



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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November 21, 2019

Via Electronic Mail [mikewiederman@gmail.com] and USPS Regular Mail

Kalman Kut  
Mike Wiederman  
Universal Coffee Corp.  
123 47<sup>th</sup> Street,  
Brooklyn, New York 11232

Re: I/M/O Bid Solicitation #19DPP00281  
Protest of Notice of Intent to Award, Universal Coffee Corp.  
T0481 Soups: Shelf Stable, Condensed, Various Flavors and Soup Bases, Beef and Chicken,  
Regular and Low Sodium-DSS

Dear Mr. Kut and Mr. Wiederman,

This letter is in response to your protest, on behalf of the Universal Coffee Corp. (Universal Coffee), to the Hearing Unit of the Division of Purchase and Property (Division), dated October 4, 2019, protesting the Notice of Intent to Award letter (NOI) issued on September 24, 2019 by the Division's Procurement Bureau (Bureau) for Bid Solicitation #19DPP00281 T0481 Soups: Shelf Stable, Condensed, Various Flavors, and Soup Bases, Beef and Chicken, Regular and Low Sodium-DSS, Price Lines #11 and 12.

By way of background, on November 30, 2018, the Bureau issued Bid Solicitation #19DPP00281 on behalf of the New Jersey Distribution & Support Services (DSS) to solicit Quotes for Shelf Stable, Condensed, Soups, Various Flavors, and Soup Bases, Beef and Chicken, Regular and Low Sodium. Bid Solicitation § 1.1 *Purpose and Intent*. The intent of this Bid Solicitation is to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation, are most advantageous to the State, price and other factors considered. *Ibid*. The State may award any and all price lines. *Ibid*. There are three (3) groups of shelf stable, condensed, canned soups and soup bases. *Ibid*. Group 3 represented the following items for Price Lines #11 and 12:

3	11	Soup Base, Low Sodium, Powdered, Beef Flavor, Packed in a 1 lb. Plastic Container with Screw Cap Lid, Twelve (12) Containers per Case
	12	Soup Base, Low Sodium, Powdered, Chicken Flavor, Packed in a 1 lb. Plastic Container with Screw Cap Lid, Twelve (12) Containers per Case

The State intends to make one award for each group in accordance with Section 6.6 of this Bid Solicitation. *Ibid*.

In accordance with the Bid Solicitation Instructions, potential Vendor(s) {Bidder(s)} were permitted to submit questions to the Bureau, using the Division's *NJSTART* eProcurement system by 2:00 pm on December 13, 2018. See, Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*.

On January 8, 2019, Bid Amendment #1 was issued, which included an answer to the one question posed, extended the Quote submission due date to Friday, January 25, 2019 at 2:00 p.m. EST, and included the Revised State-Supplied Price Sheet titled "Revised T0481 19DPP00281 Price Sheet" was posted, which included all additions, deletions, clarifications and modifications to the State-Supplied Price Sheet. Through the posting of Bid Amendment #2 on January 22, 2019, Revised Bid Solicitation titled "Revised 01 22 2019 T0481 Bid Solicitation 19DPP00281" was posted and the Quote submission date was extended to Friday, February 8, 2019 at 2:00 p.m. EST.

On February 8, 2019, the Division's Proposal Review Unit opened six (6) Quotes, received by the submission deadline of 2:00 pm EST, from the following Vendors {Bidders}:

1. Aco Endico Inc.;
2. Benjamin Foods;
3. Chicago Mea Group Inc.;
4. H. Schrier & Co. Inc.;
5. Major Products Co. Inc.;
6. Universal Coffee.

On March 5, 2019, pursuant to Bid Solicitation 6.4 *Clarification of Quote/State's Right to Request Further Information*, the Bureau requested that Universal Coffee provides specification data sheet and nutritional facts for brands and model numbers bid, for Price Lines #11 and 12, pursuant to Bid Solicitation Section 4.4.3.3 *Specification Data Sheet and Nutritional Data Sheets*. On March 8, 2019, Universal Coffee provided its response via email. Attached to Universal Coffee's response were labels with Nutritional Information for Yorkville by Zilka & Co. Beef Soup Base Low Sodium and Chicken Soup Base Low Sodium. See Universal Coffee's March 8, 2019 response to the Request for Clarification. The ingredients on both labels indicated that there is Hydrolyze Vegetable Protein present in both soups. Id. See Nutritional Information below.

