

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

In Re: South Carolina Patients'  
Compensation Fund vs. Modus21, LLC

CASE NO.: 2013-201

Contract Controversy

POSTING DATE: May 13, 2013

MAILING DATE: May 9, 2013

The South Carolina Consolidated Procurement Code (the Code) Section 11-35-4230 allows either the contracting state agency or the contractor or subcontractor to submit a request for resolution of a contract controversy to the appropriate chief procurement officer in writing setting forth the specific nature of the controversy and the specific relief requested with enough particularity to give notice of every issue to be decided. The South Carolina Patients' Compensation Fund (PCF) requested resolution of a contract controversy between it and Modus21, LLC (Modus). The Chief Procurement Officer received briefs from each party prior to conducting a hearing on March 11 and 12, 2013. At that hearing, Modus was represented by Robert D. Fogel, Esq. and PCF was represented by Tommy E. Lydon, Esq. and Helen Hiser, Esq.

PCF alleges that Modus21, through a series of Statements of Work issued under a State term contract, promised to replace the aging computer database it used to run its insurance business, with a new Member Management System (MMS). As of February 20, 2012, the PCF had paid Modus21 \$465,748 for a system it describes as poorly conceived, poorly executed, and practically useless. In addition, PCF claims that its staff spent countless hours working with Modus21 trying unsuccessfully to fix the broken system. Ultimately, PCF hired another software company to completely rewrite the MMS. PCF asks for a full refund of all monies paid to Modus, compensation for staff time lost working with a broken system, and reasonable attorney's fees.

In its hearing brief Modus21 argues that the underlying contract, and each Statement of Work, only required it to deliver consulting services on an hourly basis. Since Modus provided those

services, and PCF paid for them without any written reservation, Modus denies there was any breach of contract.<sup>1</sup> It requests that PCF's claims be dismissed. Additionally, Modus denies any liability for PCF's staff time, as the agreement specifically bars recovery of consequential damages; or for attorney's fees, as there is no contract provision authorizing such recovery.

### **FINDINGS OF FACT**

According to its web site "The South Carolina Patients' Compensation Fund was created for the purpose of paying that portion of a medical malpractice ... claim, settlement, or judgment which is in excess of two hundred thousand dollars for each incident or in excess of six hundred thousand dollars in the aggregate year for one year. The Fund is liable only for payment of claims against licensed health care providers in compliance with the provisions of the enabling statute Title 38, Chapter 79, Article 5 and includes reasonable and necessary expenses incurred in payment of claims and the Fund's administrative expense."<sup>2</sup> In other words, PCF is an insurance company that provides excess liability coverage to participating medical providers.

A thirteen-member Board of Governors exercises authority over PCF's operations, underwriting, and claims handling. The PCF is headed by its executive director, Terry Coston. Ms. Coston has held that position for twelve years. Previously she was a medical liability claims adjuster for The St. Paul Companies for twenty years. She possesses no special expertise in information technology. Ms. Coston supervises a staff of four employees at PCF. While proficient at their jobs, none boasts a background in computers, software, or contract administration. PCF has no IT staff. In 1998 PCF hired a developer to create a "Member Tracking System," based on Microsoft Access and coded in Visual Basic. It continues to use the legacy system for some functions even today. After a critical audit in 2000, PCF recognized that the agency's existing system was no longer powerful enough to handle the added business complexity PCF faced. Ms. Coston began looking in earnest for a replacement in 2007.

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<sup>1</sup> As discussed later in the decision, the testimony of Modus21's president and employees who worked on the project was contrary to this position.

<sup>2</sup> SC PCF website, [http://www.spcpf.com/about\\_mission.asp](http://www.spcpf.com/about_mission.asp) (last viewed May 1, 2013).

Modus21, LLC is located in Mount Pleasant, South Carolina. According to its web site: “Modus 21 determines where the holes are in our client’s business processes and delivers innovative, tailored solutions that resolve their every day challenges.... Modus21’s process centric approach targets clients’ internal processes and aligns them to achieve organizational objectives.”<sup>3</sup> Peter Woodhull is Modus21’s president. He testified at the hearing before the CPO that Modus21 does not write custom software for its clients. According to Mr. Woodhull, it is possible to implement his company’s process-centric approach without writing custom software code. He acknowledged that interfaces with other applications and more sophisticated user-focused features may require some coding.

### **State Term Contract for Third-Party Consulting**

On August 18, 2006, the Information Technology Management Office issued Solicitation No. 07-S7276. Through this Request for Proposals ITMO sought to procure independent third party consulting services to review and develop an improvement process for governmental entities. (Record at 2443)<sup>4</sup> The RFP was “solutions based,” and required offerors to propose imaginative ways to meet these needs described in the solicitation:

It is the intent of the State of South Carolina to solicit a Solutions-based State Term Contract(s) to allow governmental entities the ability to seek the assistance of an independent third party to better understand their current value and to develop an improvement process. This process should include financial management, operational management, and knowledge management. The objective of this engagement will be to answer the following key questions:

1. Where does the agency stand versus similar organizations in terms of cost efficiency, staffing, and productivity?
2. How mature are the agencies key operational processes, and how do they impact the agencies cost, efficiency, and effectiveness?
3. What specific steps should the agency take to modernize the agencies portfolio, improve process maturity, and further reduce costs?

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<sup>3</sup> Modus21 website (banner), <http://www.modus21.com/index.asp> (last viewed May 1, 2013).

<sup>4</sup> A scheduling order in the case required the parties to agree and provide documents to be used as exhibits in the case. The order specifically required them to include the solicitation and amendments and Modus21’s proposal. Although the parties overlooked to provide them, those documents are part of the record and appear following the exhibits they did submit.

4. What specific steps should the agency take to transfer knowledge due to the high rate of retirement?

(Record at 2452) The solicitation clarified the scope of the contract by providing bidders the following guidance in preparing their proposals for consideration:

Provide a Statement of Work to show the process that you will follow in assessment, analysis and reporting. This will be broad in nature considering the number of agencies under the State of South Carolina. This should include a description of the work to be accomplished and the format in which the information will be delivered. The measurement information and the assessment of both processes and services should provide a baseline for the current state of the agency and provide information to the agency for their accountability reporting. The recommendations should provide the insight the agency needs in improving services, reducing cost and developing processes for implementation.

