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## Protest Decision

**Matter of:** Water Conditioning, Inc.

**Case No.:** 2021-129

**Posting Date:** March 5, 2021

**Contracting Entity:** Winthrop University

**Solicitation No.:** R2100730-MC

**Description:** Water Treatment to Include, Chemicals, Service, and Maintenance

### DIGEST

Protest that apparent successful bidder is not responsive is denied. The protest letter of Water Conditioning, Inc. (WC) 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:	01/07/2021
Amendment 1 Issued	01/29/2021
Amendment 2 Issued	01/29/2021
Bid Opening	02/02/2021
Intent to Award Posted	02/17/2021
Protest Received	02/17/2021

Winthrop University issued this Invitation for Bids on January 7, 2021 to acquire water treatment services including chemicals, service, and maintenance. Amendments 1 and 2 were issued on January 29, 2021. Bids from WC and Kurita America Inc. (KA) were opened on February 2, 2021. An Intent to Award was posted to KA on February 17, 2021 and WC filed its protest with the CPO on the same day.

## ANALYSIS

WC protests:

Water Conditioning, Inc. had two employees present for the opening of the bids. At that time, it was clearly stated that we, (Water Conditioning, Inc.) had turned in BOTH Addendums. The other company, (Kurita America Inc.) **failed to acknowledge the second addendum**. Water Conditioning, Inc. believes without the acknowledgement of the second Addendum, their bid is incomplete.

As stated below, it is also a requirement. (failure to comply)

**AMENDMENTS TO SOLICITATION (JANUARY 2006)** (a) The Solicitation may be amended at **any time prior to opening**. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: [www.procurement.sc.gov](http://www.procurement.sc.gov). (b) Offerors **shall acknowledge** receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(emphasis and highlighting in original)

Section 11-35-1520(13) of the Consolidated Procurement Code provides for the waiver or cure of minor informalities or irregularities as follows:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:

(i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, on it, if the bidder states under oath that it received the amendment before bidding and that the bidder will stand by its bid price; or

(ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;

(emphasis added)

In reviewing the bids, the procurement officer identified the failure to acknowledge the amendments and attached the following statement to the bid tabulation:

#### DETERMINATION NOTES

Upon further review, I determined the absence of an acknowledgement of amendments by vendor1 does not disqualify award as low bidder. The solicitation specifications note the number of pot feeders owned by the university as "less than ten". Clarification that the university owns all pot feeders does not affect pricing in my view. In my judgment, vendor1 submitted a valid bid, is responsive and responsible, and an award is most advantageous to the State, price and other factors considered.

02/03/21 \_\_\_\_\_  
DATE

PROCUREMENT MANAGER'S SIGNATURE

\_\_\_\_\_  
R2100730-MC  
IFB

The procurement office waived this omission as a minor informality in accordance with the Code. This issue of protest is denied.

WC also raises the following concern regarding the resident vendor preference:


Water Conditioning, Inc. also would like to question where their local office is located. Water Conditioning, Inc. is a South Carolina business that has serviced Winthrop University for over 35 years. We are offended that you would even consider a company based out of Tokyo. (Go to their web-site) They have an office in a few American cities; but they are still not an American company!

KA did not apply for any of the preferences authorized by Section 11-35-1524 and the preferences did not affect the award of this contract.

## **DECISION**

For the reasons stated above, the protest by Water Conditioning, Inc. is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

Attachment 1

**From:** [susan@watercon.net](mailto:susan@watercon.net)  
**To:** [Protest-MMO](#)  
**Subject:** [External] Chief Procurement Officer - Solicitation R2100730-MC  
**Date:** Wednesday, February 17, 2021 5:56:51 PM  
**Attachments:** [image001.png](#)

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To Chief Procurement Officer,

Water Conditioning, Inc. wishes to formally protest the "Intent to Award" of Solicitation R2100730-MC.

Water Conditioning, Inc. had two employees present for the opening of the bids. At that time, it was clearly stated that we, (Water Conditioning, Inc.) had turned in BOTH Addendums. The other company, (Kurita America Inc.) **failed to acknowledge the second addendum.** Water Conditioning, Inc. believes without the acknowledgement of the second Addendum, their bid is incomplete.

As stated below, it is also a requirement. (failure to comply)

**AMENDMENTS TO SOLICITATION (JANUARY 2006)** (a) The Solicitation may be amended at **any time prior to opening.** All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: [www.procurement.sc.gov](http://www.procurement.sc.gov). (b) Offerors **shall acknowledge** receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**ADDENDUM #2:** This solicitation is amended to include the below correction and clarification:

**1. Question:** Does the university currently own all chemical feed equipment?

**Answer:** The University owns the pot feeders. The University does not own the chemical feed pumps.

**Correction:** The University owns 8 pot **meters**

**For Clarification:** The University DOES NOT own the water meter (2inch contacting head)

for the cooling tower

Below is a copy of the letter I sent Mr. Cupp immediately after receiving Addendum one, which lead to Addendum two.



Dear Mr. Cupp,

There is a discrepancy with the number of Pot feeders that are owned by Winthrop University. Addendum number- 1 states that the university owns ALL the pot feeders. This is not true; Water Conditioning owns **19** Pot feeders. The University only owns 8. Pot feeders cost \$350.00- \$450.00 each.

From Addendum #1:

Question: Does the university currently own all chemical feed equipment?

Answer: **The University owns the pot feeders.** The University does not own the chemical feed pumps.

From the Solicitation:

### **III. SCOPE OF WORK/SPECIFICATIONS**

j) It is anticipated that the chemical feed and testing equipment currently owned by Winthrop University will continue to be used. **Winthrop owns a small number of pot feeders (less than ten in newer buildings; all other equipment is owned by the current contractor).** All other feed or test equipment required will be supplied by the successful contractor.

We also own a \$1,900.00 water meter (2inch contacting head) for the cooling tower.

I feel it would be unfair to bid against a company that does not have the correct number of equipment needed, as this equipment would cost approximately **\$10,000.00 (uninstalled).**

Sorry for the late notice, but I just received the addendum.

*SUSAN*

Susan Wallen, Ph.D., Owner  
Water Conditioning, Inc.

As you can see there is the issue of approximately **\$10,000.00** worth of equipment that we own

and maintain that the other company is unaware of. We will be removing ALL of our equipment and subsequent piping if we lose the bid.

Water Conditioning, Inc. also would like to question where their local office is located. Water Conditioning, Inc. is a South Carolina business that has serviced Winthrop University for over 35 years. We are offended that you would even consider a company based out of Tokyo. (Go to their web-site) They have an office in a few American cities; but they are still not an American company!

**PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009)**

*To qualify for the RVP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must either: (1) maintain at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities for which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars [\$50,000] or the annual amount of the contract; or (2) be a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product being sold is either made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code). [022B114.1]*

We have enjoyed serving Winthrop for MANY years and have kept some VERY old boilers working way beyond their normal life expectancy, which has saved the university a whole lot of money through the years. But, if you award it to them, you will get what you pay for. They are such a large company that they did not even take the time to check for additional addendums. We are a small company. We take the time to care about every detail; whether it be our contracts or our customers service.

Thank you for your consideration in this matter.

Susan Wallen, Ph.D., Owner  
Water Conditioning, Inc.  
[susan@watercon.net](mailto:susan@watercon.net)



**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised May 2020)*

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 2020 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.**