



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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October 9, 2018

Via Electronic [NelsonD@mscdirect.com] and USPS Regular Mail

Donald Nelson, Contract Manager
MSC Industrial Supply Co.
75 Maxess Road
Melville, NY 11747

Re: Response to Comment regarding the September 21, 2018 Special Notice of Intent to Participate in Cooperative Contract - NASPO ValuePoint Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies

Dear Mr. Nelson:

This letter is in response to your email of September 25, 2018, to the Division of Purchase and Property (Division) on behalf of MSC Industrial Supply Co. (MSC). By way of that email, MSC submitted a comment to the Division's September 21, 2018, 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 the Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies. In the comment MSC inquires as to the evaluation criteria used to make the contract awards and questions why it was not considered for a contract award.

By way of background, New Jersey's 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. This statute created a distinctly different process for the State to procure contracts by cooperative purchasing

agreements as compared to traditional bidding procedures. The law “only requires the contract onto which the State piggybacks to be developed utilizing ‘a competitive bidding process,’ not ‘the’ competitive process’ required by New Jersey law.” In re Challenge of the State’s Award of an Office Supplies Contract to Staples Bus. Advantage through the National Joint Powers Alliance, No. A-0476-09 (App. Div. Aug. 25, 2011) (slip op. at 22-23); N.J.S.A. 52:34-6.2(b)(2).

On November 15, 2017, the State of Oregon Department of Administrative Services - Procurement Services (Oregon) through NASPO ValuePoint, issued a solicitation for Facilities Maintenance and Repair & Operations (MRO), Industrial Supplies. The purpose of the solicitation was to obtain proposals and establish one or more Master Agreement(s) with qualified vendors to provide Janitorial Equipment & Supplies, Sanitation Cleaning Chemicals & Supplies, Fasteners, Material Handling, Plumbing, Power Sources, Outdoor Garden, Lamps & Lighting and Ballasts, Heating Ventilation Air Conditioning (HVAC), Hand Tools, Power Tools (excluding automotive related tools and products), Electrical, Paint, Security, and Safety (does not include any Public Safety Equipment) products for all participating states and entities. Oregon Solicitation § 1.1 *Purpose*.

In determining whether to enter into this cooperative purchasing agreement, the Division’s Procurement Bureau considered all of the available and statutorily permitted procurement options, including the administration of an advertised, competitive procurement process by the Procurement Bureau as well as the availability of relevant contracts through nationally recognized cooperatives. This analysis found that the State of Oregon had administered an advertised and competitively bid procurement that resulted in the award of contracts for Facilities Maintenance and Repair & Operations and Industrial Supplies in accordance with the NASPO ValuePoint’s Cooperative Purchasing Program. As such, on November 20, 2017, the Division posted a Special Notice to its website advising the public of the State’s intent to participate in a cooperative contract Facilities Maintenance and Repair & Operations and Industrial Supplies. Specifically, the Special Notice advised:

SPECIAL NOTICE

Nov-20-2017 **Notice of Intent to Participate in Cooperative Contract –Maintenance Repair & Operations (MRO) Supplies - NASPO ValuePoint (M0002).**

Notice is hereby given that the State of New Jersey is investigating the possibility of entering into a publically advertised cooperative purchasing agreement for **Maintenance Repair & Operations (MRO) Supplies - NASPO ValuePoint** with the NASPO ValuePoint Cooperative Purchasing Organization.

The State of Oregon is the lead state for this procurement.

The deadline for submissions for this Request for Proposal (RFP) is 2 p.m. Pacific Time, Friday, December 29, 2017.

The RFP can be accessed through the NASPO ValuePoint website:
<http://www.naspovaluepoint.org>

And the State of Oregon’s Procurement website:
<https://orpin.oregon.gov/open.dll/welcome>

The reference number for this solicitation is DASPS-2183-17.

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

Please be advised that the State will not accept any communications during this preliminary stage of its investigation.

