



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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February 8, 2019

Via Electronic Mail [seth.cosans@lawmensupply.com] and USPS Regular Mail

Seth Cosans, Government Sales – Contract Administrator  
Lawmen Supply Company  
7150 Airport Highway  
Pennsauken, NJ 08109

Re: I/M/O Bid Solicitation # 17DPP00046 Lawmen Supply Company  
Protest of Notice of Intent to Award  
T0106 Law Enforcement Firearms, Equipment and Supplies

Dear Mr. Cosans:

This letter is in response to your correspondence of January 28, 2019, on behalf of Lawmen Supply Company (Lawmen) wherein you request that the Division of Purchase and Property's (Division) Hearing Unit reconsider its January 25, 2019, final agency decision related to the Bid Solicitation #17DPP00046: Law Enforcement Firearms, Equipment and Supplies (Bid Solicitation).

By way of background, on February 7, 2017, the Bureau issued the Bid Solicitation on behalf of State Using Agencies and Cooperative Purchasing Partners to solicit Quotes for sixteen categories for law enforcement equipment and supplies. Bid Solicitation § 1.1 *Purpose and Intent* and Bid Solicitation § 3.1 *Law Enforcement Equipment and Supplies Categories*.

On April 20, 2017, the Proposal Review Unit opened 102 Quotes received by the submission deadline of 2:00 p.m. The record of this procurement reveals that Lawmen submitted a Quote for various brand products in multiple categories. Relevant to Lawmen's original protests and this request for reconsideration, as shown in the screenshots below, Lawmen submitted a proposal for the Simunion® brand in response to Category 4 – Non-Lethal Weapons/Riot Control Equipment, Parts & Accessories and the Avon brand in response to Category 8 – Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) Detection, Mitigation & Personal Protective Equipment, Parts & Accessories. See, price lines 47 and 79 respectively.

CATEGORY 4 - NON-LETHAL WEAPONS/RIOT CONTROL EQUIPMENT, PARTS & ACCESSORIES									
	Brand/Equivalent	Markup/Discount from Manufacturers Price List	% Percentage	Price List Type	Price List File Name	Price List Publication Date	Price List Page # Relating to the Brand #id	Delivery Days ARO	Cash Discount for Expedited Payment, See Section 4.4.5.6
40	ASP Batons & Equipment								
41	Combined Tactical Systems, Inc.	Discount	21.00%	Wholesale	TS Agency Price Lists I	2/1/2017	pg 1-10	60 + MFA	NONE
42	FNH USA								
43	Monarch								
44	Proguard								
45	Protect								
46	Sabon/OC Systems								
47	Simunition (All Types and Calibers)	Discount	22.00%	Wholesale	JS List CRP Price 0221	2/23/2017	pg 1-10	45	None
48	Streamlight - Flash Lights								
49	Stoptech Tire Deflation Systems								
50	Taser International								
51	MM	Discount	20.00%	Retail	1MSRP 010117_Redac	1/1/2017	pg 1	30	None
	Equivalent Brand Line								
	Equivalent Brand Line								
	Equivalent Brand Line								

CATEGORY 8 - CBRNE DETECTION, MITIGATION, PPE, PARTS & ACCESSORIES									
	Brand/Equivalent	Markup/Discount from Manufacturers Price List	% Percentage	Price List Type	Price List File Name	Price List Publication Date	Price List Page # Relating to the Brand #id	Delivery Days ARO	Cash Discount for Expedited Payment, See Section 4.4.5.6
78	AR Protection								
79	Avon Protection	Discount	23.00%	Retail	pp NJ Contract Lawmen	1/1/2017	pg 1-10	30	None
80	Carson Shelters								
81	Complete Environmental Products, Inc.								
82	Concept Development Corp.								
83	Draeger								
84	Dupont								
85	Endeavor Robots								
86	FLIR Threat Detection Systems								
87	FSI North America	Discount	20.00%	Retail	SI 2017 list price 02251	2/25/2016	pg 1-100	30-30	None
88	Icor Technology								
89	Lafolard								
90	Lullium								
91	Mine Safety Appliances								
92	OmniIQ - Robots								
93	Radiation Shield Tech								
94	Remotec Robotics								
95	Robotix								
96	Robo-Team								
97	Scott Safety								
98	Smith Detection								
99	Spilllyer Sorbent Products								
100	Survival - Honeywell								
101	Telerec Systems								
102	Western Shelter								
103	Lawmen Supply	Discount	net	Wholesale	July ppe NJ Contract Lawmen	4/3/2017	pg 1	30	None
	Combat Medical Systems	Discount	10.00%	Retail	one Master NJ State Co	1/1/2017	pg 1-6	30	None
	Bulle	Discount	95.00%	Retail	Medical Retail 010117 R	1/1/2017	pg 1	30	None
	Blotmask	Discount	9.00%	Retail	Product/UPDATE MSRP	4/1/2017	pg 1-2	30	None

On October 19, 2018, the Bureau issued a Notice of Intent to Award (NOI) advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s. On October 22, 2018, Lawmen wrote to the Division's Hearing Unit protesting the NOI stating that it should be the primary Vendor {Contractor} for the Avon Protection brand rather than the secondary Vendor {Contractor} because it was the only vendor offering the "Lawmen Supply Company Avon Kits." On October 23, 2018, Lawmen wrote to the Division further protesting the NOI stating that it should be permitted to correct its Quote from a discount to a mark-up and therefore be awarded the Simunition® brand.

