



State of New Jersey

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April 30, 2015

Via Fax [877-273-8335] and USPS Regular Mail

Wayne Wilkinson, VP, Staples Advantage Sales
Staples, Inc.
1414 Radcliffe Street, Suite 110
Bristol, PA 19007

Re: Protest of Intent to Award State Contract #T0052
RFP # 15-X-23609 – *Office Supplies & Recycled Copy Paper*

Dear Mr. Wilkinson:

This letter is in response to your letter dated March 24, 2015, referencing the subject Request for Proposal (“RFP”) and regarding the slated award of the subject T0052 contract by the Procurement Bureau (“Bureau”), the unit of the Division of Purchase and Property (“Division”) responsible for conducting open competitive procurements of State of New Jersey (“State”) contracts. On behalf of Staples, Inc. (“Staples”), you challenge the Bureau’s announced intent to award the re-procured T0052 contract to WB Mason (“WBM”), presenting five points of disputation in seeking reconsideration of the slated award to WBM.

In consideration of your challenge, I have reviewed the record of this procurement, including, but not limited to, the RFP, the Bureau’s Recommendation Report, and WBM’s proposal. This review has provided me with the information necessary to determine the facts of this matter and to render an informed decision on the merits of Staples’ protest. Finding that your letter effectively conveys your concerns about, and issues with, the subject procurement and outcome, there is no need for an in-person presentation.

In the first of its five contentions, Staples asserts that the local governmental and educational entities, collectively known as Cooperative Purchasing Partners (“CPPs”), which will opt to exercise their statutorily established prerogatives to utilize the resultant T0052 contract, will be adversely affected by having to purchase non-T0052 contract items through other means or from other sources because the T0052 contract limits the types and numbers of products available to the contract users. Staples speculates that these limitations will result in less use of the T0052 contract and therefore diminished negotiation power on the part of the State going forward.

First, as this initial contention challenges the base concept, scope and structure of the subject RFP, I find it to be a challenge that has been untimely presented and thus not subject to a ruling concerning

its relevance to the scheduled award of contract. As established by the Division's administrative rules, specifically at N.J.A.C. 17:12-3.2, *Protest procedures; challenges to a specification*, challenges of this type must be presented to the Bureau and/or Division for consideration prior to the deadline for submission of proposals so that an assessment of the issue(s) can be made and a determination can be communicated to all bidders. To that end, the cited administrative rule establishes that interested parties with concerns about the scope (e.g., concept, provisions, structure) of an RFP must present those concerns during the RFP-established Electronic Question and Answer period for the Bureau's consideration and response. If dissatisfied with the Bureau's responses communicated through issuance of an RFP addendum, an interested party can, until seven business days prior to the proposal submission deadline, submit a written protest to the Division. If the Division's decision affirms a need for change to the RFP/contract provisions or clarity of an issue, such information is communicated to all bidders simultaneously through the Bureau's issuance of an RFP addendum in order to maintain the level playing field.

The right of a bidder to challenge RFP provisions after having participated in a competition for a contract has been addressed by the courts. Of note, in Waszen v. City of Atlantic City, 1 N.J. 272, 276 (1949), the New Jersey Supreme Court set forth the following conclusion:

Since they were the unsuccessful bidders they therefore have no standing to challenge the award of the contract to a rival bidder or to attack allegedly illegal specifications. . . . The rationale of such holding is that one cannot endeavor to take advantage of a contract to be awarded under illegal specifications and then, when unsuccessful, seek to have the contract set aside.

While the specifications at issue in Staples' protest are not "illegal", the principle established by this Court decision is applicable in this case. The record indicates that there was no specification challenge received from Staples or any other interested party during the procurement period at all. While Staples' initial point of protest is therefore moot, I will, nevertheless, address Staples' expressed concern.

Queried regarding this initial point of protest, the Procurement Specialist assigned to conduct the subject procurement advises that the product listing of the subject RFP and the resultant T0052 contract was purposefully established so that all State agencies and CPP entities could access the core office supplies and recycled paper needs of State agencies and was intentionally limited, in the end, to 1054 items as a base precept and condition of the RFP, with a proviso that bidders' proposals must offer viable products for at least 98 percent of the 1054 items of the contract. This reduction in the number and types of products is in line with a substantial reduction from the approximate 15,000 contract items available to users under prior office supply/paper contracts procured by the Division, including the Division's 2010 award of the M0052 multi-state contract to Staples in 2010, which, in 2012, was consolidated, through negotiations with Staples, to a contract limited to approximately 1125 core items, i.e., those items most often purchased from Staples by M5200 contract users.¹ This effort achieved more favorably discounted pricing for contract users purchasing these core items. As a result, with some discretionary modifications to the core product listing, RFP 15-X-23609 sought and obtained competitive proposals from qualified vendors for a similar core list of items with the intent to achieve, for all contract users, even greater savings for the most frequently purchased office supplies and recycled paper products. This effort has produced the desired result in that the intended awardee's offered pricing will provide greater savings to the contract users for the core products they order.

