

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE  
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

MICHAEL B. SPICER  
INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

## Protest Decision

**Matter of:** AgCentral CO-OP

**Case No.:** 2017-139

**Posting Date:** May 3, 2017

**Contracting Entity:** Clemson University

**Solicitation No.:** 81824461

**Description:** Robotic Milker System

### DIGEST

Protest of award without specific grounds is denied. AgCentral CO-OP's (AgCentral) letter of protest is included by reference. [Attachment 1]

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

---

<sup>1</sup> The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

## BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	02/03/2017
Intent to Award Issued	04/17/2017
Protest Received	04/19/2017

## ANALYSIS

This Request for Proposal was issued by Clemson University (Clemson) to acquire a robotic milker system. Proposals were received on February 24, 2017, and an Intent to Award to Southeast Ag Services, Inc. was posted on April 17, 2017. AGCentral sent an email to the MMO Protest address on April 19, 2017. The message stated in its entirety:

To whom it may concern, *[sic]* would like to protest this award until we have more information on ranking and pricing of equipment. AgCentral Coop was the lowest bid with the most experience in Delaval robotic milking.  
Please contact me asap.

Section 11-35-4210(1)(b) stipulates:

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.

AgCentral submitted its initial bid in accordance with this requirement. Section 11-35-4210(2)(b) further provides that the initial protest may be amended anytime up to fifteen days after the Intent to Award is published and requires the protest to set forth the grounds of the protest and the relief requested:

A protest pursuant to subsection (1)(b) must be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b). At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b). **A protest,**

**including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.**

(emphasis supplied) Clemson published the Intent to Award on April 17, 2017. AgCentral did not amend its protest within the fifteen days allowed.

This was a Request for Proposal which included evaluation criteria other than price as follows:

**1. AWARD CRITERIA:** Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation the is complete, all responsive Offertory will be ranked from most advantageous to least advantageous. The degree, completeness, and suitability of the Offeror's proposed technical solutions to meet or exceed the requirements of this RFP.

- Comprehensive solution for robotic milking system
- Response time, reliability and service needs
- Cost
- Warranty/Maintenance Agreement
- Training Program

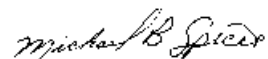
[Scope of Work, Page 8]

AgCentral does not allege a flaw in the evaluation or other violation of the Code. Simply asserting that its price was lowest and it has the most experience fails to state a claim for which the CPO can grant relief.

## **DECISION**

For the reasons stated above, the protest of AgCentral CO-OP is dismissed.

For the Materials Management Office



---

Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**From:** [Eric Risser](#)  
**To:** [Protest-MMO](#)  
**Subject:** Robtic bid  
**Date:** Wednesday, April 19, 2017 3:42:47 PM  
**Attachments:** [Intent\\_to\\_Award\\_-\\_81824461-1 \(3\).pdf](#)

---

To whom it may concern, would like to protest this award until we have more information on ranking and pricing of equipment. AgCentral Coop was the lowest bid with the most experience in Delaval robotic milking.

Please contact me asap

*Eric Risser*

423-368-7753 cell

800-467-2150 office



920 North Congress Pkwy

Athens, TN 37303

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised November 2016)*

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 111.1 of the 2016 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 473, 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.**