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## Protest Decision

**Matter of:** Sterilelink, Inc.

**Case No.:** 2017-151

**Posting Date:** June 22, 2017

**Contracting Entity:** College of Charleston

**Solicitation No.:** 17.49.DB.B

**Description:** Cage and Bottle Washer for Biology Laboratory

### DIGEST

Protest claiming protestant can provide a responsive bid is denied. Sterilelink's letter of protest is included by reference. [Attachment 1]

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on a review of procurement documents and applicable law and precedents.

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

## BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	04/13/2017
Intent to Award Issued	05/24/2017
Protest Received	05/30/2017

## ANALYSIS

This Invitation for Bids was issued by the College of Charleston (CoC) for a Cage and Bottle Washer for the Biology Laboratory. An Intent to Award was posted to Lynx Product Group on May 24, 2017. Sterilelink bid a Steelco AC 1400 cage and bottle washer. The solicitation included the following specification:

16. Automatic Level Control:

a) Provide automatic level control float device; sensor not acceptable

(emphasis added) [Cage and Bottle Washer Specifications, Page 4]

Prior to award, Dustin Bennett, the procurement officer, sought clarification from Sterilelink about the automatic level float control bid by Sterilelink:

On Wed, May 17, 2017 at 4:18 PM, Bennett, Dustin J <bennettjd@cofc.edu> wrote:

Perfect,

... What about the automatic level float control?

Sterilelink replied:

Hi Dustin,

Steelco utilizes a continuity fluid level sensor. The unit fills with water and shuts off at the appropriate level automatically.

Very Best,  
Jason Harrington

Sterilelink's bid was found non responsive to this and several other specifications as detailed by the procurement officer in response to this protest. (Attachment 2)<sup>2</sup>

Sterilelink protests on May 30, 2017, that:

Steelco is able to provide its AC 1400 Cage & Bottle Washer supplied with an automatic level control float device per spec "*Cage and Bottle Washer (CW-01).F.16.a) Provide automatic level control float device; sensor not acceptable.*" ... Since the Steelco AC1400 Cage & Bottle Washer can be ordered from the factory to comply with the 17.49.DB.B solicitation, we formally request that the award for this project be reconsidered. Please consider the Sterilelink, Inc. bid for solicitation 17.49.DB.B to be the lowest responsive and responsible bidder.

(emphasis in original)

Section 11-35-1520(6) requires that:

Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code.... Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.

Regulation 19-445.2090 requires:

The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.

Section 11-35-1410(7) defines a responsive bidder as:

"Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

Sterilelink's bid must be accepted unconditionally and without alteration. By its own admission and on its face, the equipment Sterilelink bid was non responsive. That a different model, or an option, could be provided that met the specification does not matter. The procurement officer could not allow Sterilelink to modify its bid after bid opening.

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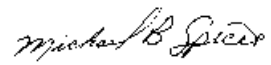
<sup>2</sup> The CPO provided a copy of the procurement officer's response to Sterilelink with an invitation to comment, but Sterilelink did not respond.

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Case No. 2017-151  
June 22, 2017

**DECISION**

For the reasons stated above, the protest of Sterilelink, Inc. is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

# STERILELINK

STERILE PROCESSING EQUIPMENT REPAIR, CONSULTING, & SALES



May 30, 2017

College of Charleston  
Material Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

RE: Solicitation 17.49.DB.B

Chief Procurement Officer,

I am writing to formally and respectfully protest the intent to award Solicitation 17.49.DB.B posted on 05/24/2017 for the reason listed below.

*"Cage and Bottle Washer (CW-01).F.16.a) Provide automatic level control float device; sensor not acceptable."*

Steelco is able to provide its AC1400 Cage & Bottle Washer supplied with an automatic level control float device per spec *"Cage and Bottle Washer (CW-01).F.16.a) Provide automatic level control float device; sensor not acceptable."* In addition, Steelco will provide a three (3) year warranty on this automatic level control float device. Full disclosure of the automatic level control float device that we use would be provided such as specifications, brochures, and technical data etc...

