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Protest Decision

Matter of: Crop Production Services, Inc.

Case No.: 2018-167

Posting Date: May 31, 2018

Contracting Entity: South Carolina Department of Corrections

Solicitation No.: 5400015354

Description: Soybean Crop Chemicals

DIGEST

Protest alleging improper award is granted in one instance and denied in a second instance. Crop Production Services' (CPS) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file 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

Event	Date
Solicitation Issued	03/16/2018
Bids Received	04/02/2018
Intent to Award Issued	04/19/2018
Protest Received	04/20/2018

ANALYSIS

The South Carolina Department of Corrections (DOC) issued this Invitation for Bids on March 16, 2018, for soybean crop chemicals. The solicitation requested pricing for thirteen line items with award made by line item. Twelve line items were for brand name or equal products including the salient features required to be considered equal.² CPS protests the award of line item four to Helena Chemical and the award of line item eight to Meherrin Agricultural & Chemical Co. as follows:

I would like to protest the award of 2 line items on this bid. Line item # 4 “Radiate” and line item # 8 “Borosol” are both proprietary chemicals to Crop Production Services. Therefore, neither Helena Chemical nor Meherrin Chemical have access to these two chemicals for which they bid as brand offered. I would like to formally protest the award for both of these line items based on this information.

² Regulation 19-445.2140(2) provides for the issuance of brand name or equal specification as follows:

"Brand Name or Equal Specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.

The Procurement Review Panel has observed:

Where a purchase description is used, bidders must be given the opportunity to offer products other than those specifically referenced if those other products will meet the needs of the State in essentially the same manner as those referenced. It should always be clear that a “Brand-Name or Equal” description is intended to be descriptive not restrictive and is merely to indicate the quality and characteristics of the product that will be satisfactory and acceptable. Products offered as equal must, of course, meet fully the salient characteristics and product requirements listed in the Invitation for Bids.

Line Item 0004 requested pricing for brand named herbicide Radiate or equal. After receipt of the protest, DOC sought clarification from Helena Chemical and determined that the Radiate product Helena bid was actually a root stimulator not an herbicide. [Attachment 2] As it turns out, Radiate, the herbicide, is not available in the United States. This issue of protest is granted, the award to Helena Chemical is cancelled, and the procurement of line item four is remanded to DOC for procurement in accordance with the Code.

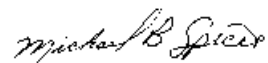
Line Item 0008 requested pricing for brand name “Soluble Polyporate Liquid Borosol” or equal. The solicitation did not list any additional acceptable brand name products, but did include a list of salient ingredients: Boron (B), 10%. Meherrin Agricultural & Chemical Co. bid “Liquid Boron 10%,” the salient ingredient, and was considered equal to Borosol. DOC posted an Intent to Award to Meherrin for line item eight mistakenly listing the brand name “Borosol” instead of the “Liquid Boron 10%” that was actually bid.

This solicitation employed a brand name or equal specification as authorized by the Code and Regulations. The Liquid Boron 10% bid by Meherrin met the salient features listed in the solicitation and was properly determined to be equal. DOC is directed to amend the award statement to reflect the product actually bid. This issue of protest is denied.

DECISION

For the reasons stated above, the first issue of protest by Crop Production Services, Inc. is granted, and the second issue of protest is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Will Barnette](#)
To: [Protest-MMO](#)
Subject: Statement of award for Soybean crop chemicals Bid # 5400015354
Date: Friday, April 20, 2018 9:34:11 AM
Attachments: [image001.png](#)

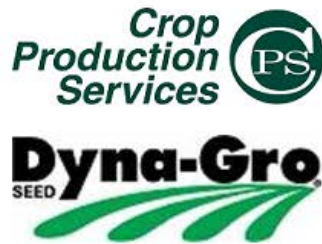
To whom it may concern;

I hope you are well today. I would like to protest the award of 2 line items on this bid. Line item # 4 "Radiate" and line item # 8 "Borosol" are both proprietary chemicals to Crop Production Services. Therefore, neither Helena Chemical nor Meherrin Chemical have access to these two chemicals for which they bid as brand offered. I would like to formally protest the award for both of these line items based on this information. Please contact me for any further questions or information. Thank you for your time and have a nice day.

Best regards,

Will Barnette

CPS – Bishopville



(C) 803.486.0325

(O) 803.484.9426

(F) 803.484.5868

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Attachment 2

From: [Myrtle Dewerd \(C054343\)](#)
To: [Spicer, Michael](#)
Cc: [Ruthie Bishop \(C045688\)](#)
Subject: RE: In the Matter of the Protest of Crop Production Services, Cse 2018-167
Date: Friday, May 04, 2018 12:08:44 PM
Attachments: [5400015354_FullBid.rtf](#)
[5400015354_Intent.doc](#)
[Line0004Docs.pdf](#)
[Line0008Docs.pdf](#)

Good Morning Mr. Spicer,
 In review of this protest I have found the following and would like to proceed with an Amended Award and I would like to ask the protesting vendor to withdraw his protest based on the following;

