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Protest Decision

Matter of: Crop Production Services, Inc.
Case No.: 2018-121
Posting Date: October 18, 2017
Contracting Entity: South Carolina Department of Corrections
Solicitation No.: 5400014100
Description: DynaGro Wheat Seed

DIGEST

Protest of award less than \$50,000 is denied. Crop Production Services' (CPS) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ 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.

¹ 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	08/28/2017
Statement of Award Issued	10/06/2017
Protest Received	10/11/2017

ANALYSIS

The South Carolina Department of Corrections (DOC) issued this Invitation For Bids (IFB) for DynaGro Wheat Seed on August 28, 2017 and posted a Statement of Award to Meherrin Agricultural & Chemical Co on October 6, 2017. [Attachment 2] CPS protested the award on October 6, 2017, in the amount of \$22,226.40, alleging that the awarded products do not to meet the specifications. The South Carolina Consolidated Procurement Code authorizes the Chief Procurement Officer to conduct an administrative review of the protest of any actual bidder, offeror, contractor, or subcontractor except as provided for in Section 11-35-4210(1)(d) as follows:

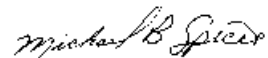
The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

(emphasis added) In this case, the total potential value of the contract is \$22,226.40, consequently the Chief Procurement Officer lacks jurisdiction to review CPS' issues of protest.

DECISION

For the reasons stated above, the protest of Crop Production Services, Inc. is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Will Barnette](#)
To: [Spicer, Michael](#)
Subject: Protest of award for Bid 5400014100
Date: Wednesday, October 11, 2017 8:03:14 AM
Attachments: [image001.png](#)
[Wheat seed protest.docx](#)
[Wheat bid protest info.pdf](#)

Mr. Spicer,

In response to the award for bid # 5400014100, wheat seed, Crop Production Services would like to formally protest the award due to the awarded products inability to meet the specifications that were required in the bid. Please see the attachments that outline the inadequacies of the varieties that were awarded, as well as, the technical sheets for those varieties.

I have also attached the varieties that exactly meet the requirements specified in the bid. Please feel free to contact me if you have any questions.

Best regards,

Will Barnette

CPS – Bishopville



(C) 803.486.0325

(O) 803.484.9426

(F) 803.484.5868

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http://www.agrium.com/email_footer_fr.jsp

To whom it may concern:

In response to the award for bid #5400014100, Wheat Seed, Crop Production Services would like to formally protest the award due to the awarded products inability to meet the specifications that were required in the bid.

SH 7200 (Line item 2)

- Has no resistance to H13 gene expression for Hessian fly or level of resistance
- Is average, not above average for Soil-Borne Mosaic Virus
- It is an awned variety, not awnless
- Does not have information on its winter hardiness or straw strength
- It has no rating for Stagnospora Glume Blotch
- It is average, not above average for Fusarium Head Scab
- It has no information on its responsiveness to foliar fungicide, head scab fungicides, high-intensive nitrogen applications
- It has no information on the type of land the wheat should be grown on

SH 4300 (Line item 1)

- There is no information regarding straw strength, its tillering ability, its 15" row widths compatibility or its winter hardiness
- No indication on how this variety reacts to foliar fungicide or head scab fungicide applications
- It has no rating at all for hessian fly (A number reflects rating), so it cannot have an above average rating as required in bid
- It has below average ratings for Leaf Rust and Stripe Rust (Bid states above average ratings for these two characteristics)
- There is no information regarding high-intensive nitrogen applications

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- There is no information regarding the land type the wheat should be grown on
- It has no rating for Stagnospora Glume Blotch

I have attached the technical sheets for the varieties of concern. I have also attached the varieties that do meet the specs exactly as they were written in the bid. Thank you for your attention and if you have any questions, please feel free to contact me at your convenience.

