THE DIVISION OF PROCUREMENT SERVICES
DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018
MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of:	Shimadzu Scientific Instruments
Case No.:	2022-110
Posting Date:	October 18, 2021
Contracting Entity:	Clemson University
Solicitation No.:	145482548
Description:	Ultra-High-Performance Liquid Chromatography Triple Quadrupole Mass Spectrometer

DIGEST

Protest that apparent successful bidder is not responsive is granted. The protest letter of Shimadzu Scientific Instruments (SSI) is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer[1] (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.

[1] The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

Solicitation Issued:	06/28/2021
Proposals Opened	07/22/2021
Intent to Award Posted	09/24/2021
SSI Intent to Protest Received	09/27/2021
SSI Protest Received	10/08/2021

Clemson University (CU) issued this Request for Proposals (RFP) on June 28, 2021, for an Ultra-High-Performance Liquid Chromatography Triple Quadrupole Mass Spectrometer. Proposals were opened on July 22, 2021. An Intent to Award was posted on September 24, 2021 to Waters Corp. SSI filed an intent to protest on September 27, 2021 followed by its formal protest on October 8, 2021.

ANALYSIS

SSI alleges that the mass spectrometer proposed by Waters fails to meet multiple specifications published in the solicitation and included a Waters specification sheet to corroborate its allegations. (Attachment 2)

Specifically SSI alleges:

> For example, under section **1.1 Autosampler**, the bid specifies, *"Autosampler material surfaces that come in contact with the sample/solvent must be compatible with pH range 1-14."* As you can see in the attached Waters ACQUITY UPLC I-Class PLUS System Specifications, the pH range of the autosampler is 1-12.5.

Waters included the following footnote with this specification:

> *For specific test conditions, contact your Waters sales representative.*

While Waters response should have elicited further investigation, without more specific detail about how the 12.5 pH was determined, a conclusive determination of responsiveness is not possible.

SSI also alleges:

> Under section **1.2 Pump**, the bid specifies, *"Pump flow rate should range from 0.01 mL/min to 5 mL/min in 1.0 µL/min increments."* As you can see in the attached Waters ACQUITY UPLC I-Class PLUS System Specifications, the Operating flow rate range is from 0.001 to 2.000 mL/min, in 0.001 mL increments (firmware version 1.71 and later). This only represents 40% of the "mandatory specification" that must be "guaranteed".

The product proposed by Waters does not meet this requirement.

SSI also alleges that the product proposed by Waters fails to meet two other requirements:

> In addition, under section **1.2 Pump**, the bid specifies, *"All pump surfaces that come in contact with sample/solvent must be compatible with pH range 1-14."* As you can see in the attached Waters ACQUITY UPLC I-Class PLUS System Specifications, the pH range of the pump is 1-12.5.

For the reasons stated above, a determination of responsiveness to this requirement is not possible.

SSI also alleges:

> Under section **2.3 Mass Spectrometer**, the bid specifies, *"The collision cell clearance time should be less than 1 ms."* The Waters Xevo TQS has a cell clearance time of 1ms, while this may be splitting hairs, still does not meet the written mandatory specification.

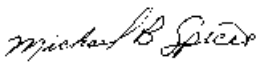
A determination of responsiveness to this requirement is not necessary.

CU concurs that the product proposed by Waters is not responsive to the requirements of the solicitation. (Attachment 3)

DECISION

For the reasons stated above, the protest of Shimadzu Scientific Instruments is granted, the award to Waters Corp. is cancelled and the procurement is remanded to Clemson University for cancellation and resolicitation in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

SHIMADZU
Excellence in Science

Shimadzu Scientific Instruments, 7102 Riverwood Drive, Columbia, MD 21046
Tel: 800.477.1227/410.381.1227; Fax: 410.381.1222; www.ssi.shimadzu.com

Chief Procurement Officer
Materials Management Office
1201 Main St, Suite 600
Columbia, SC 29201

October 8, 2021

RE: Protest of Decision to Award Solicitation #: 145482548 UHPLC Triple Quadrupole Mass Spectrometer

Dear Chief Procurement Officer,

Shimadzu would like to very respectfully protest the award of Solicitation 145482548 to Waters Corporation.

Section III. Scope of Work / Specification of the bid states, *"Evidence that the proposed instrument meets the mandatory specifications listed below must be added to the bid documents. The following instrument features must be guaranteed:"*. Waters Corporation proposed instrumentation does not meet the specifications.

