

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

PROTEST DECISION

Matter of: Smith & Stevenson Company, Inc.
Total Maintenance Solutions, Inc.
Atlantic Coastal Supply, Inc.
Sloan Valve Company
Willoughby Industries, Inc.
Acorn Engineering

Case Nos.: 2020-104, -105, -106, -107, -108, -109

Posting Date: September 19, 2019

Contracting Entity: South Carolina Department of Corrections

Solicitation No.: 5400018264

Description: Sole Source to ICON Systems, Inc. for ICON electronic plumbing retrofit systems

DIGEST

Protests that sole source improperly limits competition are dismissed as moot. The protest letters of Smith & Stevenson Company, Inc., Total Maintenance Solutions, Inc., Atlantic Coastal Supply, Inc., Sloan Valve Company, Willoughby Industries, Inc., and Acorn Engineering are 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

Intent to Sole Source Published	07/12/2019
Intent to Sole Source Advertised	07/12/2019
Sole Source Award Posted	08/08/2019
Intent to Protest Received	08/14/2019

ANALYSIS

DOC published a document identified as an Intent to Sole Source, number 5400018264 in the South Carolina Enterprise Information System (SCEIS), 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 SCBO 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. The Statement of Award 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.

At DOC's request, the CPO cancelled the award to ICON Systems, Inc., after award but prior to performance, due to an administrative error in determining ICON a sole source provider. (Regulation 19-445.2085(C)) DOC intends to issue a competitive solicitation for the required flush valves.

DECISION

The award to ICON Systems, Inc. is cancelled, and DOC will issue a competitive solicitation for this requirement. The protests of Smith & Stevenson, Total Maintenance Solutions, Atlantic Coastal Supply, Sloan Valve Company, Willoughby Industries, and Acorn Engineering are dismissed as moot.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



PO BOX 240009

Charlotte, NC 28224

704-525-3388

August 14th, 2019

Chief Procurement Officer

Materials Management Office

1201 Main St, Suite 600

Columbia, SC 29201

Dear Chief Procurement Officer,

We have received solicitation #5400018264, which states the Department of Corrections' intent to sole source electronic plumbing retrofit systems from ICON Systems, Inc. Please consider this a formal letter of intent to protest this decision, and we will follow up with a formal protest within the next 15 days.

Sincerely,

A handwritten signature in blue ink, appearing to read "Clay Tingler".

Clay Tingler

Vice President

Smith & Stevenson

ctingler@smithandstevenson.com



**TOTAL
MAINTENANCE
SOLUTIONS**
People. Knowledge. Service.

3540 Rutherford Road
Taylors, SC 29687
800/476-2212

4155 W. Bellfort
Houston, TX 77025
800/392-5066

2500 E Randol Mill Road
Arlington, TX 76011
817/649-8919

Remittance Address: TMS South, PO Box 68, Taylors, SC 29687

August 14, 2019

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Chief Procurement Officer:

Your intent to sole source electronic plumbing retrofit systems from ICON Systems, Inc. (Solicitation number 5400018264) has come to my attention. I would like to protest this decision and will follow up in the appointed time with supporting documents and associated materials.

Sincerely,

Roy Turner, President
TMS South, Inc.
rturner@tmssouth.com
864/268-2891



**Atlantic Coastal Supply, Inc.
Commercial & Institutional Plumbing Supplies**

August 14, 2019

Chief Procurement Officer
Materials Management Office
1201 Main St, Suite 600
Columbia, SC 29201

Dear Chief Procurement Officer,

We have received solicitation #5400018264, which states the South Carolina Department of Corrections' intent to sole source electronic plumbing retrofit systems from ICON Systems, Inc. Please consider this a formal letter of intent to protest this decision. Atlantic Coastal Supply, Inc. will submit a formal protest by August 29th, 2019 as required.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Fodrie', is written over a light blue horizontal line.