On January 25, 2019, the Division issued its final agency decision with respect to Lawmen's protests. In summary, with respect to the Simunition® brand, the final agency decision affirmed the Bureau's decision to reject Lawmen's requested correction to its submitted Quote from a 22% discount as noted on the submitted price sheet to a 22% mark-up as requested after the Quote opening. Additionally, the decision remanded the matter back to the Bureau noting

...that based upon the Hearing Unit's review of the correspondence between the Bureau and Lawmen, it does not appear that Lawmen

withdrew its submitted Quote for the Simunition® brand; and therefore, the Bureau should have evaluated Lawmen's Quote for award based upon its original Quote submission. Accordingly, I direct the Bureau to take the necessary steps to clarify Lawmen's intent with respect to its submitted Quote for the Simunition® brand. Lawmen may either have its Quote evaluated based upon its original Quote submission for the Simunition® brand with a 22% discount as noted on the submitted price sheet or withdraw its Quote.

Further, as to the Avon brand, the final agency decision affirmed the Bureau's NOI to award the brand (Category 8 price line 79) to Atlantic Tactical, Inc. noting that:

Both Vendors {Bidders} provided a Manufacturer's Certification stating that it was an authorized dealer/distributor for the Avon brand. Neither letter indicated either manufacturer was the only dealer/distributor for the full line of Avon brand products. The Bureau's review of the price lists submitted by both Lawmen and Atlantic revealed that the product offerings were identical. Therefore, the Bureau recommended a Blanket P.O. award to Atlantic as it offered a greater discount to the State, 24.8%, compared to that of Lawmen at 23%. Accordingly, I find no reason to overturn the Bureau's determination that Atlantic be awarded as the primary Blanket P.O. holder and Lawmen as the secondary Blanket P.O. holder for Category 8 price line 79.

Now, in its January 28, 2019, letter, Lawmen requests that the Division reconsider the decision stating in part:

Regarding the answer provided to Line 47 General Dynamics/Simunition:

1. We see that you checked the Simunition website January 22, 2019 and saw other distribution listed in New Jersey.
  - a. See attached Lawmen provided an updated letter to procurement from Simunition 10/22/18 stating Lawmen is the sole source distributor for the NJ Law Enforcement Firearms, Equipment and Supplies contract.
  - b. This letter details General Dynamics/Simunition contact Michael Chin with phone and email which no one from New Jersey Treasury contacted.
  - c. Manufactures are permitted to have different levels of distribution and Lawmen was listed as the sole source for this contract. The other distribution listed 1/22/19 was not authorized to bid the contract by Simunition and did not bid the contract.
2. Simunition held 2015-2016 pricing for the current bid and as communicated in the October 22, 2018 letter stating Lawmen had at that point already supplied over \$900,000 in Simunition product between 2017-2018. If a request was made to remove the Lawmen bid and a new request for Simunition product to be added at a later date, that would be at a mark up from a 2019 price list. This is not advantageous to the state.
3. Verifying with General Dynamics/Simunition Lawmen is the sole source distributor for the NJ state contract, and by looking at the

history of T0106 for this product shows a markup. This is consistent through the last 20 plus years that Lawmen has held Simunition on the state contracts.

In this matter, we have been asked by the procurement supervisor to respond before 2pm Monday 1/28/19 and only in one of two ways. Considering all the facts we presented:

1. Honor Lawmen's line 47 original bid even as error marked "discount".  
Or
2. Formally withdrawal Lawmen's line 47 bid.

We ask that you reconsider the answer provided to Lawmen Supply for this protest. Lawmen Supply cannot honor a typing error that should be clear as we communicated, and we have provided all the facts to you in this regard.

Regarding the answer provided to **Line 79 Avon Protection:**

1. The Bureau's review of the price lists submitted by Lawmen and Atlantic are not identical.
  - a. Lawmen Supply submitted the complete price (sic) Avon Protection price list and has the special offerings currently utilized in New Jersey
    - i. As we wrote in our 10/22/18 protest letter, Lawmen Supply Special Response Kits are exclusively offered by Avon Protection through Lawmen Supply. These kits are currently utilized by the New Jersey State Police and others. With this information, we ask that you reconsider the original answer provided and award Lawmen the primary vendor for the Avon Protection line 79.

[Emphasis added.]

In consideration of Lawmen's request for reconsideration, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, Lawmen's protests and request for reconsideration, 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 a decision with respect to the request for reconsideration.

