



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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January 24, 2023

Via Electronic Mail JSon@unionsupplygroup.com

John K. Son, Vice President of Business Affairs and General Counsel
Union Supply Group, Inc.
2500 Regent Blvd.
P.O. Box 619058
Dallas, TX 75261-9058

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

Dear Mr. Hay:

This final agency decision is in response to your letter dated December 9, 2022, 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 Union Supply Group, Inc. (Union Supply). In that letter (the Specification Challenge), Union Supply challenges certain specifications of the subject Bid Solicitation, and requests that certain revisions are made and incorporated into a revised Bid Solicitation.

With the Specification Challenge, Union Supply requested an in-person presentation as permitted by N.J.A.C. 17:12-3.2(e). With respect to Union Supply's request for an in-person presentation, "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." The issues raised in the Specification Challenge were sufficiently clear such that a review of the written record of this procurement, including the Specification Challenge, the Bid Solicitation, relevant statutes, regulations, and case law, has provided me with the information necessary to determine the facts of this matter and to render an informed agency determination on the merits of the Specification Challenge. As such, an in-person hearing is not warranted.

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

¹ No questions were received from Union Supply.

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](#).

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 this Specification Challenge.

In this Specification Challenge, Union Supply states that “certain specifications remaining in the revised Bid Solicitation # 22DOO00767 T1717 (sic) for canteen commissary items (the “Solicitation”) that render it overly restrictive.” Specification Challenge at p. 1. Union Supply asserts that the “minimum package size and case counts of many of the generic bid items are exclusive to the incumbent vendor such that only the incumbent vendor can submit a responsive bid for those items.” *Id.* at p. 2. Union Supply requests that changes be made to the product size and/or count, as well as permitting “other similar items that meet the basic functionality of the item that is currently sold”, for the price lines identified in its Specification Challenge which will permit for a larger number of potential products to be bid. *Id.* at pgs. 3-18. Moreover, Union Supply seeks clarification “that where a generic bid item (with no brand name) contains a minimum package size or count requirement and does not specify “No substitutes,” that an alternative package size or count may be bid.” *Id.* at p. 18.

Again, Union Supply failed to submit questions about the issues raised in its Specification Challenge during the Q&A process when the Division is empowered to modify the terms of a Bid Solicitation in response to a potential bidder’s question. Nevertheless, because the Specification Challenge was submitted after the close of the Q&A period, and seven (7) business days prior to the original Quote Opening Date, the Specification Challenge was timely submitted under the procedures set forth at N.J.A.C. 17:12-3.2.

Union Supply argues that, as structured, the revised Bid Solicitation would still function as a sole-source award to the incumbent vendor, Keefe. This is so, because “the Solicitation still seeks items in specific package sizes or counts that are only produced exclusively for the incumbent vendor. . . .” Specification Challenge at p. 1. Union Supply then identifies the following forty (40) specific price lines in its challenge:

Price Line #	Item Description
10	Sugar Frosted Flakes in Clear Re-sealable Bags, Generic Brand, minimum 12 count/20 to 25 oz. Bags per case
11	Raisin Bran Cereal in Clear Re-Sealable Bags, Generic Brand, minimum 12 count/20 to 25 oz. Boxes per case
12	Corn Flakes Dry Cereal, Generic Brand, minimum 12 count/20 to 26 oz. Box per case
15	Mixed Hard Candy, Generic Brand, minimum 40 count/3 to 4 oz. Pouches per case
17	Iced Honey Bun, Generic Brand, Clear Plastic Wrap, minimum 36 count/4 to 5 oz. per case
19	Saltine Crackers, Generic Brand, minimum 24 count/15 to 16 oz. Boxes per case

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.