Frederick Fodrie
Chief Operating Officer
Atlantic Coastal Supply, Inc.
dfodrie@atlanticcoastalsupply.com

Business (252) 321 0556
Toll Free (800) 520 0556
Fax (252) 321 2690
Toll Free Fax (800) 204 5630



P.O. Box 2887
Greenville, NC 27836
Email sales@atlanticcoastalsupply.com
www.acsparts.net



Delivered via Electronic Mail and Next Day Delivery

August 15, 2019

Chief Procurement Officer
Materials Management Office
1201 Main Street Suite 600
Columbia, South Carolina 92901
Email: protest-mmo@mmo.state.sc.us

RE: Protest of Sloan Valve Company
Solicitation No. 5400018264

Dear Chief Procurement Officer:

Pursuant to the above referenced solicitation, as amended on August 9, 2019, and Section 11-35-4000 of the South Carolina Code, please accept this letter as a notice of Sloan Valve Company's ("Sloan") intent to protest the issuance of a sole source contract by the South Carolina Department of Corrections to I-CON Systems, Inc. ("I-CON"). As permitted by statute, we will provide a detailed protest within 15 business days of the August 9th posting date. Until then, we request that the State impose the statutorily required automatic stay of any further contract actions and, if necessary to trigger the stay, consider this letter Sloan's official protest.

Solicitation No. 5400018264 contains a notice of the intent to sole source an award of "electronic plumbing retrofit systems" to I-CON by the Department of Corrections. The solicitation states that I-CON "is the only distributor able ... to serve the needs of this specific conservation measure." The solicitation also states that I-CON's system is unique because "it is the only system that uses a flush valve that can flush with 1.6 gallons of water on a 3.5 gallon fixture." Finally, the solicitation asserts that the I-CON system is the only one that "does not use diaphragms as part of the lavatory valve," that the "flush valve functions without the use a metering diaphragm," and that the "push button sensor has no moving parts."

The solicitation is flawed because it does not identify what product or products the State actually intends to purchase in order for potential offerors to adequately respond. In addition, the solicitation does not identify what "specific conservation measures" are being addressed and why the supposedly unique features of I-CON's system are necessary to justify a sole source award. But more importantly, there is nothing unique about I-CON's plumbing products that could justify the use of a sole source contract or a brand name product restriction. There are other manufacturers that offer products equivalent to those produced by I-CON, including Sloan. To the extent that the State has specific performance requirements for its plumbing retrofit efforts, those requirements should be identified in place of requiring a specific brand. Even if the State wanted an equivalent product, it should at least identify what product or products it intends to purchase from I-CON.

From the limited information contained within the solicitation, it appears that the State wishes to increase water conservation in its correctional facilities by retrofitting the existing 3.5 gallon fixtures (presumably water closets although not identified in the solicitation) with a valve system that can flush 1.6 gallons of water. Sloan (and other companies within the industry) manufacture products that can meet these requirements and should be given the fair opportunity to compete for an award. There is simply no legitimate reason for the State to avoid conducting an open

10500 Seymour Avenue • Franklin Park, Illinois 60131-1259 • Phone 847-671-4300 • Fax 847-671-6944

competition for the award of the retrofit work when there are other offerors who would compete for the work at a potentially lower price.

Even prior to receipt of our forthcoming protest letter, we urge you to reject this award as it not justified or necessary. As stated above, we will be providing a more detailed protest in accordance with the State's procurement procedures. Thank you for your prompt attention to this matter.

Sincerely,

Daniel Gleiberman

Daniel Gleiberman
Manager, Product Compliance and Government Affairs
Daniel.gleiberman@sloan.com
310 980 5062

Willoughby Industries, Inc.

Stainless Steel and Solid Surface
Plumbing Fixture Products and Accessories



301430 044

40:11 HL 61. 51 904

August 14, 2019

Chief Procurement Officer
Materials Management
1201 Main Street, Suite 600
Columbia, SC 29201

Subject: ***Notice of Intent to Protest South Carolina Department of Corrections' Solicitation #5400018264***

Dear Chief Procurement Officer:

It has come to my attention the South Carolina Department of Corrections is intending to sole source electronic plumbing retrofit systems from I-CON Systems, Inc. (Solicitation #5400018264). Willoughby Industries, Inc. would like to protest this decision. Our protest and supporting documents/materials will be provided within the stated time.