**Nutritional Information**

**Product Name:** Beef Soup Base (Low Sodium) 12 / 1 lb.  
**Product Code:**

**Ingredients:**  
 Wheat Starch, Salt, Maltodextrin, Hydrolyzed Vegetable Protein,  
 Dehydrated Vegetables, Spices, Natural & Artificial Flavors  
 FD&C Yellow #6 and Caramel Color

**Amount Per Serving**  
**Serving Size:** 8 Oz. Finished

<b>Calories:</b>	<b>28</b>	<b>Calories from Fat:</b>	<b>10</b>
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		% Daily Value
<b>Total Fat:</b>	<b>1 g</b>	<b>2%</b>
<b>Saturated Fat:</b>	<b>8 g</b>	<b>0%</b>
<b>Cholesterol:</b>	<b>0 g</b>	<b>0%</b>
<b>Sodium:</b>	<b>120 mg</b>	<b>1%</b>
<b>Total Carbohydrate:</b>	<b>3 g</b>	<b>0%</b>
<b>Dietary Fiber:</b>	<b>&lt;1 g</b>	<b>0%</b>
<b>Sugars:</b>	<b>0 g</b>	
<b>Protein:</b>	<b>&lt;1 g</b>	

**Mixing Instructions:**  
 1 Lb. of soup base to 5 gallons if water yields 80 x 8 Oz. servings.  
 Sodium content is 120 mg per serving

**Kosher: Yes**

**Manufactured by Zilka & Company**

### Nutritional Information

<b>Product Name:</b> Chicken Soup Base (Low Sodium) 12/1 lb	
<b>Product Code:</b>	
<b>Ingredients:</b> Wheat Starch, Salt, Maltodextrin, Hydrolyzed Vegetable Protein, Dehydrated Vegetables, Spices, Onion, Garlic, Natural & Artificial Flavors, FD&C Yellow #5	
<b>Amount Per Serving</b>	
<b>Serving Size:</b> 8 Oz. Finished	
<b>Calories:</b>	<b>28</b>
<b>Calories from Fat:</b>	<b>10</b>
<b>% Daily Value</b>	
<b>Total Fat:</b>	<b>1 g</b>
<b>Saturated Fat:</b>	<b>8 g</b>
<b>Cholesterol:</b>	<b>0 g</b>
<b>Sodium:</b>	<b>120 mg</b>
<b>Total Carbohydrate:</b>	<b>3 g</b>
<b>Dietary Fiber:</b>	<b>&lt;1 g</b>
<b>Sugars:</b>	<b>0 g</b>
<b>Protein:</b>	<b>&lt;1 g</b>
<b>Mixing Instructions:</b> 1 Lb. of soup base to 5 gallons of water yields 80 x 8 Oz. servings. Sodium content is 120 mg per serving	
<b>Kosher: Yes</b>	

**Manufactured by Zilka & Company**

[See Universal Coffee's March 8, 2019 response to the Request for Clarification email.]

The following Vendors {Bidders} Provided Quotes for Group 3:

1. Benjamin Foods;
2. Major Products Co. Inc.;
3. Universal Coffee.

Id.

After reviewing Quotes provided for Group 3, no award was recommended, because no responsive Quotes were received. See Recommendation Report, pg. 8. The Recommendation Report indicated that in reviewing the nutritional data sheets provided by the Universal Coffee, all products offered for Price Lines #11 and 12 contained Hydrolyze Vegetable Protein, which yields MSG. Id. at 9. Pursuant to Bid Solicitation Section 3.3 *Group 3: Specifications for Soup Bases, Low Sodium, Beef and Chicken Flavor (Price Lines 11 and 12):*

**No monosodium glutamate (MSG) is permitted within the ingredients of this product. If MSG is contained within the low sodium soup base, the Quote will be deemed non-responsive for this group.**

...

Each container must have a label showing the ingredients. Each container must also list the proper dilution ratio. Date of expiration must be shown on the label along with the name and address of the manufacturer. Each case shall be marked showing the product name, number of containers, net weight and name/address of the manufacturer.

Based upon the Bid Solicitation requirements in Section 3.3 *Group 3: Specifications for Soup Bases, Low Sodium, Beef and Chicken Flavor (Price Lines 11 and 12)*, and the fact that HVP can yield to MSG, the Universal Coffee's Quote for Group 3, Price Lines #11 and 12 was deemed non-responsive for the group. See Recommendation Report, pg. 8-9.

