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## Protest Decision

**Matter of:** Ennis-Flint, Inc.

**Case No.:** 2022-112

**Posting Date:** October 27, 2021

**Contracting Entity:** Department of Transportation

**Solicitation No.:** 5400027109

**Description:** Thermoplastic Pavement Markers Rebid

### DIGEST

Protest that apparent successful bidder is not responsive is denied. The protest letter of Ennis-Flint, Inc. (EF) with attachment 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:	08/10/2021
Proposals Opened	09/13/2021
Intent to Award Posted	10/11/2021
EFI Protest Received	10/14/2021

The South Carolina Department of Transportation (DOT) issued this Invitation for Bids (IFB) on August 10, 2021, for thermoplastic pavement markers. Bids were opened on September 13, 2021. An Intent to Award was posted on October 11, 2021 to Crown Technology, LLC. (CT) EF filed a protest on October 14, 2021.

## ANALYSIS

EF alleges that the product bid by CT is not responsive to the requirement of the solicitation:

According to Section VIII. Bidding Schedule / Price-Business Proposal, the bid solicitation states, “*bids must be entered for all items to be considered responsive. Non-responsive bids shall be rejected.*” Crown Technology has bid the same product in both the Preheat (PH) and No-Preheat (NPH) sections of the bid. Ennis-Flint bid two separate products according to the bid schedule as follows:

- PreMark® Preformed Thermoplastic – A No-Preheat Type
- HotTape® Preformed Thermoplastic – A Preheat Type

Distinction between these two types of materials is industry-recognized due to the inherent differences and their required, mutually exclusive application methods. A single product cannot be both a “preheat” and a “no-preheat” type of material.

EF included an undated CT specification sheet with its protest. (Attachment 1)

CT responds:

Crown Technology, LLC has submitted information for solicitation number 5400027109 with products which comply with the Specifications contained within the solicitation. Crown’s products submitted are also listed as approved on the Qualified Products List 47 provided within the solicitation. Although the DOT does not make the distinction between preheat and no-preheat products on the QPL, Crown does provide materials which meet the specifications for all products requested within this solicitation.

Crown would like to note the protest includes outdated documents regarding our Tuff-Mark® preformed thermoplastic. We are providing the attached, Tuff-Mark® Application Instructions, which state – “Tuff-Mark® and Tuff-Mark® with Tuff-Grip® can be used either as a no preheat material or a preheat

material.” These Application Instructions have been a part of Crown’s Product Portfolio for well over a year and are included in every box/shipment of our Tuff-Mark® products.

The documentation attached to CT’s response to the protest, Attachment 2, can also be found on CT’s website at:

[http://crownthermo.com/wp-content/uploads/2021/01/Indents\\_Tuff-Mark\\_and\\_Tuff-Mark\\_with\\_Tuff-Grip\\_Application\\_Procedures\\_V14.pdf](http://crownthermo.com/wp-content/uploads/2021/01/Indents_Tuff-Mark_and_Tuff-Mark_with_Tuff-Grip_Application_Procedures_V14.pdf)

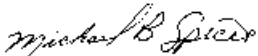
Last Viewed 10/21/2021

CT’s bid is responsive to the requirements of the solicitation.

## **DECISION**

For the reasons stated above, the protest of Ennis-Flint, Inc. is denied,

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1



**Ennis-Flint, Inc.**  
4161 Piedmont Parkway  
Suite 370  
Greensboro, NC 27410  
Phone: 800.331.8118  
sales@ennisflint.com  
www.ennisflint.com

October 14, 2021

Jeffrey Schwalk  
Materials Management Office  
1201 Main Street – Suite 600  
Columbia, SC 29201

RE: Solicitation No. 5400027109 | Thermoplastic Pavement Markers Rebid

Ennis-Flint, Inc. respectfully protests the intent-to-award of Preformed Thermoplastic Pavement Markings to Crown Technology on the grounds their submitted product does not fully comply with the Specifications contained within solicitation number 5400027109.

According to Section VIII. Bidding Schedule / Price-Business Proposal, the bid solicitation states, *“bids must be entered for all items to be considered responsive. Non-responsive bids shall be rejected.”* Crown Technology has bid the same product in both the Preheat (PH) and No-Preheat (NPH) sections of the bid. Ennis-Flint bid two separate products according to the bid schedule as follows:

- PreMark® Preformed Thermoplastic – A No-Preheat Type
- HotTape® Preformed Thermoplastic – A Preheat Type

Distinction between these two types of materials is industry-recognized due to the inherent differences and their required, mutually exclusive application methods. A single product cannot be both a “preheat” and a “no-preheat” type of material. Failure to properly follow the application instructions for the type of product being used can significantly impact performance especially related to bond strength, night-time visibility, skid resistance, and durability.

