

State of South Carolina)	Before the Chief Procurement Officer
)	
County of Richland)	Decision
)	
In Re: Protest of Printmasters Professional Printers, Inc.)	Case 2009-202
)	
Protest of Award: Solicitation #: 6641, Clemson University Preferred Printing Vendor Contract)	Posted: August 1, 2008
)	Mailed: August 1, 2008
)	
)	
)	

The South Carolina Consolidated Procurement Code grants the right to protest to any bidder who is aggrieved in connection with the solicitation or award of a contract. Printmasters Professional Printers, Inc. filed a protest of solicitation 6641 - Clemson University Preferred Printing Vendor Contract, issued by Clemson University. The Chief Procurement Officer for Information Technology (CPO) is issuing this decision without a hearing on the merits of the protest.

Findings of Fact

Clemson University posted the Intent to Award on July 15, 2008. (Attachment 2)
 Printmasters Professional Printers, Inc. filed its protest of the award on July 28, 2008. (Attachment 1)

Discussion

Section 11-35-4210 grants any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award of a contract the right to protest to the CPO within 10 days of the date of the notification of intent to award.

§11-35-4210(1)(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

Section 11-35-310 defines “days” as calendar days and prescribes the method to be used in computing statutory time frames as follows:

§11-35-310 (13) "Days" means calendar days. In computing any period of time prescribed by this code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

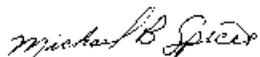
Clemson University posted its Intent to Award on July 15, 2008, which established the deadline for submitting a timely protest at the close of business on July 25, 2008. The Intent to Award had language at the top stating the award would become final on at 4:30 PM on July 25, 2008. The Procurement Review Panel has previously determined in Case No. 1988-13, In re: Protest of Oakland Janitorial, and many cases since, that the time to file a protest is jurisdictional and cannot be waived by conduct or consent of the parties. It is the responsibility of Printmasters to file a protest of the intent to award on or before July 25, 2008, in order to confer jurisdiction to review the merits of the protest. Printmasters Professional Printers, Inc. filed its protest of the award on July 28, 2008. Printmasters' protest is not filed within the time frame specified by law, and there can be no other conclusion than lack of jurisdiction to consider the merits of the protest..

Determination

The CPO lacks jurisdiction to address the merits of this protest.

Protest Denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

08/012008

STATEMENT OF THE RIGHT TO APPEAL

The South Carolina Procurement Code, under Section 11-35-4210, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten calendar days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the Panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site:

<http://www.state.sc.us/mmo/legal/lawmenu.htm>

FILING FEE: Pursuant to Proviso 66.1 of the 2004 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(4). . . . 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2004 S.C. Act No. 248, Part IB, § 66.1. **PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."**

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain 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).

Attachment 1

July 28, 2008

By email and by fax to:

Mike Nebesky
Clemson University Procurement Services
Administrative Services Building
Silas N. Pearman Boulevard
Clemson, SC 29634

Dear Mr. Nebesky:

This constitutes written notice of Printmasters Professional Printers, Inc.'s protest concerning Clemson University's solicitation number 6597, and amendment thereto in solicitation 6641.

This protest is pursuant to SC Code Ann, section 11-35-4210. This is notice to you is timely, in accordance with SC Code Ann, section 11-35-310 (13). Given the complexity of issues that Printmasters intends to raise, this protest will be amended, in accordance with the timeline established by SC Code Ann, section 11-35-4210(2)(b).

In that amendment, Printmasters will articulate such other and further grounds for its protest, and will elaborate on the probative facts and applicable law.

For purposes of this notice, Printmasters asserts the following points.

I. Grounds for Protest

1. Solicitation Number 6597, a request for Proposal, was issued on May 1, 2008. The cover includes a box, where the procurement officer has the opportunity to indicate if there will be a conference, and, if so, the type of conference as well as the date and time it will be held. The box is filled in on Solicitation Number 6597 and states, in bold-face type Mandatory Pre-Proposal Conference.

Printmasters noted the attendance of all who appeared at the Mandatory Pre-Proposal Conference. Printmasters asserts that the procurement officer is precluded from considering a bid from any *juris person* who failed to attend the Mandatory Pre-Proposal Conference. Printmasters is aware that certain of the successful bidders, whom the university intends to award preferred status, did not attend the Mandatory Pre-Proposal Conference.

Mike Nebesky
July 28, 2008
Page 2

The procurement officer does not have discretion to depart from the express requirements of the solicitation. The amendment to solicitation 6597 did not eliminate the requirement of attending the Mandatory Pre-Proposal Conference. The amendment enumerated changes in certain aspects of the solicitation, but it did not amend, waive, withdraw, rescind, or qualify the Mandatory Pre-Proposal Conference in any manner whatsoever.

