



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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MAURICE A. GRIFFIN
Acting Director

May 24, 2021

Via Electronic Mail Only tom.kelly@crafco.com

N. Thomas Kelly, Vice President
Crafco, Inc.
6165 West Detroit Street
Chandler, AZ 85226

Re: I/M/O Bid Solicitation #21DPP00573 Crafco, Inc.
Protest of Notice of Intent to Award
T1307 Hot Pour Crack Filler, Detackifier and Application Tools

Dear Mr. Kelly:

This final agency decision is in response to your letter of April 26, 2021, on behalf of Crafco, Inc. (Crafco) which was forwarded to the Division of Purchase and Property's (Division) Hearing Unit. In that letter, Crafco protests the Procurement Bureau's (Bureau) April 14, 2021, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #21DPP00573 - T1307 Hot Pour Crack Filler, Detackifier and Application Tools (Bid Solicitation).

By way of background, on August 31, 2020, the Bureau issued the Bid Solicitation on behalf of the Department of Transportation. The purpose of the Bid Solicitation was to solicit Quotes for hot pour crack filler, detackifier and application tools. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award one Master Blanket Purchase Order (Blanket P.O.) to that responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Bid Solicitation § 7.2 *Final Blanket P.O. Award*. The Bid Solicitation contained nine (9) price lines that were grouped together for one Blanket P.O. award.

Group	Price Lines	Description
1	1	Hot Pour Crack Filler, HMA Packaged in a 35 to 50 lb. Container
	2	Hot Pour Crack Filler, PCCP Packaged in a 30 to 50 lb. Container
	3	Crack Sealant Barrier (Detackifier) Packaged in 5 Gallon Pails Ordered in Pallet Load Quantities of Thirty Six (36) Pails Per Pallet
	4	Crack Sealant Barrier (Detackifier) Packaged in 5 Gallon Containers Ordered in Five (5) Pail Quantities
	5	Crack Sealant Barrier (Detackifier) Packaged in 5 Gallon Containers Ordered in Ten (10) Pail Quantities
	6	Crack Sealant Barrier (Detackifier) Packaged in 5 Gallon Containers Ordered in Twenty Five (25) Pail Quantities
	7	Crack Filler Squeegee, Rubber/Silicone Bladed
	8	Wheeled Pour Pot for Joint Repair Adhesive
	9	Swivel Head Sealing Disk

On October 14, 2020, the Division's Proposal Review Unit opened four (4) Quotes submitted by the submission deadline of 2:00 p.m. eastern time. After conducting a preliminary review of the Quotes received for compliance with the mandatory requirements for Quote submission, the Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.6 *Evaluation Criteria*.

After completing its review and evaluation, on April 8, 2021, the Bureau prepared a Recommendation Report that recommended that a Blanket P.O. be awarded to Seaboard Asphalt Products Company. On April 14, 2021, the Bureau issued the NOI advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O. consistent with the April 8, 2021, Recommendation Report.

On April 26, 2021, Crafco wrote to the Bureau stating that it was protesting the Bureau's determination its Quote did not conform to the requirements of the Bid Solicitation. Specifically, Crafco disputes the Bureau's determination that its product proposed for price line 1, product number 34232, did not meet the recommended climate requirements for use nor did it comply with the net weight per container requirements as set forth in Bid Solicitation Section 3.2.1.1. That protest was forwarded to the Division's Hearing Unit.

In consideration of Crafco's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, Crafco's 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.

Bid Solicitation Section 3.2.1.1 *Hot Pour Crack Filler, HMA Packaged in a 35 to 50 lb. Container*, set forth the requirements for products proposed in response to price line 1. Specifically,

Product must be applicable and recommended for use in climates between -7 degrees Fahrenheit (-22 degrees Celsius) and 136 degrees Fahrenheit (58 degrees Celsius).

Each container shall have a net weight of thirty-five (35) to fifty (50) pounds.