Sincerely,

Will Alderson, Sales
Willoughby Industries, Inc.
walderson@willoughby-ind.com
(317)-875-0830

5105 West 78th Street • Indianapolis, IN 46268
(317) 875-0830 • (800) 428-4065 • Fax (317) 875-0837
Visit our Website at: <http://www.willoughby-ind.com>



15125 Proctor Ave. • City of Industry, CA 91744 • P.O. Box 3527 • City of Industry, CA 91744 • 626-336-4561
Member of Morris Group International

Est. 1954

8/16/19

To:
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
Buyer: Myrtle deWerd
Director of Procurement: Ruthie H. Bishop, CPPB

From:
Acorn Engineering
15125 Proctor Avenue
City of Industry, CA 91744
Phone: 626-336-4561
Senior Vice President: Barrett Morris
National Sales Manager: Stephanie Miner
E-mail: bmorris@acomeng.com or sminer@acomeng.com

Re:
Official Protest Solicitation# 5400018264

South Carolina Department of Corrections

4420 Broad River Rd
Columbia, SC 29210

EFFECTIVE August 14, 2019 – THIS STATEMENT OF AWARD IS HEREBY SUSPENDED

AMENDED STATEMENT OF AWARD
Posting Date: August 9, 2019

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)~~ **SEVEN (7)** 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

STATEMENT OF AWARD
Posting Date: August 8, 2019

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

acomeng.com

ACORN ENGINEERING COMPANY
Manufacturer of Engineered Products

Acorn Engineering respectfully submits this official protest to South Carolina Department of Corrections' intent to sole source I-CON systems (Solicitation # 5400018264) based on the inability for the chosen manufacture to meet standard plumbing codes, and mis-leading claims by the chosen manufacture as to the unique functionality of their system. Additionally, both Acorn Engineering's Master Trol or Master Trol Plus Water Management Systems, which are used to provide water conservation to correctional facilities, meet all the applicable codes, have features that outperform the proposed I-CON system, and have been installed in facilities across the country for far longer than the proposed I-CON system who is fairly new in the market place compared to established manufactures.

Explanation of Protest:

Excerpt from Solicitation:

- A. *"These systems are unique and specialized in that it is the only system that uses a flush valve that can flush with 1.6 gallons of water on a 3.5 gallon fixture, it does not use diaphragms as part of the lavatory valves and the flush valve functions without the use of a metering diaphragm."*

Basis of Protest:

1. The ASME A112.19.6 Standard is used to test the "Hydraulic Performance Requirements for Water Closets and Urinals" (Fixtures) and not the performance of the flush valve. For their third-party testing to have any relevance they would need to provide the make and model of the 3.5 GPF fixture used in the testing. Furthermore, that test result would only be applicable to that specific fixture since the specifications for 3.5 GPF fixtures from different manufacturers will vary. The I-CON Third-Party Testing report states that the report is "based on the ASME A112.19.6 Standard." This means that it does not meet the all the requirements of the standard. There are more testing qualifications that the standard covers which are not listed in I-CON's Third-Party Testing results. To list a few:
 - 7.1.4.1 Washing of Flushing Surface (Rim Wash) – Ink Test
 - 7.1.5.1 Washing of Flushing Surface (Rim Wash) –Dye Tests
 - 7.1.7.1 Drain line Transport Characterization Procedure
 - And other performance requirementsThe last thing to note in I-CON's Third-Party Testing report is that they do not state the proper testing parameters. The ASME A112.19.6 Standard states that the fixture will be tested at 15 PSI "Flow Pressure" for most of the tests. Their report states that the fixtures were tested at 60 PSI. Acorn Engineering Company has engineered and manufactured stainless steel plumbing fixtures for more than 60 years. In our long history, and expert opinion, a 1.6 GPF flush valve used to evacuate a 3.5 GPF fixture will not meet the ASME A112.19.6 Standard. Therefore, Acorn Engineering meets all ASME requirements for flush valves, and exceeds the performance of the I-CON flush valve that does not illustrate compliance with applicable plumbing codes.
2. Though I-CON highlights the drawbacks of water diaphragms, there are also benefits as well. Water diaphragms help alleviate water hammer when the valve closes. The bypass orifices on the diaphragm regulate the speed at which the diaphragm seats against the valve body and reduces water hammer. Also, the design of the diaphragm uses the pressure of the water to stop water flow through the valve. When dealing with larger volumes of water it is more difficult for the non-

