



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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Acting Director

March 13, 2023

Via Electronic Mail Only kingslandprimemeats@gmail.com

Rosa Maria Montana
Kingsland Prime Meats
10 Squirrelwood Road
Woodland Park, NJ 07424

Re: I/M/O Bid Solicitation #22DPP00704 Kingsland Prime Meats
Protest of Notice of Intent to Award
T1105 – Foods: Meat - Cured, Fresh, Chilled and Frozen, for Distribution and Support Services

Dear Ms. Montana:

This final agency decision is in response to your correspondence of February 23, 2023, on behalf of Kingsland Prime Meats (Kingsland) to the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Kingsland protests the February 22, 2023, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #22DPP00704 – T1105 – Foods: Meat - Cured, Fresh, Chilled and Frozen, for Distribution and Support Services (Bid Solicitation). Specifically, Kingsland protests its non-responsive determination for Price Line 1.

By way of background, on February 17, 2022, the Bureau issued the Bid Solicitation on behalf of the Department of Treasury, Distribution and Support Services (DSS). The purpose of the Bid Solicitation was to solicit Quotes for various meat products for delivery to DSS. Bid Solicitation §1.1 *Purpose and Intent*. It is the State's intent to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid. On March 29, 2022, the Division's Proposal Review Unit opened eight Quotes received by the submission deadline of 2:00 pm eastern time.

After the review and evaluation of all Quotes received was completed, the Bureau prepared a Recommendation Report that recommended Blanket P.O. awards to five separate bidders for eight of the ten Price Lines. Two Price Lines, Price Line 5 and Price Line 10, were not awarded.¹ On February 22, 2023, the NOI was issued advising all bidders that it was the State's intent to award Blanket P.O.s consistent with the Bureau's February 16, 2023, Recommendation Report.

On February 23, 2023, the Division's Hearing Unit received Kingsland's protest stating:

¹ Price Line 5, "Steaks, Beef, Emulsified, Minute, Frozen," was not awarded due to a Bid Solicitation specification error. Price Line 10, "Beef Bologna, Reduced Sodium, Frozen, was not awarded due to a lack of responsive Quotes received for that Price Line.

I would like to protest my loss with regard to; Bid Solicitation #: 22DPP00704 Bid Solicitation: T1105 - Foods: Meat- Cured, Fresh, Chilled and Frozen, for Distribution and Support Services.

We lost due to an error with our label. This error was due to total fat of a 100g sample. We simply used the wrong label, it was an in house error. We used a label that was for 85% lean ground beef not 80% ground beef. 80/20 ground beef could never be under 10g of total fat, this was a huge error on our part.

I am hoping you would reconsider our submission, I have attached the correct label as well supporting documentation from the USDA.

The following screenshots, as mentioned in Kingsland's letter, were additionally attached to the protest correspondence:

Nutrition Facts	
Serving size	100 (100g)
Amount Per Serving	
Calories	250
% Daily Value*	
Total Fat 18g	23%
Saturated Fat 8g	40%
<i>Trans</i> Fat 1.2g	
Cholesterol 70mg	23%
Sodium 65mg	3%
Total Carbohydrate 0g	0%
Dietary Fiber 0g	0%
Total Sugars 0g	
Includes 0g Added Sugars	0%
Protein 17g	34%
Not a significant source of vitamin D, calcium, iron, and potassium	
*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.	

2/23/23, 7:52 AM FoodData Central

As an official website of the United States government
 This site is controlled by the U.S. Department of Agriculture
 Agricultural Research Service

FoodData Central Search Results

ARS HOME - FOODDATA CENTRAL - BEEF, GROUND, 80% LEAN MEAT / 20% FAT, PATTY, COOKED, BROILED (SR LEGACY, 171797)

Beef, ground, 80% lean meat / 20% fat, patty, cooked, broiled

SR Legacy, released in April 2018, is the final release of this data type and will not be updated. For more recent data, users should search other data types in FoodData Central.

Data Type: SR Legacy
 Food Category: Beef Products
 FDC ID: 171797
 NDS Number: 23573
 FDC Published: 4/1/2019

Nutrients **Measures**

Portion:

Name	Amount	Unit	Deriv. By	n	Samples	Min	Max	Median	Footnote	Last Updated
Water	56	g	Analytical data; derived by linear regression							5/1/2014
Energy	270	kcal	Calculated							5/1/2014
Energy	1130	kJ	Calculated							5/1/2014
Protein	25.8	g	Analytical data; derived by linear regression							4/1/2005
Total lipid (fat)	17.8	g	Analytical data; derived by linear regression							5/1/2014
Ash	1	g	Analytical data; derived by linear regression							3/1/2002
Carbohydrate, by difference	0	g	Assumed zero (insignificant)							3/1/2002

