



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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January 25, 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 correspondences dated October 22, 2018 and October 23, 2018, on behalf of Lawmen Supply Company (Lawmen) which were received by the Division of Purchase and Property’s (Division) Hearing Unit. In those correspondences, Lawmen protests the October 19, 2018, Notice of Intent to Award (NOI) issued by the Division’s Procurement Bureau (Bureau) for Bid Solicitation #17DPP00046: Law Enforcement Firearms, Equipment and Supplies (Bid Solicitation).<sup>1</sup>

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*.

<sup>1</sup> This final agency decision uses terminology employed by the State of New Jersey’s *NJSTART* eProcurement system. For ease of reference, the following is a table which references the *NJSTART* term and the statutory, regulatory and/or legacy term.

<i>NJSTART</i> Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

On April 20, 2017, the Proposal Review Unit opened 102 Quotes received by the submission deadline of 2:00 p.m. After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation § 6.6 *Evaluation Criteria*.

On September 13, 2018, the Bureau completed a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. On October 19, 2018, the NOI was issued 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 stating in part:

Lawmen Supply Company of New Jersey understands that it is the only distributor given the full Avon Protection product offering including Lawmen Supply Company Avon Kits currently being purchased by New Jersey State Police. As Lawmen is listed as the Secondary vendor and is the only vendor with the full available product line we would like to take issue and protest that Lawmen should be made the primary awarded vendor for the Avon Protection line 79.

Thereafter, in a letter dated October 23, 2018, Lawmen wrote to the Division stating in part:

Lawmen Supply Company of New Jersey sees along with the intent to award that line 47 General Dynamics/Simuntion is listed as not awarded. Lawmen also sees in the rec report after Lawmen discovered there was an error in the price sheet of the submission the State received the letter sent by Lawmen immediately informing the office per RFQ (sic) 1.4.7.2 upon finding the price was marked as discount vs as it should be "markup". Lawmen sees that the state acknowledges that per the sole source letter that Lawmen Supply Company of New Jersey is the sole source for these products as enforced in the updated letter attached. In 2017 and 2018 Lawmen Supply has sold New Jersey agencies \$900,985.88 in Simuntions (sic) Products, 50% of this was to NJ state agencies. Lawmen Supply Company presents this information for consideration in protest of not being awarded and asks for the Unit to consider award of this line item with pricing as "markup" as what would be in the best interest of the State for access of these items vs not being on contract.

The record of this procurement reveals that Lawmen submitted a Quote for various brand products in multiple categories. Relevant to this protest, as shown in the screenshots below, Lawmen submitted a proposal for the Simuntion® 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 Bid	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	YS Agency Price Lists f	2/1/2017	pg 1-10	60 + NFA	NONE
42	FNH USA								
43	Monadnock								
44	Proguard								
45	Protech								
46	Sabra Of Spraux								
47	Simunition (All Types and Calibers)	Discount	22.00%	Wholesale	JS List CRP Price 022	2/23/2017	pg 1-19	45	None
48	Streamlight - Flash Lights								
49	Stoptech Tire Deflation Systems								
50	Taser International								
51	HWI	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 Bid	Delivery Days ARO	Cash Discount for Expedited Payment, See Section 4.4.5.6
78	AR Precision								
79	Avon Protection	Discount	23.00%	Retail	sp NJ Contract Lawm	1/1/2017	pg 1-13	30	None
80	Caravan 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 0225	2/25/2016	pg 1-109	30-90	None
88	Icor Technology								
89	Lakeland								
90	Ludlum								
91	Mine Safety Appliance								
92	QinetiQ - Robots								
93	Radiation Shield Tech								
94	Remotec Robotics								
95	RoboteX								
96	Robo-Team								
97	Scott Safety								
98	Smith Detection								
99	Spillyter Sorbent Products								
100	Survivalr - Honeywell								
101	Televare Systems								
102	Western Shelter								
103	Lawmen Supply	Discount	net	Wholesale	pply ppe NJ Contract l	4/3/2017	pg 1	30	None
	Combat Medical Systems	Discount	10.00%	Retail	ns Master NJ State Co	1/1/2017	pg 1-6	30	None
	Bolle	Discount	35.00%	Retail	optical Retail 010117 R	1/1/2017	pg 1	30	None
	Blastmask	Discount	9.00%	Retail	ProductUPDATE MSRP	4/1/2017	pg 1-2	30	None

In consideration of Lawmen's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, Lawmen's protests, 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. I set forth herein the Division's Final Agency Decision.

