



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET

P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039

<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

December 9, 2020

Via Electronic Mail Only Mitch.c@atlanticbeverageco.com

Mitch Cohen, Vice President of Bid Sales
Atlantic Beverage Company
3775 Park Avenue, Unit 12
Edison, NJ 08820

Re: I/M/O Bid Solicitation #18DPP00261 Atlantic Beverage Company
Protest of Notice of Intent to Award
T0717 – Portion Controlled Food Items for Distribution and Support Services

Dear Mr. Cohen:

This final agency decision is in response to your email of November 24, 2020, on behalf of Atlantic Beverage Company (Atlantic) to the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Atlantic protests the November 20, 2020, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #18DPP00261 - T0717 – Portion Controlled Food Items for Distribution and Support Services (Bid Solicitation). Specifically, Atlantic protests the award of price line 23.

By way of background, on December 23, 2019, the Bureau issued the Bid Solicitation on behalf of the Department of Treasury, Distribution and Support Services. The purpose of the Bid Solicitation was to solicit Quotes for portion controlled food items. 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 January 28, 2020, the Division's Proposal Review Unit opened eleven 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 Elwood International Inc., Universal Coffee Corporation and, Atlantic Beverage Company.¹ On November 20, 2020, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the Bureau's November 18, 2020, Recommendation Report.

¹ Elwood International Inc. is the intended awardee for price lines 1 – 3 (Group 1), price lines 15 – 19 (Group 3), and price line 20; Universal Coffee Corporation is the intended awardee for price lines 4 – 14 (Group 2) and price line 23; and, Atlantic Beverage Company is the intended awardee for price lines 21, 22, 24 and 25

On November 24, 2020, the Division’s Hearing Unit received Atlantic’s protest stating:

In response to the attached intent to award for Bid Solicitation: T0717 – Portion Controlled Food Items for Distribution and Support Services, Bid Solicitation #: 18DPP00261 we would like to protest the award for the following item based on the information outlined below.

Line #23: Sugar Substitute (Individual Portion), “Sugar Twin” Equivalent; Packed 2000 to 2500 - 0.8 gm to 1.0 gm packets per case:

During the initial submission of the bid, we listed a brand and item # of Equal/#10300258900747. The item # we provided is the GTIN number for this product which is unique only to this specific product. We were subsequently requested to confirm the color, case count, and spec. sheet for this item on 4/9/20. We replied on 4/10/20 and provided the requested information (See attached e-mail). Although GTIN #10300258900747 is not specifically noted on the spec. sheet we provided it is in fact for the same item that we bid. This specific items product # is 20010519 and its GTIN # 10300258900747, and both #'s are unique to this specific product and can be corroborated to that effect. I have attached an e-mail from Tim Zaker who is the Customer Operations Analyst at Merisant Company where he explicitly states that the GTIN # of 10300258900747 matches to product # 20010519. It is also important to note that when we initially respond to the information request on 4/10/20 I asked, “Do you need anything in addition?” If at that point there was still any questions unanswered or if the agency needed further clarification they should have requested the additional information at that point. Based on this information the item we bid does match the spec. sheet we provided and therefore the award should be made to Atlantic Beverage Company at \$8.63/cs and not Universal Coffee at \$8.77/cs.

In consideration of Atlantic’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, 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. I set forth herein the division’s final agency Decision.

With respect to product specifications for the various items sought, Bid Solicitation Section 3.1 *Product Specifications* set forth the following requirements for price line 23 Sugar Substitute – individual portions:

Price Line	Description	Approved Products
23	<p align="center">Sugar Substitute (Individual Portion), “Sugar Twin” Equivalent Must Comply with CID AA-20178C “Sugar Substitutes, Non-Carbohydrate” (2013) as follows:</p> <ul style="list-style-type: none"> • Classification: Sugar Substitute, Saccharin Type, Individual Portion Packets • Main Ingredients: Dextrose, Saccharin (Calcium or Sodium Salt or alone), and may contain either Maltodextrin, Cream of Tartar, or Calcium Silicate 	<p align="center">Yorkville Coffee Pink #83953</p> <p align="center">Diamond Crystal – Café Delight Pink #11403</p> <p align="center">Benjamin Foods Pink #20492</p> <p align="center">Sweet ‘N Low – UPC code #4480052050</p>