(*Id.* at 2453)

The scope was further clarified in Amendment 1 by deleting from the solicitation a request that bidders identify their application development methodologies. (Amendment 1, *id.* at 2465) The RFP also included the following provisions:

**CONTRACT LIMITATIONS (JAN 2006):** No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment.

(*Id.* at 2458)

**STATEWIDE TERM CONTRACT – SCOPE (JAN 2006):** The scope of this contract is limited by the Bidding Schedule / Cost Proposals and by the description included in Part I, Scope of Solicitation. Sales of supplies or services not within the scope of this contract are prohibited. See clause entitled Contract Limitations.

(*Id.* at 2461)

Thus, the RFP neither requested nor authorized software application development. In its response to the RFP dated September 1, 2006, Modus21 acknowledged that “no application development is called for in this program.” (Modus21 Proposal, *id.* at 2477) During the hearing before the CPO, Peter Woodhull, President of Modus21, and Shannon Laughlin, Modus21’s Project

Manager for the PCF project, acknowledged the prohibition against software applications development under this contract.

The State awarded to multiple vendors, including Modus21. For unknown reasons, there is no “Record of Negotiations” reflecting changes to the solicitation and Modus 21’s response. Instead, the procurement officer took the extraordinary and irregular measure of executing a “Master Agreement” Modus 21 prepared. (Record at 71) The agreement includes, by reference in its “Order of Precedence” clause, all statements of work, the RFP and amendments, and Modus21’s proposal. (Record at 76-77) It also includes article 5, titled “Acceptance.” Article 5 provides in part:

5.1 All Deliverables prepared by CONTRACTOR must be approved in writing by the State’s Program Manager or his or her written designee that such Deliverables comply in all material respects with the requirements of the applicable SOW, which approval shall not be unreasonably withheld.

5.2 To the extent not otherwise identified in a SOW, the State shall complete its review of a Deliverable in not more than ten (10) business days. The State shall provide CONTRACTOR (i) with approval of the Deliverable or (ii) with a written statement, as provided below, of the deficiencies preventing approval. Such business days shall be counted from and include the first business day following the delivery of the Deliverable to the State.

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5.5 If CONTRACTOR is unable to correct any deficiency in a Deliverable within the period of time set forth above, the State shall be entitled, at its option, to a refund or credit of professional fees paid to CONTRACTOR hereunder with respect to the Services giving rise to the claimed deficiency. If the State exercises this option, it will be its sole and exclusive remedy concerning any claim that this Deliverable does not conform to the requirements of the applicable SOW. The State may, at its sole discretion, elect not to exercise this option, and instead to pursue all other remedies provided for elsewhere in this Master Agreement.

Article 11, the Order of Precedence clause, provided in part:

[T]erms and conditions in this Master Agreement supersede and replace the terms and conditions in the RFP and the amendments thereto. In the event of any conflicts between the Master Agreement or [any Statement of Work; the RFP and amendments; and Modus21’s proposal], the order of priority is that the Master Agreement, exclusive of the items listed above, shall take precedence over the

items listed and the items listed shall thereafter take precedence over each other so that the earlier listed item would take precedence over the later listed item.

### **Modus21 Meets Patients Compensation Fund**

PCF first met with Modus21 in late February 2008. (Record at 3) In March Modus21 presented its plan to improve the business and technological processes at PCF. (Record at 5) The presentation identified three primary issues PCF's legacy system created. First, it offered little to no control of business reporting; second, it lacked grounded information for true business metrics; and third, it was an aging system that did not support business processes. (Record at 7)

In May 2008 Modus21 delivered its "Process Centric Proposal." (Record at 23, 27) In it, Modus21 restated its observations of the old system: it was technologically outdated and inadequate; its reporting capabilities were compromised; and it could not be updated or expanded to reflect changes in the insurance business. (Record at 36) The proposal stated that Modus21 "helps an organization make the transition to a process centric system through the delivery of it [*sic*] unique five phase methodology. These phases include Planning, Analysis & Design, Prototyping, Quality Assurance, Testing, and Deployment." (Record at 38) Modus' proposed conversion to a process centric system was to be facilitated through a Business Process Management System (BPMS). A BPMS is a software based system that allows a business to define its workflow or processes in a graphical manner and the BPMS will fill in all the steps of the process in the order necessary to process the work. The BPMS software actually generates software code "behind" its interface, and the code integrates the business process models into the computerized workflow. This does require someone to define all the necessary processes with all the pertinent steps and someone with the skill set to input that information into the BPMS. Theoretically, when used in an appropriate case, BPMS does not require manually written software coding. According to the proposal, the new system would provide PCF with "the functionality it needs to complete work today with a platform that is scalable for the future needs and requirements of tomorrow." (Record at 36)

Modus21 proposed that the project be executed in five phases and estimated that the project could be completed in a maximum of 30 weeks for \$191,044. Modus21 also promised to offer training "on the software changes that are going to change the way [PCF] currently do[es] business." (Record at 38) Modus would "deliver, install and configure the new system for

implementation.” (Record at 40) And it would provide “[c]onfiguration management of the documentation, software, and process models...” (Record at 41) Initially the new system would include:

- Membership Management
- Claims Management
- Underwriting & Rating
- Billing & Payments
- Financial
- Renewals
- Endorsement Process
- Settlement Process

### **Statement of Work 001**

On June 1, 2008, the parties signed Statement of Work #1 (“SOW 001”). (Record at 82) SOW 001 covered the first phase of the project, and included the following “Task Description:”

Modus21 will perform project planning and project analysis tasks to support SCPCF. The goal is to assess project needs around process, architecture, and to further define scope for the replacement of the current system.

