



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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September 9, 2019

Via Electronic Mail [bids@unitedsalesusa.com] and USPS Regular Mail

Pinchus Ziegler
United Sales USA, Corp.
185 30th Street
Brooklyn, NJ 11232

Re: I/M/O Bid Solicitation #18DPP00259 United Sales USA, Corp.
Protest of Notice of Intent to Award
T0374 Bar Soap, Individually Wrapped for Distribution and Support Services (DSS)

Dear Mr. Ziegler:

This letter is in response to your email of May 29, 2019, on behalf of United Sales USA, Corp. (United Sales) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, United Sales protests the May 17, 2019, Notice of Intent to Award issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #18DPP00259 – T0374 Bar Soap, Individually Wrapped for Distribution and Support Services (Bid Solicitation).

On December 5, 2018, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of the Treasury, Distribution and Support Services (DSS). The purpose of this Bid Solicitation is to solicit Quotes for bar soap, individually wrapped, for DSS. 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 this Bid Solicitation is most advantageous to the State, price and other factors considered. *Ibid.*, N.J.S.A. 52:34-12.

On January 29, 2019, the Division's Proposal Review Unit opened nine Quotes received by the submission deadline of 2:00 pm eastern time. Quotes were received from the following Vendors {Bidders}:

- 5 Star Enterprise, Inc.
- Access NJ
- American Products, Inc.
- Bob Barker Company, Inc.
- Charm Tex
- DLK Medical Technologies, Inc.
- Epic Medical Supply Corp.
- TSP Maintenance Supply
- United Sales USA Corp.

With its Quote, Accses NJ included a letter requesting the subject Blanket P.O. be set aside. Specifically, Accses NJ stated:

Please accept this letter and our attached proposal as our formal request to the set aside Bar Soap, Individually Wrapped for Distribution and Support Services (DSS) RFP 18DPP00259 T0374 under the Rehabilitation Facilities Set-Aside Act. This contract is currently out to bid and we submit this proposal to be considered along-side any commercial bids received by DPP.

After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation § 6.6 *Evaluation Criteria*.¹

The following criteria will be used to evaluate Quotes received in response to this Bid Solicitation. The criteria are not necessarily listed in order of importance:

- A. Price - Since the specifications allow for a range in the size of the individual bar soap that can be offered – from a 3-ounce bar to a 4-ounce bar – the State will evaluate Quotes based on the price per ounce. As such, a Vendor {Bidder} must specify the number of ounces per bar in the space provided on the State-Supplied Price Sheet.
- B. Experience of the Vendor {Bidder}
- C. The Vendor's {Bidder's} documented past performance under similar Blanket P.O.s, including, but not limited to, the Division's Vendor {Contractor} performance database.

On May 16, 2019, the Bureau completed a Recommendation Report which recommended a Blanket P.O. award to Accses NJ in accordance with the Rehabilitation Facilities Set-Aside Act N.J.S.A. 30:6-23 et seq. (Rehabilitation Act). On May 17, 2019, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O. to the Access NJ.

On May 29, 2019, United Sales submitted a protest to the Division's Hearing Unit stating:

I would like to know why my company did not get awarded for this bid
My company came in \$0.20 on each bar
Accses NJ came in \$0.20498 on each bar
Please get back to me why my company did not awarded

In consideration of United Sales' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the protest, the relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render

¹ The Quotes submitted by DLK Medical Technologies, Inc. and TSP Maintenance Supply were automatically rejected by the Division's Proposal Review Unit for failure to include mandatory forms required at the time of Quote submission.

an informed final agency decision on the merits of the protest submitted by United Sales. I set forth herein my final agency decision.

A review of the record of this procurement reveals the following with respect to the responsive Quotes submitted:²

Vendor {Bidder}	Brand/Manufacturer	Unit Price Per Bar ³ (after Best and Final Offer)	Ounces per Bar	Unit Price per Ounce ⁴ (after Best and Final Offer)
Bob Barker Company, Inc.	BBC / JIU32W	\$0.1825	3	\$0.06083
American Products, Inc.	Amerfresh/#S-3	\$0.1857	3	\$0.0619
Charm Tex	Charm-Tex H/S3	\$0.1868	3	\$0.06226
United Sales USA Corp.	Fresh Scent USS3	\$0.20000	3	\$0.0667
Accses NJ	Fresh Scent/ NJS3W/New World	\$0.20498	3	\$0.06832
Epic Medical Supply Corp.	New World Imports Item # S3	\$0.2700	3	\$0.0900