For example, under section **1.1 Autosampler**, the bid specifies, *"Autosampler material surfaces that come in contact with the sample/solvent must be compatible with pH range 1-14."* As you can see in the attached Waters ACQUITY UPLC I-Class PLUS System Specifications, the pH range of the autosampler is 1-12.5.

Under section **1.2 Pump**, the bid specifies, *"Pump flow rate should range from 0.01 mL/min to 5 mL/min in 1.0 µL/min increments."* As you can see in the attached Waters ACQUITY UPLC I-Class PLUS System Specifications, the Operating flow rate range is from 0.001 to 2.000 mL/min, in 0.001 mL increments (firmware version 1.71 and later). This only represents 40% of the "mandatory specification" that must be "guaranteed".
In addition, under section **1.2 Pump**, the bid specifies, *"All pump surfaces that come in*

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contact with sample/solvent must be compatible with pH range 1-14." As you can see in the attached Waters ACQUITY UPLC I-Class PLUS System Specifications, the pH range of the pump is 1-12.5.

Under section **2.3 Mass Spectrometer**, the bid specifies, *"The collision cell clearance time should be less than 1 ms."* The Waters Xevo TQS has a cell clearance time of 1ms, while this may be splitting hairs, still does not meet the written mandatory specification.

Bids are written by end users to specify the requirements of the system that are needed. Vendors respond to the bids-in good faith- based on the specifications as they are written and position the best fit for the specifications. In this instance, the end users specified what in their words were "mandatory specifications" and that they must be guaranteed. The Intent to Award stated Waters Corporation as the intended award recipient even though they do not meet the mandatory specifications-as described by the bid. Other vendors may not have bid because they did not meet these posted specifications which makes this award unfairly biased. Everything from the sample analysis to the cost of the system could be different if the posted specifications were different (lowered) to meet the Waters specifications. This means that there was not a fair comparison of the complete packages that the vendors submitted for consideration in this bid process.

It has always been my understanding that if a bid provides mandatory specifications and a vendor solution does not meet those specifications, that solution will be eliminated from consideration. I kindly request that the bid be cancelled and rebid using the "correct" mandatory specifications.

Thank you,

Faith A. Hays

Faith Hays

Attachment 2

[INSTRUMENT SPECIFICATIONS]

Waters
THE SCIENCE OF WHAT'S POSSIBLE.™

ACQUITY UPLC I-Class PLUS System (SM-FTN-I)

The Waters™ ACQUITY™ UPLC™ I-Class PLUS System's holistic design is targeted for investigative analysis where maximized peak capacity, throughput, and sensitivity are critical and is perfectly suited for running any MS-based applications. The system is comprised of a Binary Solvent Manager (BSM) and a Sample Manager with Flow-Through Needle (SM-FTN-I); this configuration offers excellent carryover performance.

ACQUITY UPLC I-CLASS PLUS SYSTEM FEATURES (WITH SM-FTN-I)

Total system bandspread,† 5σ	≤9 µL (default configuration)
Dwell volume (total system)†	≤100 µL (default configuration)
Gradient delay volume†	≤80 µL
Integrated leak management	Leak sensors, as standard, and safe leak handling
System synchronization	Injection synchronization between both pumps and the sample manager enhances retention time reproducibility
Operating flow rate range	0.001 to 2.000 mL/min, in 0.001 mL increments (firmware version 1.71 and later)
Maximum operating pressure	18,000 psi up to 1 mL/min, 12,000 psi up to 2 mL/min
pH range†	1 to 12.5
Unattended operation	Leak sensors, full 96-hour diagnostic data display through console software
Cycle time	≤15 s inject to inject, with load ahead enabled

BINARY SOLVENT MANAGER (BSM)

Number of solvents	Up to four, in combination of two, A1 or A2 and B1 or B2
Solvent conditioning	Integrated vacuum degassing, six lines with two allocated for the injector needlewash/purge solvents
Gradient formation	High pressure mixing, binary gradient
Gradient profiles	11 gradient curves (including linear, step [2], concave [4], and convex [4])
Primary check valves	Intelligent Intake Valves (*i*²Valve)
Flow accuracy†	±1.0% of set flow rate at 0.500 mL/min, as per SystemsQT™
Flow precision†	≤0.075% RSD or 0.01 min SD, (0.2 to 2.0 mL/min), whichever is greater using premixed solvent
Composition ripple†	≤1.0 mAu
Composition precision†	≤0.15% RSD or ±0.01 min SD, whichever is greater
Composition accuracy†	±0.5% absolute from 5% to 95%, 0.2 to 2.0 mL/min