(Record at 82) The project deliverables listed in the SOW were a project plan, process analysis, and architecture feedback. Modus was to deliver 160 hours on a time and materials basis at a cost of \$18,270 to complete this SOW by August 1, 2008. The Task Description and the Deliverables are reasonably aligned, consistent, and within the scope of the state term contract.

Although no written acceptance of the deliverables under SOW 001 appears in the record, neither party contended that PCF expressed any dissatisfaction, written or otherwise, with the deliverables for SOW 001. Modus21 billed PCF for the full amount of SOW 001, and the State has paid Modus21 for that work.

On June 13, 2008, Modus delivered its “Membership Management System (MMS) Project Executive Summary.” (Record at page 59) This report was not listed as a deliverable in SOW 001. In paragraph 3.1 Modus identified the problem facing the PCF:

Today, the South Carolina Patients' Compensation Fund (SC PCF) leverages a customized Membership Tracking System (MTS) based on Access, Visual Basic 6.0 and Crystal Reports 9.0 utilizing Microsoft Word and Excel The current system, created in 1998, is now outdated and unable to provide the necessary information to remain compliant The system is extremely limited in its ability to generate accurate data needed for financial / Board reporting and audit

capabilities. In addition, the current MTS is not flexible and unable to expand in the manner and ways the SC PCF needs in order to continue to deliver value for their more than 5,500 physician members and customers. The system is further complicated by an inadequate service level with little to no local control available for the SC PCF. Finally, the current system also requires a myriad of manual processes to be managed by the SC PCF in order to successfully manage the day to day operations of the organization.

(Record at page 63) In paragraph 3.3 of the Executive Summary, Modus went on to define the scope of the project as follows:

The scope of the South Carolina Patients' Compensation Fund project is defined to include the development and implementation of a new, comprehensive Membership Management System (MMS) based upon a BPM, process centric solution. The new Membership Management System needs to provide numerous key functions for the PCF, including Policy Management, Claims Management, Underwriting and Rating, Financial Management (Billing and Payment Posting), Risk Management, Advanced Workflow, and Data Storage. In addition, the new system will need to provide Joint Underwriting Associates (JUA) connectivity, web interaction, real time reporting capabilities, audit capabilities and document processing.

Moreover, the project scope includes the delivery, installation, set up, testing and deployment of the new system. The necessary training of end users required for successful implementation is also considered in scope of the project. Finally, the project shall also include the transfer and migration of data from the current MTS to the new Membership Management System (MMS).

(Record at page 63) The Executive Summary included an abbreviated schedule showing deployment of the MMS would be completed by February 10, 2009. (Record at 66) Ms. Coston signed the Executive Summary, indicating PCF's acceptance, on June 17, 2008. (Record at 62)

### **Statement of Work 002**

On June 23, 2008, prior to the completion of SOW 001, Modus and PCF executed SOW 002. The Task Description and the Deliverables of SOW 002 are at odds. The Task Description states that:

Modus21 will deliver, install, set up and training [*sic*] of PCF personnel in the use and maintenance of the MTS process. This includes software, services and support to the PCF process to provide policy management, claims management, financial management, risk management, advanced workflow, data storage, risk analysis, document processing, and web interaction.

(Record at page 86) The estimated cost of this SOW is \$191,044.<sup>5</sup>

(Record at page 54) However, the Deliverables for SOW 002 did not match up with an agreement to deliver and install a membership management system. They were:

- Project plan
- Process Specifications
- Architecture
- Weekly Status reports of Modus21 project work
- Approved Functional Process Model(s) – Initial Operational Capability
- System Architecture Document
- Revised Process Specification and Project Management Plan
- Implementation & Training Plan
- Training Guide(s)
- Transition Plan
- Project Closeout Report

The parties expected the work under SOW 002 would be completed by March 1, 2009. (Record at page 87)

Read together with Modus21's Process Centric Proposal and Project Executive Summary, SOW 002 has much in common with a contract to develop custom software. If that were the agreement, it would be outside the scope of the State term contract. The deliverables listed in the SOW are consistent with a consulting agreement. Mr. Woodhull testified that his company's process-centric approach can be implemented without writing custom software code. The solicitation encouraged offerors to be creative and ingenious in solving the business and operational problems identified in an agency, including developing improved and modernized processes. The CPO believes that the work described in SOW 002 was not what the solicitation intended to authorize. However, it is not prohibited by the language of the solicitation. Accordingly, the CPO will treat SOW 002 as a creative and ingenious approach to solving the problems described in the RFP and thus within the scope of the state term contract—but only barely.

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<sup>5</sup> This is the same amount quoted by Modus in its May 2008 presentation when it said:

Modus21 helps an organization make the transition to a process centric system through the delivery of it [*sic*] unique five phase methodology. These phases include Planning, Analysis & Design, Prototyping, Quality Assurance Testing, and Deployment.”

In addition to the Executive Summary, the Record includes a document titled “System Requirements System Architecture.” (Record at 128) Ms. Coston signed, accepting the document, on December 2, 2008. (Record at 133) There is also a “Membership Management System (MMS) Process Specification” which Ms. Coston accepted ten days later. (Record at 252) There is a “Converted Project Plan” (unsigned) at pages 397-398; and the Record is replete with progress reports. (e.g., Record at 405-529) It is not clear if PCF received any of the other deliverables listed in SOW 002. There is no evidence that, during the performance period for that Statement of Work, PCF provided Modus21 with any deficiency notice as described in Article 5 of the Master Agreement. Modus21 billed PCF for the full amount of SOW 002. By April 2, 2009, the State had paid Modus21 for that work.