The following product(s) shall be considered responsive to the requirements of 3.2.1.1:

- Crafco Asphalt Rubber Type 1 Part No. 34240

Vendors {Bidders} may also offer equivalent products that meet the specifications in Section 3.2.1.1.

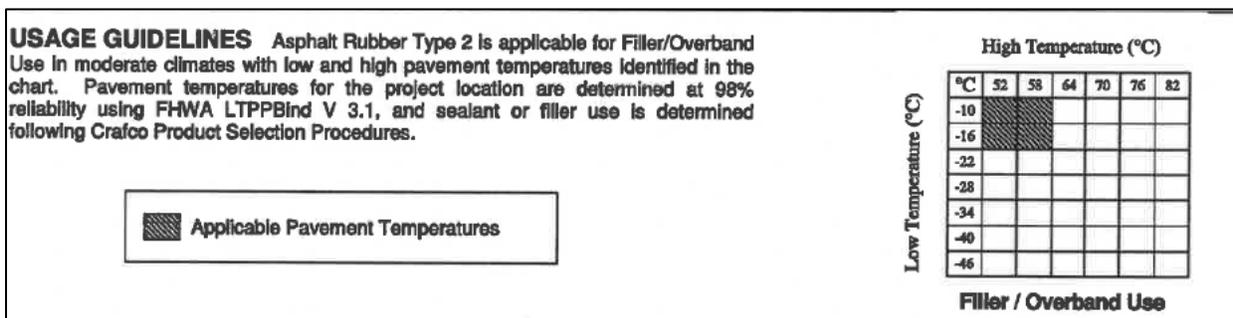
As shown in the screenshot below, in response to price line 1, Crafco bid the following:

STATE-SUPPLIED PRICE SHEET								
Hot Pour Crack Filler, Detackifier and Application Tools								
(21DPP00573, T-1307)								
Vendor (Bidder) Name:				CRAFCO, INC.				
Cash Discount for Expedited Payment (i.e. 2% 10 Days, Net 30 Days) (Refer to Bid Solicitation Section 4.4.5.6)				0%				
Price Line	Item Description	Quantity	Unit of Measure	Unit Price (Required)	Delivery Days After Receipt of Order (Required)	Manufacturer or Brand (Required)	Product Name or Product Number (Required)	Net Weight per Package (in pounds) (Required)
	GROUP 1 COMMODITY CODE: 745-56-067805 [ROAD AND HIGHWAY BUILDING MATERIALS...]							
1	ITEM DESCRIPTION HOT POURED CRACK FILLER, HMA PACKAGED IN A 35 TO 50 LB. CONTAINER	1	LB	\$0.35	7-14 Days ARO	Crafco, Inc.	34232	30

Additionally, with the Quote, Crafco submitted the data sheet for product number 34232.

After reviewing the information provided in the Quote, the Bureau concluded that Crafco’s proposed product did not conform to the requirements of the Bid Solicitation. The Recommendation report noted that the product bid by Crafco for Price Line 1 did not meet the temperature requirements and the net weight per container requirements set forth in the Bid Solicitation. Therefore, Crafco’s proposed product for Price Line 1 was deemed non-responsive and Crafco was not eligible for an award as price lines 1 through 9 were grouped to create a single award. April 8, 2021, Recommendation Report, p. 7.

The Hearing Unit’s independent review of Crafco’s Quote confirms the Bureau’s determination. First, as noted above, price line one sought a product that was “recommended for use in climates between -7 degrees Fahrenheit (-22 degrees Celsius) and 136 degrees Fahrenheit (58 degrees Celsius).” A shown in the screenshot below, the data sheet for product number 34232 indicated that product number 34232 was only recommended for use in moderate climates with pavement temperatures between -16 degrees Celsius and 58 degree Celsius.¹



