



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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March 7, 2023

Via Electronic Mail jharris@keefegroup.com

Jeff Harris, Group Vice President
Keefe Group, LLC
301 Mill Road
Edison, New Jersey 08837

Re: Protest of Bid Solicitation Specifications
Bid Solicitation #22DPP00767 - T1715 Canteen Commissary for the Department of Corrections
Through Distribution and Support Services

Dear Mr. Harris:

This final agency decision is in response to your letter dated February 15, 2023, regarding Bid Solicitation #22DPP00767 - T1715 Canteen Commissary for the Department of Corrections Through Distribution and Support Services (Bid Solicitation), to the Division of Purchase and Property (Division) on behalf of Keefe Group, LLC (Keefe). In that letter which Keefe identifies as a Specification Challenge (the Specification Challenge), Keefe challenges certain responses made during the electronic Question and Answer period, which responses can be found in Bid Amendment #10, posted on NJSTART on February 13, 2023. Specifically, Keefe argues that the bid specifications are not vendor specific, and that any vendor can source products to meet the specifications incorporated into the revised Bid Solicitation.

By way of background, the subject Bid Solicitation was issued by the Division's Procurement Bureau (Bureau) on behalf of the New Jersey Department of Corrections (DOC) through Distribution and Support Services (DSS) to solicit quotes for canteen commissary items for the inmate population. Bid Solicitation §1.1 *Purpose and Intent*. Bidders' electronic questions were due to the Bureau by August 12, 2022.¹ The Bureau posted Bid Amendment #1, with answers to the questions received from potential Bidders, on August 24, 2022. On August 26, 2022, seven (7) business days prior to the original Quote Opening Date of September 7, 2022, Union Supply timely submitted its Specification Challenge.² With respect to Union Supply's September Specification Challenge, the Hearing Unit's review resulted in revisions to the Bid Solicitation which were memorialized in Bid Amendment #4 and posted on [NJSTART](#).

¹ No questions were received from Union Supply before submitting its two separate specification challenges.

² To allow for the resolution of the Specification Challenge, the Bureau thereafter posted Bid Amendments #2 and 3, which postponed the Quote Submission Due Date to October 26, 2022, at 2:00 pm Eastern Time. By letter dated October 17, 2022, Union Supply protested the amended Bid Solicitations "by incorporating all of the arguments contained in the August 26 protest." Those arguments were addressed in the Final Agency Decision issued on October 20, 2022.

Following the posting of that Bid Amendment, the Question and Answer period was re-opened, with the second Question Submission Due Date set for November 9, 2022, and the Revised Quote Opening Date on December 8, 2022. A subsequent Bid Amendment (#6) revised the Quote opening date to December 21, 2022. On December 9, 2022, seven (7) business days prior to the revised Quote Opening Date of December 21, 2022, Union Supply timely submitted a second Specification Challenge. With respect to Union Supply's December Specification Challenge, the Hearing Unit's review resulted in revisions to the Bid Solicitation which were memorialized in Bid Amendment #9 and posted on [NJSTART](#).

Following the posting of Bid Amendment #9, the Question and Answer period was re-opened, with the third Question Submission Due Date set for February 3, 2023, and a Revised Quote Opening Date of February 28, 2023. On February 15, 2022, seven (7) business days prior to the revised Quote Opening Date of February 28, 2023, Keefe timely submitted this Specification Challenge.

In this Specification Challenge, Keefe states that "all vendors should meet the specifications listed in the bid, and that the original product package requested be met even if vendors are required to source these items." Specification Challenge at p. 2. Keefe further asserts that the "edits are not based upon factual claims made by other vendors, and Keefe is contending that they be cured to the original specifications listed." Id. at p. 2. Specifically, Keefe states:

Bid Amendment #10 has revised the following line items under the pretense that these products are exclusively packaged by Keefe Supply Company, the incumbent vendor.

- "Price Line Number 12: Corn Flakes Dry Cereal, Generic Brand, minimum 9 count/14 to 26 oz. Box per case": We understand this item to be an exclusively packed product that only the incumbent vendor can supply.
 - This is factually incorrect. Keefe does not have an exclusive right to offer this product in the case count and packaging requested in the bid. The Department specifically requested these items in the past and Keefe sourced the specifications. Any provider should be able to do the same and source this item.
- "Price Line Number 13: Iced Tea Mix, Pre-Sweetened with Sugar, Generic Brand, minimum 12 count/30 to 32 oz. Packages per case": We understand this item to be an exclusive product that only the incumbent vendor can supply
 - This is factually incorrect. Keefe does not have an exclusive right to offer this product in the case count and packaging requested in the bid. The Department specifically requested these items in the past and Keefe sourced the specifications. Any provider should be able to do the same and source this item.
- "Price Line Number 39: Pouched Lasagna With Beef In Tomato Sauce, Generic Brand, minimum 5 count/6 to 13 oz. Pouches per case": We understand this item to be an exclusive product that only the incumbent vendor can supply
 - This is factually incorrect. Lasagna is not an exclusive item to Keefe. The Department requested this item in the past as it had high prior usage. Lasagna and Manicotti are not the same the product and should therefore not be substituted. Like Keefe, other vendors should source the proper item requested by the Department. If Lasagna is to be deleted, both items should be

