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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:** Technical Training Aids

**Case No.:** 2020-113

**Posting Date:** October 23, 2019

**Contracting Entity:** State Board for Tech & Comprehensive Education

**Solicitation No.:** 5400018326

**Description:** Equipment for Mechatronics Lab

### DIGEST

Protest of unduly restrictive specification is denied. The protest of Technical Training Aids (TTA) is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (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.

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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**

Solicitation Issued  
Protest Received

08/22/2019  
09/04/2019

The State Board for Tech & Comprehensive Education (Tech) issued this Invitation for Bids on August 22, 2019 to acquire Festo MPS204-14.0 make and model mechatronics lab equipment for all sixteen technical colleges. TTA protests that the Festo MPS204-14.0 make and model specification is unduly restrictive.

## **ANALYSIS**

This Invitation for Bids restricts responses to a specific manufacturer and model number as follows:

Only Festo MPS204-14.0 brand and model will be accepted.

[Solicitation, Page 14]

A brand name specification is defined in Regulation 19-445.2140(A)(1) as:

"Brand Name Specification" means a specification limited to one or more items by manufacturers' names or catalogue number.

TTA protests that its Amatrol Mechatronics Lab Equipment is functionally equivalent and:

After careful review of the specifications for the 4 mechatronic training stations that are called out in this solicitation, we protest the inability to provide an equivalent bid under the competition limiting specifications. We request that the specifications be opened to allow for adequate competition with equipment manufactured in the United States that meets the SMSCP requirements for levels 1, 2, & 3 and aligning to existing equipment in several South Carolina Community Colleges.

Prior to issuance of this solicitation Tech completed an MMO form #139, "Justification for Brand Name Specification" which acknowledges the restrictive nature of this specification and offers the following justification:

SC Technical College System is purchasing automation training equipment for achieving Siemens Certification Training Level I within the Technical Colleges System. The Colleges are requesting brand name Festa MPS 204-14.0 for the compatibility and uniformity with existing equipment and course materials for

training programs throughout the state. This brand is recommended by the SMSCPL 1 (Siemens Mechatronic System Certification Program) as a preferred brand for training programs.

(Attachment 2)

The CPO found this explanation vague and lacking in specifics and sought additional information:

Teresa,

I have a couple questions related to this protest. As I understand it, this solicitation is for mechatronics equipment for all sixteen technical colleges. The brand-name justification indicates that compatibility and uniformity with existing equipment and course materials for training programs throughout the state is the paramount concern in restricting the specifications to equipment from Festo. A recent award was made by Horry Georgetown Technical College for Amatrol equipment. In its proposal the successful bidder indicated that several other Colleges also use the Amatrol equipment. My question is how much of the mechatronics equipment is Festo compared to the other otherwise qualified providers? In addition, how much time, effort, and disruption would the introduction of alternate providers create?

Tech responded:

The response to your questions are (sic) noted below:

9 of the 16 technical colleges have Festo name brand Mechatronic equipment that total 29 units throughout the 9 colleges.

6 of the 16 technical colleges have Amatrol brand Mechatronic equipment that total 10 units throughout the 6 colleges.

5 of the 16 technical Colleges have SMC brand Mechatronic equipment that total 17 units throughout the 5 colleges.

Last year SCTCS sent 16 instructors through a 75 hours (1,152 man hours) Siemens certified Mechatronic training program, which cost \$7000 per trainee - \$112,000. The instructors were training on the Festo brand equipment during the certification program. In addition, the SCTCS has over 25 Siemens Certified Mechatronic Instructors trained on the Festo equipment. Also, The SCTCS is looking to have uniformity throughout the Technical Colleges System Mechatronic Training program. Having to introduce a another brand of equipment was cost the SCTCS time and resources, and according to the College this would set the program back, since some colleges have a wait list of students training to get into the Mechatronic training program.

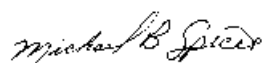
The majority of the mechatronics equipment in the technical college system is manufactured by Festo. The technical college system has a significant investment in the certification of instructors using the Festo equipment and desires to realize the benefits of standardizing on a single manufacturers equipment. There is competition among resellers of Festo mechatronics equipment.

