



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 28, 2015

Via Electronic [kevin@jmlmed.com] and USPS Regular Mail

Kevin F. Carlin
JML Medical Inc.
1 Havenwood Court, Unit #502
Lakewood, New Jersey 08701

Re: May 27, 2015 Special Notice of Intent to Participate in Cooperative Contract – Hospital & Surgical Supplies

Dear Mr. Carlin:

This letter is in response to your email dated August 26, 2015, to the Division of Purchase and Property (Division) on behalf of JML Medical, Inc. (JML), in which you protest the May 27, 2015, Special Notice posted to the Division's website notifying the public of the State's intent to participate in a publically advertised cooperative purchasing agreement for Hospital and Surgical Supplies; specifically, the Minnesota Multistate Contracting Alliance for Pharmacy Contract (MMCAP). In the protest email, JML alleges that prices through MMCAP are substantially higher than JML's prices. JML requests that the T0119 term contract, of which JML is an incumbent vendor, be extended beyond its August 31, 2015 expiration.

In consideration of this protest, I have reviewed the record of this procurement, including the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest submitted by JML. I set forth herein my Final Agency Decision.

By way of background, on June 10, 2013, the Division posted to its website a Special Notice of the State's intent to participate in a cooperative contract for hospital and surgical supplies. Specifically, the notice advised:

Notice of Intent to Participate In Cooperative Contract – Hospital & Surgical Supplies

Notice is hereby given that the State of New Jersey is investigating the possibility of entering into a publically advertised multi-state cooperative purchasing agreement for HOSPITAL & SURGICAL SUPPLIES.

A second identical Special Notice was posted to the Division's website on April 1, 2015, to ensure that the bidder community was properly notified of the State's intent due to the extended length of time since the first Special Notice was posted. Again, that notice advised:

Notice of Participation In Cooperative Contract – Hospital & Surgical Supplies

Notice is hereby given that the State of New Jersey is investigating the possibility of entering into a publically advertised multi-state cooperative purchasing agreement for HOSPITAL & SURGICAL SUPPLIES.

Subsequently, on May 27, 2015, the Division posted to its website a Special Notice advising that the State intended to enter into a cooperative contract with MMCAP. Specifically,

Notice of Intent to Participate In Cooperative Contract – Hospital & Surgical Supplies

Notice is hereby given that the State of New Jersey intends to enter into a publically advertised cooperative purchasing agreement for Hospital & Surgical Supplies.

The State of New Jersey anticipate joining the Minnesota Multistate Contracting Alliance for Pharmacy Contract (MMCAP) contract in September 2015 timeframe. The State of New Jersey expects to award a contract to Medline Industries.

The MMCAP contract has a term of June 1, 2012 through May 31, 2016, with an option for extension through May 31, 2017.

Under N.J.S.A. 52:34-6.2, the State of New Jersey is authorized to join competitively bid and awarded cooperative purchasing agreement.

Note that the comment period ends with the close of business on June 15, 2015.

Despite these three notices, none of the five current contractors provided any comments on the cooperative contract for Hospital and Surgical Supplies. The Special Notice gave the public including the five contractors on T0119, the current contract for State agencies to similarly purchase Hospital-Surgical Dressings, Supplies, and Related Items, an opportunity to comment with any perceived issues with the MMCAP contract.

On June 18, 2015, after the closing date for comments to the third and final Special Notice, the Division received and logged a letter from JML. JML's comments and questions are summarized as follows:

1. JML questioned whether or not the cooperative contract would eliminate the need to extend or re-bid the current contract for Hospital-Surgical Supplies, Dressing & Related Items (T0119).
2. JML alleged that the State will not save money by joining MMCAP as the Tri-State area is one of the most competitive medical supply markets in the Country.
3. JML alleged that the closest Medline distribution center is located in New York, while JML and other vendors currently under contract with the State are located in New Jersey; and
4. JML requested that the State conduct a pricing analysis.

The Bureau reviewed the points raised by JML and conducted further research. After determining that MMCAP offered the most cost effective means to obtain these supplies, the State entered into a contract with MMCAP-Medline Industries, Inc. (Medline) on July 1, 2015. This award was published on the Division's public website on July 1, 2015.

On August 6, 2015, JML wrote to the Bureau requesting a meeting to discuss pricing under Medline's contract. I understand that the Bureau denied that meeting request. On August 19, 2015, JML wrote to the Bureau requesting that the State "immediately extend all contracts under T0119 through January 31, 2015, and that you either re-bid or renew this contract effective February 1, 2016." The T0119 contract was originally awarded to five vendors, inclusive of JML, with a three-year base term from February 1, 2009 through January 31, 2012. The contract was then extended eight times and is currently due to expire on August 31, 2015.

