

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
)
)
)
IN THE MATTER OF: BID PROTEST)
)
NUCOR BUILDING SYSTEMS -)
SWANSEA)
)
v.)
)
SOUTH CAROLINA DEPARTMENT)
OF CORRECTIONS)
)
WATEREE RIVER CORRECTIONAL)
INSTITUTE FARM DAIRY)
EXPANSION MILKING CENTER)
PROJECT N04-9674-MJ-C)
_____)

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

WRITTEN DETERMINATION

CASE NO. 2010-002

**POSTING DATE:
NOVEMBER 2, 2009**

Based on the attached request from Jon Ozmit, Director of the South Carolina Department of Corrections (DOC), I find that it is in the best interest of the state that the solicitation and award of this procurement shall not be delayed.

With this invitation for bids, DOC attempts to procure a contract for construction of a milking parlor and milk processing building to be located at the Wateree River Correctional Institute Farm Dairy. The milking parlor and milk processing building constitutes the third and final phase of a project to expand a milking center to accommodate 1,500 cows versus the 350 cows the dairy operation currently accommodates.

The following dates and facts are relevant to this decision:

1. On September 7, 2009, DOC advertised for bids to construct the Project.
2. Included in the bid documents were specifications for the Metal Building System that is a part of the project. These specifications include a list of six approved metal building system manufactures. Nucor is not included on the list of approved manufacturers.
3. On October 9, 2009, Nucor Building Systems-Swansea (Nucor) protested DOC's decision not to list Nucor as an approved metal building supplier staying further action on the solicitation.
4. On October 28, 2009, the CPOC conducted a hearing on Nucor's protest.

5. On October 29, 2009, the CPOC received DOC's request to lift the automatic stay of the procurement during protest. This request set forth the following grounds for lifting the stay:

- a. DOC has a construction loan to pay for the construction of the project and is making monthly interest payments on the loan of \$29,000 a month.
- b. Major milking and processing equipment that is to be housed in the milking center has started arriving on-site.
- c. If the project is not completed in a timely manner, 1,000 cows will be arriving on-site with no place to be milked.
- d. Each month of delay in the project will cost DOC \$241,000 in lost revenue

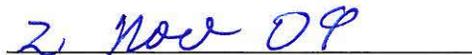
7. On November 2, 2009, the CPOC posted his decision on the protest wherein he denied the protest. The CPOC's decision is incorporated herein by reference.

Upon further consultation with DOC, the CPOC confirmed that DOC is currently making interest payments out of its operating budget. DOC can ill afford to divert much needed funds from its operating budget to make additional interest payments resulting from delay in the project.

In addition to the above factors, the monthly lost revenue due to delay is 61% of the estimated building package cost. From the time the Nucor filed its protest until the time the period to appeal the CPOC's decision ends, DOC will have incurred one month's delay. An appeal will result in at least another two months delay. Based on the foregoing information provided by DOC, if there is further delay, the state will lose far more in monthly revenue than the estimated value of the metal building package over which Nucor is protesting.¹

Based on the foregoing, the CPOC finds that solicitation and award of the contact without further delay is necessary to protect the best interest of the State. Left unprotected, the State will continue to incur significant losses.


John St. C. White
Chief Procurement Officer for Construction


Date

Columbia, South Carolina

¹ DOC's architect estimates the metal building package at \$395,000.

STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:

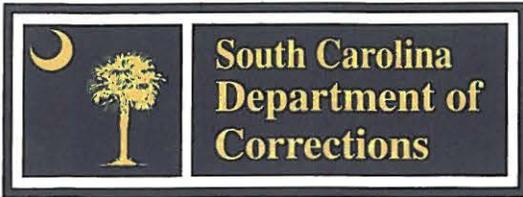
(b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

Copies of the Panel's decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Requests 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 2008 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(4). . . . 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an action before the Panel, a business must retain 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).



MARK SANFORD, Governor
JON OZMINT, Director

October 29, 2009

RECEIVED
OCT 30 2009
STATE ENGINEER

Mr. John St. C. White, PE
Chief Procurement Officer for Construction
Office of State Engineer (OSE)
1201 Main St, Suite 600
Columbia, SC 29201

RE: Wateree River CI – Dairy Expansion N04-9674-MJ-C
Lifting the Stay during Nucor’s Protest Period

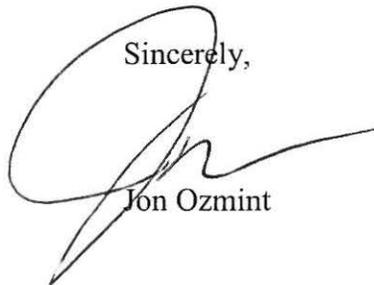
Dear Mr. White:

The South Carolina Department of Corrections (SCDC) is requesting the Office of State Engineer to lift the current stay on the solicitation process of the Wateree River CI Dairy Expansion – Milking Center.

Time is of the essence for the Dairy project. SCDC has started making interest payments on the construction loan at \$29,850 a month. Major pieces of equipment (total installed value of \$1.8M) have started arriving on-site for the milking parlor and processing areas and the bids have not even been taken for the general contractor. Construction of the tunnel barns is on-going and 1,000 cows will be arriving on-site with no place to be milked. Each month of delay will cost us \$241,000 of lost revenue. These funds are budgeted to cover loan payments.

It is critical the solicitation process continue without further delay for the selection of the milking center general contractor for this is in the best interest of the State and the Agency.

Sincerely,



Jon Ozmint

JO/ndh

cc: Ms. Gerri Miro
Mr. John Harmon