Pressure pulsation†	≤0.4% or 25 psi, whichever is greater
Compressibility compensation	Automatic, no user intervention required
Priming	Wet priming runs at a flow rate of 4 mL/min
Pump seal wash	Equipped with a programmable active wash system to flush the rear of the high pressure seals and the plungers
Flow ramping	Automatic
Primary wetted materials	316L stainless steel, UHMWPE blend, MP35N, titanium alloy, gold, sapphire, ruby, zirconia, Nitronic 60, DLC, fluoropolymer, PEEK, PEEK blend
Mixing options	Standard: 50 µL Optional: 100 µL and 380 µL

SAMPLE MANAGER-FTN (SM-FTN-I)

Injection volume range	0.1 to 10.0 µL as standard configuration Up to 1000.0 µL with optional extension loop
Accuracy	±0.2 µL, measured by fluid weight removed from vial with 10.0 µL injections averaged over 20 injections using standard 100-µL syringe
Precision†	≤0.25%, 5 to 50µl
Linearity†	≥0.999
Maximum sample capacity	Any two of the following: ▪ 96 and 384 microtiter plates ▪ 48 position 2.00-mL vial plates ▪ 48 position 0.65-mL micro-centrifuge tube plates ▪ 24 position 1.50-mL micro-centrifuge tube plates
Sample compartment temperature range	4.0 to 40.0 °C, settable in 0.1 °C increments; maintains 19 °C below ambient with a tolerance range between -2 and +4 °C
Temperature accuracy	±0.5 °C at sensor
Temperature stability	±1.0 °C at sensor
Sample manager heat time	≤30 min ambient-40 °C
Sample manager cool time	≤60 min ambient-4 °C
Injection needle wash	Integrated, active, programmable
Minimum sample required	3 µL residual, using Waters' Total Recovery 2-mL Vials (zero offset)
Sample carryover†	≤0.001% caffeine (UV) ≤0.001% sulphadimethoxine (MS)
Advanced sample manager capabilities	Auto-dilution and auto-addition
Primary wetted materials	316L stainless steel, polyimide, PEEK blend, DLC, PPS

COLUMN HEATERS (CH-A)

Column capacity	CH-A: Single column, up to 4.6 mm internal diameter (I.D.), up to 150 mm in length with filter or guard column. Mounting extends out for use with MS-based detector
Fittings	18,000 psi, low dispersion, with reusable column inlet fittings
Column compartment temperature range	Settable from 20.0 to 90.0 °C, settable in 0.1 °C increments
Column compartment temperature accuracy	±0.5 °C at sensor
Column compartment temperature stability	±0.3 °C at sensor
Column compartment heat time	≤15 min ambient-60 °C
Solvent conditioning	Active pre-heating as standard; passive pre-heating (for legacy method support)
Column tracking	eCord™ Technology column information management tracks and archives column usage history

COLUMN MANAGEMENT (CM-A)

Column capacity	CM-A: Two columns, as standard (maximum length of 150 mm with filter or guard column) up to 4.6 mm internal diameter (I.D.)
Switching valves	Two nine-port, eight-position valves (CM-A only); provides programmable access switching, waste and bypass positions for rapid solvent changeover
Column compartment(s) temperature range	4.0 to 90.0 °C, settable in 0.1 °C increments; two independent heat/cool zones
Column compartment(s) temperature accuracy	±0.5 °C at sensor
Column compartment(s) temperature stability	±0.3 °C at sensor
Column compartment heat time	≤15 min ambient-60 °C
Column compartment cool time	≤15 min 60–20 °C
Solvent conditioning	Active pre-heating as standard; passive pre-heating (for legacy method support)
Fittings	18,000 psi, low dispersion, with reusable column inlet fittings
Column tracking	eCord Technology column information management tracks and archives column usage history
2D support	Optional

