

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Austin Drilling

Department of Corrections
RFQ # 5400007931

Irrigation Well

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2014-127

POSTING DATE: July 14, 2014

MAILING DATE: July 14, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed June 12, 2014 by Donald S. Austin, President, Austin Drilling (Austin) under authority of South Carolina Code Section 11-35-4210. With this request for quotations (RFQ), the Department of Corrections (SCDC) attempts to procure drilling an irrigation well. After evaluating the quotations, on June 3, 2014, SCDC posted a Statement of Award to AAA Well Drilling. Austin protested.

As the issues to be decided are statutory, the CPO makes this decision without the benefit of a hearing, based upon an administrative review of the protest letter and the procurement file.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On May 20, 2014, SCDC issued Request for Quotations (RFQ) for an irrigation well pursuant to the small purchases procedures provided for in S.C. Code Ann. § 11-35-1550 (2011). [Ex. 1]
2. On May 28, 2014, SCDC issued Amendment #1. [Ex. 2]
3. On May 29, 2014, DHHS opened the quotations.

4. On June 3, 2014, SCDC issued its Statement of Award to AAA Well Drilling for:
- | | |
|---------------------------------------------------------------------|--------------|
| a. Item 1 - Drill 8" Agricultural Irrigation Well, 240 Feet | \$38,160 |
| b. Item 2 - Cost to drill per foot under 240 ft but not over 350 ft | \$45.00/foot |

[Ex. 3]

5. On June 12, 2014, Austin protested the Statement of Award.

CONCLUSIONS OF LAW

The Consolidated Procurement Code, which grants bidders the privilege to protest, reads as follows:

(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(b) 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.

(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.

Section 11-35-4210(A) (1) Right to Protest; Exclusive Remedy (emphasis supplied). By the time Mr. Austin filed his protest, SCDC had already issued its Statement of Award, which established that the actual value of the solicitation was \$38,160 for a well 240 feet deep plus \$45.00 per foot for any depth greater than 240 feet, but less than 350 feet. Even if the additional depth is added,

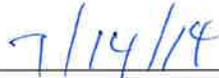
the total potential award would be \$43,110 [\$38,160 + \$4,950 (110 feet x \$45/foot)]. Since the actual value of the contract is less than \$50,000, the CPO lacks jurisdiction to consider the matter. *Appeal by Appraise Sell, LLC*, Panel Case No. 2010-8.

DETERMINATION

For the reasons stated above, the protest of Austin Drilling is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

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 2013 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.

Austin Drilling Inc.
2584 Fish Hatchery Rd.
West Columbia, SC 29172
Tel: 803-926-5402 Fax: 803-926-5401
Email: email@austindrilling.com

June 12, 2014

Attn: Voight Shealy

Ref- Solicitation: 5400007931
SC Dept. of Corrections

Protest for Irrigation Well bid award

Austin Drilling Inc. would like to protest the bid award for the irrigation well, solicitation #5400007931 with the SC Dept. of Corrections.

The bid specs on the 2nd solicitation were not clear on the unit quantity.

It states 240 TDH. TDH is a term for total dynamic head used in sizing for submersible pumps.

In this solicitation, it states 240 TDH as the drilling depth, listed under quantity.

It also states, that the depth could go to 350 feet.

The drilling depth should have been 350 feet, as stated in the description.

In the first solicitation, 350 feet was listed as the quantity but not as the quantity in the 2nd solicitation.

Donald S. Austin

President

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MMO OFFICE