

NIKKI R. HALEY, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES  
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DIVISION DIRECTOR  
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INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
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HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE  
CHAIRMAN, HOUSE WAYS AND MEANS

## Written Determination

**Matter of:** Cancellation of Award to Zuercher Technologies

**Case No.:** 2017-203

**Posting Date:** December 5, 2016

**Contracting Entity:** South Carolina Department of Health and Environmental Control

**Solicitation No.:** 5400011291

**Description:** Law Enforcement Records Management Software System (LERMSS)

This matter is before the Chief Procurement Officer for Information Technology (CPO) pursuant to a request from the South Carolina Department of Health and Environmental Control (DHEC) [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 Zuercher Technologies to provide Law Enforcement Records Management Software System (LERMSS), prior to performance due to administrative error discovered after award but prior to performance.

### **BASIS FOR THE REQUEST**

DHEC issued solicitation 5400011291 on April 13, 2016 to provide a fully hosted, web-based secure access RMS solution requiring no additional hardware to be purchased. On May 5, 2016 an amendment was issued to the solicitation which answered questions submitted by vendors. DHEC received proposals on May 17, 2016,

and awarded this contract to Zuercher Technologies on June 24, 2016. [Exhibit 2]

DHEC is in the process of moving its computer services data center operations over to the Department of Technology (DTO) for management. Unfortunately, a member from the agency IT Department was not invited to serve on the evaluation panel nor was IT staff involved in the answering of questions. As a result, certain technical allowances that were made in the amendment were in conflict with agency security and network requirements and the current migration of the agency data center to DTO. This makes the awarded system untenable for DHEC. In an effort to resolve these issues, a teleconference call was held on September 29, 2016 with Zuercher and DHEC's IT technical staff. Questions were raised and Zuercher provided a written response regarding Zuercher Suite installation.

After review, DHEC's IT Department finds that Zuercher's proposed client-server architecture is not deployable. After award but prior to performance, on October 18, 2016, the requestor advised DHEC's procurement department that the solution is not viable and cannot be deployed in the current DHEC IT environment or at DTO.

DHEC requests cancellation of the award prior to performance in accordance with Regulation 19-445.2085(C)

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,

(8) For other reasons, cancellation is clearly in the best interest of the State.

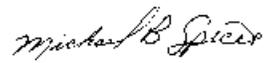
## **DETERMINATION**

For the reasons stated above, the award to Zuercher Technologies is cancelled under Regulation 19-445.2085(C).

Written Determination, page 3

Case No. 2016-203

December 5, 2016

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

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Michael B. Spicer  
Chief Procurement Officer for Information  
Technology

## Exhibit 1

**From:** [Clark, Tripp](#)  
**To:** [Spicer, Michael](#)  
**Cc:** [Pinckney, Eric M.](#); [Guion, Kevin J.](#); [Maddox, Larry](#)  
**Subject:** Request for Cancellation of Award Prior to Performance  
**Date:** Tuesday, October 18, 2016 5:24:54 PM  
**Attachments:** [2349\\_001.pdf](#)  
[DrugControl-App-Network and Data Questions and Answers - 10.05.16.pdf](#)

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Mike,

DHEC is requesting permission to cancel contract 4400013350 ("Law Enforcement Records Mgt System"). This contract was awarded 6/24/2016 as a result of solicitation 5400011291. Total potential value is \$105,012.00. The purpose of the project was to provide a Law Enforcement Records Management solution for DHEC's Drug Control Division.

As detailed in the attached Justification, an administrative error was made wherein the proposal received inadequate technical review by the agency's IT department resulting in the allowance and selection of a software solution that was incompatible with the agency's network environment and did not satisfy security requirements.

DHEC requests cancellation of the award prior to performance in accordance with Regulation 19-445.2085(C):

***Cancellation of Award Prior To Performance.***

*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.*

Be aware that a purchase order has not been issued to the awarded vendor, Zuercher Technologies, pursuant to this contract. Likewise, while Zuercher is aware of DHEC's concerns, they have not been informed of our intent to cancel. We do intend to resolicit.