20	Salted 3 Ring Pretzels, Generic Brand, minimum 15 count/10 to 12 oz. Bags per case
22	Sour Cream & Onion Potato Chips, Generic Brand, minimum 16 count/4 to 6 oz. Bags per case
23	Spicy Hot Potato Chips, Generic Brand, minimum 16 count/4 to 6 oz. Bags per case
24	Tortilla Chips, Nacho Cheese Flavor, Generic Brand, minimum 12 count/8 to 10 oz. Bag per case
25	Potato Chips, Generic Brand. minimum 16 count/4 to 6 oz. Bags per case
26	Barbeque Flavored Potato Chips, Generic Brand, minimum 12 count/4 to 6 oz. Bags per case
28	Sandwich Cookies, Chocolate with Vanilla Cream-Filled, Generic Brand. minimum 12 count/14 to 16 oz. packages per case
32	Pouched Beef Stew, Generic Brand, minimum 24 count/10 to 11 oz. Pouches per case
34	Pouched Chili W/Beans, Generic Brand, minimum 24 count/10 to 11 oz. Pouches per case
36	Pouched Smoked Baby Clams, Generic Brand, minimum 24 count/3 to 4 oz. Pouches per case
37	Pouched Pink Salmon, Generic Brand, minimum 24 count/3 to 4 oz. Pouches per case
39	Pouched Lasagna With Beef In Tomato Sauce, Generic Brand, minimum 24 count/11 to 12 oz. Pouches per case
40	Pouched Cooked Octopus In Olive Oil or Vegetable Oil, Generic Brand, minimum 24 count/3 to 4 oz. Pouches per case
41	Pouched Chunk Chicken, White Meat, Generic Brand, minimum 12 count/6 to 7 oz. Pouches per case
44	Pouched Black Beans, Generic Brand, minimum 24 count/9 to 10 oz. Pouches per case
50	Sharp Cheddar Cheese Stick, Generic Brand, minimum 48 count/3 to 4 oz. Stick per case
57	Granulated White Sugar, Generic Brand, minimum 18 count/10 to 12 oz. Box per case
58	Bath Soap, Wrapped Bar, Generic Brand, minimum 80 count/4 to 5 oz. Bars per case
59	Liquid Laundry Detergent, Phosphate Free, Generic Brand, minimum 12 count/30 to 32 oz. Plastic Bottles per case
63	Skin Care Lotion For Dry Skin, Generic Brand, minimum 12 count/14 to 15 oz. per case
64	Cough Drops, Cherry Or Licorice Flavor, Generic Brand, minimum 24 count/3 to 4 oz. packages per case
65	Electric Fan, Desk Type Oscillator, Generic Brand, 9" each, minimum one (1) fan per case
78	Toaster Pastries, Generic Brand, Strawberry, 14 to 15 oz. Box, minimum 12 boxes/8 Count per case
80	Toaster Pastries, Generic Brand, Brown Sugar, 14 to 15 oz. Box, minimum 12 boxes/8 Count per case
82	Toaster Pastries, Blueberry, 14 to 15 oz. Box, minimum 12 boxes/8 Count per case
120	Ketchup, Generic Brand, minimum 16 count/14 to 16 oz. Clear Plastic Squeeze Bottles per case (No Glass)
122	Bar Soap, Generic Brand, minimum 72 count/3 to 4 oz. Bars per case
124	Bar Soap, Generic Brand, minimum 12 packages of 4 count/ minimum 3 to 4 ounce Bars per case
126	Bar Soap, Generic Brand, minimum 36 packages of 2 count/3 to 4 oz. Bars per case
128	Bar Soap, Generic Brand, minimum 72 count/3 to 4 oz. bars per case
130	Bar Soap, minimum 12 packages of 3 to 4 oz. bars per case
134	Sensitive Tooth Toothpaste, Original Flavor, Generic Brand, minimum 12 count/3 to 4 oz. Tubes per case
136	Tartar Control Toothpaste, Generic Brand, minimum 24 count/6 to 7 oz. Tubes per case
138	Liquid Laundry Detergent, Generic Brand, minimum 6 count/40 to 50 oz. plastic Bottles per case

Accordingly, Union Supply's Specification Challenge requested that the Division:

1. Issue a statement or amendment clarifying that where a generic bid item (with no brand name) contains a minimum package size or count requirement and does not specify “No substitutes,” than an alternative pack size or count may be bid;
2. Amend the Solicitation to remove the minimum package size or count requirements for the items identified in the protest.

Union Supply first requests clarification “that where a generic bid item (with no brand name) contains a minimum package size or count requirement and does not specify ‘No substitutes,’ than an alternative pack size or count may be bid.” Bid Solicitation Section 4, *Scope of Work*, states that the “Contractor must comply with all terms and conditions outlined within this Bid Solicitation.” Pursuant to N.J.A.C. 17:12-2.9(b)(2), the “factors and significant subfactors that establish the requirements of responsiveness shall be set forth in the RFP.” Based upon these requirements, any product bid must meet the size and quantity requirements specified on the given Price Line as they are the “factors and significant subfactors that establish the requirements of responsiveness” in the Bid Solicitation. Permitting any product size or quantity despite having clearly identified specifications would violate these mandates leaving the State without assurances that it would receive the products it requires, and bidders would be subjected to a potentially arbitrary selection process instead of one guided by clear standards.


Having considered the Specification Challenge, and following 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 in the Specification Challenge, in accordance with N.J.A.C. 17:12-3.2(d). Please see Bid Amendment #9, “T1715 Revised Bid Solicitation 1.17.23”, and “T1715 Revised Price Sheet 1.17.23”, which have been posted on [NJSTART](#). Sections of the Bid Solicitation that have been significantly revised include:

- Section 1.1 *Purpose and Intent*
- Section 3.26 *State Price Sheet Instructions*
- Section 4.1 *Price Line Specifications*

With respect to Union Supply’s Specification Challenge, the Hearing Unit’s review has resulted in the aforementioned revisions to this Bid Solicitation. Bid Amendment #9 has been posted on [NJSTART](#). Please be advised that, with the posting of this amendment, the Question and Answer period has been reopened. The third Question Submission Due Date is February 3, 2023, and the Revised Quote Opening Date is February 28, 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.

Sincerely,



Amy Davis
Acting Chief Hearing Officer

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