¹ The list of these items was determined from sales records provided by Staples to the Bureau which intended to limit use of the contract to core office use items in order to achieve higher percentage discount pricing for those primary items rather than a lower percentage discount off the broad array and great number of a vendor's catalog items.

In rebuttal to Staples’ initial contention, the assigned Procurement Specialist advised that the intent of the RFP’s allowance for bidders to offer a private label or different branded equivalent product to the one specified on the RFP pricing page was an effort to establish the standard and allow for maximum participation and, thereby, greater competition and resultant lower pricing more favorable to the contract users while maintaining a level playing field for all bidders. Thus, the RFP provided bidders with options to offer either the specified “core list” product, an equivalent alternate product, or an alternate environmentally preferable (“AEP”) equivalent product², or, in fact, products that met the requirements for any one, two or all three of these categories. If any offered alternate or AEP product did not measure up to the specified core item, it was deemed unacceptable.

With regard to Staples’ concern about the State’s future negotiating power and a potential for price escalations that may adversely affect CPPs, I find that the success of the subject procurement in reducing the office supplies and paper costs for all users of the core office supplies and paper is evident and have concluded that all contract users will benefit from deeper discounts off the base items available under the new contract. It is reasonably anticipated that the preponderant use of the T0052 contract by State agencies as required, and the expected prudent voluntary use of the T0052 contract by CPPs, will more than offset any added costs for the occasional use of other sources to obtain office supplies/paper not available under the T0052 contract. The Bureau’s successful effort to achieve most favorably discounted pricing for core office supplies and paper was properly conducted and is hereby upheld.

Staples’ second point of protest concerns RFP instructions for bidders to follow in determining their pricing and correspondingly completing the RFP Price Sheet pricing provisions by entering their line-by-line proposal prices. Staples suggests that the process of “[c]onverting private label items to original equipment manufacturer (“OEM”) or name brand equivalent items and then allowing suppliers to offer alternate products could have resulted in an inconsistent and potentially flawed evaluation process.” Providing a single example of its concern, Staples asserts that the product identified as item 979 on the RFP Price Sheet, “Custom Classification Folder (Top Tab) . . .” (see below), manufactured by Smead Manufacturing, “does not match the OEM or national brand item listed on the item bid list”, consistent with the Price Sheet’s use of the word “custom” in the product description column.

CORE LIST ITEMS				EXACT ITEM CORE LIST PRICES					
Price Line Number	Manufacturer Item Number	Manufacturer Name	Product Description	2013 Calendar Year - Usage	UOM	UOM Count	List Unit Price	Contract Unit Price	Ext Contract Price
979	SMD 14092	Smead Manufacturing	Custom Classification Folder (Top Tab) 40 PT Pressboard 11 3/4" W x 10" H, overall 9 1/2" Body. 2/5 Cut Right of Center 2K1&3, 2 Kraft Dividers Pocket Style with 1" Bonded Fasteners in POS 1 & 3, 2" Mathcing [sic]Tyvek Expansion - Packed 50ea per Carton	8000/yr (ordered 4x/yr in 2000 qty)	Ea	1			\$

² As set forth in RFP Subparagraph 4.4.3.1 (cited and quoted herein), “An Alternate Environmentally Preferable Item that meets the US EPA’s Comprehensive Product Guidelines developed pursuant to Federal Executive Order 13101.” As set forth in RFP Subparagraph 4.4.3.2, *Alternate Item and Alternate Environmentally Preferable Item Pricing*,” to be accepted as responsive, an AEP product had to be “equal to or better in quality and priced no more than 15% higher than bidder’s [sic] offering the exact Core Line Item specified.”