removed from the bid and put into the price catalog the DOC has requested.

- “Price Line Number 40: Pouched Cooked Octopus In Olive Oil or Vegetable Oil, Generic Brand, minimum 11 count/2 to 6 oz. Pouches per case”: We understand this item to be an exclusive product that only the incumbent vendor can supply.
 - This is factually incorrect. Octopus is not an exclusive item to Keefe. The Department requested this item in the past as it had high prior usage. Octopus and clams are not the same the product and should therefore not be substituted. Clams are previously listed in the bid as a separate item as Line Number 36. Like Keefe, other vendors should source the proper item requested by the Department.
- "Price Line Number 56: Mayonnaise, Shelf Stable, Generic Brand, minimum 12 count/16 to 18 oz. Plastic Squeeze Bottles per case (No Glass) ": We understand this item to be an exclusive product that only the incumbent vendor can supply.
 - This is factually incorrect. Keefe does not have an exclusive right to offer this product in the case count and packaging requested in the bid. The Department specifically requested these items in the past and Keefe sourced the specifications. Any provider should be able to do the same and source this item.

[Specification Challenge at pgs. 1-2.]

New Jersey procurement law requires that “specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency. . . .” N.J.S.A. 52:34-12. This principle is based on the long-recognized “policy behind the competitive bidding statutes, i.e., assurance against favoritism, improvidence, extravagance and corruption in the bidding process.” Palamar Constr., Inc. v. Pennsauken, 196 N.J. Super. 241, 251 (App. Div. 1983) (citing Terminal Construction Co. v. Atlantic City Sewerage Auth., 67 N.J. 403, 410 (1975)). “These policies, in turn, are meant to ensure that all bidders are equally situated in their competition for the public contract.” Palamar, supra, 196 N.J. Super. At 251 (citing Hillside Twp. v. Sternin, 25 N.J. 317, 322 (1957)). “The conditions and specifications must apply equally to all prospective bidders. Otherwise, there is no common standard of competition.” Id.

Having considered the questions raised during the third Question and Answer period, as well as a detailed review of the specific price lines and the Bid Solicitation as a whole, the Bureau determined to amend the Bid Solicitation and State Price Sheet to address the concerns raised during the third Question and Answer period, with the revisions highlighted in Bid Amendment #10. Please see Bid Amendment #10, “T1715 Revised Bid Solicitation 2.10.23”, and “T1715 Revised Price Sheet 2.13.23”, which have been posted on [NJSTART](#). These specification changes in Bid Amendment #10 were in addition to those revisions in Bid Amendment #4 and Bid Amendment #9 which increased the number of potential bidders and products in accordance with the principles outlined in New Jersey’s statutory and case law.

Although the State appreciates Keefe’s efforts to source items to meet the Bid Solicitation specifications, Keefe’s position that “all vendors should meet the specifications listed in the bid, and that the original product package requested be met even if vendors are required to source these items” runs contrary to the principles outlined above. As noted above, Bid Solicitation specifications should permit the

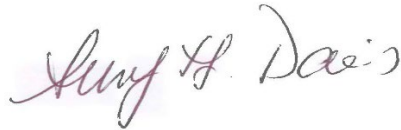
largest number of available products meeting a using agency's specifications. Revising specifications to reduce the desired "full and free competition" would only serve to potentially limit products to those meeting Keefe's specifications or ability to source specialized packaging.

In light of the findings set forth above, I sustain the revisions in the Bureau's Bid Amendment #10. After the filing of this protest, the Bureau posted Bid Amendment #11 on [NJSTART](#). Please be advised that, with the posting of that amendment, the Revised Quote Opening Date is March 21, 2023.

Thank you for your company's interest in doing business with the State of New Jersey and for registering your company with [NJSTART](#) at www.njstart.gov, the State of New Jersey's new eProcurement system.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Amy F. Davis
Acting Director

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