First, with respect to Lawmen's April 20, 2017, submitted Quote for the Simunition® brand (price line 47) in Category 4, Lawmen's submitted Quote indicated a 22% discount for the brand. On July 26, 2017, three months after the Quote opening date, relying upon Bid Solicitation § 1.4.7.2 *Quote {Proposal} Withdrawal After Quote {Proposal} Opening, But Prior To Blanket P.O. {Contract} Award* Lawmen wrote the Division's Proposal Review Unit advising that it had discovered an error on its submitted price sheet for the Simunition® brand. Bid Solicitation § 1.4.7.2 permits a Vendor {Bidder} to withdraw a submitted Quote upon the discovery of an error. In pertinent part, the Bid Solicitation states:

If, after the Quote {Proposal} opening, but before Blanket P.O. {Contract} award, a Vendor {Bidder} discovers an error in its Quote {Proposal}, the Vendor {Bidder} may make a written request to the Supervisor of the Proposal Review Unit to withdraw its Quote {Proposal} from consideration for award. If the Vendor's {Bidder's} request to withdraw is made in good faith, and the State will not be significantly prejudiced by granting the withdrawal of the Quote {Proposal} beyond the loss of the benefit of the bargain to the State of the withdrawing Vendor's {Bidder's} offer, the request shall be granted. Evidence of the Vendor's {Bidder's} good faith in making this request can be demonstrated by one or more of the following factors: A mistake is so significant that to enforce the Blanket P.O. {Contract} resulting from the Quote {Proposal} would be unconscionable; that the mistake relates to a material feature or term of the Blanket P.O. {Contract}; and that the mistake occurred notwithstanding the Vendor's {Bidder's} exercise of reasonable care. After Quote {Proposal} opening, while pursuant to the provisions of this section a Vendor {Bidder} may request to withdraw its Quote {Proposal} and the Director may in her discretion allow said Vendor {Bidder} to withdraw it, the Division also may take notice of repeated or unusual requests to withdraw by a Vendor {Bidder} and take those prior requests to withdraw into consideration when evaluating the Vendor's {Bidder's} future Quotes {Proposals}.

[Bid Solicitation § 1.4.7.2 *Quote {Proposal} Withdrawal After Quote {Proposal} Opening, But Prior To Blanket P.O. {Contract} Award*, emphasis added.]

In its July letter however, Lawmen did not request permission to withdraw its Quote; instead, Lawmen requested that its submitted Quote be amended to reflect a 22% mark-up rather than the 22% discount as bid. Specifically, Lawmen wrote:

Lawmen discovered an error in one line of our price sheet submission. Line #47 listed as Simunitions (sic) for which we submitted as the sole source with a letter from the manufacturer was to be a "Mark-up" and was marked in error as "Discount".

As listed in the RFQ (sic) 1.4.7.2 we upon finding an error are notifying you as soon as possible prior to award for consideration.

We ask since this is a sole source bid list of items that we could update the spreadsheet to reflect the intended "Mark-up" for this item instead of complete withdrawal. We feel this would be in the best interest of the State for access of these items. Thank you for your consideration.

The record of this procurement indicates that no response to Lawmen's July 26, 2017, letter was made.

Thereafter, in connection with the evaluation of the submitted Quote, on September 26, 2017, the Bureau requested that Lawmen submit a Best and Final Offer. On September 28, 2017, Lawmen responded to the correspondence again requesting that its submitted Quote for the Simunition® brand be changed from the 22% discount to a 22% mark-up. Specifically,

One other issue came up to address which we attached a letter dated 7/26/17 prior to award as listed in the terms of the bid to notify the Supervisor, Proposal Review Unit. Regarding Lawmen submission of line item #47 Simunitions (sic) we bring to your attention that a typing error occurred to the master price template in which Lawmen marked "discount" and should have marked "mark-up" for the pricing structure on the submission. As Lawmen Supply is the sole source and we attached a copy of the letter. We thank you for your consideration.

[Lawmen's September 28, 2017, email.]

