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(803) 737-0600  
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## Written Determination

**Matter of:** Cancellation of Award to Edibon USA, LLC

**Case No.:** 2021-109

**Posting Date:** September 10, 2020

**Contracting Entity:** Trident Technical College

**Solicitation No.:** 071720-545-16806-08/03/20

**Description:** Double Sided Process Control Trainers

This matter is before the Chief Procurement Officer (CPO) pursuant to a request from Trident Technical College (TTC) [Ex. 1] to cancel the award of a contract to Edibon USA, LLC pursuant to Regulation 19-445.2085(C), because ambiguous specifications in the solicitation resulted in an award that is not in the best interest of the State.

### BASIS FOR THE REQUEST

TTC published this Invitation for Bids on July 17, 2020 to obtain double-sided process control trainers. The solicitation included brand name or equal specification referencing an Innotek PC-101 and including a list of minimum required features to be used to define a product equal to the Innotek PC. A requirement for duplicate components on both sides of the trainer was not included in the list of minimum requirements.

An Intent to Award was posted to Edibon USA, LLC (Edibon) on August 13, 2020. [Ex-2] A protest was filed by Southeastern Educational Systems August 17, 2020 alleging that the

successful bid did not meet the industry accepted definition of a double-sided process control trainer as it lacked duplicate components on both sides of the trainer allowing two students to be trained simultaneously. The successful bidder argued that, while its unit lacked duplicate components on both sides, all elements were positioned in a 3D environment which would allow viewing from either side of the unit and was consequently double-sided. Based on long-established case law, the requirement for duplicate components on both sides of the trainer was not included in the list of minimum requirements and the protest was denied.

Trident requested cancellation of the award to Ebidon after award but prior to performance as provided for in Regulation 19-445.2085(C) based on the following justification:

**(1) Ambiguous specifications were cited in the invitation:**

While our specification stated “Double-sided process control trainer” and gave for reference a Manufacturer and Model number that was, in fact, a double-sided trainer, the actual specifications that followed were the components of a single-sided trainer. While our specification writers were confident that because the definition of “double-sided” is “using or able to be used on both sides” that this was clear enough for offerors to realize that what they meant was that the trainer would have a set of equal components on each side of the piece of equipment so that with 4 units 8 students could be doing the same exercise or experiment at the same time, one on each side, each student using a set of components exactly alike. (See the attached sketch in email attached.) However, our low apparent offeror interpreted that to be “used on both sides” meant that a student could see all components from any angle. Our specification was ambiguous. This resulted in an offer that appears to be only one half of what we need.

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

It is not in the best interest financially for the college to continue with this award as to re-bid and purchase the additional units needed would cost the college at the least an additional \$37,640 dollars based on bid pricing of the actual double-sided units.

We feel that the appropriate action at this point is to cancel the award prior to performance, do further research, and rebid with corrected specifications.

Regulation 19-445.2085(C) provides:

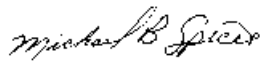
After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing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

(1) Inadequate or ambiguous specifications were cited in the invitation;

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

## **DETERMINATION**

For the reasons stated above, the Chief Procurement Officer approves Trident Technical College's request and the award to Edibon USA, LLC is cancelled under Regulation 19-445.2085(C). Trident Technical College is directed to reissue this solicitation with revised specifications that reflect the actual requirements of the College in accordance with the Code.



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Michael B. Spicer  
Chief Procurement Officer

## Exhibit 1

**From:** [Belcher, Carol](#)  
**To:** [Spicer, Michael](#)  
**Subject:** [External] FW: Double Sided Process Control Trainer - Solicitation # 545-16806-08/03/06  
**Date:** Monday, August 31, 2020 11:08:31 AM  
**Attachments:** 38 email from Edibon 08-19-20.pdf  
40 email to Edibon 08-19-20.pdf  
41 email from Edibon 08-19-20.pdf  
Double Sided Process Controller Specifications.docx

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**Subject:** Double Sided Process Control Trainer - Solicitation # 545-16806-08/03/06

Good morning. Thank you for the quick turnaround on the ruling of the Double-Sided Process Control Trainer. You ruled as I expected based on the specifications included in the solicitation.

In doing additional research while preparing the materials that we submitted for your consideration, we have determined that our specifications were flawed and that it is not in the best interest of the college to continue with the award.

We are requesting permission in accordance with Section 19-445-2085, (1) and (8) to cancel this award prior to performance and rebid the requirement. We are basing this request on the following:

**(1) Ambiguous specifications were cited in the invitation:**

While our specification stated "Double-sided process control trainer" and gave for reference a Manufacturer and Model number that was, in fact, a double sided trainer, the actual specifications that followed were the components of a single sided trainer. While our specification writers were confident that because the definition of "double sided" is "using or able to be used on both sides" that this was clear enough for offerors to realize that what they meant was that the trainer would have a set of equal components on each side of the piece of equipment so that with 4 units 8 students could be doing the same exercise or experiment at the same time, one on each side, each student using a set of components exactly alike. (See the attached sketch in email attached.) However, our low apparent offeror interpreted that to be "used on both sides" meant that a student could see all components from any angle.

Our specification was ambiguous. This resulted in an offer that appears to be only one half of what we need.

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

It is not in the best interest financially for the college to continue with this award as to re-bid and purchase the additional units needed would cost the college at the least an additional \$37,640 dollars based on bid pricing of the actual double-sided units.

We feel that the appropriate action at this point is to cancel the award prior to performance, do further research, and rebid with corrected specifications.

We appreciate your consideration.

C

Carol A. Belcher, C.P.M.

Director

Procurement & Risk Management

Trident Technical College

Phone: 843 574-6230 Fax: 843 574-6395

[carol.belcher@tridenttech.edu](mailto:carol.belcher@tridenttech.edu)

[www.tridenttech.edu](http://www.tridenttech.edu)

**Dennis,Wendy**

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**From:** Dennis,Wendy  
**Sent:** Thursday, August 13, 2020 3:33 PM  
**To:** Dennis,Wendy  
**Subject:** Solicitation # 071720-545-16806-08/03/20 Double Sided Process Control Trainer Intent To Award

INTENT TO AWARD

This is a statement of intent to award a contract and becomes the official statement of award effective **12:01 A.M. 08/25/2020**, unless otherwise suspended or cancelled. Vendors are cautioned not to begin work on the contract or incur any costs associated with the contract prior to the effective date of the contract. The College assumes no liability for the expenses incurred by vendors prior to the effective date of the contract.

Posting Date: **08/13/2020**  
Solicitation: **071720-545-16806-08/03/20**  
Description: **Double Sided Process Control Trainers**  
Issue Date: **07/17/2020**  
Opening Date: **08/03/2020**  
Is Awarded To: **Edibon USA LLC  
5805 Blue Lagoon Drive  
Suite 220  
Miami, Florida 33126**

Evaluated Amount: **\$194,575.20**

Protests (May 2019) If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate chief procurement officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Written Determinations Appeal Notice (Revised June 2018)*

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 2018 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: \_\_\_\_\_

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.**