	<ul style="list-style-type: none"> • Sweetness: Packets must state that product is equal in sweetness to 2 Teaspoons of Sugar • Type: Must be Saccharin - based Sugar Substitute, as in the "Sugar Twin" product • Anti-Caking Agent: Must contain an anti-caking agent such as Calcium Silicate or Maltodextrin • "Pink" Packets: Packets shall be pink color to denote a Sugar Substitute product • Packaging: 2000 to 2500 / 0.8 gm to 1.0 gm packets per case • Shelf Life: minimum 18 months from date of production 	<p>Regal Foods Pink- UPC #10719098114281</p>
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Further, to assist Vendor {Bidders} in preparing and submitting a Quote, Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions*, instructed Vendors {Bidders} to in part, complete the following information on the State-supplied price sheet:

- Step 5 - The Vendor {Bidder} shall enter the number of items per case in the "Number of Items per Case" column.
- . . .
- Step 7 – The Vendor {Bidder} shall enter the "Brand/Product" in the "Brand/Product" column.

As required, Atlantic entered the number of items per case and the Brand/Product in the appropriate columns. See screenshot below.

Price Line Number	Item Description	Quantity	Unit of Measure	Unit Price Per Case (Required)	Number of Items Per Case (Required)	Net Weight Per Case (Required)	Brand/Model (Required)
23	Sugar Substitute (Individual Portion), "Sugar Twin" Equivalent; Packed 2000 to 2500 - 0.8 gm to 1.0 gm packets per case. For more information please see Bid Solicitation Section 3.1.	1	Case	\$8.63000	20000.00	4.46lb	Equal/#10300258900747

While there was no location on the State supplied price sheet for Vendors {Bidders} to indicate the packet color, Atlantic's specification data sheet submitted with the Quote was entitled "Equal Saccharin Pink 112012.pdf." See Screenshot below.

Attachment File Detail: Equal Saccharin Pink 112012.pdf

Name:	Equal Saccharin Pink 112012.pdf	Last Modified On Disk:	07/21/2020 03:43:20 PM
Description:	Equal/#20010519	Uploaded By:	mitch cohen
File:	Equal Saccharin Pink 112012.pdf		
Location:	vendor/V00003884/profile		
Size:	92,517 bytes		
Uploaded:	01/28/2020 09:08:29 AM		

EXIT

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During the evaluation of Atlantic's Quote, on April 9, 2020, the Bureau wrote to Atlantic requesting additional information regarding the packet color and the number of packets per case for the product bid as those details were not included on the submitted specification data. See screenshot below.

Dear Sir/Madam:

The Division of Purchase and Property ("Division") is in receipt of the Quote submitted by Atlantic Beverage Company ("Company"). Prior documentation provided with your Quote did not address or was unable to confirm the following:

- Price Line 23 Sugar Substitute: Equal/ #10300258900747. Previous documentation submitted did not provide the color of the packet and the packet count are in accordance with Bid Solicitation Section 3.1.

Bid Solicitation Section 4.4.5 State-Supplied Price Sheet, states in pertinent part:

"[T]he State may require a Vendor {Bidder} 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 {Bidder} shall, within the time limit set forth in the written request, comply with said request.

Please provide Specification Data Sheets which show that the product on the above price line meets or exceeds the Bid requirements. If the requested specific information noted above is not received by the close of business day Thursday, April 16, 2020, your company's Quote submission for this particular price line item may be considered non-responsive.

Thank you,

On April 10, 2020, Atlantic responded stating, "the color is pink and the case count is 2000ct. Do you need anything in addition?" No further clarification letters were sent to Atlantic regarding price line 23.

On November 18, 2020, the Bureau prepared a Recommendation Report setting forth the details of the evaluation. With respect to Atlantic's Quote for price line 23, the Recommendation Report states:

Atlantic Beverage did not provide sufficient information, through a specification data sheet, to confirm that the packet color and number of packets per case for the product bid met the Bid Solicitation requirements.

Bid Solicitation requirements:

"Pink" Packets: Packets shall be pink color to denote a Sugar Substitute product

Packaging: 2000 to 2500 / 0.8 gm to 1.0 gm packets per case

Atlantic Beverage bid Equal 10300258900747 for price line 23 on the State-Supplied Price Sheet. The specification data sheet provided by Atlantic Beverage with its Quote submission, Equal 20010519, did not match the model number bid on the State-Supplied Price Sheet.

