2 of the RFP, at [pbuckley@pcgus.gov](mailto:pbuckley@pcgus.gov) (Exhibit A) on November 9, 2017 at 3:45 PM with a deadline of November 13, 2017 at 3:00 PM. The procurement officer realized the email address was incorrect and subsequently sent another email to P Buckley at [pubuckley@pcgus.gov](mailto:pubuckley@pcgus.gov) (Exhibit B) requesting the same information on November 13, 2017 at 3:06 PM with a deadline of November 15, 2017 at 3:00 PM. An email delivery receipt was received on November 13, 2017 at 3:06 PM (Exhibit C).

With no response received from the Offeror, PCG has been deemed non-responsive.

<u>11/13/2017</u>	<u>South Carolina Department of Health &amp; Human Services</u>
Date	Using Governmental Unit
	
	Signature
	<u>Procurement Manager</u>

## Exhibit A

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**From:** Michele Mahon

**Sent:** Thursday, November 09, 2017 3:45 PM

**To:** 'pbuckley@pcgus.com' <pbuckley@pcgus.com>

**Subject:** [Secure] SCDHHS Solicitation 5400013926 Multi-Vendor Integrator (MVI) Request for Clarification

Good afternoon,

Please find attached a Request for Clarification letter in reference to the SCDHHS MultiVendor Integrator (MVI) solicitation. Please note the deadline for your response submission in the letter.

If you have any questions, please call.

Michele

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**Michele Mahon**

*Program Manager II*

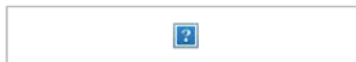
[Michele.Mahon@scdhhs.gov](mailto:Michele.Mahon@scdhhs.gov)

803-898-1863 cell: 803-

521-1921 J6 1801 Main St.

Columbia, SC - 29201

[www.scdhhs.gov](http://www.scdhhs.gov)



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## Exhibit B

**From:** Michele Mahon  
**To:** "[pbuckley@pcgus.com](mailto:pbuckley@pcgus.com)"  
**Subject:** FW: [Secure] SCDHHS Solicitation 5400013926 Multi-Vendor Integrator (MVI) Request for Clarification  
**Date:** Monday, November 13, 2017 3:04:00 PM  
**Attachments:** [PCG Clarification Letter.pdf](#)

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Good afternoon,

The email address for this was incorrect on the original send. I am extending the response deadline for a response to Wednesday, November 15, 2017 at 3:00 P.M.

If you have any questions, please contact me.

Michele

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**Michele Mahon**  
*Program Manager II*  
[Michele.Mahon@scdhhs.gov](mailto:Michele.Mahon@scdhhs.gov)  
803-898-1863 cell: 803-  
521-1921 J6 1801 Main  
St. Columbia, SC - 29201  
[www.scdhhs.gov](http://www.scdhhs.gov)



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**From:** Michele Mahon  
**Sent:** Thursday, November 09, 2017 3:45 PM  
**To:** 'pbuckley@pcgus.com' <pbuckley@pcgus.com>  
**Subject:** [Secure] SCDHHS Solicitation 5400013926 Multi-Vendor Integrator (MVI) Request for Clarification

Good afternoon,

Please find attached a Request for Clarification letter in reference to the SCDHHS MultiVendor Integrator (MVI) solicitation. Please note the deadline for your response submission in the letter.

If you have any questions, please call.

Michele

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**Michele Mahon**

*Program Manager II*

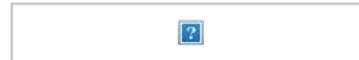
[Michele.Mahon@scdhhs.gov](mailto:Michele.Mahon@scdhhs.gov)

803-898-1863 cell: 803-

521-1921 J6 1801 Main

St. Columbia, SC - 29201

[www.scdhhs.gov](http://www.scdhhs.gov)



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## Exhibit C

**From:** [Microsoft Outlook](#)  
**To:** [pubuckley@pcgus.com](mailto:pubuckley@pcgus.com)  
**Subject:** Relayed: [Secure] SCDHHS Solicitation 5400013926 Multi-Vendor Integrator (MVI) Request for Clarification  
**Date:** Monday, November 13, 2017 3:06:01 PM  
**Attachments:** [Secure SCDHHS Solicitation 5400013926 Multi-Vendor Integrator \(MVI\) Request for Clarification.msg](#)

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Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:  
pubuckley@pcgus.com (pubuckley@pcgus.com) - mailto:pubuckley@pcgus.com  
Subject: [Secure] SCDHHS Solicitation 5400013926 Multi-Vendor Integrator (MVI) Request for Clarification

