

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**WRITTEN DETERMINATION**

**In Re:** Cancellation of Award to  
Johnson Controls, Inc.

CASE NO.: 2016-121

**Cancellation of Award Prior to  
Performance**

Solicitation No. 5400009183  
Energy Management System

POSTING DATE: December 9, 2015

MAILING DATE: December 9, 2015

This matter is before the Chief Procurement Officer for Information Technology (CPO)<sup>1</sup> pursuant to a request from the South Carolina Department of Administration (Admin) [Ex. 1] under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), and Regulation 19-445.2085(C) to cancel an award to Johnson Controls, Inc. (Johnson) to provide an Energy Management System prior to performance due to a change in requirements and for other reasons, cancellation is clearly in the best interest of the State.

**Basis for the Request**

Admin issued solicitation 5400009183 on February 4, 2015, for the installation, implementation, technical service and support of building automation and control systems for seven (7) South Carolina Budget and Control Board (SCB&CB) buildings:

1. Harden Street DSS Building, 3150 Harden St. Columbia, SC 29201
2. North Tower Building, 1535 Confederate Ave. Columbia, SC 29201
3. Five Points Building, 2221 Devine St. Columbia, SC 29201
4. Rutledge Building, 1429 Senate St. Columbia, SC 29201
5. State Library Building, 1500 Senate St. Columbia, SC 29201
6. Mills Jarrett Building, 1751 Calhoun St. Columbia, SC 29201
7. Sumter Street Building, 1026 Sumter St. Columbia, SC 29201

Performance has not begun on this project. As a result of information obtained pursuant to a real property analysis conducted by an outside consultant, two of the buildings on the list of performance locations in the solicitation are being evaluated for sale or repurposing and Admin is considering the addition of the Columbia Mills building to the list. In addition, technology now allows for alternatives such as mobile access, allowing the State to consider better options regarding the data system to be utilized. Consequently

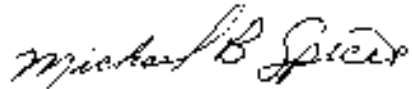
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<sup>1</sup> The Interim Materials Management Officer delegated the administrative review of this request to the Chief Procurement Officer for Information Technology.

Admin requests the cancellation after award but prior to performance due to a change in requirements and specifications clearly being in the best interest of the State.

### **Determination**

The award to Johnson Controls, Inc. is cancelled under Regulation 19-445.2085(C) and the State is to resolicit these requirements in accordance with the Consolidated Procurement Code.

A handwritten signature in black ink that reads "Michael B. Spicer". The signature is written in a cursive style with a large initial "M" and "S".

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**Michael B. Spicer**  
**Chief Procurement Officer for Information Technology**

## STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW

*Written Determination Appeal Notice (Revised June 2013)*

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.

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Copies of the Panel's decisions and additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Requests 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 108.1 of the 2013 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived.” 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  
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: \_\_\_\_\_

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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.**

## Exhibit 1



Nikki R. Haley, Governor  
Marcia S. Adams, Executive Director

OFFICE of ADMINISTRATIVE SERVICES  
Steven Lake, Director  
1200 Senate Street, Suite 460  
Columbia, SC 29201  
803.734-8120  
803.734.9002 fax

November 20, 2015

Mike Spicer, Chief Procurement Officer  
Information Technology Management Office  
Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201

Dear Mr. Spicer,

Pursuant to § 19-445.2085(C) of the S.C. Procurement Code Regulations, the State of South Carolina is requesting the cancellation of its previously published Best Value Bid Solicitation (#5400009183) and Award (#44000010756) based on the reasons set forth below. Specifically, after in-depth review and analysis of the project scope included in Attachment 1 to the Solicitation, as amended, it has been determined that there were a number of terms and provisions within the Solicitation that were not in the best interest of the State.

*19-445.2085(C)(2) Specifications have been revised;*

It has become apparent that the specifications should be revised with regard to the buildings included in the Performance Locations section of the Solicitation. As a result of information obtained pursuant to a real property analysis conducted by an outside consultant, the buildings requiring controls are no longer as specified in the initial scope. Specifically, the real estate consultant is advising the Division of General Services that the State evaluate the sale or repurposing of two (2) buildings which were originally listed in Section III - Scope of Work/Specifications of the solicitation. In light of these recommendations, it is not in the best interest of the State to expend funds procuring the specified services on these properties at this time. Further, additional analysis is necessary with regard to the possibility of adding the Columbia Mills building (DHEC side only) as an additional building to the list of Performance Locations. The estimated cost of adding the Columbia Mills building (DHEC side) to the list of Performance Locations is approximately \$35,000.00.

*19-445.2085(C)(3) The supplies, services, information technology, or construction being procured are no longer required;*

Further, as technology now allows for alternatives such as mobile access, there are now better options regarding the data system to be utilized for the State instead of solely relying on a stationary proprietary system. Specifically, the improved technology will allow for the State to consider a bid that does not use the already existing Johnson Controls ADX system. Although referenced as an option on page 25 55 00-1, section 1.2 Scope of Work, B (above), the terms of the specifications were configured so that utilizing a new data system was rendered essentially cost prohibitive for most potential contractors and thus, not a real option.

Accordingly, based on the above reasons, it is in the best interest of the State of South Carolina that the Award be cancelled and the State be allowed to re-bid the project with revised terms and

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**South Carolina Department of Administration**  
1200 Senate Street, Suite 460 Columbia, SC 29201  
Post Office Box 2825, Columbia, SC 29211

Ph: 803.734.8120  
Fx: 803.734.9002  
[www.admin.sc.gov](http://www.admin.sc.gov)





Nikki R. Haley, *Governor*  
Marcia S. Adams, *Executive Director*

OFFICE of ADMINISTRATIVE SERVICES  
Steven Lake, Director  
1200 Senate Street, Suite 460  
Columbia, SC 29201  
803.734-8120  
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specifications to better meet the needs and current requirements of the State. If you have any questions or need any additional information, please do not hesitate to contact me.

Thanks,

W. Jason Evans  
Procurement Director  
Department of Administration

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