### **Change Orders and Addenda**

On August 19, 2008, Modus21 delivered a “Project Change Log” to PCF. (Record at 307) It included seven “change requests,” all purportedly requested by PCF. On August 26, 2008, Ms. Coston signed five change orders corresponding to five of the seven “requests” in the change log. Modus21 prepared the change orders. None of them increased the contract amount. Each one, however, purported to change the performance requirements in Modus21’s favor, even though none appears to have added any work not included in the original Statements of Work.<sup>6</sup>

Modus21 recognized in its first presentation to PCF in February 2008 the importance of reporting capabilities for the new MMS. It reiterated that requirement in its Process Centric Proposal two months later, and in the Project Executive Summary two months after that. Against this backdrop of repeated emphasis on reporting, the parties signed Addendum 001 to SOW 002 on January 22, 2009. The Addendum was for “Reporting assistance, including analysis of reports needed, development of report structure, and to assist with PCF Sys Admin to develop and generate reports for PCF.” (Record at 90) It extended the end date for SOW 002 through July 2009. On August 6, 2009, the parties added a nearly identical Addendum 002 to SOW 002. It

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<sup>6</sup> One of the change orders dealt with Modus21’s evaluation of BPM software systems and recommendation to PCF which system to buy. This work was included in the SOW and was clearly within the scope of the state term contract. Acting on Modus21’s recommendation, PCF purchased a software product called BizFlow. The cost of the software exceeded \$10,000. PCF neither advertised the purchase nor sought competing bids for it, as mandated by Code Section 11-35-1550.

included the same language about reporting and extended the end date through December 2009. Together, these addenda increased the price of SOW 002 by \$7200.<sup>7</sup> It does not appear that any of the work described in or furnished under the Addenda is different, or in addition to, what Modus21 agreed to furnish in SOW 001. No deliverable attributable to the Addenda appears in the Record. Modus21 billed PCF for the full amount of Addenda 001 and 002, and the State has paid Modus21 for that work.

### **SOW 002 Performance**

Except for work covered by the “addenda” to SOW 002, Modus21 promised to complete all the work described in SOW 001 and SOW002 by March 1, 2009. The work was not completed. In fact, by April 2, 2009, Modus 21 had revised the “Go Live” date to May 18, 2009. (Record at 530) However, it had billed for 100% of its estimated hours and over \$3812 in expenses against these two statements of work. PCF paid all these invoices. (Record at 801)

Modus21 pointed to two reasons for the delays. First, it had assumed PCF would use QuickBooks<sup>8</sup> for accounting. PCF was using that program for its internal business operations. On December 10, 2008, PCF briefed PCF’s Board of Governors on project progress. (Record at 405) Thereafter, Modus21 noted that PCF decided not to use QuickBooks. (e.g., Record at 419) It claimed this decision caused Modus21 to “essentially building PCF its own accounting system, resulting in added development complexity.” (*Id.*) However, the Project Change Log Modus21 presented five months earlier reflected PCF had not made a decision regarding QuickBooks. In fact, the “Change Requested” form states that financial management was included in the original SOW, but that Modus21 had failed to realize the true extent and scope of the work associated with that component until work was well underway. (Record at 313) The change description identifies no cost savings accruing to PCF from the use of QuickBooks. Instead it recommends PCF look into the *additional* cost of training all its employees to use QuickBooks.

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<sup>7</sup> Subsequently the parties entered into amendments to SOW 004 and SOW 005 to “support the development of reports requested by SC PCF.” Those amendments will be discussed during the CPO’s treatment of their corresponding statements of work.

<sup>8</sup> QuickBooks is a shrink wrapped commercial off the shelf (COTS) accounting software application for small businesses, published by Intuit Corporation.

Second, Mr. Woodhull acknowledged that Modus21 had significant problems capturing the actual business processes PCF used. Peter Grazaitis, a Modus21's Senior Software Engineer and Ms. Laughlin claimed the problems all stemmed from incomplete or erroneous information PCF provided to them. Even if this were true, Modus21 expressly undertook to "discover" complete and accurate information about PCF's business processes. If the discovery process were ineffective, the plan Modus21 developed based on the capture would not reflect how PCF conducted its business. Modus21 holds itself out as an expert in the fields of system analysis and business process improvement. Both Ms. Laughlin and Mr. Woodhull described the cutting-edge methodology Modus21 uses to identify and map the business processes involved in their clients' day-to-day activities. The allegation that PCF failed to provide accurate information is essentially an admission that Modus21 failed to do its "as is" assessment properly.

According to Mr. Woodhull, these two issues combined to "doom" the project. By January 7, 2009, Modus21 knew PCF would not be using QuickBooks. Because PCF's business processes were both more numerous and more complex than Modus21 originally thought, and because the MMS would have to incorporate accounting functions, the BPM software was no longer adequate to provide the system Modus21 had promised. According to Mr. Woodhull, the QuickBooks decision in particular caused the project to change from the relatively simple BPMS integration described in SOW 002, to custom software development. In his words, Modus21's decision to begin writing code was dictated by PCF's insistence on integrating accounting functionality within the BPMS.

Although PCF used QuickBooks internally, it isn't clear that it ever intended to use that program to run the insurance business. According to Modus21, PCF's decision not to follow the QuickBooks recommendation was momentous. Besides testimony from Modus21's analysts and programmers, there is little in the record to suggest the tremendous impact Modus21 claims. Regardless of QuickBooks' role in the project failure, it turned out Modus21 didn't do a very good job gathering, compiling, and defining PCF's processes. These errors did not manifest themselves until Modus21 began delivering the prototypes for testing by PCF staff. There were apparently many missing processes and missing steps within defined processes. Many issues did not come to light until triggered by specific events during testing and implementation. Correcting these overlooked or missing steps and processes often introduced other problems. In early 2009

Modus21 began writing code to solve the pervasive issues and bugs in the BPMS. Essentially, Modus21 converted the consulting engagement into a custom software development contract.