<https://fdc.nal.usda.gov/fdc-app.html#/food-details/171797/nutrients> 1/12

With respect to product specifications for the various items sought, Bid Solicitation Section 4.1 *Product Specifications* set forth the following requirements for Price Line 1 Ground Beef, Frozen:

Price Line	Description	Specification	Approved Products
GROUP 1 (Price lines 1 and 2)			
1	Ground Beef, Frozen	<p><u>The product must meet the following requirements:</u></p> <ul style="list-style-type: none"> Shelf Life: Product shall have a minimum of three hundred sixty-five (365) days of shelf life from date of manufacture, if kept frozen Packaging: Must be packed in 4/ 10 lb. plastic sleeves or chubs per case 	<ul style="list-style-type: none"> Cherry Meat Packers Bulk Ground Beef 4/10 lb. Rolls Cook's Wholefood Dist., Inc. Ground Beef 80% Lean 4/10 lb. Chubs per Case North Star Imports – North Star Ground Beef Bulk 100% Beef – Item code # 1155

		<ul style="list-style-type: none"> • Classification: Beef, ground, frozen, IMPS # 136 compliant, in plastic sleeves or chubs • Ingredients: Product shall consist solely of pure ground beef • Processing: Product must be ground and packed into sleeves or chubs • USDA Inspection: Product must be USDA inspected and evidenced on the case labeling with stamped shield • Sleeve/Chub Weights: Ground beef sleeves/chubs must weigh between 9.6 lbs. minimum to 10.4 lbs. maximum • Fat Content: Between 10 grams minimum to 22 grams maximum • Sodium: Between 40 mg. minimum to 100 mg. maximum • Calories: Between 200 calories minimum to 280 calories maximum • Protein: 14 grams minimum • Net Weight per Case: Between 38.4 lbs. minimum to 41.6 lbs. maximum 	<ul style="list-style-type: none"> • Kingsland Prime Meats – Ground Beef (IMPS # 136)
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Further, to assist bidders in preparing and submitting a Quote, Bid Solicitation Section 3.26 *State-Supplied Price Sheet Instructions*, instructed bidders to in part, complete the following information on the State-supplied price sheet:

- Step 6 – The Vendor shall enter the brand or manufacturer in the “Brand or Manufacturer” field. Equivalent Products, as noted in Bid Solicitation Section 4.1, shall be entered in this field and are subject to review and evaluation for specification compliance and must comply with the requirements set forth in Bid Solicitation Section 3.19.

- Step 7 – The Vendor shall enter the product name or product number in the “Product Name or Product Number” field. **Equivalent Products, as noted in Bid Solicitation Section 4.1, shall be entered in this field and are subject to review and evaluation for specification compliance and must comply with the requirements set forth in Bid Solicitation Section 3.19.**

A Vendor offering more than one brand or the same brand with alternate product/model numbers for the same price line item should copy and submit a separate State-Supplied Price Sheet for each additional brand or model number bid along with any changes to fixed prices, if applicable, with the Quote.

[Emphasis added.]

As required, Kingsland entered the number of items per case and the Brand/Product in the appropriate columns. See screenshot of the relevant portion of Kingsland’s Price Sheet below.

Price Line No.	Item Description	Qty.	Unit	Unit Price (Required)	Net Weight Per Case (Required)	Brand or Manufacturer (Required)	Product Name or Product Number (Required)	Packaging Satisfies Bid Solicitation Section 4.5 Requirements (Yes or No) (Required)
GROUP 1 (Price Lines 1 and 2)								
1	Ground Beef, Frozen Refer to Section 4.1 of the Bid Solicitation for product specifications.	1	CASE	\$2.50000	40.00000	Kingsland Prime Meat	GB1	yes
2	Ground Beef Patties, Frozen Refer to Section 4.1 of the Bid Solicitation for product specifications.	1	CASE	\$2.60000	20.00000	Kingsland Prime Meat	Patty1	Yes

During the evaluation of Kingsland’s Quote, on June 21, 2022, the Bureau wrote to Kingsland requesting confirmation of the pricing submitted by Kingsland, as well as requesting specification data sheets for the products bid with Kingsland’s Quote. See screenshot below.

Dear Mrs. Montana:

The Division of Purchase and Property (“Division”) is in receipt of the Quote submitted by Kingsland Prime Meats (“Company”) in response Bid Solicitation #22DPP00704. This letter is to request that your Company submit additional documentation to assist the Division in reviewing the commodity offered in your Quote.

Bid Solicitation Section 3.36 State Price Sheet Instructions Step 4, states in pertinent part:

“The Vendor shall insert a firm, fixed, all-inclusive price in U.S. dollars in the “Unit Price” field on the State-Supplied Price Sheet. The “Unit Price” must be the price per unit specified in the “Unit” column and must be submitted Freight On Board (F.O.B.) Destination.”