diaphragm solenoid than it is for a solenoid that uses a diaphragm. Acorn Engineering Company offers different diaphragm materials to hold up against the different water conditions around the country. We also feel that it is easier and more cost effective to replace a diaphragm than it is to replace a valve body or solenoid. Therefore, the Acorn Valve not only meets the performance of the I-CON system, it exceeds the requirement by better protecting the system, providing different diaphragms based on site needs, and offering an inexpensive repairable part instead of an un-repairable throw away valve that will add costs overtime.

3. Acorn Engineering Company offers flushometer valve options from multiple manufacturers. These flushometer valves are of proven designs that have been an industry standard for decades. The design of the flushometer valves does not allow you to change the flow volume by turning a knob or by adjusting the timing on an electronic controller. Flushometers are also not affected by changes in water pressure. The flow volume on the I-CON Momentum Flush Valve can easily be changed by an adjustment knob on the valve or by changing the timing electronically and is not a good design for water conservation. If correctional officers or maintenance personnel can change the flow volume to lower maintenance calls, then it undermines any water conservation mandate put in place by the state or facility. Metering flushometer valve diaphragms are designed to maintain their listed flow volume even if the water pressure changes and the flow volume is not affected by changing the valve timing electronically. Therefore, the flush valves that Acorn provide have a much longer proven track record in correctional facilities and offer better security for the facility and the integrity of the plumbing system guaranteeing long lasting water savings.

Excerpt from Solicitation:

- B. *"The stainless steel pushbutton sensor has no moving parts."*

Basis of Protest:

1. I-CON's stainless steel pushbuttons are piezo style pushbuttons. This style of pushbutton is offered by almost all water management systems, including Acorn Engineering Company.

Excerpt from Solicitation:

- C. *"I-CON Systems, Inc. is the only distributor able to provide the required product to serve the needs of this specific conservation measure for the South Carolina Department of Corrections."*

Basis of Protest:

1. Acorn Engineering has been providing water management systems that effectively provide water conservation for over 25 years. I-CON is the newest of manufactures in the market. Not only do they not meet the same code standards provided by established water management manufactures that provide water conservation needs, they also have short comings that make their installation and maintenance more costly and cumbersome to the end user. Just a few of these advantages are as follows:
 - I-Con systems uses one input wire and one output wire for each port of their controller. Acorn Engineering uses one wire for both functions. Therefore, the I-CON system does not

meet the standards of the Acorn Engineering system as it requires twice the amount of wiring costs, installation, and maintenance than the Acorn Engineering System.

- I-CON controllers can only support up to eight ports of communication while Acorn Engineering supports up to 12. Because of the lack of ports, the I-CON system will require more controllers creating more wiring, installation, and maintenance cost. Therefore, Acorn Engineering exceeds the capabilities of I-CON's system
- The I-CON system has no protection against electrical surges. The Acorn Engineering system uses a branch box interface which protects against electrical surges which could ruin components. Therefore, Acorn Engineering offers a built-in design advantage to protect the components, which I-CON does not have, and exceeds the performance of the I-Con system.

It is our feeling, that the I-CON system does not meet or exceed the performance of Acorn Engineering's Water Management System that provides water conservation to facilities, and thus should not be considered as an adequate sole source provider to the state. Since the survey book of the State procurement indicates that competition is generally favored, and that unduly restrictive specifications are disfavored, we hope that you will agree that I-CON does not qualify as an exception. We offer the attached side by side comparisons and I-CON cut sheet which shows I-CON does not adhere to applicable plumbing code standards for your review. Given the opportunity, we would appreciate the time to present our system's features and benefits, and better explain the concerns of a system that does not meet applicable codes.

If you have any questions, please feel free to contact me at 626-523-3429 or by email at sminer@acorneng.com

We look forward to your response.

Respectfully,

Stephanie Miner
Acorn Engineering
National Sales Manager

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2019)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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

FILING FEE: Pursuant to Proviso 111.1 of the 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**

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.