### **Statement of Work 003**

On April 24, 2009, the parties agreed to SOW 3 at a cost of \$54,208 to be completed by June 1, 2009. (Record at page 93) The Task Description for SOW 3 states that Modus would allocate resources to support the *development and implementation* of new requirements in the MMS. (emphasis added) There were twelve components and processes listed in this Task Description that included Refunds, Tail Coverage, Hospital / Clinic / Facilities Policies & Billing, Renewals sub process, Incident / Claims sub process, Assessments sub process, and a Quote sub process. Again, it is difficult to imagine how these basic insurance related issues were not identified in the design documents created by Modus and approved by PCF in SOW 002. The Deliverables listed for this SOW are Project plan updates, Process Specification updates, Weekly Reports of Modus21 project work, and Approved Functional Process Model – Initial Operational Capability. The Task Description and the Deliverables are not aligned or complementary and the Task Description is not within the scope of the state term contract for consulting services. This lack of alignment between the Task Description and Deliverables with the Task Description being inconsistent with the scope of the state term contract is prevalent throughout the remaining SOWs.

Peter Grazaitis, a Senior Software Engineer at Modus21, was involved early in the project. He stated that at some point PCF's inability to distinguish "issues" from "enhancements" became a serious problem. Ultimately he admitted those problems overwhelmed him. He pointed to a document dated December 2008 as marking a turning point in the progress of the project. (Record at 882) He first began writing code, instead of modeling business processes, when Modus21 started incorporating the accounting function into the BPMS. From other testimony, that was in late 2008 or early 2009. The second area that required substantial coding was the "correspondence manager" function. The project, according to Mr. Grazaitis, became custom software development. By the time he became immersed in attempts to correct a calculations issue, he was writing code regularly. That issue came to a boil in April 2009. (Record at 913)

Thus, by early spring 2009 Modus21 was performing custom software development pursuant to SOW 003. Every project employee who testified for Modus21—Ms. Laughlin, Mr. Grazaitis, and Mr. Woodhull—understood perfectly that custom software development was prohibited under the State term contract. Nevertheless, they prepared SOW 003, Ms. Coston to sign it, and Modus began billing for their development work. Modus21 has billed PCF for all work performed under SOW 003, and the State has paid Modus21 for that work.

#### **Statement of Work 004**

On August 1, 2009, the parties entered into SOW 004 at a cost of \$67,440 to be completed by December 31, 2009. This SOW was to support testing and deployment of the system during its “initial operating configuration,” or go-live date, and for 90 days following “final operating configuration,” or debugging and final commissioning of the system. (Record at page 98) SOW 004 included among its deliverables “updated source code.” It contemplated the assignment of a “senior software system engineer,” at an estimated cost of nearly \$40,000, to produce “project plan updates” and “process specification updates.” Presumably this was Mr. Grazaitis, who by that time was heavily involved in coding a solution to the many problems PCF was experiencing with the system. On November 12, 2009, the parties entered into Post IOC Change Request 01 to modify the Membership effective date. (Record at page 323) On December 15, 2009, they added Amendment 001 at a cost of \$6,085.00 for a “software system engineer I” to support development of reports requested by PCF and extended the contract through May 31, 2010. (Record at page 102) January 15, 2010, was a busy day for paperwork. The parties entered into Post IOC Change Request 02 (Record at page 325); Post IOC Change Request 03 (Record at page 326); Post IOC Change Request 04 (Record at page 328); and Post IOC Change Request 05 (Record at page 329) Finally, on February 10, 2010, the parties entered into Post IOC Change Request 06 (Record at page 331) All these Change Orders involved coding modifications to the MMS. All these Change Orders and the amendment had to pertain to SOW 004, as it was the only SOW then operative. Modus21 has billed PCF for all work performed under SOW 004, and the State has paid Modus21 for that work.

### **Statement of Work 005**

On April 1, 2010, the parties entered into SOW 005 at a cost of \$20,520.00 to support deployment and provide post productions support of the Member Management System. The period of performance for this SOW was April 1, 2010 through September 30, 2010. (Record at page 103) SOW 005 allocated nearly \$18,000 for a “senior software system engineer,” and required PCF to provide direction “regarding completion of development tasks.” On May 31, 2010, the parties added amendment 1 to SOW 005 for resources—primarily a “software system engineer I”—to support the development of reports requested by PCF. (Record at page 107) Weekly reports for SOW 005 indicate data migration work, web integration, Quickbooks integration, and Quoting sub process development (which was supposed to have happened during SOW 003). (Record pages 612 through 613) Modus21 has billed PCF for all work performed under SOW 005, and the State has paid Modus21 for that work.

### **Statement of Work 006**

On June 28, 2010 the parties entered into SOW 006 for the period July 1, 2010 through June 30, 2011 at a cost of \$41,040.00.<sup>9</sup> (Record at page 108) Over \$35,000 of the costs in SOW 006 were for a senior software system engineer. Weekly reports covering SOW 006 also show software development work. (Record pages 614 through 644) Modus21 has billed PCF for all work performed under SOW 006, and the State has paid Modus21 for that work.

### **Statement of Work 007**

On January 9, 2011, the parties entered executed SOW 007 for the period January 1 2011, through March 31, 2011, at a cost of \$32,800.00. (Record at page 112) This entire amount was for services of a senior software systems engineer. The Task Description includes data migration analysis, actual migration, and migration support. The data to be migrated was the information stored in the existing Access database: historical claims, billing, premium, and similar data. It was the same data that would have been imported into the new MMS, had the work been completed in SOW 002. This work should have been completed during the original performance

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<sup>9</sup> SOW 005 was still in effect until September 30, 2010.

period for SOW 002. Modus21 has billed PCF for all work performed under SOW 007, and the State has paid Modus21 for that work.

### **Statements of Work 008, 009, and 010**

On December 6, 2011, Ms. Coston signed SOW 008 for the period December 1, 2011, through December 31, 2011. (Record at page 116) The cost of this change order was \$275.00. (Record at page 864) Effective January 1, 2012, the parties began work under SOW 009. This SOW ended on January 31, 2012. (Record at page 120) The cost of SOW 009 was \$751.25. (Record at page 865) From February 1, 2012 through February 29, 2012 the parties worked under SOW 010. (Record at page 124) The cost of this SOW was \$12,225.75. (Record at page 866) SOW 8, 9, and 10 indicate that all source code generated or modified would be conveyed to PCF. Modus21 has billed PCF for all work performed under SOW 008, SOW 009, and SOW 010, and the State has paid Modus21 for that work.