Please confirm that the pricing offered on your Quote submission is as follows:

Price Line/Description	Price on State-Supplied Price Sheet
Line 1: Ground Beef, Frozen	\$2.50 per case price
Line 2: Ground Beef Patties, Frozen	\$2.60 per case price

On June 30, 2022, Kingsland responded to the Bureau’s June 21, 2022, request with the following by email and included the specification data sheet discussed below which was included in the Bureau’s Recommendation Report discussion on Kingsland’s responsiveness to the Bid Solicitation requirements:

Ground Beef Frozen
 Price is \$2.50 per lbs 40# case \$100.00
 GB1
 Shelf life 365 days
 Ground beef frozen in plastic sleeve
 USDA Seal on each box
 Weight per sleeve no less than 9.6 lbs and no more than 10.4 lbs.
 40 lbs per case
 Please see attached nutritional label for remainder of questions.

Ground Beef Patties Frozen
 Price is \$2.60 per lbs 20# case \$52.00
 Patty1
 Shelf life 365 days
 USDA Seal on each box
 All Patties round
 weight of burgers to be no less than 3.6oz and no more than 4.4 oz
 Fat content no less than 10 grams minium and 22 grams maximum
 Please see attached nutritional label for remainder of questions.

After reviewing Kingsland’s June 30, 2022, response, the Bureau again wrote to Kingsland on August 2, 2022, with a follow-up request regarding the serving size for the products bid. See screenshot below.

Dear Mrs. Montana:

The Division of Purchase and Property (“Division”) is in receipt of the Quote submitted by Kingsland Prime Meats (“Company”) in response Bid Solicitation #22DPP00704 and your Company’s attached response to the Division’s Request for Further Information, dated June 30, 2022. This letter is to request that your Company submit additional documentation to assist the Division in reviewing the commodity offered in your Quote.

Bid Solicitation Section 3.36 State-Supplied Price Sheet, states in pertinent part:

“[T]he State may require a Vendor to provide additional information or documentation that has been deemed not to be material to product identification or price determination, in which case, the Vendor shall, within the time limit set forth in the written request, comply with said request.” Your Company bid the following brands/products in response Bid Solicitation #22DPP00704:

Price Line/Description	Brand/Product Bid
Line 1: Ground Beef, Frozen	Kingsland Prime Meats (GB1)
Price Line/Description	Brand/Product Bid
Line 2: Ground Beef Patties, Frozen	Kingsland Prime Meats (Patty1)

Based on your previous response to the Division’s Request for Information, attached for reference, please confirm the serving size on the nutritional label for each price line noted above bid by your Company.

Please note that the submitted information must address all specifications required by Bid Solicitation Section 4.1.

On April 10, 2020, Kingsland responded stating, “That would be a 3oz. serving of ground beef. I could change the serving size on the label if needed. Please let me know you received this response as I do not want to be late.” No further clarification letters were sent to Kingsland regarding Price Line 1.

On February 16, 2023, the Bureau prepared a Recommendation Report setting forth the details of the evaluation. With respect to Kingsland’s Quote for Price Line 1, the Bureau determined that Kingsland’s submitted Quote was non-responsive to the requirements in Bid Solicitation Section 4.1 *Product Specifications* for Price Line 1 Ground Beef, Frozen. The Bureau, in its Recommendation Report, states:

The brand/product bid by Kingsland for Price Line 1 did not meet the requirements of Bid Solicitation Section 4.1, specifically the product bid did not meet the minimum fat content requirements.

Bid Solicitation Section 4.1 identified an Approved Product, Kingsland Prime Meats – Ground Beef (IMPS# 136), that met the Bid Solicitation specifications. Kingsland bid Kingsland Prime Meats GB1. As such, the product bid was evaluated as an equivalent product.

Based on the product label specifications provided by the Vendor {Bidder}, the product bid did not meet the requirements listed in Bid Solicitation Section 4.1, as outlined below.

In this instance, the Kingsland Prime Meats brand did not meet the following specification (**bolded for emphasis**):

Bid Solicitation requirements:


The product must meet the following requirements:

Fat Content: Between **10 grams minimum** to 22 grams maximum

As stated in Bid Solicitation Section 4.1, the product bid was evaluated based on a 100 gram serving size.

The Kingsland Prime Meats specification, as taken from the product label provided by the Vendor {Bidder}:

Fat Content: 8 grams, based on a 3 ounce (85.0486 gram) serving size, which converts to **9.41 grams**, based on a 100 gram serving size.