According to the Procurement Specialist conducting this procurement, the identification of the products to be included in this contract were derived from information and specifications emanating from Staples as the incumbent contractor, including the product description above for Price Line 979. The Specialist reports that Product 979 is a specialty item included in this contract because it is purchased frequently and extensively by one of the State agencies. The Specialist advises that the word “custom” was used to inform bidders that the product to be offered must have at least two pocket-style dividers within the folder. Thus, a bidder’s offer of a product that met or exceeded the cited product descriptors, i.e., had two or more dividers and meets all other standards, would be acceptable; a bidder’s offer of an otherwise compliant folder but with one pocket-style divider would not be acceptable. Looking at the proposals submitted by WBM and Staples for Price Line 979, I note that both bidders offered compliant, accepted products: Staples offered its Staples brand folder manufactured by Cardinal Brands, Inc. as an alternate item for that line at a unit price of \$1.48, and WBM offered the named Smead item at a unit price of \$1.37.

In the end, the difference in offered pricing for this folder item had no bearing on the outcome of the competition since the evaluation of proposals correctly discerned that Staples’ proposal did not achieve the 98 percent threshold expressly established for a bidder’s eligibility for an award of contract. With regard to Staples’ suggestion that the inclusion of the “custom” folder in the list of 1054 contract items is a substantive issue that may have created confusion among bidders, I note that no entity indicated confusion or queried the Bureau about this line item either at the mandatory pre-proposal conference with Staples in attendance or during the standard Question and Answer period when vendors’ concerns were presented, considered and addressed by the Bureau. As set forth on the RFP’s Signatory Page, a bidder, by signature, attests to have read, to understand, and to agree to all terms, conditions, and specifications set forth in the RFP and its addenda.

As previously noted in this letter, a base precept of this procurement was to allow, and even encourage, bidders to offer multiple items for each price line, i.e., up to three different products for each non-paper product line, i.e., the named item, an equivalent alternate item, and/or AEP item. RFP Subparagraphs 4.4.3.1 and 4.4.3.2, as part of RFP Paragraph 4.4.3, *Submittals*, within RFP Section 4.0, *Proposal Preparation and Submission*, set forth the standards for bidders’ completion of the price sheets as follows:

4.4.3.1 EXCEL RFP PRICE SHEET

The Excel RFP Price Sheet contains the State’s current Core Item List and provides the quantities ordered by State agencies for the 2013 calendar year. Bidder may use the provided quantities as a gauge to expected State usage of all Core List items, but they are no guarantee of any future volume for any Core Item. Manufacturer item numbers (SKUs) have been provided for all current items.

The bidder shall fully complete and submit the Excel RFP Price Sheet, consisting of various General Office Supplies & Recycled Copy Paper with NET unit pricing. Bidders are encouraged to submit pricing for all of the approximate 1,200 Core Items listed, but must submit overall pricing for at least 98% of the Core List items, and for all recycled copy paper items, to be considered responsive.

For each line item, bidders may provide pricing for:

- The Exact Item Specified by manufacturer and SKU number;
- An Alternate Item of the same or a different brand that is equal or better in quality;
- An Alternate Environmentally Preferable Item that meets the US EPA’s Comprehensive Procurement Guidelines developed pursuant to Federal Executive Order 13101.

Bidders are encouraged to offer pricing for ALL Core List items exactly as specified, **TOGETHER** with Alternate Items and Alternative Environmentally Preferable items, but may offer only Alternate Item pricing for particular price lines if so desired.

Bidders are encouraged to offer at least one price (Exact Item Specified, Alternate Item or Alternate Environmentally Preferable) for all Core List price lines, but **MUST** offer at least one price for 98% of line items. Bidders **MUST** offer pricing for **ALL** Recycled Copy Paper line items (Lines 514-524), which are highlighted on the Excel Price Sheet. Proposals which do not meet these two requirements will be considered nonresponsive.

If Bidder offers only Alternate Item(s) for Recycled Copy Paper, should the Alternate Item(s) be deemed not acceptable to the State, the bid will be deemed non-responsive. Similarly, should a sufficient number of bidder's Alternate Items be rejected, thus reducing the bidder's percentage of items offered to less than 98% of Core List items, the bid will be deemed non-responsive. Again, bidders are encouraged to bid the Exact Items Specified **TOGETHER** with Alternate Items and Alternate Environmentally Preferable Items.

Bidders offering Alternate Items and Alternate Environmentally Preferable Items should offer them in the same or similar Unit of Measure and case pack as the Exact Item Specified. If offering a different UOM or case pack than the Exact Item Specified, bidder should indicate that by entering an "X" in the column provided, and should provide UOM and case pack details in the Description column. Note that the State reserves the right to reject Alternate Items offered in case packs deemed by the State to be inappropriate (i.e. an Alternate Item offered as a case of 144, when each is specified).

