

September 15, 2022

Adam Steen
Director – Department of Administrative Services
1305 E. Walnut St.
Des Moines, IA 50319

REQUESTS FOR "WAIVER OR VARIANCE"

Pursuant to 11 IAC 118.16, the Department of Corrections (DOC) and the Iowa Communications Network (ICN) request a waiver to 11 IAC 118.11(3), with respect to the 6-year limitation, including all optional renewals, on the duration of a service contract related to the operations, including maintenance, of the offender calling system, contracted by the DOC and administered by the ICN on behalf of the DOC.

11 IAC 118.11(3) specifically provides:

"118.11(3) A service contract should be competitively selected on a regular basis so that a state agency obtains the best value for the funds spent, avoids inefficiencies, waste or duplication and may take advantage of new innovations, ideas and technology. A service contract, including all optional renewals, shall not exceed a term of six years unless the state agency obtains a waiver of this provision pursuant to rule 11—118.16(8A)."

The six-year duration limitation established by 11 IAC 118.11(3) was intended to reinforce the competitive bidding requirements established in chapter 11 by requiring agencies to renew contracts on a somewhat regular basis, including engaging in competitive selection processes that test the marketplace. The rules further authorize the DAS Director to waive the requirements of this rule for good cause. Rule 11 IAC 118.16(3) specifically recognizes that the six-year limitation may not be appropriate in all circumstances and provides an example of good cause when "showing that a requirement or provision of a rule should be waived because the requirement or provision would likely result in an unintended, undesirable, or adverse consequence or outcome." (emphasis added)

Previously, on June 16, 2019 a waiver request was approved which enabled DOC to complete an RFI process which was followed up by the ICN release of an RFP on behalf of DOC in January of 2020. The initial due date of the RFP was February 24, 2020, however due to COVID related aspects the due date was extended three times to April 30, 2020.

Evaluations were complete and a recommendation was presented to DOC Director Skinner on July 24th upon which she provided her approval of the recommendation on July 27th and same day the Intent to Award Notice was released. The Notice provided that Securus had been selected as the awardee.

On July 28th, ICN received an open records request for RFP related information and on August 3rd ICN received a protest to the RFP award.

Then as directed in our administrative rules, ICN proceeded through the appeal process and concluded the appeal hearing on Thursday, September 17th.

Randy Goddard, Executive Director

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November 23, 2020 Administrative Law Judge, David Lindgren released his ruling which was favorable to the ICN and DOC finding the premise of the appeal unsubstantiated, thus the appeal was dismissed.

December 7, 2020, ICS filed a motion to be heard in oral argument, by the ITTC, the governing commission of the ICN.

February 18, 2021 the ITTC issued a Ruling on Application for Rehearing, directing the ICN to rescind the original notice of intent to award and simply reevaluate the proposals already in hand, using a new set of evaluators.

April 20, 2021 the three RFP bidders were notified that the original notice of intent was rescinded and the responses would be reevaluated.

July 12, 2021 the evaluation was completed and the recommendation was sent to the DOC Director. Director Skinner approved of the recommendation, which was again Securus.

July 15, 2021 the second notice of intent to award was released to the bidders.

July 16, 2021 as a result of the award notice, ICN received an open records request from ICS.

July 22, 2021 ICN received a second appeal from ICS.

July 27, 2021 ICN provided DIA a transmittal form seeking a hearing date, which was to be 45 days from the date of appeal. The hearing date was originally set to be September 1, 2021. However due to a new discovery application, within the AG's office, some of the information was not able to be provided to ICS in a timely manner. Due to the delay in completing the discovery request, the hearing is now scheduled for October 4th & 5th.

March 9, 2022 Administrative Law Judge, David Lindgren released his ruling which was, again, favorable to the ICN and DOC finding the premise of the appeal unsubstantiated, thus the appeal was dismissed.

March 24, 2022 ICS filed notice of Appeal of proposed decision and request for oral presentation. The ITTC subsequently declined ICS request for oral arguments.

May 19, 2022 The ITTC reached its final decision, to accept the ruling of the ALJ.

May 23, 2022 ICS petitioned the ITTC for stay of final decision.

June 6, 2022 The ITTC declined the ICS petition for stay.

June 17, 2022 ICS filed a petition with the clerk of District Court a petition for judicial review.

July 7, 2022 ICN responded to the ICS petition for judicial review

August 12, 2022 ICN is made aware that the judge assigned to the case recused himself due to a conflict of interest, which delayed the Court's schedule and actions.

Prior to this request, two previous waiver requests had been granted for a 12-month period to allow the original vendor to continue providing services after the previous contract had expired. Due to the ongoing appeal process associated with the award of a new contract for inmate calling services as detailed above, the DOC and ICN request approval of a second waiver for an

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additional period of up to 12 months to allow the current vendor (ICS) to continue to provide inmate calling services at DOC facilities.

At this time, ICN, DOC and two RFP respondents are waiting for the ruling of the District Court.

Pursuant to 11 IAC 118.11(3), the DOC and the ICN request approval of the following:

1. **Request.** Due to the filing of the petition with the District Court, we request a waiver of the "six-year term limitation on service contracts" for the purpose of allowing the DOC to enter into month to month renewals, not to exceed 12 months for the offender calling system agreement administered by the ICN.
 - a. **Justification.** The current contract was originally sourced through a formal competitive RFP process. DOC has also completed an RFI process for the purpose of determining the feasibility of pursuing new products and services associated with offender calling in a new RFP. ICN and DOC completed the RFP process, made an award, however due to the due date delay, the first vendor appeal, the subsequent second appeal, then the petition to the District Court, we are unable to install, test and cutover to the new system proposed in the RFP response.
 - b. **Benefits.**
 - i. The renewal extension will allow DOC and ICN time as we await the ruling of the District Court. Once the District Court provides a ruling, ICN and DOC will need to retain the current inmate calling services vendor as we either; 1) are required to go through the RFP process again, or 2) enter into contract negotiations with the selected vendor and begin system installation and testing, prior to system cutover, or 3) DOC changes requirements and or identifies a different option.
 - ii. The month to month renewals will enable the DOC and ICN to preserve critical services of offender call monitoring and recording and the related security capabilities of the system as we work through the appeal process and subsequent requirements.

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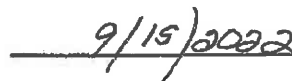
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Thank you in advance for your consideration of this request. Please do not hesitate to contact me if you need any additional information to help in your consideration of this request.

Sincerely,



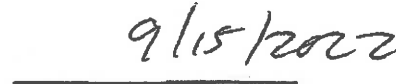
Deb Evans – ICN CFO & Chief of Staff



Date



Beth Skinner – DOC, Director



Date

- 1) DOC signature included due to ICN administering the Agreement on behalf of DOC.

The waiver request is approved due to the delay in finalizing the award of the replacement contract as described in the request. This approval will allow for extension of an additional year.


Adam Steen, Director, DAS
Date

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