The following point outlines additional concern and ground for protest:

- According the Tuff-Mark® Application Instructions accompanying this letter, Tuff-Mark® preformed thermoplastic is a No-Preheat Type of material. There is no reference to preheating the road surface to a certain temperature prior to application of the preformed thermoplastic material.

It is the opinion of Ennis-Flint, Inc. that the product submitted for bid by Crown Technology fails to comply with the solicitation as stated above and should be considered non-responsive. Therefore, we respectfully request the intent-to-award be rescinded and awarded to Ennis-Flint, Inc.

Thank you for your time and consideration. I can be reached at (336) 336-308-3847.

Sincerely,

Cindy Burk  
Director of Contract Administration



**Tuff-Mark®**  
available with  
**Tuff-Grip®**

### **Standard Application Procedure**

#### **General Requirements:**

- **Material:**

Tuff-Mark® and Tuff-Mark™ with Tuff-Grip® must remain dry at all times. It should be stored in an area that is 35°F - 90°F. The boxes should be stacked flat and no more than 30 boxes high. Do not drop or throw Tuff-Mark® and Tuff-Mark® with Tuff-Grip® in temperatures below 50°F, as Tuff-Mark® and Tuff-Mark® with Tuff-Grip® will be less flexible and can break. Use the plastic sheets contained in the box to keep the Tuff-Mark® and Tuff-Mark® with Tuff-Grip® pieces separate as they can bond together especially in hot weather. Shelf life is one year.

- **Surface Preparation:**

Be sure that the application surface is thoroughly clean and moisture free. Do not apply Tuff-Mark® and Tuff-Mark® with Tuff-Grip® on top of ANY existing markings other than thermoplastic. If applying on top of existing thermoplastic, remove any loose thermoplastic, make sure the marking is clean, and make sure there is no moisture on the markings. If the old marking has a powdery surface, scrape the surface to reveal fresh material. Tuff-Mark® and Tuff-Mark® with Tuff-Grip® can be applied to new asphalt once the asphalt has cooled and the surface is "non-tracking" due to tack or oils. Tuff-Mark® and Tuff-Mark® with Tuff-Grip® can be applied to new (green) concrete once the surface has hardened, curing compound has been removed, and the surface is free from any moisture.

- **Safety Precautions:**

During the application of Tuff-Mark® and Tuff-Mark® with Tuff-Grip®, protective clothing should be worn. The clothing should consist of work boots, long pants, gloves, and safety goggles or a face shield.

#### **Asphalt Surface Requirements:**

1. Thoroughly clean the application area of any loose particles and ensure that there is no moisture in the application area.
2. Position all parts on the surface with the bead side up. Make sure all connecting parts of symbols have no gaps between them. Make sure parts are properly aligned before heating the material.

3. After parts are aligned, heat the material by moving an approved heating device slowly and steadily over the material. The heating device should be moved in a sweeping motion over the material at a height of 6" to 10" for even heating of the material.
4. Application of heat is to continue, until the largest surface media are at a minimum of 60% embedment.
5. After the Tuff-Mark® or Tuff-Mark® with Tuff-Grip® has cooled check the bond to the surface. Try lifting an edge or cutting an area in the interior of the material. Properly bonded Tuff-Mark® and Tuff-Mark® with Tuff-Grip® will bring up some of the asphalt with it, or it will leave some residue on concrete. If bonding is not adequate, continue heating until the material is properly bonded. Do not leave until proper bonding has been achieved. Reheating at a later date will not work due to moisture trapped beneath the Tuff-Mark® or Tuff-Mark® with Tuff-Grip® material.
6. Tuff-Mark® and Tuff-Mark® with Tuff-Grip® will cool within a couple of minutes of application. A spray of cool water may be used to accelerate cooling time. Do not allow foot or auto traffic until material has cooled.