On January 5, 2018 Oregon received 31 proposals in response to the solicitation. After reviewing all of the proposals received, Oregon awarded contracts to thirteen vendors.¹

Thereafter, on September 21, 2018, the Division posted a Special Notice to its website advising that the State intended to enter into a cooperative contract with Fastenal and Grainger. Specifically,

SPECIAL NOTICE

Sept-21-2018 **Notice of Intent to Participate in Cooperative Contract – Facilities Maintenance and Repair & Operations (MRO) and Industrial**

Notice is hereby given that the State of New Jersey intends to enter into a publically advertised cooperative purchasing agreement for Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies to replace the existing State Blanket P.O. {Contract} M0002 Industrial/MRO Supplies and Equipment, which expires on 09/30/18.

Information regarding the Blanket P.O. {Contract} may be found in NJSTART, the State's eProcurement website: www.njstart.gov

The State of New Jersey anticipates joining the NASPO ValuePoint in October 2018.

The State of New Jersey expects to award Blanket P.O.s {Contracts} to Fastenal Company and W.W. Grainger, Inc.

These Blanket P.O.s have a nine (9) month term, commencing on October 1, 2018 through June 30, 2019. The Blanket P.O. {Contract} has four (4) optional one-year extensions.

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

Note that the comment period ends at 4:00 p.m. on September 28, 2018.

Comments should be sent to: Procurement.bureau@treas.nj.gov

As noted above, on September 24, 2018, MSC wrote to the Division's Procurement Bureau stating:

I was on the NJ Start site this morning and noticed in the special notice section "expectations to award blanket PO's to Fastenal Co. and WW Grainger Inc." only. We are hoping this is an oversight and that MSC has also been considered for an award?

If this is not the case, MSC would appreciate the opportunity to discuss this matter in more detail. Discussion points:

What was the evaluation criteria used by NJ State in making this determination? Why is MSC not being considered as a viable NASPO contract supplier partner for NJ?

MSC has worked very hard over the past 5 years+ building relationships and servicing agencies across the state of NJ. We want to continue to do so and hope we can come to an agreement regarding a new NASPO Contract.

¹ Only four of the thirteen vendor awarded contracts by Oregon, Fastenal Company (Fastenal), W.W. Grainger, Inc. (Grainger), MSC Industrial Supply Co. Inc. (MSC) and Noble Supply and Logistics Company, Inc. (Noble) offer national coverage.

In consideration of MSC's request, I have reviewed the record of this procurement, including Oregon's solicitation, the Procurement Bureau's review and evaluation, MSC's comment along with 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 issue a response to MSC's comment below.

In determining whether to join a cooperative purchasing agreement, the applicable statute and regulation require that the Director determine that the use of a cooperative purchasing agreement is the most cost-effective method of procurement. N.J.S.A. 52:34-6.2; N.J.A.C. 17:12-1A.3. In reviewing Oregon's solicitation, I note that Oregon's cost analysis was based on a market basket of approximately 500 high volume items. In conducting New Jersey's cost analysis, the Division reviewed the market baskets provided by Fastenal, Grainger, MSC and Nobel. That initial review revealed that these four vendors bid on 242 lines in common. As shown in the table below, further analysis of those 242 lines reveals Fastenal and Grainger submitted low bids for approximately 89% of those 242 price lines. Further, an overall analysis of the prices for these 242 price lines revealed that Fastenal and Grainger had total market basket values 24%-29% lower than MSC and Nobel.²

Bidder	Lines - Low Bid	Overall Value
FASTENAL	125	\$19,542,520.84
GRAINGER	90	\$19,451,109.14
MSC	16	\$26,016,678.19
NOBEL	11	\$27,406,865.89

The State's review of the proposals submitted and the cost analysis performed demonstrates that proposals submitted by Fastenal and Grainger can effectively meet the State's Facilities Maintenance and Repair & Operations and Industrial Supplies needs and also will provide the best value to the State.

Sincerely,



Gregg Olivera
Deputy Director

C: J. Kerchner
K. Thomas
C. Murphy

² Further, in response to Oregon's solicitation, vendors were asked to submit percentage discounts off of list pricing for fifteen discrete categories of products. These discounts apply to each Vendors {Contractors} price list and are separate from the items included in the Market Basket. Fastenal's discounts ranged from 25% to 60%, with an average discount of 32%; Grainger's discounts ranged from 11 % to 35%, with an average discount of 18%; MSC's discounts ranged from 18% to 25%, with an average discount of 22%; and Nobel's offered a flat 15% discount for all categories. However, due to the likelihood that each bidder's list price varies this discounts were not given much weight in the Division's cost analysis.