Line 0004 Radiate

The Solicitation Specification Reads:

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0004	5.000	Case		
Product Catg.: 02046 - Herbicide Insecticide Fungicide Applicator & Dist				
Item Description: Herbicide - Radiate				
Tendering Text: Herbicide – Radiate or equal Quantity: 5 cases (1 gal x 4) Item Specs: Contains 150 g/Litre picloram and 225 g/litre clopyralid, both as the monoethanolamine salt, in the form of a soluble concentrate.				
Salient Factor 150 g/Litre picloram and 225 g/litre clopyralid, both as the monoethanolamine salt				

I did not request the descriptive literature before award as the low bid vendor entered “Radiate” (as specified). Once protest was filed I contacted the awarded vendor (Helena Chemical) for his descriptive literature and explanation – the literature he offered “Radiate” is not the chemical analysis described in our solicitation pasted above. This “Radiate” is a root stimulator not a herbicide. (see attachment) This vendor indicated this was the Radiate the farm has always purchased in the past and he did not realize we were asking for the herbicide. The herbicide described in our solicitation is not available in the USA (banned). With this information I contacted the protesting vendor and was told the same thing, they offered the root stimulator not the herbicide as it is not available. Both vendors offered “Radiate” the root stimulator not the Herbicide. Both vendors supplied me their descriptive literature for the same thing. Upon contacting the Wateree Farm whom entered the specifications they also indicated they did not mean to enter a herbicide and had always used a root stimulator. They did not realize there were (2) different products with the same name. The SCDC originator pulled the wrong specification information and they do not want nor could they obtain what is specified as it cannot be purchased in USA. “Radiate” in the USA is a widely used Root Stimulator not a herbicide. I would like to amend the award as Line 0004 No Award (incorrect product specification).

I have attached the information for this as Line0004Docs.

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
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0004	5.000	Case		
Product Catg.: 02046 - Herbicide Insecticide Fungicide Applicator & Dist				
Item Description: Herbicide - Radiate				
Tendering Text: Herbicide – Radiate or equal Quantity: 5 cases (1 gal x 4) Item Specs: Contains 150 g/Litre picloram and 225 g/litre clopyralid, both as the monoethanolamine salt, in the form of a soluble concentrate. <i>Salient Factor</i> 150 g/Litre picloram and 225 g/litre clopyralid, both as the monoethanolamine salt				

Line 008 Boron

The Solicitation Specification Reads:

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0008	2.000	each		
Product Catg.: 02046 - Herbicide Insecticide Fungicide Applicator & Dist				
Item Description: Soluble Polyborate Liquid - Borosol				
Tendering Text: Soluble Polyborate Liquid – Borosol or equal Quantity: 2 totes(275 gal) Item Specs: Boron (B)10.00% Derived from: Boric Acid Contains 1.1 pounds of Boron per Gallon <i>Salient Factor</i> Boron (B)10.00%				

The Award Reads:

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0008	2.000	each	\$2,334.75	\$4,669.50
Product Catg.: 02046 - Herbicide Insecticide Fungicide Applicator & Dist				
Item Description: Soluble Polyborate Liquid - Borosol				
Tendering Text: Soluble Polyborate Liquid – Borosol Quantity: 2 totes(275 gal) Item Specs:				

Boron (B)	10.00% Derived
from: Boric Acid Contains 1.1 pounds of Boron per Gallon	
<i>Salient Factor</i>	
Boron (B)	10.00%
Brand Offered: Borosol	

This awarded Line item 00008 must be amended as the awarding vendor offered Liquid Boron 10% - when the award was typed the brand was incorrectly entered as Borosol – The brand should have been entered as Liquid Boron 10% - an approved equal. I have attached the information for this as Line0008Docs

Please advise if I may proceed.

Thank You.

Myrtle K. Dewerd
Procurement Manager
SC Department of Corrections
Purchasing Division
Columbia, SC 29210
(803) 896-8582 tele
(803) 896-1223 fax
Dewerdmmyrtle@doc.sc.gov / www.doc.sc.gov / www.procurement.sc.gov

From: Spicer, Michael [mailto:mspicer@mmo.sc.gov]
Sent: Monday, April 23, 2018 8:27 AM
To: Myrtle Dewerd (C054343) <Dewerdmmyrtle@doc.sc.gov>
Cc: Skinner, Gail <GSkinner@mmo.sc.gov>; Vaughan, Letia <lvaughan@mmo.sc.gov>; Robertson, Dixon <drobertson@ogc.sc.gov>; Grier, Manton <mgrier@ogc.sc.gov>; Ruthie Bishop (C045688) <Bishop.Ruthie@doc.sc.gov>
Subject: In the Matter of the Protest of Crop Production Services, Cse 2018-167

***** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. *****

Please note the attached protest and proceed in accordance with the Code.



Michael B. Spicer | Information Technology Management Officer
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896-5225 | mspicer@mmo.sc.gov

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 367, 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.