



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROCUREMENT BUREAU
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November 19, 2020

Via Electronic Mail Only susan.thompson@zeiglerfeed.com

Susan Thompson, Marketing Services Supervisor
Zeigler Brothers, Inc.
400 Gardners Station Road
Gardners, PA 17324

Re: IMO Bid Solicitation 19DPP00432 Zeigler Brothers, Inc.
Protest of Notice of Cancellation
T1486 Foods: Feed, Fish Food, Trout Grower NJDEP Fish & Wildlife

Dear Ms. Thompson:

This final agency decision is in response to your November 2, 2020, protest submitted on behalf of Zeigler Brothers, Inc. (Zeigler), to the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Zeigler protests the Division's Procurement Bureau's (Bureau) decision to cancel Bid Solicitation 19DPP00432 T1486 Foods: Feed, Fish Food, Trout Grower NJDEP – Fish & Wildlife (Bid Solicitation).

By way of background, on August 31, 2020, the Bureau issued the Bid Solicitation on behalf of The Department of Environmental Protection – Fish and Wildlife. The purpose of the Bid Solicitation was to solicit Quotes for fish food for the growing of trout. Bid Solicitation § 1.1 *Purpose and Intent*. It was the State's intent to award a Master Blanket Purchase Order (Blanket P.O.) to that responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation, was most advantageous to the State, price and other factors considered. Ibid.

On October 7, 2020, the Division's Proposal Review Unit opened one (1) Quote received from Zeigler by the submission deadline of 2:00 p.m. eastern time. That Quote was forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.6. After completing its review and evaluation, the Bureau prepared a Recommendation Report that noted that the Quote submitted by Zeigler was not responsive to the mandatory requirements of the Bid Solicitation. Specifically, the feed proposed by Zeigler did not meet the shelf life requirements identified in the Bid Solicitation. On November 2, 2020, the Bureau advised Zeigler that the procurement would be cancelled as no responsive Quote had been received. With the letter, the Bureau provided Zeigler with a copy of the October 27, 2020, Recommendation Report.

On November 2, 2020, Zeigler submitted a protest challenging the Bureau's determination noting:

Zeigler Bros., Inc. product shelf life policy for extruded aquaculture feeds states that the shelf life of the product is six (6) months from the date of

manufacture. However, due to large variances in product storage facilities across our customer base, we also recommend that for highest quality, product should be used within 90 days of receiving. We apologize for the confusing language in the Technical Data Sheets originally provided to the State of New Jersey.

Provided for your consideration are revised Technical Data Sheets indicating shelf life as requested by the State of New Jersey.

We would appreciate your consideration of not canceling the current bid solicitation from Zeigler Bros., Inc. and move forward with awarding the contract. Please let us know of your decision and any further steps needed on behalf of Zeigler to continue with its bid proposal.

With the protest, Zeigler included updated specification data sheets.

In consideration of Zeigler's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Zeigler's Quote and protest, 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.

Bid Solicitation Section 3.1 *Product Specification* required that products proposed "have a minimum of six (6) months of shelf life from date of manufacture." The record of this procurement reveals that Zeigler did not submit the specification data sheets with the submitted Quote. Accordingly, on October 16, 2020, as permitted by Bid Solicitation 4.4.3.3 *Specification Data/Nutritional Data Sheets*, the Bureau requested that Zeigler submit the specification data sheets for review and evaluation. On October 19, 2020, Zeigler responded to the Bureau's request and submitted specification data sheets for each of the products proposed. Each of the submitted specification data sheets included the following notation "SHELF LIFE: For highest quality, product should be used within 90 days of receiving." Based upon the information provided, the Bureau determined that Zeigler's Quote was not responsive to the requirements of the Bid Solicitation as the shelf life did not meet the requirements of the Bid Solicitation. Because Zeigler was the only Vendor {Bidder} who submitted a Quote, the Bureau concluded that the Bid Solicitation would be cancelled.

Although the Division has broad discretion to select among qualified and responsive Vendors {Bidders} in public contracting matters, the discretion afforded to the Director, "is not limitless." See, *In re Request for Proposals #17DPP00144*, 454 N.J. Super. 527, 559 (App Div. 2018). "In line with the policy goal of thwarting favoritism, improvidence, extravagance, and corruption, the Division may not award a contract to a bidder whose proposal deviates materially from the RFP's requirements." *Ibid.*, quoting, *Barrick v. State*, 218 N.J. 247, 258-59 (2014)). For that reason, the Division's governing regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State's bidding process. Notably, "a proposal that is not...responsive to the material requirements of the RFP shall not be eligible for further consideration for award of contract, and the bidder offering said proposal shall receive notice of the rejection of its proposal." N.J.A.C. 17:12-2.7(c).

Unfortunately, as noted above, Zeigler's Quote specification data sheets submitted to the Bureau for review indicated that the product shelf life was 90 days. Zeigler cannot now amend its Quote submission, to revise the specification data sheets to comply with the requirements of the Bid Solicitation, as doing so would be contrary to the Court's holding in *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract*, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In *On-Line*

Games the Appellate Division held that “in 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”.

The Division encourages competition and appreciates the time and effort put forth by Zeigler in preparing and submitting a Quote; however, in light of the findings set forth above, I have no choice but to uphold the Bureau’s determination that Zeigler’s Quote was not responsive to the requirements of the Bid Solicitation. Accordingly, I sustain the November 2, 2020, Notice of Cancellation. This is my final agency decision on this matter.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov. 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. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
G. Gerstenacker
U. Magaya