



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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October 20, 2022

Via Electronic Mail LDHay@unionsupplygroup.com

L.D. Hay, Executive Vice President
Union Supply Group, Inc.
2500 Regent Blvd.
P.O. Box 619058
Dallas, TX 75261-9058

Re: Protest of Bid Solicitation Specifications
Bid Solicitation #22DPP00767 - T1715 Canteen Commissary for the Department of Corrections
Through Distribution and Support Services

Dear Mr. Hay:

This final agency decision is in response to your letter dated August 26, 2022, regarding Bid Solicitation #22DPP00767 - T1715 Canteen Commissary for the Department of Corrections Through Distribution and Support Services (Bid Solicitation), to the Division of Purchase and Property (Division) on behalf of Union Supply Group, Inc. (Union Supply). In that letter (the Specification Challenge), Union Supply challenges certain specifications of the subject Bid Solicitation, and requests that certain revisions are made and incorporated into a revised Bid Solicitation.

With the Specification Challenge, Union Supply requested an in-person presentation as permitted by N.J.A.C. 17:12-3.2(e). With respect to Union Supply's request for an in-person presentation, "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." The issues raised in the Specification Challenge were sufficiently clear such that a review of the written record of this procurement, including the Specification Challenge, the Bid Solicitation, relevant statutes, regulations, and case law, has provided me with the information necessary to determine the facts of this matter and to render an informed agency determination on the merits of the Specification Challenge. As such, an in-person hearing is not warranted.

By way of background, the subject Bid Solicitation was issued by the Division's Procurement Bureau (Bureau) on behalf of the New Jersey Department of Corrections (DOC) through Distribution and Support Services (DSS) to solicit quotes for canteen commissary items for the inmate population. Bid Solicitation §1.1 *Purpose and Intent*. Bidders' electronic questions were due to the Bureau by August 12, 2022.¹ The Bureau posted Bid Amendment #1, with answers to the questions received from potential

¹ No questions were received from Union Supply.

Bidders, on August 24, 2022. On August 26, 2022, seven (7) business days prior to the original Quote Opening Date of September 7, 2022, Union Supply timely submitted its Specification Challenge.²

In the Specification Challenge, Union Supply states that “the specifications are overly restrictive to the extent that only the incumbent vendor can submit a responsive proposal.” Specification Challenge at p. 1. “Specifically,” Union Supply asserts, “the Solicitation seeks quotes for canteen commissary items that only Keefe Commissary Group (“Keefe”), the incumbent vendor, has the exclusive rights to supply.” Id. Union Supply claims that “[t]he only way to make this Solicitation competitive is to allow bidders to propose alternative brand names, sizes, and flavors, provided they are suitable for the intended purpose of the specified bid items and convey the same general style, type, character, and quality desired . . .” Id. at p. 6. Moreover, Union Supply seeks a change to the price evaluation methodology, stating that “bid prices should be evaluated and compared based on the smallest unit of measure – such as price-per-ounce, price-per-each, or price-per-count – in order to accurately evaluate the lowest relative price.” Id.

No questions about the issues raised in Union Supply’s Specification Challenge were submitted during the Q&A process. Nevertheless, because the Specification Challenge was submitted after the close of the Q&A period, and seven (7) business days prior to the original Quote Opening Date, the Specification Challenge was timely submitted under the procedures set forth at N.J.A.C. 17:12-3.2.

Union Supply argues that, as structured, the original Bid Solicitation would function as a sole-source award to the incumbent vendor, Keefe. This is so, because Group 1 and Group 2 in the original Bid Solicitation are designated as “all or none groups, meaning the Bidder must bid on all lines within the group to be considered for award”, the original Bid Solicitation disallows brand substitution for certain price lines within those groups, and “many of the name brand bid items on the price lines are exclusive to Keefe, meaning **no other commissary provider that [sic] can supply these items.**” Id. at p.3.

Union Supply further explains the exclusivity issue, by noting that for many price lines,

- (i) the [specified] item is Keefe’s private label brand that no other vendor can supply,
- (ii) the [specified] item has a national brand name attached to it but it is packaged in special prison-safe packaging or produced in a flavor exclusively for Keefe by the manufacturer,
- (iii) the [specified] item is a national brand item but Keefe has the exclusive rights to supply it to correctional facilities pursuant to an exclusive supply agreement with the manufacturer, or
- (iv) the [specified] item, which may or may not be a national brand, is packaged in special prison-safe packaging in custom sizes by either Keefe (in its own re-packaging facilities) or by the manufacturer for Keefe.