On December 21, 2017, the Bureau responded to Lawmen advising:

Your firm submitted a Best and Final Offer (BAFO) on Price Line 47, "Simunition (All Types and Calibers)", in connection with your firm's Proposal {Quote} for T-0106 Law Enforcement – Firearms, Equipment and Supplies. In your firm's BAFO response, you changed the word "markup" in the column heading "Markup/Discount from the Manufacturer's Price List", but in your originally submitted Price Sheet, you wrote the word "Discount" underneath this column heading for Price Line 47. As per Bid Solicitation {RFP} Section 6.7 NEGOTIATION AND BEST AND FINAL OFFER (BAFO), "Any BAFO that does not result in more advantageous pricing to the State will not be considered, and the State will evaluate the Vendor's {Bidder's} most advantageous previously submitted pricing." Accordingly, the State will not consider your firm's BAFO for Price Line 47, and your firm will be evaluated based on your original proposal submission indicating a 22% Discount in Price Line 47. If your firm's offer of a 22% Discount on Price Line 47 was made in error, you may request to withdraw your Quote {Proposal} in accordance with Bid Solicitation {RFP} Section 1.4.7.2.

[Emphasis added.]

Again Lawmen responded requesting that the typographical error be corrected. Lawmen however did not withdraw its submitted Quote.

In support of its request to have the price sheet amended to reflect a 22% mark-up rather than the 22 discount as bid, Lawmen states that it has provided a Manufacturer's certification demonstrating that it is a sole source distributor. While Lawmen did provide a Manufacturer's Certification, that certification did not indicate that Lawmen was a sole source distributor. Rather, the letter indicated that Lawmen was an authorized distributor for the contract stating "Lawmen Supply Company of New Jersey, Inc. is an authorized Distributor to supply Simunition® and their associated products for the NJ Law Enforcement Firearms, Equipment and Supply contract." Simunition® February 21, 2017 letter.<sup>2</sup>

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

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<sup>2</sup> I note that a review of the Simunition® website made on January 22, 2019, reveals that Lawmen is not the only distributor of the brand in New Jersey.

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." In re Protest of the Award of the On-Line Games Prod. & Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). 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).

Here, the Bid Solicitation was clear, after the Quote opening date, if a Vendor {Bidder} finds an error in its submitted Quote, its option is to withdraw its submitted Quote. Bid Solicitation § 1.4.7.2. There is no mechanism to amend a Quote after the Quote opening date. 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 where there were no other Vendors {Bidders} for the Simunition® 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).

Based upon the foregoing I affirm the Bureau's decision to reject Lawmen's requested modification to its submitted Quote. However, I do note 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.

Second, as to Lawmen's Quote for the Avon brand (price line 79) in response to Category 8, as shown in the screenshot below, another Vendor {Bidder}, Atlantic Tactical, Inc. (Atlantic), also submitted a Quote for this brand in response to Category 8.

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 Bid	Delivery Days ARO	Cash Discount for Expedited Payment, See Section 4.4.5.6
78	AR Precision		NO BID						
79	Avon Protection	Discount	24.80%	Retail	PP00046 2017 Avon Protection	1/1/2017	ALL	30-90	
80	Caravan Shelters		NO BID						
81	Complete Environmental Products, Inc.		NO BID						
82	Concept Development Corp.		NO BID						
83	Draeger		NO BID						
84	Dupont		NO BID						
85	Endeavor Robots		NO BID						
86	FLIR Threat Detection Systems		NO BID						
87	FSI North America		NO BID						
88	Icor Technology		NO BID						
89	Lakeland		NO BID						
90	Ludlum		NO BID						
91	Mine Safety Appliance		NO BID						
92	QinetiQ - Robots		NO BID						
93	Radiation Shield Tech		NO BID						
94	Remotec Robotics		NO BID						
95	Robotex		NO BID						
96	Robo-Team		NO BID						
97	Scott Safety		NO BID						
98	Smith Detection		NO BID						
99	Spillyter Sorbent Products		NO BID						
100	Survivair - Honeywell		NO BID						
101	Televare Systems		NO BID						
102	Western Shelter		NO BID						
103	Equivalent Brand Line								
	Equivalent Brand Line								
	Equivalent Brand Line								
	Equivalent Brand Line								

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.

In light of the findings set forth above, I remand this matter to the Bureau for review consistent with this final agency decision.

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. This is my final agency decision with respect to the protest submitted by Lawmen. I encourage you to log into **NJSTART** to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

Sincerely,

  
 Maurice A. Griffin  
 Acting Director

MAG: RUD

c: J. Kerchner  
 K. Thomas