“[A] specification can be restrictive so long as it is not ‘unduly so’—in other words, it must be written in such a manner as to balance the reasonable, objective needs of the State against the goal of obtaining maximum practicable competition.” *In Re: Appeal by Cambex Corp.*, Panel Case No. 1992-7. In determining whether a brand-name specification is unduly restrictive, the CPO will not substitute his judgment for the judgment of the using agency and reject a brand name justification that reflects a reasonable business decision and is not arbitrary, capricious or contrary to law. *Id.* In this case, brand-name specifications are contemplated by Regulation 19-445.2140(A)(1). There is competition through a reseller / distributor network. The technical college system has sound business reasons to restrict this procurement to a specific manufacturer’s equipment and that decision is not arbitrary or capricious. *See, e.g., Matter of: PTC, Inc.*, 2019 CPD P 48 (Comp. Gen. Dec. 20, 2018) (finding agency’s desire for standardization and investments in training are legitimate supporting rationales for a sole-source procurement); *Matter of: Phillips Cartner*, 86-2 CPD D 382 (Comp. Gen. Oct. 2, 1986) (finding agency’s brand-name specifications justified where it demonstrated a “legitimate need to standardize its fleet engines”). Restricting this procurement to Festo MPS204-14.0 equipment is not unduly restrictive.

## DECISION

For the reasons stated above, the protest of Technical Training Aids is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer



September 4<sup>th</sup>, 2019

Re: Solicitation 5400018326

Chief Procurement Officer  
Materials Management Office  
1201 Main Street, Ste. 600  
Columbia SC 29201  
[protest-mmo@mmo.state.sc.us](mailto:protest-mmo@mmo.state.sc.us)

To Whom It May Concern,

Technical Training Aids and Amatrol are formally protesting the solicitation 5400018326 for Equipment for Mechatronics Lab based on three main areas:

- 1) Amatrol meets the Siemens SMSCP qualifications
- 2) Many colleges in South Carolina have existing Amatrol equipment and would prefer to purchase the Amatrol Mechatronics Equipment to fulfill the Siemens SMSCP.
- 3) Amatrol qualifies under Section 11-35-1524 as US based equipment manufacturer and provider

Amatrol is a preferred equipment Provider for Siemens and meets the hardware requirements for the SMSCP Program as noted in the attached document from Siemens. Amatrol was the first equipment provider selected by Siemens in 2007 and have maintained this relationship. The Amatrol Mechatronics Lab Equipment is upgradeable for Level 2 SMSCP and can provide equipment for all three levels of SMSCP.

Many of the colleges in South Carolina have existing Amatrol mechatronics lab equipment that they would prefer to be able to connect to, which would require the Amatrol Mechatronics Line, not Festo. The colleges should have the right to choose either option that fits their individual requirements and existing equipment.

In the US End-Product Pref. Section 11-35-1524, (B)(1) we can provide documentation that the Amatrol products meet this qualification and call to question whether FESTO can provide documentation as such.



After careful review of the specifications for the 4 mechatronic training stations that are called out in this solicitation, we protest the inability to provide an equivalent bid under the competition limiting specifications. We request that the specifications be opened to allow for adequate competition with equipment manufactured in the United States that meets the SMSCP requirements for levels 1, 2, & 3 and aligning to existing equipment in several South Carolina Community Colleges.

We look forward to your response and consideration of our protest.

Sincerely,

A handwritten signature in blue ink, appearing to read "Travis Coon", is written over a light blue horizontal line.

Travis Coon  
Operations Manager  
Technical Training Aids

Cc: [livingstont@sctechsystem.edu](mailto:livingstont@sctechsystem.edu)  
Larry Baggett  
Paul Perkins  
Kent Powell  
Fred Langley

Attachment 2

JUSTIFICATION FOR  
BRAND NAME SPECIFICATION

The agency understands that a "Brand Name" specification is the least preferred type to be used in state procurements. It limits responses to include only the make and model products specified. Potentially equivalent products are not considered for award. The agency offers the following justifications:

**NOTE:** Explanations will be provided for each brand name specification submitted. The products may be grouped when the explanation is the same for several products. The term "All" can be used if the same explanation applies to all items.

1. The agency cannot identify the salient characteristics of the products to be procured because it lacks sufficient:

Time: (explain)

Expertise: (explain)

Continued

2. The agency needs to standardize its inventory for:

Maintenance: (explain)

Compatibility: (explain)

SC Technical College System is purchasing automation training equipment for achieving Siemens Certification Training Level I within the Technical Colleges System. The Colleges are requesting brand name Festo MPS 204-I 4.0 for the compatibility and uniformity with existing equipment and course materials for training programs throughout the state. This brand is recommended by the SSMCPL1 (Siemens Mechatronic System Certification Program) as a preferred brand for training programs.

The agency further certifies that it is not aware that the products specified qualify as sole sources. It believes that there are or may be multiple vendors that can offer a price on the makes and models specified.

8/15/19  
DATE

\_\_\_\_\_  
MMO APPROVAL SIGNATURE

SC Technical College System

GOVERNMENTAL BODY

Teresa Livingston

AUTHORIZED REP.'S PRINTED NAME

Teresa Livingston

AUTHORIZED REP.'S SIGNATURE

Procurement Manager

TITLE



## 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.

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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>

**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**

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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.**