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Protest Decision

Matter of: Crop Production Services

Case No.: 2017-127

Posting Date: December 5, 2016

Contracting Entity: SC Department of Corrections

Solicitation No.: 5400012333

Description: Corn Seed for Department of Corrections' Wateree Farm

DIGEST

Protest of an award based on failure of protestant to received notification of solicitation publication 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	10/27/2016
Intent to Award Issued	11/28/2016
Protest Received	11/30/2016

ANALYSIS

The South Carolina Consolidated Procurement Code (Code) grants any actual bidder, offeror, contractor, or subcontractor the right to protest the award or intended award of a contract. S.C. Code Ann. §11-35-4210(1)(b). This Invitation for Bids was issued by the South Carolina Department of Corrections (DOC) October 27, 2016, to acquire Corn Seed for the Wateree Farm. Section 11-35-1520(3) requires advertisement of the publication of solicitations as follows:

Notice. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in 'South Carolina Business Opportunities' or a means of central electronic advertising as approved by the designated board office.

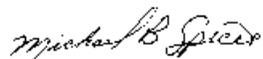
The solicitation was advertised in South Carolina Business Opportunities (SCBO) on October 28, 2016.

As stated in its protest, CPS was unaware of the publication of this solicitation and did not submit a bid. The Bid Tabulation reflects two bidders neither of which is CPS. (Attachment 2) Consequently, CPS is not an actual bidder and lacks standing to protest this award.

DECISION

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

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: barnettwp@gmail.com
To: [Protest-MMO](#)
Subject: Corn seed bid # 5400012333
Date: Wednesday, November 30, 2016 11:01:48 AM

To whom it may concern:

I am protesting this award due to the fact that I was unaware of the solicitation being released for bid. Ever since I have signed up on the procurement website with my name and company, I have received an email informing me of a solicitation being put out for bid. However, for some reason, I never received an email informing me of this solicitation. I was hoping for an amendment to the bid for an extension.

Thank you for your consideration.

Thanks,
Will

Attachment 2

Requisition # 5400012333
 Date: 11/15/2016
 Opened By: Rebecca Long

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS TABULATION FORM

Description: Corn Seed/Waterree
 Buyer: Melissa Mims
 Read By: Rebecca Long

VENDOR NAME				MeherrIn Agri			So. States Coop		
ITEM	Description	QTY	UOM	Unit Price	Extended Price	Preferences	Unit Price	Extended Price	Preferences
1	DeKalb 67-88 Corn Seed - Must be bid as Specified; • Price will include delivery • Need 200 bags-- each bag is 50 lbs with 80,000 seed count • Delivered to Waterree Farm, 8200 State Farm Road, SC 29128 • Quantity requested can be delivered all at one time	200.000	ea	\$198.00	\$39,600.00	RVP / USEP	\$192.00	\$38,400.00	RVP / USEP
2	DeKalb 67-72 Corn Seed - Must be bid as Specified; • Price will include delivery • Need 65 bags-- each bag is 50 lbs with 80,000 seed count • delivered to Waterree Farm, 8200 State Farm Road, SC 29128 • Quantity requested can be delivered all at one time	65.000	ea	\$243.00	\$15,795.00	RVP / USEP	\$234.00	\$15,210.00	RVP / USEP
3	DeKalb 64-35 Corn Seed - Must be bid as Specified • Price will include delivery • Need 60 bags-- each bag is 50 lbs with 80,000 seed count • delivered to Waterree Farm, 8200 State Farm Road, SC 29128 • Quantity requested can be delivered all at one time	60.000	ea	\$273.00	\$16,380.00	RVP / USEP	\$262.00	\$15,720.00	RVP / USEP
4	DeKalb 64-69 Corn Seed - Must be bid as Specified • Price will include delivery • Need 95 bags-- each bag is 50 lbs with 80,000 seed count • delivered to Waterree Farm, 8200 State Farm Road, SC 29128 • Quantity requested can be delivered all at one time	95.000	ea	\$226.00	\$21,470.00	RVP / USEP	\$218.00	\$20,710.00	RVP / USEP
5	DeKalb 67-55 Corn Seed - Must be bid as Specified • Price will include delivery • Need 120 bags-- each bag is 50 lbs with 80,000 seed count • delivered to Waterree Farm, 8200 State Farm Road, SC 29128 • Quantity requested can be delivered all at one time	120.000	ea	\$209.00	\$25,080.00	RVP / USEP	\$202.00	\$24,240.00	RVP / USEP
TOTAL			ea		\$118,325.00			\$114,280.00	

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
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.