



State of New Jersey

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Governor

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Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROCUREMENT BUREAU
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February 9, 2021

Via Electronic Mail Only bid@mivila.com

Rebecca McGuire
Mivila Foods
226 Getty Ave.
Paterson, NJ 07503

Re: I/M/O Bid Solicitation #21DPP00594 Mivila Foods
Protest of Notice of Intent to Award
T2432 Recycled Paper: Napkins, Towels, Toilet Tissue for Distribution and Support Services - REBID

Dear Ms. McGuire:

This final agency decision is in response to an email received by the Division of Purchase and Property's (Division) Procurement Bureau (Bureau) from Mivila Foods (Mivila) on February 8, 2021. Mivila's email was forwarded to the Division's Hearing Unit and was accepted as a protest of the Bureau's February 8, 2021, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #21DPP00594 for T2432 Recycled Paper: Napkins, Towels, Toilet Tissue for Distribution and Support Services - REBID (Bid Solicitation).

By way of background, on November 16, 2020, the Bureau issued the Bid Solicitation on behalf of State of New Jersey, Department of the Treasury, Distribution and Support Services (DSS). The purpose of the Bid Solicitation was to solicit Quotes for recycled toilet tissue. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award a Master Blanket Purchase Order (Blanket P.O.) to the responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Ibid.

On December 22, 2020, the Division's Proposal Review Unit opened sixteen (16) Quotes submitted by the submission deadline of 2:00 p.m. eastern time. After conducting a preliminary review of the Quotes submitted, those Quotes which conformed to the mandatory requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7.1. After completing its review an evaluation of the Quotes, on February 5, 2021, the Bureau completed its Recommendation Report which recommended that a Blanket P.O. be awarded to B&E Supply as the Vendor {Bidder} who's Quote was most advantageous to the State, price and other factors considered. On February 8, 2021, the Bureau issued the NOI advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O. to B&E Supply.

On February 8, 2021, Mivila submitted a protest challenging the Bureau's determination that it was not eligible for a Blanket P.O. award because it was not registered as a SBE. Specifically, Mivila states:

Mivila Foods' bid was rejected due to the fact we aren't registered in NJSAVI. We are not a small business, therefore we are not in NJ SAVI. Are only small businesses permitted to submit bids to State of NJ? We have conducted business with the State before and this was never a requirement. We also did not check off that we were a small business. We would like to take part in the upcoming Frozen Entree bid so please help clarify.

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

While not all New Jersey procurements are designated for small business, a review of this Bid Solicitation reveals that the procurement was designated as a full Small Business Set-Aside in accordance with N.J.S.A. 52:32-17 et seq., commonly known as the Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses. Accordingly, the Bid Solicitation alerted Vendors {Bidders} to the requirement that they must be registered as Small Business Enterprise as of the Quote opening date to be eligible for a Blanket P.O award.

Pursuant to the provisions of N.J.S.A. 52:32-17 and N.J.A.C. 17:13 this is a full Set-Aside Blanket P.O. for **Category I, II and III** for Small Businesses. The Vendor {Bidder} must be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened.

[Bid Solicitation Section 4.4.1.4 *Small Business Set-Aside Blanket P.O.*]

In conducting the review of the submitted Quotes the Bureau consulted with the Division of Revenue and Enterprise Services (DORES), Small Business Registration and M/WBE Certification Services Unit and found that Mivila was not registered as a Small Business Enterprise in accordance with N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:13 et seq. N.J.S.A. 52:32-25 requires that "when a contract or portion thereof has been designated as a set-aside, invitations for bids shall be confined to businesses designated by the department as appropriate for the set-aside and bids from other bidders shall be rejected."

The Bureau's February 5, 2021 Recommendation Report states that the Bureau found that the Quote submitted by Mivila was non-responsive to the mandatory requirements of the Bid Solicitation because Mivila was not registered as a Small Business Enterprise (SBE) as of the Quote opening date and therefore, it was not eligible for a Blanket P.O award. Consistent with the requirements of the Bid Solicitation, bidding here was limited to those entities certified as Small Business Enterprise by the DORES by the Quote opening date. In the protest, Mivila acknowledges that it is not certified as a Small Business Enterprise.¹

¹ In the protest Mivila states that it is interested in submitting a Quote in response to T2423 Frozen Entrees for Distribution and Support Services which is currently advertised on **NJSTART**, Mivila should carefully review the requirements for Quote submission and to ensure that it meets any eligibility requirements as of the Quote opening date.

The Division encourages competition and appreciates the time and effort put forth by Mivila in preparing and submitting a Quote. However, in this case the procurement was designated as a Small Business Set-Aside as vendors submitting Quotes for this Bid Solicitation had to meet this requirement. In light of the findings set forth above, I have no choice but to uphold the Bureau's determination that Mivila was not eligible for a Blanket P.O. award. 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 Mivila to log into **NJSTART** to select any and all commodity codes for procurements it may be interested in submitting a Quote for so that it may receive notification of future bidding opportunities.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
G. Gerstenacker
S. Brandbergh