2. Successful bidders offer printing projects that conflict with the overriding sustainability policies of Clemson Universities. The solicitation did not eliminate the university's express sustainability policies, and those policies are required to be read in *pari materia* with the terms and conditions set forth in the preferred printer solicitation documents.
3. Bidders with super-capacity were favored over bidders with adequate capacity to produce the print projects listed in the solicitation. Such preference is unjustified and denies other bidder the opportunity to compete on an even playing field. Further, when large presses are used to produce small size print projects, renewable resources are wasted. Such waste is inconsistent with the university's sustainability policies.
4. Additional grounds will be provided as an amendment to this written notice. I

II. Relief Requested

Printmasters is entitled, and request to be included among the preferred print vendors in all categories for which Printmasters has production capacity.

Respectfully,

Jim Sheets
Printmasters Professional Printers, Inc.

CLEMSON UNIVERSITY

Intent to Award

Posting Date: 07/15/2008

This is a statement of intent to award a contract and becomes the official statement of award effective 4:30 p.m. EST, July 25, 2008 unless otherwise suspended or canceled. 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. Clemson University assumes no liability for the expenses incurred by vendors prior to the effective date of the contract.

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this intent to award. Protest to be filed with:
Chief Procurement Officer
Information Technology Management Office
4430 Broad River Road
Columbia, SC 29210
Facsimile: 803-896-0789
E-Mail: protest-itmo@cio.sc.gov

Solicitation #: 6641
Issue Date: May 22, 2008
Opening Date: June 19, 2008
Description: Clemson University Preferred Printing Vendor Contract

Awarded To: See below by lot (7 pages total)

Lot 1a

Brochures / Programs / Media Guides - < 10,000 Color or <20,000 B/W Imprints

Martin Printing Company
PO Box 69
Easley, SC 29641

Electric City Printing
730 Hampton Rd
Williamston, SC 29622

The R.L. Bryan Company
301 Greystone Blvd.
Columbia, SC 29210

Professional Printers
1730 Old Dunbar Rd.
West Columbia, SC 29172

INDEXX, Inc
303 Haywood Rd.
Greenville, Sc 29607



CLEMSON

U N I V E R S I T Y

Lot 1b

Brochures / Programs / Media Guides - \geq 10,000 Color or \geq 20,000 B/W Imprints

Martin Printing Company
PO Box 69
Easley, SC 29641

Electric City Printing
730 Hampton Rd
Williamston, SC 29622

The R.L. Bryan Company
301 Greystone Blvd.
Columbia, SC 29210

Professional Printers
1730 Old Dunbar Rd.
West Columbia, SC 29172

INDEXX, Inc
303 Haywood Rd.
Greenville, Sc 29607

Lot 2a

Newsletters, Pamphlets, Post Cards, or other similar projects - 1 or 2 Color - $<$ 10,000 Color or $<$ 20,000 B/W Imprints

Martin Printing Company
PO Box 69
Easley, SC 29641

Electric City Printing
730 Hampton Rd
Williamston, SC 29622

The R.L. Bryan Company
301 Greystone Blvd.
Columbia, SC 29210

Professional Printers
1730 Old Dunbar Rd.
West Columbia, SC 29172

INDEXX, Inc
303 Haywood Rd.
Greenville, Sc 29607



CLEMSON

U N I V E R S I T Y

Lot 2b

Newsletters, Pamphlets, Post Cards, or other similar projects - 1 or 2 Color - >= 10,000 Color or >=20,000 B/W Imprints

Martin Printing Company
PO Box 69
Easley, SC 29641

Electric City Printing
730 Hampton Rd
Williamston, SC 29622

The R.L. Bryan Company
301 Greystone Blvd.
Columbia, SC 29210

Professional Printers
1730 Old Dunbar Rd.
West Columbia, SC 29172

INDEXX, Inc
303 Haywood Rd.
Greenville, Sc 29607

Lot 3a

Newsletters, Pamphlets, Post Cards, or other similar projects – 4 Color - < 10,000 Color or <20,000 B/W Imprints