[Specification Challenge at p. 3.]

² To allow for the resolution of the Specification Challenge, the Bureau thereafter posted Bid Amendments #2 and 3, which postponed the Quote Submission Due Date to October 26, 2022, at 2:00 pm Eastern Time. By letter dated October 17, 2022, Union Supply protested the amended Bid Solicitations “by incorporating all of the arguments contained in the August 26 protest.” These arguments are addressed herein.

Union Supply identifies eleven (11) specific price lines that fall into one of these four (4) categories, as follows:

Line #	Item Description
11	Instant Coffee, "Maxwell House", 24/4 oz. Bags per case- No Substitutes
23	"Tang", Orange Drink Mix 18/10 to 12 oz. Packages per case- No Substitutes
24	"Kool-Aid" Tropical Punch Presweetened Drink Mix.18/12 oz. Packages per case- No Substitutes
26	Ramen Noodles, "Maruchan", Hot & Spicy Vegetable Lower Sodium, 24/3 oz. Blocks per Package per case, No Animal Fat Or Animal By Products- No Substitutes
27	Ramen Noodles, "Maruchan", Chicken, Lower Sodium, 24/3 oz. Packages per case- No Substitutes
28	Ramen Noodles, "Maruchan", Beef, Lower Sodium, 24/3 oz. Packages per case- No Substitutes
29	Cup Of Noodles, Vegetable, Low Sodium, "Maruchan", 12/2.25 oz. Cups per case- No Substitutes
30	Cup Of Noodles, Chicken, "Maruchan", 12/2.25 oz. Cups per case- No Substitutes
36	"Jolly Ranchers" Assorted, 48/3.7 oz. Pouches per case- No Substitutes
38	"Digby's All Stars", Mixed Hard Candy 48/3.75 oz. Pouches per case - No Substitutes
39	"E Z Digby's" Student Mix, 48/3.75 oz. Pouches per case - No Substitutes

Accordingly, Union Supply's Specification Challenge requested that the Division:

1. Amend the Solicitation to permit the bidding of alternative items;
2. Amend the Solicitation to specify that items will be evaluated on a price-per-ounce, price-per-each, or other applicable lowest-unit-of-measure price basis (instead of unit price); and
3. Amend the Price [Sheet] to add a column for the price-per-ounce, price-per-each, or other applicable lowest-unit of measure price.

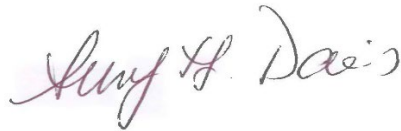
Having considered the Specification Challenge, and following a detailed review of the specific price lines and the Bid Solicitation as a whole, the Bureau determined to amend the Bid Solicitation and State Price Sheet to address the concerns raised in the Specification Challenge, in accordance with N.J.A.C. 17:12-3.2(d). Please see Bid Amendment #4, "T1715 Revised Bid Solicitation 10.20.22", and "T1715 Revised Price Sheet 10.20.22", which have been posted on [NJSTART](#). Sections of the Bid Solicitation that have been significantly revised include:

- Section 1.1 *Purpose and Intent*
 - Section 3.8 *Small Business Set-Aside Contracts*
 - Section 3.26 *State Price Sheet Instructions*
 - Section 4 *Scope of Work*
 - Section 4.1 *Price Line Specifications*
 - Section 4.2 *Other Products Not Previously Identified*
 - Section 5.5 *Reporting and Supplier Convenience Fee*
 - Section 8.9.1 *Technical Evaluation Criteria*
 - Section 8.9.2 *Price Evaluation*
 - Section 8.16 *Contract Award*
 - Section 9 *Glossary*
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With respect to Union Supply's Specification Challenge, the Hearing Unit's review has resulted in the aforementioned revisions to this Bid Solicitation. Bid Amendment #4 has been posted on [NJSTART](#). Please be advised that, with the posting of this amendment, the Question and Answer period has been re-opened. The second Question Submission Due Date is November 9, 2022, and the Revised Quote Opening Date is December 8, 2022.

Thank you for your company's interest in doing business with the State of New Jersey and for registering your company with [NJSTART](#) at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Amy Davis
Acting Chief Hearing Officer

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