4.4.3.2 ALTERNATE ITEM AND ALTERNATE ENVIRONMENTALLY PREFERABLE ITEM PRICING

Bidders may submit their own company-branded private label products, alternate brand products, and/or recycled environmentally preferable products in the **appropriate columns** of the Excel RFP Price Sheet for award consideration. Pricing for Alternate Items and Alternate Environmentally Preferable Items must not be entered in the specified Core List item section of the Excel RFP Pricing Spreadsheet. The only exception is recycled copy paper (Lines 514-524), which has been specified as environmentally preferable and thus may be entered in the Core List item section, if offering the Exact Item Specified. For recycled copy paper, Alternate Environmentally Preferable Items are the only alternate items which will be considered. The State will disregard any offer of alternate copy paper which does not meet the definition of Alternate Environmentally Preferable Items.

Alternate Items will be considered only if they are equal to or better in quality, and equal to or less in price than bidder's offering of the Exact Item Specified.

Alternate Environmentally Preferable Items will be considered only if they are equal to or better in quality and priced no more than 15% higher than bidder's offering of the exact Core Line Item specified. Note that the 15% rule does not apply to copy paper because the specified items are already environmentally preferable.

Bidders shall provide the alternate manufacturer name(s) and manufacturer item number(s) for all Alternate Items and Alternate Environmentally Preferable Items offered (i.e. Avery, 3M, etc.) under the appropriate category on the Excel Item Price Sheet.

The State may require bidders to provide additional product information, specifications and/or product samples for testing purposes to determine whether submitted Alternate Items and Alternate Environmentally Preferable Items are acceptable to the State. The bidder must respond to all such requests within seven (7) business days. The State reserves the right to accept or reject any Alternate Items or Alternate Environmentally Preferable Items submitted.

Only one product will be awarded for each Core List price line. If the State accepts the Alternate Item or the Alternate Environmentally Preferable Item, then the Exact Item Specified in the Core List will not be awarded.

(Shadowing emphasis added.)

In light of these circumstances relative to Staples' second point of protest, I find no substantive cause to rescind the scheduled award of contract to WBM.

Staples third contention questions the Bureau's evaluation of proposal pricing for four of the RFP's 1054 price lines, contending that the pricing offered by WBM for these four items is substantially lower than proximate pricing offered by Staples and by Office Depot, a third participating bidder. Staples suggests that these substantive variations raise concerns about the long-term sustainability of the T0052 contract if awarded to WBM. The chart below lists the four items at issue and provides information pertinent to the discussion that follows:

Line #	RFP-Specified Manufacturer	RFP-Specified Item Description	Office Depot Price	Staples Price	WBM Price
27	3M	Post It® Flags, Blue, 1in	\$ 27.48	\$ 30.97	\$ 5.88
590	Tops Business Forms	Steno Book Green 6X9 12 Count	\$ 5.59	\$ 6.49	\$ 2.52
734	General Binding Corp Acco	Board Cork Aluminum Frame 4X3	\$ 26.69	\$ 34.88	\$ 12.09
738	General Binding Corp Acco	25X500 1.5 mil 1in Corefilm Utl65	\$ 38.89	\$ 37.99	\$ 12.49

The record of the Bureau's evaluation of product and price proposals affirms that the pricing data presented in Staples' letter of protest is accurate. In reviewing the Bureau's tabulation data for the entire product listing, I note that there were multiple instances where Staples' proposed prices were similarly substantially lower than the pricing proposed by WBM and Office Depot. Below are some of these instances:

Line #	RFP-Specified Manufacturer	RFP-Specified Item Description	Office Depot Price	Staples Price	WBM Price
68	Acme United Corp.	12in Beveled Wood Ruler	\$ 0.35	\$ 0.07	\$ 0.30
544	Esselte America	Memo Book Top Opening 3X5	\$ 2.25	\$ 0.48	\$ 1.95
603	Esselte America	INDEX CARD RULD 1 SIDE 4X6 WE	\$ 0.59	\$ 0.27	\$ 0.61
668	Esselte America	Pocket 100%Recy 3 1/2 Exp Ltr	\$ 1.85	\$ 0.67	\$ 1.52
703	Fellowes	Binding Combs 1/4In Blk 100Pk	\$ 4.15	\$ 2.36	\$ 4.24
706	Fellowes	Coat Hook Mesh Partition	\$ 4.99	\$ 1.99	\$ 3.82
830	Lagasse Bros Inc	Lysol Sanitizing Wipe Frsh35Pk	\$ 3.09	\$ 1.41	\$ 2.69
1018	Tops Business Forms	Pad Can Ltr Narrow Rule Econ	\$ 3.18	\$ 1.34	\$ 3.69