**Tripp Clark**  
Procurement Director  
Bureau of Business Management  
**S.C. Dept. of Health & Environmental Control**  
Office: (803) 898-3485  
Mobile: (803) 465-3636  
Fax: (803) 898-3505  
Connect: [www.scdhec.gov](http://www.scdhec.gov) [Facebook](#) [Twitter](#)





**BUREAU OF  
BUSINESS MANAGEMENT**  
DIVISION OF PROCUREMENT SERVICES  
301 Gervias Street  
Columbia, SC 29201-3073  
Telephone (803) 898-3501 Fax (803) 898-3505

### JUSTIFICATION FOR CANCELLATION OF AWARD

Based on the following justification, the proposed procurement action described below is in accordance with Regulation 19-445.2085(C) of the South Carolina Consolidated Procurement Code:

DATE: 10/18/2016

PROCUREMENT MANAGER: Eric Pinckney 

SHOPPING CART #: 2001159601

DIVISION or PROGRAM: DRUG CONTROL

COMMODITY: Law Enforcement Records Management Software

This matter is before the Chief Procurement Officer for Information Technology (CPO) pursuant to a request from Department of Environmental Control (DHEC), 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 Zuercher Technologies to provide a Law Enforcement Records Management System (LERMS) prior to performance because the selected solution does not comply with agency security requirements and the agency's environment. Additionally, DHEC is unable to meet the network requirements of this solution.

DHEC issued solicitation 5400011291 on April 13, 2016 to provide a fully hosted, web-based secure access RMS solution requiring no additional hardware to be purchased. On May 5, 2016 an amendment was issued to the solicitation which answered questions submitted by vendors. DHEC received proposals on May 17, 2016, and awarded this contract to Zuercher Technologies on June 24, 2016.

DHEC is in the process of moving its computer services data center operations over to the Department of Technology (DTO) for management. Unfortunately, a member from the agency IT Department was not invited to serve on the evaluation panel nor was IT staff involved in the answering of questions. As a result, certain technical allowances that were made in the amendment were in conflict with agency security and network requirements and the current migration of the agency data center to DTO. This makes the awarded system untenable for DHEC. In an effort to resolve these issues, a teleconference call was held on September 29, 2016 with Zuercher and DHEC's IT technical staff. Questions were raised and Zuercher provided a written response regarding Zuercher Suite installation. The response is attached.

After review, DHEC's IT Department finds that Zuercher's proposed client-server architecture is not deployable. After award but prior to performance, on October 18, 2016, the requestor advised DHEC's procurement department that the solution is not viable and cannot be deployed in the current DHEC IT environment or at DTO.

DHEC requests cancellation of the award prior to performance in accordance with Regulation 19-445.2085(C):  
**Cancellation of Award Prior To Performance.**

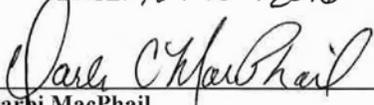
After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing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

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

DATE: 10/18/2016

  
\_\_\_\_\_  
Tripp Clark  
Director, Division of Procurement Services

DATE: 10/18/2016

  
\_\_\_\_\_  
Darbi MacPhail  
Operations Chief of Staff

DISTRIBUTION: The original will be retained in the Procurement file.

**Exhibit 2**

STATE OF SOUTH CAROLINA  
SC DHEC  
ATTN: PROCUREMENT SERVICES DIVISION  
2600 BULL STREET  
COLUMBIA SC 29201-1708

**Intent to Award**  
Posting Date: 06/24/2016

**Solicitation:** 5400011291  
**Description:** LAW ENFORCEMENT RECORDS MANAGEMENT SOFTWARE SYSTEM  
(LERMSS)  
**Agency:** SC Dpt of Health & Environmental Control

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **July 06, 2016**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

**Contract Number:** 4400013350  
**Awarded To:** ZUERCHER TECHNOLOGIES (7000125503)  
4509 WEST 58<sup>TH</sup> STREET  
SIOUX FALLS, SD 57108

**Total Evaluated Amount:** \$ 105,012.00  
**Maximum Contract Period:** July 06, 2016 through July 05, 2021

<b>Item</b>	<b>Description</b>	<b>Unit Price</b>	<b>Total</b>
00001	Law Enf. Records Mgt. System Software pkg	\$ 105,012.00	\$ 105,012.00

**Procurement Manager**  
ERIC PINCKNEY

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised September 2015)*

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>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 111.1 of the 2015 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 473, 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.**