### **PCF's Mitigation Efforts**

By July 2011 PCF recognized it lacked the information technology and project management expertise needed to get the project back on track. At the recommendation of one of its Board members, PCF hired Jeff Stanley of JA Stanley Associates. PCF asked Mr. Stanley to provide “an independent third party review of the project implementation and deployment of a custom designed system of software suites and modules heretofore referred to as the Member Management System as developed by Modus21.” (Record at page 707) Mr. Stanley testified that by October 2011 he had become PCF's project manager. Although he was able to make some progress resolving issues with Modus21, he ultimately concluded the project could not be completed successfully. PCF has paid Mr. Stanley \$16,325.12. (Record Supplement – Jeff Stanley Billing)<sup>10</sup> It does not seek to recover this amount from Modus21.

Team IA, Inc., is one of several vendors awarded a State term contract for electronic document management systems, or EDMS. Independent of the Member Management System, PCF had engaged Team IA through the EDMS State term contract to provide a document imaging and

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<sup>10</sup> PCF neither advertised nor provided a competitive opportunity for the services Mr. Stanley provided, as required by Code Section 11-35-1550.

workflow solution under a SOW dated October 28, 2011. Phil Hunt is Chief of Consulting and Software Development for Team IA. He testified that PCF asked him to participate in a meeting about the MMS in about November 2011. There is no copy of the SOW in the Record.

By January 2012, Modus had installed most of the business process models and software code it contended would provide the functionality PCF required. There were still significant reporting issues, and the system was unable to calculate agent commissions accurately or timely. In January 2012 PCF retained Team IA under an EDMS State term contract SOW dated February 9, 2012, to fix the reporting problems.<sup>11</sup> Team IA worked through March 2012 and billed PCF \$17,226. (Record at pages 804 thru 806) There is no copy of this SOW in the Record. PCF has not asked to recover these amounts from Modus21. On February 29, 2012, Modus21 delivered the Final Version of the Membership Management System Product Specification. (Record at page 254) PCF has been using the inefficient, problem plagued Modus developed MMS ever since. PCF testified that, while labor intensive and inefficient, the MMS provided all the required functionality.

By March 2012, PCF had retained private counsel. On March 28, 2012, PCF's lawyer wrote Modus21, purporting to terminate the MMS contract<sup>12</sup> and demanding Modus21 reimburse PCF "for the costs it incurs to repair and/or complete...the MMS...." Counsel also enclosed a check for nearly \$11,000, representing payment to Modus21 for work performed under SOW 010. (Record at 1993-6)

On April 9, 2012, PCF issued another SOW to Team IA under the EDMS State term contract. Under this SOW Team IA patched the reporting issues in the MMS and rewrote the commissions' module. This work continued through August 3, 2012 at a total cost of \$136,402.50. (Record at pages 807 thru 808 and 811 thru 813) PCF has not asked to recover

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<sup>11</sup> For similar reasons as those discussed below concerning Modus21's Statements of Work 3 through 10, the work Team IA performed on the MMS is beyond the scope of state term contract # 4400004820 for Electronic Document Management.

<sup>12</sup> Although the Master Agreement describes the procedure for termination, the solicitation is clear that "[a]ll authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer." (Record at 2456) Agencies are reminded to involve the central procurement office early in any dispute so that appropriate contract administration measures may be properly authorized and issued.

these amounts from Modus21. Team IA prepared a report assessing the MMS and delivered it to PCF on August 3, 2012. The report concludes that further attempts to patch or fix the MMS Modus21 had delivered would not be cost effective, and the best approach for the agency would be to hire a developer to write a custom program from scratch. (Record at 763, 800) By Statement of Work dated September 5, 2012, PCF hired Team IA to rewrite the MMS system at a cost of \$545,180. The “go live” date for the Team IA system is supposed to be April 15, 2013. (Record at pages 807 thru 813) The SOW is not in the Record, but testimony at the CPO’s hearing indicates it was issued under the State term contract for EDMS. Custom software development, of course, is outside the scope of the document management contract. PCF has not asked to recover these amounts from Modus21.

### **CONCLUSIONS OF LAW**

Any agreement between PCF and Modus21 exists solely by virtue of term contract 07-S7276, a multiple-award statewide term contract established by ITMO, and Statements of Work properly issued and within the scope of that contract. The agreement is necessarily governed and limited by the documents comprising the State term contract awarded to Modus21. Those documents are the “Master Agreement” document, including any amendments later executed, SOWs under this Master Agreement, and Attachments...the RFP and any amendments; and ... [Modus21’s] technical and business proposals and clarifications dated September 23, 2006.” (Record at 77) The RFP and Modus21’s proposal specifically except custom software development from the scope of the contract. The RFP explicitly prohibits “sales of supplies or services not within the scope of this contract” and warns that violation of the prohibition may result in termination of the contract and suspension and debarment of the contractor.

The Master Agreement requires the agency to approve deliverables in writing, or within ten days of receipt, to provide a written statement to the contractor of any deficiencies. Pursuant to the order of preference provisions of the Master Agreement, these terms supersede contrary language in the RFP in the clause titled “Waiver.”

#### **Statement of Work 001**

Statement of Work 001 described services and deliverables that are plainly within the scope of the State term contract. PCF either accepted those deliverables in writing, or failed to provide

any written notice of deficiencies. PCF also paid Modus21 in full for its work. By the plain language of the Master Agreement PCF accepted Modus21's performance under SOW 001.

### **Statement of Work 002**

Statement of Work 002, while straining the limitations in the RFP, can be read to include services within the scope of the contract. As it did with SOW 001, PCF either accepted those deliverables in writing, or failed to provide any written notice of deficiencies. PCF also paid Modus21 in full for its work. By the plain language of the Master Agreement PCF accepted Modus21's performance under SOW 002.<sup>13</sup> Although PCF established that Modus21 failed to deliver an MMS as promised in SOW 002, it waived the breach. *E.g., L. D. Powell Co. v. Levy*, 136 S.C. 387, 134 S.E. 415 (1926) (sale of goods); *Southern Coal Co. v. Rice*, 122 S.C. 484, 115 S.E. 815 (1923).