# STERILELINK

STERILE PROCESSING EQUIPMENT REPAIR, CONSULTING, & SALES



The savings to the College of Charleston are considerable to say the least if purchased from Sterilelink, Inc. Since the Steelco AC1400 Cage & Bottle Washer can be ordered from the factory to comply with the 17.49.DB.B solicitation, we formally request that the award for this project be reconsidered. Please consider the Sterilelink, Inc. bid for solicitation 17.49.DB.B to be the lowest responsive and responsible bidder.

Thank you in advance for your reply and consideration. Feel free to contact me with any questions, comments, or if you require any additional information.

Very Best,

Jason D. Harrington  
Vice President  
Sterilelink, Inc.

## Attachment 2

### Response to the Award Protest for Solicitation 17.49.DB.B

#### 1. College of Charleston Specification:

16. Automatic Level Control:

- a) Provide automatic level control float device; sensor not acceptable
- b) Device is for recirculating sump or staging tanks to ensure sump/tank is filled to proper level prior to pump operation
- c) Design to prevent overfilling; include drain overflow

#### Response:

The Steelco AC 1400 utilizes a continuity fluid level sensor. The unit fills with water and shuts off at the appropriate level automatically. This was the response that I received from Jason Harrington at Steelco when asked about this function. Mr. Harrington never offered to provide an alternative to the sensor. The College of Charleston specifically stated in our specifications that a sensor is not acceptable.

#### Justification for the level control float device:

In the past the College flooded out our history department due to a faulty water level sensor. I have forwarded the email received from Mr. Harrington confirming that they offer the sensor and never did Mr. Harrington offer the level control float device as an alternative.

#### 2. College of Charleston Specification:

I. Oscillating Jet System:

- i. Washer shall be equipped with a stainless-steel oscillating jet spray system for treatment solutions
- ii. Machined jets shall be Type 304 stainless steel and shall be mounted on oscillating header along top, bottom, and sides of wash chamber

#### Response:

The Steelco AC 1400 has rotating spray arms instead of the oscillating jet spray headers that are requested in our bid specifications. The Steelco AC 1400 only has the rotating spray arms on the top and bottom of the unit. There are no spray arms on the sides of the unit. The rotating spray headers are not 100% stainless steel and have plastic parts. The durability and quality of these plastic parts come into question. The Steelco specifications are attached. The multiple plastic parts can be seen in the pictures. The College of Charleston's specifications clearly requests the oscillating jet system and the College is not interested in a unit that has rotary washing spray arms. I have forwarded an email that has photos of the rotary arm system and the absence of spray heads on the sides of the wash chamber.

#### Justification for oscillating spray headers as opposed to rotating spray headers:

The LYNX spray system is an oscillating design, drastically reducing the number of moving parts required in the cleaning process. This eliminates the need to replace wear and tear items typically required in rotating spray assemblies and reduces the potential for equipment downtime.

### 3. College of Charleston Specification:

18. Central Spray Header System:

- a) Additional vertical, stainless steel spray arm for use with processing rack accessories
- b) Arm shall swing up and out of way, and be secured, within the chamber when not in use

#### Response:

The Steelco AC 1400 has a central rotating spray arm system which is a large rack that must be taken out of the unit and stored somewhere within the lab when not in use. The central spray header system cannot be secured within the chamber when not in use. I have forwarded the email with a link to the video that demonstrates how their central rotating spray arm system works.

### 4. College of Charleston Specification:

17. Pump shall be appropriately sized, **5.52 kW 7.5 HP minimum**, with a mechanical seal to deliver treatments under pressure.

#### Response:

Below are the specs for the pump size of the Steelco AC1400 unit.

- 2 x 2.0kW power pumps, 800 l/min flow  
each dedicated to recirculation of the  
washing water
- 1 x 0.55kW power pump, 110 l/min flow  
dedicated to the rinsing circuit

#### Justification for the higher powered pump:

The LYNX Washer utilizes high pressure, high volume “spray” jets for stripping heavily soiled cages. **Several companies have designed their equipment with lower volume, smaller type jets. These systems are less effective on heavily soiled cages**



**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised November 2016)*

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.

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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 2016 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.**