**Concrete Surface Requirements:**

1. Follow step 1 of the asphalt application procedure. The surface of worn polished concrete should be roughed up.
2. Create outline of marking pattern on surface with chalk or crayon for guidance to aid with sealer application.
3. When applying on new concrete, all curing compounds should be removed before sealer application. Apply Crown's recommended primer sealer to concrete. Make certain all solvent has evaporated and sealer has dried. Solvent left in the sealer will cause obstructions in the marking commonly referred to as blistering or pin holing. If a sealer is applied at a heavier mil thickness, solvent can be trapped beneath the top dry film resulting in the same type of problem.
4. Continue with steps 2 through 6 of the asphalt application procedure.

**Crown Technology, LLC**  
**35 Industrial Park Drive, P.O. Box 789, Woodbury, GA 30293**  
**Phone: (706) 553-9500 Fax: (706) 553-9501**  
**[www.crownthermo.com](http://www.crownthermo.com)**

Attachment 2



35 INDUSTRIAL PARK DRIVE  
P.O. BOX 789  
WOODBURY, GA 30293  
(706) 553-9500  
FAX (706) 553-9501

October 20, 2021

Jeffrey Schwalk  
Materials Management Office  
1201 Main Street – Suite 600  
Columbia, SC 29201

RE: Protest for Solicitation No. 5400027109 / Thermoplastic Pavement Markers Rebid

Crown Technology, LLC has submitted information for solicitation number 5400027109 with products which comply with the Specifications contained within the solicitation. Crown's products submitted are also listed as approved on the Qualified Products List 47 provided within the solicitation. Although the DOT does not make the distinction between preheat and no-preheat products on the QPL, Crown does provide materials which meet the specifications for all products requested within this solicitation.

Crown would like to note the protest includes outdated documents regarding our Tuff-Mark® preformed thermoplastic. We are providing the attached, Tuff-Mark® Application Instructions, which state – *“Tuff-Mark® and Tuff-Mark® with Tuff-Grip® can be used either as a no preheat material or a preheat material.”* These Application Instructions have been a part of Crown's Product Portfolio for well over a year and are included in every box/shipment of our Tuff-Mark® products.

Crown Technology LLC does not feel we fail to comply with the solicitation in providing the requested products and we respectfully request to proceed with the awarded contract.

Please let us know if you require further information.

Sincerely,

*Donnie Kick*

Donnie Kick  
President

**MANUFACTURER OF  
THERMOPLASTIC PAVEMENT MARKING MATERIAL**





**Tuff-Mark®**  
available with  
**Tuff-Grip®**

## **Application Procedures**

### **General Requirements**

(For all applications shown below)

- **Equipment:**

Powered Blower or Broom  
Tape Measure  
Crayon, Chalk Sticks, and Chalk Line  
Utility Knife, Putty Knife  
Tuff-Max® (Custom or some color applications and non-asphalt applications requiring sealer. Consult your local sales representative or customer service.)  
EX255/EX256 (Aged asphalt standard non-colored applications that need sealer.)  
Tuff-Max® sealer dispenser gun (For Tuff-Max® only.)  
Sprayer (Optional for EX255/EX256.)  
Foam Paint Roller (Only for sealer.)  
Propane fueled torch  
Supply of Propane  
Hammer and Mason Chisel  
Water Sprayer (optional)

- **Material:**

Tuff-Mark® and Tuff-Mark® with Tuff-Grip® can be used either as a no preheat material or a preheat material. Tuff-Mark® and Tuff-Mark® with Tuff-Grip® must remain dry at all times. It should be stored indoors in an area that is 35°F - 90°F (2°C - 32°C). The boxes should be stacked flat and no more than 30 boxes high. Do not drop or throw Tuff-Mark® and Tuff-Mark® with Tuff-Grip® in temperatures below 50°F (10°C), as Tuff-Mark® and Tuff-Mark® with Tuff-Grip® will be less flexible in colder weather. Use the plastic sheets contained in the box to keep the Tuff-Mark® and Tuff-Mark® with Tuff-Grip® pieces separate as they can bond together especially in hot weather. Shelf life is one year. EX255/EX256 sealer should be used for any standard non-colored aged asphalt applications and Tuff-Max® sealer is required for any non-asphalt, color or, specialty/custom marking. Tuff-Mark® and Tuff-Mark® with Tuff-Grip® do not have any minimum temperature requirements for application.

All Tuff-Mark® and Tuff-Mark® with Tuff-Grip® lines are packaged as whole sheets of material. These sheets have evenly spaced factory-made score lines in them (exact spacing depends on the specific line width). Before application these sheets should be separated into the individual lines by pulling them apart along the score mark.



(Emphasis added)



## 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.**