

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In Re: Protest of NaturChem, Inc.

CASE NO.: 2015-111

Protest of Award to Crops Production Services, Inc. to Furnish and Deliver Herbicide Application in Accordance with Solicitation for the South Carolina Forestry Commission, Solicitation No. # 5400008258

POSTING DATE: September 11, 2014

MAILING DATE: September 11, 2014

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation is to Furnish and Deliver Herbicide Application in Accordance with Solicitation for the South Carolina Forestry Commission. (FC) NaturChem, Inc. protests [Attachment 1] the award of a contract to Crops Production Services, Inc. [Attachment 2]

I am protesting this award, Solicitation 5400008258 based on certain criteria in the winners bid that was not filled out at the time of bid opening which I was present for with Mrs. Stukes and a witness from your office. Please let me know what needs to be done next.

The Chief Procurement Officer issues this ruling without a hearing.

Findings of Fact

Invitation For Quotes Published:	08/05/2014
Deadline for Quotes:	08/25/2014
Award Announced:	08/29/2014
Protest Received	09/11/2014

Discussion

This solicitation was issued under Section 11-35-1550, Small Purchase and the award amount is \$28,969.10. Section 11-35-4210(1)(d) limits protests to contracts with a total potential value greater than \$50,000.

Section 11-35-4210(1)(d) The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

In addition, Section 11-35-4210(1)(b) states that

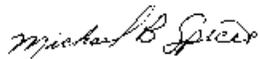
Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within **ten days** of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code;

The award of this contract was posted on August 29, 2014. The tenth day after posting was September 8, 2014 and the protest was received on September 11, 2014. If the protest were authorized under the Code, it was filed with the CPO outside the allowable time.

Determination

Protest of this award is not authorized under the South Carolina Consolidated Procurement Code. The Chief Procurement Officer lacks jurisdiction to address issues related to the protest of this award. Protest denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 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.

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 108.1 of the 2014 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**

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.

Attachment 1

From: Jonathan Black [mailto:jblack@NaturChem.Net]
Sent: Thursday, September 11, 2014 10:44 AM
To: Spicer, Mike
Cc: Istukes@scfc.gov; mfleming@scfc.gov; Skinner, Gail; Hutto, Kristen
Subject: RE: Case 2015-107 - Protest of NaturChem

I am protesting this award, Solicitation 5400008258 based on certain criteria in the winners bid that was not filled out at the time of bid opening which I was present for with Mrs. Stukes and a witness from your office. Please let me know what needs to be done next.

Jonathan Black
Senior Sales

NaturChem, Inc.
270 Bruner Road
Lexington, SC 29072
Office: (803) 957-8989
Mobile: (803) 361-5267
Fax: (803) 957-1043
jblack@naturchem.net
www.naturchem.net

Being passionate about what you do or about your beliefs may cause friction. Most others, however, will be drawn to your conviction, determination, and aggressive approach to making the difference.

Attachment 2

STATE OF SOUTH CAROLINA
 SOUTH CAROLINA FORESTRY COMMISSION
 5500 BROAD RIVER ROAD
 COLUMBIA, SOUTH CAROLINA 29212

Statement of Award

Posting Date: August 29, 2014

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina consolidated Procurement Code applies to this award. Protest to be filed with:

Chief Procurement Officer
 Materials Management Office
 1201 Main Street, Suite 600
 Columbia, SC 29201
 Facsimile: 803 737-0639
 Email: protest-mmo@mmo.state.sc.us

The State awards the contract(s) noted below. This document is the final Statement of Award, effective **8:00:00, August 29, 2014**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

Solicitation : 5400008258
Issue Date : 8/5/2014
Opening Date : 8/25/2014 10:00 am local time
Description : Furnish and Deliver Herbicide Application in Accordance with Solicitation

Awarded To : Crops Production Services, Inc..
 432 Peachland Dr.
 Gilbert, SC 29054

Evaluated Amount : \$28,969.10
Total Potential Value : \$28,969.10
Contract Number : 5400008258

Item	Quantity	Unit of Measure	Unit Price	Extended Price
1	162	ACRES	64.63	10,470.06
Product Catg.: 02046 – Herbicide Insecticide Fungicide Applicator & Dist				
Item Description: HERBICIDE APPLICATION TO APPROX 162 ACRE				
Item	Quantity	Unit of Measure	Unit Price	Extended Price
2	398	ACRES	46.48	18,499.04
Product Catg.: 02046 – Herbicide Insecticide Fungicide Applicator & Dist				
Item Description: HERBICIDE APPLICATION TO APPROX 398 ACRE				

Lenora Stukes
South Carolina Forestry Commission

cc: file
 vendors