A request was sent to Atlantic Beverage for a specification data sheet for Equal 10300258900747 that confirmed that the product bid met the Bid Solicitation specifications for the number of individual packets per case and the packet color.

In response to the Bureau's request for a specification data sheet for Price Line 23, Atlantic Beverage responded through e-mail with a written response to the packet color and number of packets per case, but did not provide the requested specification data sheet to support the responses given.

Due to the Vendor's {Bidder's} lack of sufficient evidence, through a specification data sheet, to verify the packet color and number of packets per case for the product bid (Equal 10300258900747), the Bureau was not able to evaluate Atlantic Beverage's Quote for this price line. Such lack of information to confirm that the product bid met the Bid Solicitation

requirements rendered Atlantic Beverage's Quote for Price Line 23 non-responsive.

[Emphasis added.]

In reviewing the record of this procurement, it is clear that Atlantic's Quote for price line 23 was for "Equal/#10300258900747" as specified on the State-supplied price sheet. What is also clear is that Atlantic's submitted specification data sheet was for "Equal – Saccharin Formula / Number F20010428 / Product Number 20010519," and despite the fact that the filename for the specification data sheet was "Equal Saccharin Pink 112012.pdf," the data sheet did not indicate the color of the sugar substitute packets nor the number of packets per case. Accordingly, the Bureau properly sought to clarify Atlantic's Quote submission.

What is unclear is whether the Bureau accepted Atlantic's specification data sheet was for "Equal – Saccharin Formula / Number F20010428 / Product Number 20010519" during the evaluation as the proper specification data sheet for "Equal/#10300258900747" and only sought to clarify the color of the sugar substitute packets and the number of packets per case; or, whether the Bureau recognized the discrepancy during the evaluation and sought the specification data sheet for "Equal/#10300258900747". Unfortunately, the Bureau's April 9, 2020, clarification letter did not clearly indicate the information sought, other than that the Bureau sought information regarding the color of the sugar substitute packets and the number of packets per case. Despite the fact that Atlantic inquired whether additional information was needed regarding price line 23, the Bureau did not seek any additional information from the Vendor.

While the Recommendation Report attempts to clarify the issue, it does not. First, the Recommendation report notes that Atlantic's Quote was deemed non-responsive because the discrepancy between the product bid and the product identified on the specification data sheet stating "the specification data sheet provided by Atlantic Beverage with its Quote submission, Equal 20010519, did not match the model number bid on the State-Supplied Price Sheet." However, the Recommendation Report goes on to say that "a request was sent to Atlantic Beverage for a specification data sheet for Equal 10300258900747 that confirmed that the product bid met the Bid Solicitation specifications for the number of individual packets per case and the packet color."

Therefore, the questions remains. Did the Bureau seek to obtain a correct specification data sheet for "Equal/#10300258900747" or only to verify the color of the sugar substitute packets and the number of packets per case? If it only sought to verify the color of the sugar substitute packets and the number of packets per case, did the Bureau accept Atlantic's submitted specification data sheet was for "Equal – Saccharin Formula / Number F20010428 / Product Number 20010519" as proof specification conformation for all other requirements of the Bid Solicitation.

If the Bureau had concerns regarding whether the submitted specification data sheet was in fact for the product identified on the State-supplied price sheet, it should have clearly requested that Atlantic provide the specification data sheet for "Equal/#10300258900747". If the Bureau was only concerned that the submitted specification data sheet did not specify the color of packet and the number of packet in a case it could have request that Atlantic provide a sample of the product bid as permitted by Bid Solicitation Section 4.4.3.6 *Samples/Samples Testing* that stated in part:

The Vendor {Bidder} must, following a request from the State, submit Quote samples to the State. If the Vendor {Bidder} fails to comply with the written request within five (5) business days, its Quote may be considered non-responsive for the requested item(s). The samples submitted must meet the specification requirements set forth in the Bid

Solicitation and must be representative of the product bid. Quote samples for testing purposes are to be made available at no charge and delivered to the State, at the Vendor's {Bidder's} expense. Vendor {Bidder} samples will not be returned.

Accordingly, I remand this matter back to the Bureau for further review and clarification to determine whether Atlantic's Quote for price line 23 is responsive to the specifications. This remand affects price line 23 only; the Bureau may proceed with the Blanket P.O. awards for all other price lines.

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 you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

C: J. Kerchner
K. Thomas
G. Gerstenacker
A. Puza