Based upon the information above, WBM appears to have applied the common practice of offering select products at less than standard prices to gain pricing advantages in the effort to secure the award of contract and/or to serve as a "loss leader", i.e., an incentive for contract users to purchase that item along with other contract items that engender off-setting profits. Having discerned that the issue in Staples' third contention regarding price differentials for select products was evidently utilized by both WBM and Staples as a bidding and/or marketing strategy, I find this point of protest to be without substance or merit.

Staples' fourth contention takes exception to the statement in the Bureau's Recommendation Report that "Remanufactured/reconditioned toner cartridges are not the same as, and are not an acceptable substitute for new OEM cartridges." Staples asserts that "private label remanufactured toners are industry standard products, are designed and tested to be equal to or better than their OEM equivalents, and because of legal restrictions imposed by the manufacturers of OEM product, are

often the only practical and acceptable alternatives to OEM products. Staples notes that the Bureau's determination that the private label remanufactured toner cartridges are not equivalent products to the RFP Price Sheet-specified new OEM cartridges was cause for Staples' proposal being non-responsive for failing to meet the previously quoted RFP Subparagraph 4.4.4.1's stipulated requirement that ". . . should a sufficient number of bidder's Alternate Items be rejected, thus reducing the bidder's percentage of items offered to less than 98% of Core List items, the bid will be deemed non-responsive."

First, in response to this assertion, the Procurement Specialist conducting this procurement states that all bidders, which included the three bidders named herein, were advised during the pre-proposal conference of the RFP's recurring encouragement for bidders to offer, not just an alternate product or AEP product, but to offer pricing for the specified item as well in the event that an alternate product would be deemed non-equivalent or otherwise unacceptable. A review of the RFP finds that, in fact, the sentence directly following the quotation in this letter's paragraph immediately above, bidders were advised as follows: "Again, bidders are encouraged to bid the Exact Items Specified **TOGETHER** with Alternate Items and Alternate Environmentally Preferable Items." (Emphasis in original.)

Notwithstanding this encouragement, Staples opted to offer only remanufactured cartridges for the toner cartridge product lines, i.e., no OEM new toner cartridges. The Bureau's determination that OEM toner cartridges and remanufactured toner cartridges are not equivalent products is a continuation of past practice that recognizes the longstanding contractual commitment to the State's CNA³ entity as an exclusive provider of remanufactured toner cartridges for State agencies, a condition known to Staples as the provider of only OEM toner cartridges under its T0052 contract. Thus, Staples evidently assumed a risk that, unfortunately for Staples, resulted in a non-responsive proposal rather than contract award. The equivalency issue is not a discretionary matter.

I note that the record of the procurement indicates that, had there been no such determination regarding the non-equivalency of remanufactured toner cartridges, Staples' proposal would still not have achieved a status as the most favorably priced proposal.

A review of the proposals submitted by WBM and Office Depot establishes that both entities offered pricing for the specified new OEM products as well as, in some instances, alternate or AEP products. This circumstance supports the Bureau's conclusions and recommendation. In consideration of these findings, I discern no substantive reason to alter the scheduled award of contract to WBM relative to Staples' fourth point of protest.

Staples' fifth and final contention is as follows:

It is Staples' contention that the prospect of measures to restrict "anti-dumping" practices to protect against the importing of cut-sheet paper at significantly lower prices than the prices offered in the applicable countries of origin will impact the long term viability of the awarded contract. Copy paper accounted for 56% of the spend contained in the RFP, and thus any change to the import environment for paper could impact the contract's value to the State.

³ The State's Central Nonprofit Agency (CNA), currently ACCSES-NJ, is an organization operating in the interest of the blind and visually impaired or other persons with severe disabilities and designated by the Commissioner of the New Jersey Department of Human Services to facilitate the distribution (by direct allocation, or other means) of orders of the State and local government for select commodities and services.

According to Staples, the Division should be concerned about potential adverse effects of unfair trading practices by certain foreign countries on future cost increases to WBM, which plans to purchase the uncoated, cut sheet copy paper for users of the new T0052 contract from an Indonesian-based company. Staples surmises that there is great potential for increased costs to WBM if these alleged unfair practices were to result in increased import duties or anti-dumping tariffs. In support thereof, Staples mentions a March 6, 2015, U.S. International Trade Commission (“ITC”) vote on this matter and cites a news story that precipitated the ITC’s voting action.

