

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

In the Matter of Protest of:

Horiba Instruments Incorporated

Clemson University  
Solicitation No. 33132599  
Particle Size Analyzer

**BEFORE THE CHIEF PROCUREMENT OFFICER**

DECISION

CASE NO.: 2012-148

POSTING DATE: March 6, 2013

MAILING DATE: March 6, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest received on November 2, 2012, from Michael C. Pohl, Vice President of Horiba Instruments Incorporated. (Horiba). With this invitation for bids (IFB), Clemson University attempts to procure a Particle Size Analyzer. Following evaluation of the bids, Clemson posted its Statement of Award to Shimadzu Scientific Instruments, Inc. Horiba protested the award, alleging:

We wish to officially protest your award of Solicitation 33132599, Particle Size Analyzer, to Shimadzu Scientific Instruments. Your bid *[sic]* listed the Horiba LA-950A2 or equivalent. We do not believe the Shimadzu SALD 3101, which was the winning offer, is equivalent to the LA-950A2.

Because the controlling issue in this case is a matter of law, this decision is prepared without a hearing.

**FINDINGS OF FACT**

The following dates are relevant to the protest:

1. On September 20, 2012, Clemson issued Solicitation No. 33132599.
2. On October 1, 2012, Clemson opened the bids received.
3. On October 23, 2012, Clemson posted a Statement of Award to Shimadzu for \$48,830. (Ex. 1)
4. On November 1, 2012, Horiba sent its protest to the Chief Procurement Officer via overnight delivery.
5. On November 2, 2012, the CPO received the protest.

## CONCLUSIONS OF LAW

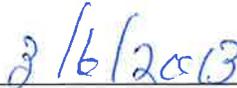
The Consolidated Procurement Code provides a right to protest to actual bidders who are aggrieved in connection with the intended award or award of a contract. S.C. Code Ann. § 11-35-4210(1)(b) (2011). The right to protest as described in § 11-35-4210 is a bidder's exclusive remedy against the State. § 11-35-4210(1)(c). Neither the protest right granted by subsection (1) of § 11-35-4210, nor the right to appeal to the Procurement Review Panel, is available for contracts with an actual or potential value of up to fifty thousand dollars. § 11-35-4210(1)(d). This contract award was for \$48,830. Accordingly, Horiba has no right to protest.

## DETERMINATION

For the foregoing reasons the protest is dismissed.



R. Voight Shealy  
Chief Procurement Officer  
For Supplies and Services



Date

Columbia, S.C.

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised January 2013)*

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>

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 83.1 of the 2012 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  
1105 Pendleton Street, Suite 202, 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.**

# CLEMSON

U N I V E R S I T Y

## Statement of Award

Posting Date: 10/23/2012

Solicitation #: 33132599  
Issue Date: 9/20/2012  
Closing Date: 10/1/2012  
Description: Particle Size Analyzer

**Awarded To:**

Shimadzu Scientific Instruments, Inc.  
7102 Riverwood Drive  
Columbia, MD 21046 USA

Evaluated Amount (Line Items 1 – 4 Total): \$48,830.00



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Michael J. Nebesky,  
Director, Procurement Services