### **Addenda 001 and 002 to Statement of Work 002**

The two addenda to SOW 002 are another matter. The solicitation defines a Change Order as a “written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.” (Record at 2445) The definition is from S.C. Code Ann. § 11-35-310(4). Fundamentally, there must have been a change to justify a change order. For these two addenda there was no change in the scope of work Modus21 was to perform. Since there were no additional deliverables, there was nothing for PCF to accept, or to advise Modus21 in writing of deficiencies. None of the invoices Modus21 generated against the “reporting addendum” indicate

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<sup>13</sup> This holding—that the State accepted performance by its failure to object in writing and its payment for work—is limited to the extraordinary and unfortunate factual circumstances of this case. The State structures its solicitations as requests for irrevocable, binding offers to contract. In a RFP, negotiations with the highest-ranked offeror may result in changes to the strict terms of the solicitation. The RFP itself contemplates those changes will be reflected in a “Record of Negotiations,” prepared by the procurement officer and signed by both the State and the vendor. Through this process the State controls the terms of its contracts. Where, as here, the State accedes to a vendor's form of agreement, it loses that control. It also loses the protection of carefully drafted provisions of the solicitation. What happened in this case—the procurement officer ceding control of the contract terms to the vendor—resulted in the State's acceptance of an inferior product. “All authority regarding the conduct of this procurement” was vested in the procurement officer, and she was authorized to bind the government. No one has argued that the scope of negotiations with Modus21 exceeded that allowed by Code Section 11-35-1530(8). Accordingly, the Master Agreement, including its acceptance provisions, is not illegal. Since it was within the actual authority of the procurement officer to bind the state to those provisions, the CPO must enforce them according to their terms.

that additional or different reports were provided. Finally, the system reports never worked properly: PCF paid Team IA over \$17,000 just to restore marginal functionality.

Simply put, there was no consideration for the addenda. Modus21 was already obligated, through SOW 002, to provide reporting functions. An agreement to do that which one is already legally bound to do is not supported by consideration. *E.g., Rabon v. State Finance Corp.*, 203 S.C. 183, 26 S.E. 2d 501 (1943).<sup>14</sup> A private party has no right to public funds received as a result of the unauthorized conduct of a government employee. *Service Management, Inc. v. State Health and Hum. Svcs. Fin. Comm'n*, 298 S.C. 234, 379 S.E.2d 442, 444 (1989). As a general rule, the Government is entitled to a refund of all amounts erroneously or illegally paid. *United States v. Wurts*, 303 U.S. 414, 415, 58 S.Ct. 637, 638, 82 L.Ed. 932 (1938). It is entitled to recover payments made to a vendor for which it received nothing, or nothing extra, in return. *Laka Tool & Stamping Co., Inc. v. United States*, 7 Cl. Ct. 213 (1984). Modus21 must return all amounts received on account of the two addenda to SOW 002.

### **Statements of Work 003 through 010**

From SOW 003 through the end of its work on the project, Modus21 was delivering code—custom developed software—to PCF. This was work that was not competitively bid in the solicitation and was a material (and thus, improper) change to the contract. As a universal rule of public contracting, material modifications may not be made to a contract let under a competitive bidding statute. *E.g., Kenai Lumber Company, Inc. v. LeResche*, 646 P.2d215 (Ak. 1982); *Matter of: LDDS WorldCom*, B-266257 (Comp.Gen), 96-1 CPD P 50, 1996 WL 51207; *cf.* S.C. Code Ann. § 11-35-3070 (architectural, engineering, or construction changes). The policy behind the rule is that such a change is tantamount to forming a new contract, which ought to be accomplished by starting anew with the competitive process. *Id.* Accordingly, PCF had no authority to issue a statement of work exceeding the scope of the State term contract. The last eight statements of work, and change orders or addenda issued pursuant to those SOWs, all included work outside the scope of the State term contract.

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<sup>14</sup> In fact, S.C. CONST. art. 3, § 30, bars a contractor from receiving from the State sums over and above the contract price for work agreed to be done under the contract. 1976 S.C. Op. Atty Gen. No. 4309, 1976 WL 22929.

Early in 2009 Modus21 realized the project could not be completed without writing custom software code. It also knew that this contract prohibited custom software development. Not even the ITMO procurement officer had authority to engage Modus21 to write custom software code under this contract. *Kenai Lumber Company, supra*. That work simply was not completed. By signing SOW 003 and the subsequent orders, Ms. Coston was awarding a contract to Modus21 in violation of law. Because “a State employee has made an unauthorized award of a contract or that a contract award is otherwise in violation of law,” S.C. Code Ann. Reg. 19-445.2015 applies.<sup>15</sup>

S.C. Code Ann. § 11-35-30 imposes an obligation on all parties to State contracts to act in 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.

Black’s defines bad faith as “[t]he opposite of ‘good faith,’ generally implying or involving ... a neglect or refusal to fulfill some duty of some contractual obligation, not prompted by an honest mistake as to one’s rights or duties....” BLACK’S LAW DICTIONARY 139 (6th ed. 1990).

“Bad faith” is not simply bad judgment or negligence, but it imports a dishonest purpose or some moral obliquity, and implies conscious doing of wrong, and means breach of known duty through some motive of interest or ill will....“Bad faith” is a general and somewhat indefinite term. It has no constricted meaning. It cannot be defined with exactness. It is not simply bad judgment. It is not merely negligence. It imports a dishonest purpose or some moral obliquity. It implies conscious doing of wrong. It means a breach of a known duty through some motive of interest or ill will.

*Spiegel v. Beacon Participations*, 297 Mass. 398, 416, 8 N.E.2d 895, 907 (1937).