The Bureau’s Procurement Specialist conducting the subject procurement has affirmed Staples’ indication that copy paper will constitute over 50 percent of the “spend” generated by this contract, which is the reason the RFP required bidders to offer pricing for all 11 recycled copy paper lines of the RFP Price Sheet. She advises that the issue now presented as a point of protest by Staples was not raised by the potential bidders attending the mandatory October 2, 2014 pre-proposal conference when each RFP segment was reviewed in turn. A review of the procurement record found that two questions posed as part of the Electronic Question and Answer segment of the procurement concerning the “Buy American” clause of the State’s Standard Terms and Conditions document⁴ were answered by the Bureau through issuance of Addendum # 2, as follows:

#	Page #	RFP Section Reference	Question	Answer
24	Standard T&C Pg 4	Standard T&C – Section 3.7 Buy American	Our company must delete this requirement as it is not applicable to the rfp [sic] since a considerable number of office products are made or assembled outside of the United States. This would be most likely be [sic] true for all of your potential bidders.	Section 3.7, Buy American applies only to products used in a public works contract, and thus is not applicable to this procurement.
#	Page #	RFP Section Reference	Question	Answer
33	Standard T&C – Pg 3-4	Standard T&C – Section 3.3 and Section 3.7	Our company does not consider this contract as a Public Works contract. Please confirm that this assumption is accurate.	This is not a public works contract.

Thus, the RFP did not prohibit a bidder’s offering copy paper produced outside the United States of America.

With regard to Staples’ post-bidding concern about potential price increases for imported copy paper arising from increased import duties or anti-dumping tariffs, the RFP established that bidders were to offer pricing reflecting the provisions of the RFP’s scope of work, which included the following provision for recycled copy paper:

3.4.2 PRICE ADJUSTMENTS – CORE RECYCLED COPY PAPER

3.4.2.1 PRICE INCREASES

Recycled Copy Paper prices shall remain firm for the first twelve months of the Contract. Thereafter, the State will consider price increase requests for copy paper on each six (6) month anniversary of the Contract. Retroactive increases will not be permitted.

⁴ The State of New Jersey Standard Terms and Conditions’ Subsection 3.7, titled “Buy American”, reads as follows: Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

Contractor must document increase requests to the Procurement Specialist by providing proof of Contractor's cost increase, in writing, on mill/manufacturers' letterhead, indicating the effective date of the mill price increase. Documentation including words such as "approximate" or "expected" will not be accepted. If the Division determines that the documentation provided does not fully support the requested increase, the request may be denied or the Division may request additional documentation to support the requested increase.

The Division may also utilize the PPI index for copy paper (Paper, Except Newsprint, Mills, PCU32212-1322121) and other industry indices or price indicators in determining whether a price increase request for Recycled Copy Paper will be approved.

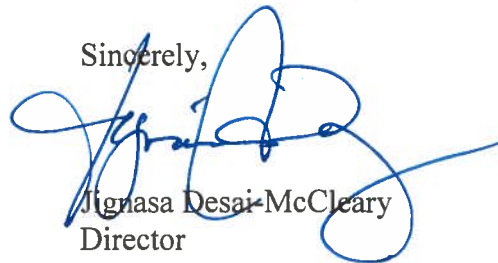
DPP reserves the right to negotiate or reject any price increase it deems to be excessive.

With regard to Staples' concerns about potential price increases having a deleterious effect on WBM's ability to honor its offered pricing for recycled copy paper under the provisions set forth above, I cannot rescind the slated award of contract to WBM on the basis of conjectured concern. The proposals submitted by WBM, Office Depot, and Staples were offered under the terms of the RFP, with the risk of price increases borne by the bidders. To act at this time on speculative information regarding a potential cause for increased costs to the intended awardee of the contract in order to meet its contractual obligations is not supportable as a reason to cancel this procurement, or for that matter, to invite the named awardee to seek the Division's authorization to withdraw its entire proposal.

Thus, having addressed the points of contention presented by Staples in contesting the slated award of contract to WBM as a responsible bidder having offered the lowest priced, fully responsive proposal, I must deny your challenge of the slated award. This is my final agency decision on this matter.

Thank you for your prior service to the State of New Jersey and for registering your entity with **NJ START**, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:RW

c: G. Olivera
M. Griffin
J. Kemery
A. M. Wiedemann