In support of the protest, Crafco states that the Bid Solicitation referenced “recommended climate” temperatures whereas Crafco’s specifications referenced “pavement” temperatures which can be slightly different. Crafco correctly points out that the Bid Solicitation sought a product that could be used in the referenced “climate” temperature range. With respect to the climate temperature range, Crafco’s data sheet says for use in “moderate climates,” but offers no details to describe the temperature range for a moderate

¹ The Bureau’s Recommendation Report incorrectly notes that product number 34232 was only recommended for use where the temperature is between -10 degrees Celsius and 58 degree Celsius. Nonetheless, Crafco’s proposed product does not conform to the requirements of the Bid Solicitation.

climate. While the data sheet did include the pavement temperature range, that was not the information sought in the Bid Solicitation. Nothing in Crafco's data sheet indicates the climate temperature in which the product was suitable for use. Without this information, the Bureau did not have the necessary information to evaluate the product bid against the requirement of the Bid Solicitation. Accordingly, the Bureau correctly determined that Crafco's proposed product does not conform to the requirements of the Bid Solicitation.

Second, price line one sought a product that where "each container shall have a net weight of thirty-five (35) to fifty (50) pounds." As shown in the screenshot below, the data sheet for product number 34232 indicated that the packing for product number 34232 was "30 lb. blocks of product with 70 packages per pallet."

<p>PACKAGING Product is supplied in either cardboard boxes, or in meltable, boxless PLEXI-melt packaging. Both package types are labeled in accordance with OSHA, GHS, and specification requirements; are sold by net weight; are interlock stacked on 48 x 40 in. (122 x102 cm) 4-way pallets; can be stored outside; and are covered with a weather resistant pallet cover and 2 layers of UV protected stretch wrap.</p> <ul style="list-style-type: none">o BOX packaging consists of cardboard boxes containing approximately 30 lb. (13.6 kg) of product with 75 boxes per pallet, weighing approximately 2250 lb. (1020 kg). Boxes contain a quick melting release film for easy removal and are taped closed, without any staples.o PLEXI-melt packaging consists of 30 lb. (13.6 kg) blocks of product with 70 packages per pallet, weighing 2100 lb. (952 kg). To use, the pallet wrap is removed, and individual blocks are placed in the melter. There are no cardboard boxes or other cardboard components to open, empty, handle, or dispose of. PLEXI-melt packaging quickly melts into the product without affecting specification conformance.
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In support of this protest, Crafco referred to the requirements for Bid Solicitation Section 3.2.1.2 *Hot Pour Crack Filler, PCCP Packaged in a 30 to 50 Lb. Container*. Crafco states that its product is sold in 30 lb. blocks and therefore complies with the requirement of the Bid Solicitation. However, Crafco has referenced the wrong section of the Bid Solicitation. Bid Solicitation Section 3.2.1.2 sets forth the requirements for price line 2. Crafco's bid was deemed non-responsive because product number 34232 did not conform to the requirements for price line 1 which requires that the product be sold in a container with a "net weight of thirty-five (35) to fifty (50) pounds." Bid Solicitation Section 3.2.1.1. Accordingly, the Bureau correctly determined that Crafco's proposed product does not conform to the requirements of the Bid Solicitation.

Finally, Crafco notes that it is the current vendor on State contract T1307 Hot Pour Crack Filler, Detackifier and Application Tools, and has been providing product number 34232 for the State's use under that contract for several years. I do not dispute Crafco's statement; however, Bid Solicitation Section 1.2 *Background* noted the following: "Vendors {Bidders} are cautioned that this new Bid Solicitation addresses current requirements." The current Blanket P.O. was awarded in July of 2014, the needs of the primary using agency, the Department of Transportation, have changed since that original award, and the specifications set forth in the Bid Solicitation reflect the current requirements.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation that a Blanket P.O. be awarded to Seaboard Asphalt Products Company, whose Quote, conformed to the requirements of the Bid Solicitation, and is most advantageous to the State, price and other factors considered. Accordingly, I sustain the April 14, 2021 Notice of Intent to Award.

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
S. Ghorbani
B. Birchmeier