Will Barnette

Cell: 803.486.0325

Office: 803.484.9426

Email: will.barnette@cpsagu.com



Attachment 2



South Carolina Department of Corrections
4420 Broad River Rd
Columbia, SC 29210

STATEMENT OF AWARD

Posting Date: October 6, 2017

Solicitation : 5400014100
Issue Date : 08/13/2017
Opening Date : 09/25/2017 @ 10 AM
Description : Wheat Seed

Awarded To: Meherrin Agricultural & Chemical Co
P.O. Box 508
Bowman, SC 29018
(803) 829-2601
DHUTTO@MEHERRINAG.COM
Vendor 7000129096

Evaluated Amount: \$ 22,226.40
Awarded Amount: \$ 22,226.40

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	21.000	each	\$529.20	\$11,113.20
Product Catg.: 79015 - Field Seeds: Grains etc.				
Item Description: Wheat Seed (40 Unit Mini Bulk) Southern Harvest SH4300 <ul style="list-style-type: none">• Must be certified Soft Red Winter Wheat Seed.• Delivered to 8200 State Farm Road Rembert, South Carolina.• Bulk packaged in approximately 2000 pound containers.• Total number of containers is 21.• Must be delivered by October 15, 2017.• Medium maturity variety with resistance for Hessian Fly and Stripe rust.• Bearded with medium height and very good straw strength.• Excellent tillering ability.• Compatible with 15" planting row widths.• Highly responsive to foliar fungicide applications• Highly responsive to head scab fungicide applications.• Excellent winter hardiness.• Very good test weight.• Above average disease rating for Hessian Fly.• Above average disease rating for Leaf Rust.				

- Above average disease rating for Stripe Rust.
- Above average disease rating for Powdery Mildew.
- Above average disease rating for Septoria Leaf Blotch.
- Above average disease rating for Stagnospora Glume Blotch.
- Above average disease rating for Barley Yellow Dwarf Virus.
- Highly responsive for High-Intensive Nitrogen Applications.
- Recommended for sand to sandy loam soils.
- Highly recommended for silt loam to loams soils.
- Recommended for clay loam to clay soils.
- Recommended for poorly drained soils.

*******Line Item 1 must have the following Salient factors:**

- **Must have above average disease rating for Hessian Fly and**
- **Must have above average rating for Barley Yellow Dwarf Virus.**

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0002	21.000	each	\$529.20	\$11,113.20

Product Catg.: 79015 - Field Seeds: Grains etc.

Item Description: Wheat Seed (40 Unit Min Bulk) Southern Harvest SH7200

- Must be certified Soft Red Winter Wheat Seed.
 - Delivered to 8200 State Farm Road Rembert, South Carolina.
 - Bulk packaged in approximately 2000 pound containers.
 - Total number of containers is 21.
 - Must be delivered by October 15, 2017.
 - H13 gene expression for Hessian Fly resistance.
 - Highly resistant to Soil Borne Mosaic Virus.
 - Medium-Early maturity.
 - Awnlett head type.
 - Excellent test weight and very good straw strength.
 - Very Good winter hardiness.
 - Above average disease resistance to Leaf Rust.
 - Above average disease resistance to Stripe Rust.
 - Above average disease resistance to Powdery Mildew.
 - Above average disease rating for Septoria Leaf Blotch.
 - Above average disease rating for Stagnospora Glume Blotch.
 - Above average disease rating for Barley Yellow Dwarf Virus.
 - Above average disease rating for Fusarium Head Scab.
 - Highly responsive to foliar fungicide applications.
 - Highly responsive to head scab fungicide applications.
 - Highly responsive for High-Intensive Nitrogen Applications.
 - Recommended for sand to sandy loam soils.
 - Highly recommended for silt loam to loams soils.
 - Highly recommended for clay loam to clay soils.
 - Recommended for poorly drained soils.
- *****Line Item 2 must have the following Salient factors:**
- **Must have H13 gene expression for Hessian Fly resistance**
 - **Must have above average disease rating for Barley Yellow Dwarf Virus**

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Buyer: Laurie Branham

Director of Procurement: Ruthie Bishop, CPPB

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised September 2015)

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 2015 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 209, 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.