Ground Beef

Distributed by
Kingsland Prime
Meats
Woodland Park,
NJ 07945

packed on

for institutional use only

Keep Frozen

U.S.
INSPECTED
AND PASSED BY
DEPARTMENT OF
AGRICULTURE
EST. 5067

Nutrition Facts	
Serving size	3 oz
Amount Per Serving	
Calories	180
	% Daily Value*
Total Fat 8g	10%
Saturated Fat 3g	15%
Trans Fat 0g	
Cholesterol 80mg	27%
Sodium 75mg	3%
Total Carbohydrate 0g	0%
Dietary Fiber 0g	0%
Total Sugars 0g	
Includes 0g Added Sugars	0%
Protein 25g	50%

Not a significant source of vitamin D, calcium, iron, and potassium

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

It is important to note that Kingsland listed some of the product specifications, such as shelf life, packaging, weight per sleeve, and pounds per case, in its email response to the Bureau's request for specification data sheets. For the remainder of the specifications that were not addressed in the e-mail response, Kingsland stated: "*Please see attached nutritional label for remainder of questions.*" Please refer to the screenshot above for the nutritional label provided by Kingsland.

Since Kingsland bid a product that did not meet the Bid Solicitation requirements for minimum fat content, its Quote for Price Line 1 was deemed non-responsive, thereby rendering its Quote for Group 1 (Price Lines 1 and 2) non-responsive.

Note: The Approved Products list in Bid Solicitation Section 4.1 for Price Line 1 included Kingsland Prime Meats – Ground Beef (IMPS# 136) that met the Bid Solicitation specifications, including fat content (23 grams at 4 ounce/113.4 gram serving size, which converted to 20.28 grams at a 100 gram serving size). Kingsland should have bid the Kingsland Prime Meats – Ground Beef (IMPS# 136) brand/product number listed in Bid Solicitation Section 4.1, which met the Bid Solicitation specifications.

[Emphasis in original.]

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

The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion. Specifically the Bid Solicitation Section 9.0 *Glossary* states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

This mandatory language is found in Bid Solicitation Section 3.19, *Specification Data Sheets*, wherein it makes clear that:

Bidders should submit with its Quote specification data sheets for all Equivalent Products bid. **The specification data sheets must document that its product bid meets or exceeds the requirements of the Bid Solicitation specifications.**

Bidders offering Approved Products identified in this Bid Solicitation are not required to submit specification data sheets for those Approved Products only. However, all required information identified on the State-Supplied Price Sheet and outlined in Bid Solicitation Section 4.0 as necessary to confirm specification conformance must be provided.

[Emphasis added.]

The clear language in Bid Solicitation Section 3.19 requiring that “specification data sheets must document that its product bid meets or exceeds the requirements of the Bid Solicitation specifications,” and the Glossary definitions explaining the mandatory nature or “shall” and “must” requirements, make clear that the product specifications were a required component of the Bid Solicitation.

Contrary to the instructions set forth in Bid Solicitation Section 3.19, Kingsland did not provide a specification data sheet which met all mandatory specifications as required. Kingsland has requested that the Division reconsider the Bureau’s non-responsive determination, and instead consider the specification data sheet submitted with its protest correspondence. By making this request, Kingsland is asking the Division to determine that the failure to submit the correct specification data sheet is a waivable deviation from the Bid Solicitation’s requirements. These determinations are analyzed according to the decision in Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974), which set forth a two-part test.

In order for Kingsland’s Quote to be considered responsive, Kingsland would have had to have submitted all of the information required by the Bid Solicitation with its Quote. While minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 8.1 *Right to Waive*, it is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Stemin, 25 N.J. 317,324 (1957). In Meadowbrook Carting Co. v. Bor. of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in River Vale, *supra*, for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity.” In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No.95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, *supra*, 127 N.J. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over

other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” *Id.* at 222.

Here, unfortunately, Kingsland submitted a specification data sheet in support of its Quote with information that did not meet the specifications outlined in Section 4.1 for Price Line 1. Although the State could be assured that the Blanket P.O. could be performed in accordance with the specified requirements based on the information provided with Kingsland’s protest, providing Kingsland with the opportunity to modify its bid documents post-Quote opening would adversely affect competitive bidding by placing Kingsland in a position of advantage over the other bidders, and would undermine the necessary common standard of competition. River Vale, *supra*, 127 N.J. at 216. Kingsland’s failure to include the proper information with its Quote submission and as requested by the Bureau is a material deviation from the requirements of the Bid Solicitation. See N.J.A.C. 17:12-2.2(a)(6).

The Division encourages competition and appreciates the time and effort put forth by Kingsland 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 Kingsland’s Quote was non-responsive.

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 your company may be interested in submitting a Quote for so that it may receive notification of future bidding opportunities.

Sincerely,



Cory K. Kestner
Acting Chief Hearing Officer

C: J. Kerchner
K. Thomas
U. Magaya