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## Written Determination

**Matter of:** Cancellation of Award to ICON Systems, Inc.

**Case No.:** 2020-104A

**Posting Date:** September 19, 2019

**Contracting Entity:** South Carolina Department of Corrections

**Solicitation No.:** 5400018264

**Description:** Sole Source to ICON Systems for ICON electronic plumbing retrofit systems

This matter is before the Chief Procurement Officer (CPO) pursuant to a request from the South Carolina Department of Corrections, (DOC) [Ex. 1] to cancel the award of a sole source contract to ICON Systems due to an administrative error under Regulation 19-445.2085(C).

### BASIS FOR THE REQUEST

DOC published a document identified as an Intent to Sole Source in the South Carolina Enterprise Information System (SCEIS), number 5400018264, on July 12, 2019, announcing DOC's intention to award a sole source contract to ICON Systems for a flush valve that can flush with 1.6 gallons of water on a 3.5 gallon fixture, does not use diaphragms as part of the lavatory valves, functions without the use of a metering diaphragm, and has a stainless steel push button sensor with no moving parts.. DOC also advertised its intention to award this sole source contract to ICON in South Carolina Business Opportunities (SCBO) on July 12, 2019. Neither

document 5400018264 nor the advertisement included a notice of a potential bidder's right to protest. DOC posted a Statement of Award to ICON on August 8, 2019 that included a notice of the right to protest. (Attachment 2) The Statement of Award included a bidder's right to protest, but did not include the duration of the contract or the total potential value of the contract.

Protests were received from Smith & Stevenson, Total Maintenance Solutions, Atlantic Coastal Supply, Sloan Valve Company, Willoughby Industries, and Acorn Engineering Company challenging DOC's determination that ICON was the only source for the required equipment.

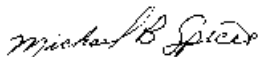
DOC requested cancellation of the award to ICON Systems, Inc., after award but prior to performance, due to an administrative error in determining ICON a sole source provider, as DOC later discovered that at least six vendors could supply the systems. DOC intends to issue a competitive solicitation for the required flush valves. Regulation 19-445.2085(C) provides:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

(7) Administrative error of the purchasing agency discovered prior to performance, or

## **DETERMINATION**

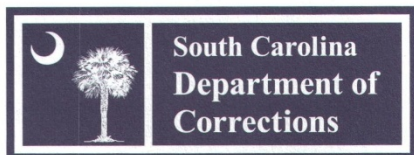
For the reasons stated above, the award to ICON Systems, Inc. is cancelled under Regulation 19-445.2085(C). DOC is directed to procure the required flush valves in accordance with the Code.



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Michael B. Spicer  
Chief Procurement Officer

## Exhibit 1



HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

August 21, 2019

Mike Spicer  
Chief Procurement Officer  
Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201

Dear Mr. Spicer

The South Carolina Department of Corrections in accordance with SC Regulation 19-445.2085(C)(7), is requesting cancellation of the award for Solicitation 5400018264 – Intent to Sole Source ICON Systems, Inc. The Intent to Sole Source was issued on 7/9/2019 with an opening date of 7/31/2019.

When the Solicitation opened on 7/31/2019 no responses were received from any other Vendors stating they could provide SCDC with the electronic plumbing retrofit system. Therefore, SCDC proceeded with posting an Award Statement to ICON Systems, Inc. on 8/9/2019. After award, it was discovered during the protest period that there are at least 6 other Vendors that could possibly supply SCDC with the electronic plumbing retrofit system.

As allowed by the SC Consolidated Procurement Code Regulation 19-445-2085-C(7) administrative error of the purchasing agency was discovered prior to performance and under Regulation 19-445-2085-C(8) for other reasons it is clearly in the best interest of the State. Once the cancellation is granted SCDC will work on detailed specifications that will be issued in an Invitation for Bid.

Respectfully yours,

Ruthie H. Bishop, CPPB  
Director of Procurement

## Exhibit 2



**South Carolina Department of Corrections**  
**4420 Broad River Rd**  
**Columbia, SC 29210**

### PROTESTS:

If you are aggrieved in connection with the intended award or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest an award, you must (i) submit notice of your intent to protest within five (5) business days of the date this notice is posted, and (ii) submit your actual protest within fifteen days of the date this notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided. Any protest or notice of intent to protest must be addressed to the Chief Procurement Officer, and submitted in writing

Chief Procurement Officer  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201  
Facsimile: 803-737-0639  
E-mail: [protest-mmo@mmo.state.sc.us](mailto:protest-mmo@mmo.state.sc.us)

### STATEMENT OF AWARD

**Posting Date: August 8, 2019**

**Solicitation : 5400018264**  
**Issue Date : 07/12/2019**  
**(a) Opening Date : 08/05/2019 @ 10 AM**  
**Description : Intent to Sole Source- ICON Systems**

**Awarded To: ICON Systems, Inc.**

**Buyer: Myrtle deWerdt**  
**Director of Procurement: Ruthie H. Bishop, CPPB**

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Written Determinations Appeal Notice (Revised June 2019)*

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

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

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

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

**FILING FEE:** Pursuant to Proviso 111.1 of the 2019 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.**