SAMPLE ORGANIZER

Sample plate capacity	Sample plate capacity is configured based on the types and combinations of plates being used: ▪ Maximum of 19 standard microtiter plates, up to 15.5 mm high, or ▪ Maximum of 9 intermediate height plates (or 2-mL vial holders), up to 40.0 mm high, or ▪ Maximum of 6 deep well plates (or 4-mL vial holders), up to 47.0 mm high
Maximum sample capacity	Maximum of 7296 samples in nineteen 384-well plates
Sample compartment temperature range	4.0 to 40.0 °C, settable in 0.1 °C increments with a tolerance range between -2 and +4 °C
Temperature accuracy	±1 °C at the sensor
Temperature stability	±1 °C at the sensor

BASED INSTRUMENTAL CONTROL

External control	Empower™ Software, MassLynx™ Software, UNIFI™ Scientific Information System, or standalone through console software
External communications	Ethernet interfacing via RJ45 connection to host PC
Event inputs/outputs	Rear panel contact closure and/or TTL inputs/outputs
Connections INSIGHT™	Provides real-time monitoring and automatic notification of instrument performance and diagnostic information, allowing for quicker problem resolution

ENVIRONMENTAL SPECIFICATIONS

Acoustic noise	≤62 dBA, system
Humidity operating	20% to 80%, non-condensing
Operating temperature range	4 to 40 °C

ELECTRICAL SPECIFICATIONS

Power requirements	100 to 240 VAC
Line frequency	50 to 60 Hz
Power consumption	BSM: 360 VAC FTN: 400 VAC CM-A: 400 VAC

PHYSICAL SPECIFICATIONS

ACQUITY UPLC I-Class PLUS System: BSM, SM-FTN-I, and CH-A	Width:	34.3 cm (13.5 in.)
	Height:	71.1 cm (28.0 in.)
	Depth:	71.2 cm (28.0 in.)
ACQUITY UPLC I-Class PLUS System: BSM, SM-FTN-I, and CM-A	Width:	34.3 cm (13.5 in.)
	Height:	79.6 cm (31.4 in.)
	Depth:	71.2 cm (28.0 in.)
Sample Organizer	Width:	25.4 cm (10.0 in.)
	Height:	96.5 cm (38.0 in.)
	Depth:	71.1 cm (28.0 in.)

† *For specific test conditions, contact your Waters sales representative.*

Waters

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Waters Corporation
34 Maple Street
Milford, MA 01757 U.S.A.
T: 1 508 478 2000
F: 1 508 872 1990
www.waters.com

Attachment 3

From: Michael Nebesky
To: Spicer, Michael; Sam Young Jr; White, John
Cc: Grier, Manton; Craig, Kimber
Subject: RE: [External] Intent to Protest Award for Solicitation 145482548
Date: Tuesday, October 5, 2021 4:02:22 PM
Attachments: image003.png
image005.png
image011.png
image012.png
image013.png
image015.png
image016.png

Once again I find myself in a situation where I believe it is in Clemson's best option to cancel the Intent to Award and rebid. I can share details if necessary, but the short of it is it appears the awardee submitted an offer that we now understand to be non-responsive, as pointed out by the protestant. Discussing with Shimadzu who filed the intent to protest below, they also had issues with their bid and shared an email with me that they will withdraw or not follow thru with their protest if Clemson agrees to rebid. That is what I would like to do – cancel my award due to administrative error in evaluation.

Given they have filed an Intent to Protest, I am not sure how best to handle this now. Can you please let me know what you need from me or what I should do at this point?

Thanks

Mike
Mike Nebesky CLEMSON UNIVERSITY

Procurement Director
Procurement and Business Services
391 College Ave, Suite 203, Clemson, SC 29634
864.656.2067 Office

Procurement and Business Services website
Current Bid Opportunities

From: Spicer, Michael <mspicer@mmo.sc.gov>
Sent: Monday, October 4, 2021 8:15 AM
To: Sam Young Jr <scy@clemson.edu>; Michael Nebesky <mnebesk@clemson.edu>
Cc: Grier, Manton <mgrier@ogc.sc.gov>; White, John <jswhite@mmo.sc.gov>; Craig, Kimber <kcraig@mmo.sc.gov>; fahays@SHIMADZU.com
Subject: FW: |External| Intent to Protest Award for Solicitation 145482548

Please see the intent to protest below and proceed in accordance with the Code.

Michael B. Spicer | Information Technology Management Officer
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896-5225 | mspicer@mmo.sc.gov

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.

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

_____ _____
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.