The Bureau’s Recommendation Report reveals that in conducting an evaluation of those responsive Quotes, the Bureau relied upon the Rehabilitation Act to recommend that the Blanket P.O. award be made the Accses NJ. See, Recommendation Report, p. 2. Specifically, the Recommendation Report noted the following with respect to the Bureau’s evaluation:

The Rehabilitation Facilities Set-Aside Act, P.L. 1981, c. 488 (c. 30:6-23), which provide, in pertinent part:

N.J.A.C. 10:99 Title 10 > Chapter 99, Rehabilitation Facilities Set-Aside Act Rule provides: Accses NJ/CNA Services is permitted to have specific Blanket P.O.s set aside specifically for them if the price(s) offered is/are no more than 15% (not to exceed 7% for administrative and management fee per Subsection 10:99-2.4 and 8% added to the total Blanket P.O.

² The Quote submitted by 5 Star Enterprise, Inc. was deemed non-responsive by the Bureau. Bid Solicitation Section 3.1 *Product Specifications* required that the individually wrapped bars of soap weigh between 3 – 4 ounces per bar. The sample bar of soap submitted by 5 Star Enterprise, Inc. weigh 63 grams or 2.2 ounces. See, Bureau Recommendation Report, p. 6.

³ Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions*, permitted Vendors {Bidders} to submit Quote pricing up to five decimal places and specifically stated “Unit prices may be offered on the State-supplied Price Sheet up to five (5) decimal places to the right of the decimal point. Price Sheet formatting will automatically round Unit Prices containing more than five (5) decimal places to the right of the decimal point so as not to exceed this limit.”

⁴ Bid Solicitation Section 6.6 *Evaluation Criteria* advised the Vendors {Bidders} that Quote pricing would be evaluated based upon the price per ounce, and specifically stated “Since the specifications allow for a range in the size of the individual bar soap that can be offered – from a 3-ounce bar to a 4-ounce bar – the State will evaluate Quotes based on the price per ounce. As such, a Vendor {Bidder} must specify the number of ounces per bar in the space provided on the State-Supplied Price Sheet.”

selling price per Subsection 10:99-3.5) higher than the fair market value as determined by the State of New Jersey.

This Bid Solicitation will be the final determinant of fair market value for the product(s) and/or services required. The Vendor's {Bidder's} offered price(s) will be multiplied by a factor of 115% and compared with the prices that had been previously submitted by Accses NJ/ CNA Services. Awards will be made to the lowest responsive Vendor {Bidder}, price and other factors considered.

The Quote evaluation, based upon the above evaluation criteria, yielded the following results:

Vendor {Bidder}	Unit Price Per Bar (at conclusion of the Best and Final Offer process)	Number of Ounces per Bar	Unit Price Per Ounce	Final Unit Price Per Ounce (with the addition of 15% markup, based on The Rehabilitation Facilities Set-Aside Act)
Americare	\$ 0.1857	3	\$ 0.0619	\$ 0.07118
5 Star	\$ 0.30135	3	\$ 0.10045	\$ 0.11551
Accses NJ	\$ 0.20498	3	\$0.06832	Not applicable.
United Sales	\$0.20000	3	\$0.0667	\$0.0767
Bob Barker	\$0.1825		\$0.06083	\$0.06995
Epic	\$0.2700	3	\$0.0900	\$0.1035
Charm Tex	\$0.1868	3	\$0.06226	\$0.07159

[Recommendation Report, p. 5.]

New Jersey's public procurement process is governed by N.J.S.A 52:34-6 et seq. which states that "[a]ll purchases, contracts or agreements, the cost or contract price whereof is to be paid with or out of State funds shall, except as otherwise provided in this act, be made or awarded only after public advertisement for bids therefor, in the manner provided in this act."⁵ Further, the law requires that the "award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered." N.J.S.A 52:34-12(a)(g). Additionally, the New Jersey Supreme Court has expressed the state's public policy for competitive bidding statutes in general as follows:

Bidding statutes are for the benefit of the taxpayers and are construed as nearly as possible with sole reference to the public good. Their objects are to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition. To achieve these purposes all bidding practices which are capable of being used to further corrupt ends or which are likely to affect adversely the bidding process are prohibited, and all awards made or contracts entered into where any such practice may have played a part, will be set aside. This is so even though it is evident that in fact there was no corruption or any actual adverse effect upon the bidding process.

[*Terminal Construction Corp. v. Atlantic County Sewerage Authority*, 67 N.J. 403, 409-10 (1975).]