Martin Printing Company
PO Box 69
Easley, SC 29641

Electric City Printing
730 Hampton Rd
Williamston, SC 29622

The R.L. Bryan Company
301 Greystone Blvd.
Columbia, SC 29210

Professional Printers
1730 Old Dunbar Rd.
West Columbia, SC 29172

INDEXX, Inc
303 Haywood Rd.
Greenville, Sc 29607



CLEMSON

U N I V E R S I T Y

Lot 3b

**Newsletters, Pamphlets, Post Cards, or other similar projects – 4 Color - >= 10,000
Color or >=20,000 B/W Imprints**

Martin Printing Company
PO Box 69
Easley, SC 29641

Electric City Printing
730 Hampton Rd
Williamston, SC 29622

The R.L. Bryan Company
301 Greystone Blvd.
Columbia, SC 29210

Professional Printers
1730 Old Dunbar Rd.
West Columbia, SC 29172

INDEXX, Inc
303 Haywood Rd.
Greenville, Sc 29607

Lot 4a

Displays / Signs / Banners - <= 500 ea

Martin Printing Company
PO Box 69
Easley, SC 29641

The Standard Register Company
140 Stoneridge Dr., Ste 380
Columbia, SC 29210

Printmasters Professional Printers
305 Industrial Dr.
Greenville, SC 20607

East Park Printing
PO Box 767
Clemson, SC 29633

Print It!
PO Box 1707
Seneca, SC 29679

Lot 4b

Displays / Signs / Banners - <= 500 ea

Not awarded due to lack of competition



CLEMSON

U N I V E R S I T Y

Alternates: per RFP, should one of the awarded vendors fail to perform, alternate vendors can replace them as a preferred vendor. Alternates may be given that opportunity based on order of ranking in RFP evaluation. Next three highest ranked Offerors per lot are listed as follows.

Lot 1a - Alternates

Brochures / Programs / Media Guides - < 10,000 Color or <20,000 B/W Imprints

- | | |
|---|--|
| #6) Powers Printing Company
PO Box 170685
Spartanburg, SC 29301 | #7) Printmasters Professional Printers
305 Industrial Dr.
Greenville, SC 20607 |
| #8) East Park Printing
PO Box 767
Clemson, SC 29633 | |

Lot 1b - Alternates

Brochures / Programs / Media Guides - >= 10,000 Color or >=20,000 B/W Imprints

- | | |
|---|--|
| #6) Powers Printing Company
PO Box 170685
Spartanburg, SC 29301 | #7) Print It!
PO Box 1707
Seneca, SC 29679 |
| #8) emediagroup
214 West McBee Ave
Greenville, SC 29601 | |

Lot 2a - Alternates

Newsletters, Pamphlets, Post Cards, or other similar projects - 1 or 2 Color - < 10,000 Color or <20,000 B/W Imprints

- | | |
|---|---|
| #6) Print It!
PO Box 1707
Seneca, SC 29679 | #7) emediagroup
214 West McBee Ave
Greenville, SC 20601 |
| #8) East Park Printing
PO Box 767
Clemson, SC 29633 | |



CLEMSON

U N I V E R S I T Y

Lot 2b - Alternates

Newsletters, Pamphlets, Post Cards, or other similar projects - 1 or 2 Color - >= 10,000 Color or >=20,000 B/W Imprints

- | | |
|---|--|
| #6) emediagroup
214 West McBee Ave
Greenville, SC 20601 | #7) Printmasters Professional Printers
305 Industrial Dr.
Greenville, SC 20607 |
| #8) Powers Printing Company
PO Box 170685
Spartanburg, SC 29301 | |

Lot 3a - Alternates

Newsletters, Pamphlets, Post Cards, or other similar projects – 4 Color - < 10,000 Color or <20,000 B/W Imprints

- | | |
|---|---|
| #6) Palmetto Graphics
15 Distribution Ct.
Greer, SC 29650 | #7) East Park Printing
PO Box 767
Clemson, SC 29633 |
| #8) emediagroup
214 West McBee Ave
Greenville, SC 29601 | |

Lot 3b - Alternates

Newsletters, Pamphlets, Post Cards, or other similar projects – 4 Color - >= 10,000 Color or >=20,000 B/W Imprints

- | | |
|---|---|
| #6) emediagroup
214 West McBee Ave
Greenville, SC 20601 | #7) Powers Printing Company
PO Box 170685
Spartanburg, SC 29301 |
| #8) Palmetto Graphics
15 Distribution Ct.
Greer, SC 29650 | |

Lot 4a - Alternates

Displays / Signs / Banners - <= 500 ea

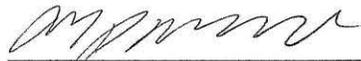
None



CLEMSON

U N I V E R S I T Y

Initial Contract Period: July 26, 2008 – July 25, 2009
Maximum Contract Period: July 26, 2008 – July 25, 2013



Director, Procurement Services



Procurement Services Department | Administrative Services Building | Silas N. Pearman Blvd
Clemson SC 29634-5365 | 864-656-2000 | fax 864-656-2394