On October 4, 2019, Universal Coffee submitted a letter protesting Price Lines #11 and 12 not being awarded. See October 4, 2019 Universal Coffee Letter of Protest. Universal Coffee asserts in its protest that "the manufacturer states that our brand, "Yorkville by Zilka and Co." has HVP in the product which is in all soup bases but has **no trace of MSG** in their HVP or in any other ingredients whatsoever." *Id.* Finally, Universal Coffee states "since all soup bases have HVP in the ingredients how were items 9 and 10, regular soup bases awarded as they also contain HVP." *Id.*

In consideration of the Universal Coffee's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the protest, the relevant statutes, regulations, and case law. The issues raised by the Universal Coffee are sufficiently clear such that a review of the record of this procurement 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 based on the written record. I set forth herein my Final Agency Decision.

Universal Coffee's first protest point is that its "manufacturer states that our brand, "Yorkville by Zilka and Co." has HVP in the product which is in all soup bases but has **no trace of MSG** in their HVP or in any other ingredients whatsoever." See October 4, 2019 Universal Coffee Letter of Protest.

Bid Solicitation Section 3.3 *Group 3: Specifications for Soup Bases, Low Sodium, Beef and Chicken Flavor (Price Lines 11 and 12)* states in the relevant part:

**No monosodium glutamate (MSG) is permitted within the ingredients of this product.** If MSG is contained within the low sodium soup base, the Quote will be deemed non-responsive for this group.

The Bureau, based upon the information obtained from the U.S. Food and Drug Administration, concluded that "HVP is produced by boiling foods such as soy, corn, or wheat in hydrochloric acid and then neutralizing the solution with sodium hydroxide. The acid breaks down the protein in vegetables into their component amino acids. **One of the amino acids in the dark-colored liquid that is left is glutamic acid. Consumers are more familiar with glutamic acid in the form of its sodium salt — monosodium glutamate, or MSG.**" See Recommendation Report, pg. 9. The Bureau, therefore, rejected Universal Coffee's Quote for Price Lines #11 and 12 pursuant to Bid Solicitation Section 3.3 requirements.

The Hearing Unit cannot confirm whether or not there is a possibility that there are no traces of MSG in the products offered by Universal Coffee. It was a material specification of the Bid Solicitation

that no MSG was contained “within the ingredients” of products offered for Price Lines #11 and 12. Based upon the information provided in the Bid Solicitation Section 3.3, it is unclear whether the State’s intent was to reject all items for Price Lines #11 and 12 that contained **added** MSG as part of their ingredients, or that contained **any ingredients** (including HVP) that could naturally produce MSG as their by-product. This was an oversight in the original specifications. “Requiring adherence to material specifications maintains a level playing field for all bidders competing for a public contract.” *Barrick v. State*, 218 N.J. 247, 259, 2014 N.J. LEXIS 789. The ambiguity in Bid Solicitation Section 3.3 could have deterred many potential Vendor {Bidders} from participating in this procurement, who came to the conclusion that the no-MSG, also meant no HVP (which may or may not lead to naturally occurring MSG), thus creating un-level playing field for all bidders.

As for the Universal Coffee’s question “how were items 9 and 10, the regular soup bases awarded as they also contain HVP.” See October 4, 2019 Universal Coffee Letter of Protest. Price Lines #9 and 10 are governed by Bid Solicitation Section 3.2 *Group 2: Specifications for Soup Bases, Regular, Beef and Chicken Flavor (Price Lines 9 and 10)*, and Bid Solicitation Section 3.2 does not contain any prohibition of MSG. Therefore, ingredients in the products for Price Lines #9 and 10 could contain HPV without rendering Quotes non-responsive.

In the light of the findings set forth above, I sustain Bureau’s NOI for Price Lines #1-10 and to not award Price Lines #11 and 12. However, I direct the Bureau to issue a supplemental procurement for Price Lines # 11 and 12, clarifying requirements of the Bid Solicitation Section 3.3 related to HVP and MSG. This is my final agency decision on this matter.

Thank you for your company’s interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey’s eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RD

c: B. Billings  
K. Popso  
C. Murphy  
J. Kercher