The statutory authority to enter into cooperative purchasing agreements is set forth in N.J.S.A. 52:34-6.2 which states in pertinent part:

...the Director of the Division of Purchase and Property in the Department of the Treasury may enter into cooperative purchasing agreements with one or more other states, or political subdivisions thereof, for the purchase of goods and services. A cooperative purchasing agreement shall allow the jurisdictions which are parties thereto to standardize and combine their requirements for the purchase of a particular good or service into a single contract solicitation which shall be competitively bid and awarded by one of the jurisdictions on behalf of jurisdictions participating in the contract.

The purpose of N.J.S.A. 52:34-6.2, which provides an alternative to advertised competitive bidding, is to: (1) allow the State's using agencies to derive the benefits of volume purchasing, standardized specifications and increased leverage through a nationwide marketplace; and, (2) to enhance the State's range of available procurement options and realize cost savings by partnering with similarly situated states or other jurisdictions that have already competitively procured these necessary goods or services.

In determining whether to enter into this cooperative purchasing agreement, the Bureau considered all of the available and statutorily permitted procurement options, including the administration of an advertised, competitive procurement process by the Bureau as well as the availability of relevant contracts through nationally recognized cooperatives. This analysis found that the MMCAP had administered an advertised, competitively bid procurement that resulted in the award of contracts for hospital and surgical supplies. Specifically, MMCAP posted a Request for Proposals to its website in 2011. In early 2012, MMCAP awarded contracts to five vendors.

In connection with its review of available cooperative agreements, the Division's Procurement (Bureau) sent each of the MMCAP vendors a spreadsheet outlining the State's top expenditures for hospital and surgical supplies for fiscal year 2014. Two vendors responded – Medline and McKesson Schein, Inc. (McKesson).

Upon receipt of the pricing information from Medline and McKesson, a pricing analysis was conducted by the Division on the top 74% of expenditures for hospital and surgical supplies. Specifically, a comparison of prices on State contract (T0119), Medline and McKesson spreadsheets was conducted. The pricing analysis revealed that entering into the cooperative agreement with Medline would result in over 20% in cost savings to the State for the same or comparable items.¹ Accordingly, pursuant to its statutory authority, the Division determined that entering into a cooperative agreement with MMCAP-Medline was the most cost effective method for the State to procure hospital, surgical and other medical supplies needed by State agencies.


¹ The State's top expenditures are in the categories of incontinence, gloves, and wound care. MMCAP-Medline's prices offers the State a 7% savings for incontinence, 6% savings for gloves and 37% savings for wound care. This savings is attributed to Medline's vast offering of private label products which are manufactured at their own facilities.

With respect to the other points raised in JML's protest letter, I note the following: First, I acknowledge that entering into the cooperative contract with MMCAP-Medline will eliminate the need to extend or rebid T0119. Second, in connection with the protest, the pricing analysis was reviewed and it was confirmed that entering into the cooperative agreement with MMCAP-Medline would result in significant cost savings to the State. Third, while the State values New Jersey businesses, Medline's distribution centers are able to fulfill the State's distribution needs at reduced cost over the current contract. Fourth, while JML asserts that the State will derive monetary benefits by extending the existing contracts or by conducting its own advertised procurement such benefits are speculative. Again, the pricing analysis conducted by the Bureau both before the contract award and in connection with this protest, reveals that entering into a contract with MMCAP-Medline will result in significant savings to the State over the T0119 contract prices. Therefore, it would not be in the State's best interest to extend the current contract. I reach this conclusion taking into account the long-standing principle of public procurement established by the New Jersey Supreme Court, that

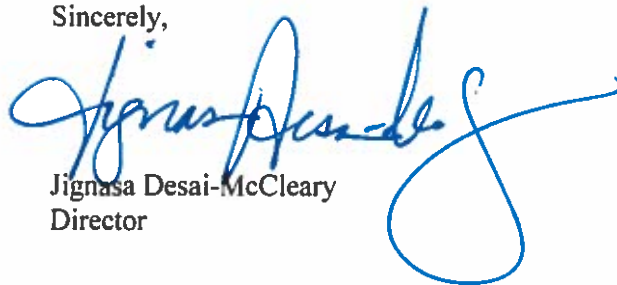
... the purpose of a procurement is not to advance the interest of those who want the State's business. On the contrary, the purpose is to serve the State's interest as a purchaser.

[Trap Rock Industries v. Kohl, 59 N.J. 471, 479 (1971).]

The Bureau has conducted a necessary and appropriate level of review and recommended a course of action that represents the most cost-effective method of procurement that is advantageous to the State of New Jersey and conforms to applicable law. Despite the overwhelming price evidence, I regret the manner in which the Bureau communicated with a State vendor.

I must conclude that your correspondence has not presented facts, information or arguments sufficient to alter the course of action as set forth in the Division's May 27, 2015, Notice of Intent to Participate in a Cooperative Contract. This is my final agency decision with respect to the protest submitted by JML. Thank you for your years of service to the State and for registering your business with  at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: D. Reinert
J. Kemery