Attachment 3



Henry McMaster GOVERNOR  
Deirdra T. Singleton ACTING DIRECTOR  
P.O. Box 8206 > Columbia, SC 29202  
www.scdhhs.gov

November 9, 2017

Mr. William S. Mosakowski  
President & CEO  
Public Consulting Group, Inc.  
148 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

\*\*\* SENT VIA ELECTRONIC MAIL TO [pbuckley@pcgus.com](mailto:pbuckley@pcgus.com) \*\*\*

RE: SCDHHS Request for Proposal #5400013926 Multi-Vendor Integrator (MVI)

Dear Mr. Mosakowski:

By signing your Cover Page, Page 2, and acknowledging the amendments to the referenced proposal, you agree to be bound by the terms of the solicitation. In accordance with Section 11-35-1530 (1), Conditions for Use of the South Carolina Consolidated Procurement Code, and Regulation 19-445.2095, E, Clarifications and Minor Informalities in Proposals, the following items from your response require clarification.

1. Section 3.8.5 Service Management of the solicitation states:

**3.8.5 SERVICE MANAGEMENT**

Contractor will coordinate with ES to implement processes, guidelines, and ITIL v3.0 best practices related to service design, documentation, management, and improvement; service catalog design, development, and implementation; and MES platform capacity management. Contractor will support information technology service management (ITSM), which includes ITIL v3.0 processes and guidelines.

Contractor responsibilities shall include:

- Provide a process to ensure alignment with ITIL v3.0 Service Management best practices.
- Establish and maintain an engagement model for joint operations of applications and infrastructure, including development, documentation, and management of processes and procedures for an ITIL service catalog. Model must provide enough detail for SPs to leverage, including roles and responsibilities, SLAs, and KPIs.
- With SCDHHS, establish guidelines and procedures for service reuse, including when service reuse is required and how to request permission to use a service.
- Coordinate with SCDHHS and SPs to ensure maximum sharing of business processes, data, and technologies. Instances where Contractor and/or SPs do not comply will be communicated by Contractor to RMMIS Program.
- Support SPs in conforming service offerings to SCDHHS business processes, recommending business process modifications as needed.

- Establish and maintain comprehensive MES capacity, availability, and security management processes as related to integration hub components for SP systems.
- Ensure SPs use application capacity forecasts to recommend system modifications and issue appropriate change requests.

Contractor Deliverables shall include:

- Service catalog design, development, and management process
- Capacity and availability management processes design and development
- Service engagement model design and development
- Service reuse strategy design and development

*The Procurement Officer is unable to locate your response to bullets 2, 3, 4, 5, and 7. Please provide the location of this information in your Offer.*

2. Section 3.8.6 Service Level Management of the solicitation states:

#### **3.8.6 SERVICE LEVEL MANAGEMENT**

Contractor will coordinate with ES to define and implement processes related to SLA and performance management oversight of SPs. Contractor will communicate SLA performance and other performance metrics to RMMIS Program upon request.

Contractor responsibilities shall include:

- Leverage ITIL v3.0 Service Level Management and use SLAs to govern relationships between SPs.
- Evaluate and provide metrics to RMMIS Program related to SLA oversight of SPs, taking into account daily, weekly, and seasonal variations in capacity demands.
- Execute performance management plan and processes for MES.
- Maintain and update performance management processes and policies for the MES while ensuring platform conforms to SCDHHS requirements.

Contractor Deliverables shall include:

- SLA monitoring process
- Performance management plan monitoring, execution, and management

*The Procurement Officer is unable to locate your response to bullet 4. Please provide the location of this information in your Offer.*

3. Section 3.8.8 Business Architecture of the solicitation states:

#### **3.8.8 BUSINESS ARCHITECTURE**

Contractor will coordinate with SCDHHS PMO to evaluate the business architecture to verify that it supports a multi-vendor environment, and assist SCDHHS in managing changes to policies, processes, and procedures.

Contractor responsibilities shall include:

- Evaluate the solutions provided by SPs and determine the business impact.
- Provide recommendations for changes to the business architecture.

- Coordinate with SCDHHS PMO and RMMIS Program on business architecture requirements.
- Adhere to strategic and tactical instructions provided in accordance with CDML. (ATTM 009)

Contractor Deliverables shall include:

- Business architecture review process, including policies and procedures

*The Procurement Officer is unable to locate your response to bullet 2. Please provide the location of this information in your Offer.*

Please provide your response no later than Monday, November 13, 2017 at 3:00 PM ET. Failure to provide a timely response may deem your Offer non-responsive.

Sincerely,



Michele Mahon, CPPB  
Procurement Manager

c: file



## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2018)*

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 2018 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

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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.**