First, as to Lawmen's proposal for the Simunition® brand (price line 47) in Category 4, as previously noted, Lawmen's submitted Quote indicated a 22% discount for the brand. After the Quote opening date, Lawmen wrote the Division's Proposal Review Unit advising that it had discovered an error on its submitted price sheet for the Simunition® brand and requested that the submitted Quote be changed to reflect a 22% mark-up rather than the discount as originally bid. Later, in response to the Bureau's request for a Best and Final Offer, Lawmen again requested that its submitted Quote for the Simunition® brand be changed from the 22% discount to a 22% mark-up as the original notation was a typographical error. See, Lawmen's September 28, 2017, email. The Bureau rejected Lawmen's request to change its Quote from a discount to a mark-up. In my January 25, 2019, I sustained that determination concluding that allowing the requested change would be contrary to the Appellate Division's holding in In re Protest of the Award of the On-Line Games Prod. & Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566

(App. Div. 1995). However, I did remand the matter back to the Bureau for a determination about whether Lawmen had withdrawn its submitted or whether it would abide by its original submitted Quote. In response to the Bureau's clarification letter, Lawmen asks that the Division reconsider the decision denying Lawmen's request change to its submitted Quote because it is the sole source distributor for the Simunion® brand, and implying that a reprourement might result in higher pricing.

As discussed in the January 25, 2019, final agency decision, the New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey's statutory procurement scheme is "to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." Barrick v. State of New Jersey, 218 N.J. 247, 258. (2014); citing, Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985). To further the State's public policy, the Courts have held that "[i]n clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP." On-Line Games, supra, 279 N.J. Super. at 597, emphasis added. The Division's overriding mission in conducting sealed, advertised bidding is to "encourage free and open competition." N.J.A.C. 17:12-2.1. It is only through maintaining a level playing field for all potential Vendors {Bidders} that the public policy of "thwarting favoritism, improvidence, extravagance, and corruption" underlying the public bidding process can be realized. Barrick, supra, 218 N.J. at 258-59 (2014).

It is of no import whether Lawmen is the sole source distributor of the brand. The question to be answered is whether Lawmen's requested change to its submitted Quote is permitted by the Court's reasoning in On-Line Games. If find that Lawmen's requested change from a 22% discount to a 22% mark-up is the type of alteration frowned upon by the Court in On-Line Games, and therefore, cannot be permitted. As previously noted:

If the Bureau accepted Lawmen's request to amend the Quote, it would be contrary to the State's public policy to "thwart[] favoritism, improvidence, extravagance, and corruption," particularly here were there were no other Vendors {Bidders} for the Simunion® brand. Barrick, supra, 218 N.J. at 258-59 (2014). In theory, this would allow any Vendor {Bidder} to obtain the list of Vendors {Bidders} to ascertain whether there was competition for specific brand in a category bid and request a favorable modification to its submitted Quote. Further, permitting the requested change would be contrary to the Appellate Divisions reasoning in In re Protest of the Award of the On-Line Games Prod. & Servs. Contract, Bid No. 95-X-20175 where the court held "[i]n clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP." 279 N.J. Super. 566, 597 (App. Div. 1995).

Accordingly, I affirm the Bureau's decision to reject Lawmen's requested change to its submitted Quote. In addition, I note that its request for reconsideration Lawmen stated that it "cannot honor a typing error;" therefore, I find that Lawmen has withdrawn its submitted Quote for the Simunion® brand (price line 47) in Category 4. While this will necessarily result in a reprourement of these goods should using agencies

determine they are necessary, and an accompanying increase in price, the case law noted above does not permit a possible increase in cost to be a shield against the requirements of public procurement law.

Second, as to Lawmen's Quote for the Avon brand (price line 79), in its request for reconsideration Lawmen states the "Lawmen Supply submitted the complete price (sic) Avon Protection price list and has the special offerings currently utilized in New Jersey...Lawmen Supply Special Response Kits are exclusively offered by Avon Protection through Lawmen Supply. These kits are currently utilized by the New Jersey State Police and others." Based upon the information provided in the request for consideration, it appears that the Lawmen Supply Special Response Kits were specially designed for Lawmen and are not available to other Vendors.

As noted in the January 25, 2019, final agency decision, both Vendors {Bidders} provided a Manufacturer's Certification stating that it was an authorized dealer/distributor for the Avon brand. Neither letter indicated either manufacturer was the only dealer/distributor for the full line of Avon brand products. The Bureau's review of the price lists submitted by both Lawmen and Atlantic revealed that the product offerings were identical, but for Lawmen's specialty kits. Therefore, the Bureau recommended a Blanket P.O. award to Atlantic as it offered a greater discount to the State, 24.8%, compared to that of Lawmen at 23%. Accordingly, I find no reason to overturn the Bureau's determination that Atlantic be awarded as the primary Blanket P.O. holder and Lawmen as the secondary Blanket P.O. holder for Category 8 price line 79. If any using agency has a need to purchase the Lawmen Supply Special Response Kits, it may do so utilizing Lawmen's awarded Blanket P.O. as the secondary Vendor {Contractor}.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with *NJSTART* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's eProcurement system. In light of the findings set forth above, I sustain the January 25, 2019, final agency decision.

Sincerely,

  
Maurice A. Griffin  
Acting Director

MAG: RUD

c: J. Kerchner  
K. Thomas