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July 25, 2014

Via Electronic Mail [cgaetano@cnaservices.org] and USPS Regular Mail

Caryn Gaetano
Business Development Manager
ACCSES NJ/CNA Services
150 West State Street, Suite 120
Trenton, NJ 08608

RE: Protest of Notice of Award of State Contract #T0586
RFP # 14-X-23355 Foods: Puddings & Gelatins, Individuals, Canned & Powdered- DSS

Dear Ms. Gaetano:

This letter is in response to your email and letter received May 5, 2014, referencing the subject Request for Proposal ("RFP") and regarding the award of the subject contract by the Procurement Bureau of the Division of Purchase and Property ("the Division"). In your letter, you protest the slated award of the RFP's grouped price lines 1 through 4 for flavored gelatin products to Universal Coffee Corporation, contending that ACCSES NJ/CNA Services ("A-NJ") should be the awardee of these four price lines based upon its offered pricing that is within the 15% allowance established for the State of New Jersey's Central Non-profit Agency set-aside program. You question the Procurement Bureau's conclusion that the TOVA brand gelatin products offered by A-NJ for these four price lines were the same TOVA brand products that had failed sample testing performed by the Division's Quality Assurance Laboratory ("QAL") during a 2012 procurement of the subject T0586 contract, contending that the Procurement Bureau did not take into account that these products have been reformulated and now conform to the pertinent RFP product specifications. Seeking remedial action, you offer to provide samples of the reformulated gelatin products for testing by the QAL.

I have reviewed the record of this procurement, including the RFP, A-NJ's proposal, and the results of the testing of the four flavored gelatin samples A-NJ promptly provided upon request. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of A-NJ's protest.

RFP # 14-X-23355 was issued by the Procurement Bureau to solicit proposals "for various puddings and powdered gelatins, which will be made available and delivered by the Contractor to [the Division's] Distribution & Support Services (DSS)" facility in West Trenton, NJ. The technical specifications addressing composition and qualitative product requirements for items offered for price lines 1 through 4 were presented in RFP Subsection 3.7, *Specifications for Powdered Gelatins (Line Items 00001 through 00006)*, and were based upon Federal Commercial Item Description (CID) # AA-20170A.

Additionally, in order to ensure that products available under the T0586 contract are sufficiently palatable so that those individuals who are dependent upon the State for their sustenance and nourishment will ingest the food products served to them, RFP Section 4.0, *Proposal Preparation and Submission*, contained select segments which provided the following guidance to bidders concerning the methodology and requirements for sample submission and testing as follows:

> **4.4.3.2 SAMPLES/SAMPLE TESTING**
>
> The samples submitted must meet the specification requirements set forth in the RFP and must be representative of the product bid. Proposal samples for pricing lines #00001 thru #00017 for evaluation and testing purposes are to be made available at no charge and delivered to DSS, at the bidder's expense. The bidder must, within five (5) working days following a request from the State, submit proposal samples to DSS. Proposal samples will not be returned. QAL at DSS will conduct laboratory tests to assure that the proposal samples submitted for pricing lines #00001 thru #00017 conform to this RFP. The State reserves the right to perform any tests necessary to assure that the proposal samples conform to this RFP for pricing lines #00001 thru #00017. If the sample(s) of the brand/model/product offered by the bidder in its proposal fails, the State shall reject the proposal for the affected line item(s). The testing results of the State are final.
>
> **Palatability Testing**
>
> The State reserves the right to perform palatability testing of bid samples and products delivered by a test panel appointed by the Chief, DSS. Palatability testing will be supervised and conducted by DSS' Quality Assurance Unit. The Hedonic Scale Method of measuring food preferences will be used. Testing shall be conducted in an impartial atmosphere with a panel not informed of the brand names, vendors and manufacturers until the award recommendation is approved by the Director. If the testing involves a Qualified Product (QPL) and a proposed approved equal basis product, the QPL product will be used as the basis of comparison. In the event a product bid has been determined not to comply with the bid proposal specifications, that product shall not be eligible for contract award.

The record indicates that QAL's recent testing of the four sample TOVA brand products offered by A-NJ for price lines 1 through 4 has confirmed A-NJ's assertion that these gelatin products have been reformulated by the manufacturer since QAL's 2012 testing of the prior version of these four products when they each failed to "meet the specifications of the QAL."

However, as set forth in the enclosed QAL reports of the results of its testing of the four product samples submitted by A-NJ, none of the four TOVA brand products proposed by A-NJ for price lines 1 through 4 passed the QAL-administered standard palatability tests, each judged as having a "very disagreeable after-taste." In accordance with the provisions of RFP Subparagraph 4.4.3.2

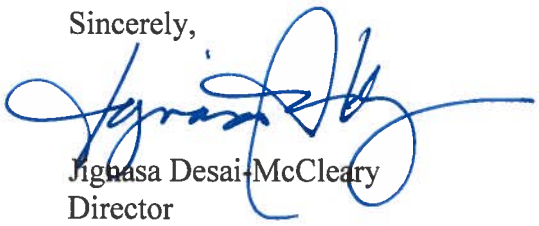
quoted above, these palatability deficiencies render A-NJ's offers for the subject four price lines unacceptable and thus ineligible for the award of price lines 1 through 4.

Thus, A-NJ's argument that it should be awarded the price lines 1 through 4 grouping if its pricing was within 15% of the most favorably priced offer by a competing bidder is moot because the products offered by A-NJ for these price lines do not satisfy the State's need for palatable products for the end users who must rely on the State for their sustenance.

Based on the findings and conclusions set forth above, which establish that A-NJ's proposal failed to comply with the material palatability requirements for price lines 1 through 4, I must deny your protest and uphold the award of these lines to Universal Coffee Corporation as initially announced by the Procurement Bureau. This is my final decision on this matter.

I look forward to A-NJ's satisfactory performance of its contract to provide the products offered for RFP/Contract lines 5 and 6. Thank you for your interest in doing business with the State of New Jersey and for registering your entity with NJ START at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:RW/DF

Enclosures

c: L. Dubois
R. Sharbaugh
J. Signoretta
G. Gerstenacker