⁵ The State's public procurement laws were enacted in 1954 through PL 1954, c. 48.

By contrast, the purpose of the Rehabilitation Act⁶ “is to further the policy of the State to encourage and assist blind and other severely handicapped persons to achieve maximum personal independence through productive employment by assuring a continuous market for their commodities and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and the need for costly institutionalization.” N.J.S.A. 30:6-23. In order to effectuate the purpose of the Rehabilitation Act, the law requires that the Commissioner of the Department of Human Services “shall designate a nonprofit agency to facilitate the distribution of orders received from various State agencies for commodities and services on the set-aside list among approved rehabilitation facilities and to insure the effective and efficient administration of this [Rehabilitation Act].” N.J.S.A. 30:6-28. Accses NJ is currently designated as the State of New Jersey Central Non-Profit Agency (CNA).

In order to achieve the significant and valuable public purpose sought to be advanced by the Rehabilitation Act, in February 1985 the Department of Human Services adopted regulations. Since that time, those regulations have been readopted with some amendment through the current iteration which went into effect in 2008 and were readopted on November 24, 2014 without amendment.

In part, the regulations permit an administrative/management fee payable to the CNA in the amount of eight percent over the fair market price and fee payable to the Community Rehabilitation Program⁷ in the amount of up to seven percent over the fair market price. N.J.A.C. 10:99-2.4(b)(4) and N.J.A.C. 10:99-3.5. As such, the Bureau has interpreted the applicable laws to require that an award be made to the CNA, if the “price(s) offered is/are no more than 15% (not to exceed 7% for administrative and management fee per Subsection 10:99-2.4 and 8% added to the total Blanket P.O. selling price per Subsection 10:99-3.5) higher than the fair market value as determined by the State of New Jersey.” Recommendation Report, p. 5. Here, the Bureau’s review of the Quote submitted by Accses NJ revealed that Accses’ Quote was not more than 15% over the fair market price, as determined through the receipt of Quotes in response to the advertised procurement.⁸ Recommendation Report, p. 5. Accordingly, the Bureau recommended a Blanket P.O. award to Accses NJ.

In response to the protest submitted by United Sales questioning “why [its] company did not get awarded for this bid;” I note that had Accses NJ not requested a set-aside, based upon the Bureau’s review of the Quotes received, a Blanket P.O. award would have been recommended to Bob Barker Company, Inc. which had the lowest Quote price and was the “responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered.” N.J.S.A 52:34-12(a)(g); Recommendation Report, p. 5 – 6.

⁶ The Rehabilitation Act was adopted in 1981 through PL 1981, c. 488.

⁷ “Community rehabilitation program (CRP)” means a rehabilitation program located in this State which qualifies as a charitable organization or institution under the provisions of section 501(c)(3) of the Internal Revenue Code and is conducted on a nonprofit basis for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency, illness or injury and of providing these individuals with remunerative employment or other occupational rehabilitative activity of an educational or therapeutic nature as defined in section 525.1 et seq. of the regulations adopted pursuant to the Federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. and related codes, and which is engaged in the production of commodities or the provision of services in connection with which not less than 75 percent of the total amount of direct labor is performed in the preparation of the commodity for sale or in the execution of the services rendered by blind or other persons with severe disabilities excluding any hours of supervision, administration, inspection or shipping. N.J.A.C. 10:99-1.3.

⁸ While not specified in the Recommendation Report, the Bureau has determined that the FMP is the Quote Price submitted by the lowest responsive Vendor {Bidder}, here Bob Barker Company, Inc.

Vendor {Bidder}	Brand/Manufacturer	Unit Price Per Bar (after Best and Final Offer)
Bob Barker Company, Inc.	BBC / JTU32W	\$0.1825
American Products, Inc.	Amerfresh/#S-3	\$0.1857
Charm Tex	Charm-Tex H/S3	\$0.1868
United Sales USA Corp.	Fresh Scent USS3	\$0.20000
Accses NJ	Fresh Scent/ NJS3W/New World	\$0.20498
Epic Medical Supply Corp.	New World Imports Item # S3	\$0.2700

The Quote submitted by United Sales, while responsive to the Bid Solicitation, was not the “most advantageous to the State, price and other factors considered,” and as such, United Sales was not recommended for a Blanket P.O. award. N.J.S.A 52:34-12(a)(g).

Based upon the foregoing, I sustain the Bureau’s NOI. This is my final agency decision on this matter.

Thank you for your company’s interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov, the State of New Jersey’s eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
A. Puza