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<sup>15</sup> Absent the regulation, common law principles would govern. There is ample authority that, even absent any showing of fraud or collusion, the government is entitled to return of all monies paid under a void contract. *E.g., Neacy v Drew*, 176 Wis 348, 187 NW 218 (1922). The rule is nearly universal that, where the contractor is guilty of wrongful conduct, he must return all sums paid to him. *E.g., Oakland v. California Constr. Co.*, 15 Cal.2d 573, 104 P.2d 30 (1940); *North Bergen Tp. v. Clinton Asphalt Co.*, 12 N.J. Misc. 22, 169 A. 818 (1933); *Gerzof v. Sweeney*, 22 N.Y.2d 297, 292 N.Y.S.2d 640, 239 N.E.2d 521, 33 ALR3d 387 (1968). Regulation 19-445.2015 moderates the harsh common law rule.

In South Carolina, bad faith can exist notwithstanding a party's best intentions. In *Farmers' Bank v. Bradham*, 129 S.C. 270, 123 S.E. 835, 838 (1924), the Supreme Court found bad faith in a conveyance from husband to wife to avoid creditors:

We need not impute bad motives to exist in the hearts and minds of Mr. and Mrs. Bradham; their integrity and character may be beyond reproach.... Mrs. Bradham's knowledge or imputed knowledge of all these facts and circumstances all go to show that bad faith existed between Mr. and Mrs. Bradham in the execution of this conveyance.

With full knowledge the proposed work would violate its State term contract and fall outside its scope, Modus21 nevertheless prepared statements of work disguised as consulting contracts. Under these statements of work it performed custom software development, billed the State for its work, and retained the benefits. This conduct was fundamentally dishonest in that Modus21 knew that the State was not permitted, under the term contract, to pay it for writing software code. To paraphrase *Beacon Participations*, Modus21 did not simply exercise bad judgment. It was not merely negligent. It consciously and wrongfully breached a known duty, motivated by its desire to be paid. This is precisely the definition of bad faith.

S.C. Code Ann. Reg. 19-445.2015 treats illegal contracts. For those who would deal with the government in bad faith, Reg. 19-445.2015(D) provides:

Upon finding after award that an award is in violation of law and that the recipient of the contract acted fraudulently or in bad faith, the appropriate chief procurement officer shall declare the contract null and void unless it is determined in writing that there is a continuing need for the supplies, services, information technology, or construction under the contract and either (i) there is no time to re-award the contract under emergency procedures or otherwise; or (ii) the contract is being performed for less than it could be otherwise performed. If a contract is voided, the State shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract and the State is entitled to recover the greater of (i) the difference between payments made under the contract and the contractor's actual costs up until the contract was voided, or (ii) the difference between payments under the contract and the value to the State of the supplies, services, information technology, or construction it obtained under the contract. The State may in addition claim damages under any applicable legal theory.

The CPO finds that Statements of Work numbered 003 through 010; amendment 1 to SOW 004; amendment 1 to SOW 005; and Post IOC Change Requests numbered 01 through 06, were

awarded in violation of law. The CPO further finds that Modus21 acted in bad faith in procuring these statements of work and amendments. They are, therefore, declared null and void pursuant to Reg. 19-445.2015(D).

The CPO must determine “the value to the State of the...services [and] information technology...it obtained under” these agreements. That value should be measured by the difference between what Modus21 promised, in SOW 001 and SOW 002, and what it delivered in the work orders that followed.

Modus21 described the overall scope of the project in several different documents: the “Process Centric Proposal;” the “MMS Project Executive Summary;” and SOW 002. Consistent throughout is Modus21’s promise to deliver, install, and set up a software system (based on BPMS) that PCF could use to run its insurance business. In SOW 002, Modus21 promised to provide that scope of work for \$191,044. There is no real dispute that it failed—PCF did not have a functional system, based on process models or otherwise, at the conclusion of SOW 002. All of the work that followed, and all of the money PCF paid to Modus21, was to perfect delivery on the promise Modus21 made in SOW 002. In other words, Modus21 promised to provide a software system adequate for PCF to run its business, by March 1, 2009, for \$209,314, the total amount payable under SOW 001 and SOW 002. On February 29, 2012, Modus21 gave PCF the final deliverable it promised. By that time PCF had a business software system that is inefficient, plagued with bugs and problems, and labor intensive. It marginally delivers the functionality Modus21 promised in SOW 002. PCF paid Modus21 \$250,695.25 after completion of SOW 002. The work performed after the completion of SOW 2 should have been included in the system delivered under SOW 2, was outside the scope of the state term contract, and provided no additional value to the State.

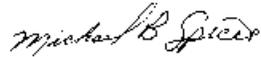
Including the check enclosed in counsel’s letter, PCF paid Modus21 a total of \$460,009.25. (Record at 801 and 1995) Subtracting the costs of SOW 001 and SOW 002 yields a difference of \$250,695.25.<sup>16</sup> This is the amount paid on account of contracts awarded in violation of law. It is

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<sup>16</sup> Modus21 did not consistently bill against a specific SOW or addendum. Accordingly it is not possible to “parse” the payments PCF made to determine which were paid on account of SOW 001 and 002 (which PCF has waived its right to recover); those paid on account of Addenda 001 and 002 to SOW 002 (which Modus21 must return because

also “the difference between payments under the contract and the value to the State of the supplies, services, information technology, or construction it obtained under the contract.” Modus21 is to refund \$250,695.25 to PCF.

For the Information Technology Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer  
Chief Procurement Officer

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there was no consideration for the change in contract price); and those paid on account of SOW 003 and subsequent work orders (which Modus21 must repay pursuant to Reg. 19-445.2015(D)). The calculus here is to take the total amount paid to Modus21, less the payments it may keep, and order the return of everything else.

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Contract Controversy Appeal Notice (Revised January 2013)*

The South Carolina Procurement Code, in Section 11-35-4230, 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 requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(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 why the person disagrees 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 any affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or legal.

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Copies of the Panel’s decisions and other information regarding the protest process are 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 83.1 of the 2012 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); *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1105 Pendleton Street, Suite 202, 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: \_\_\_\_\_

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.**