



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
State Treasurer

MAURICE A. GRIFFIN
Acting Director

August 8, 2017

Via Electronic Mail [psctcb@aol.com] and USPS Regular Mail

Hiram Reinhart, President
Para Scientific Co.
297 Cedar Lane
Fairless Hills, PA 19030

Re: Specification Challenge
Bid Solicitation {Request for Proposal} #17DPP00064
Scientific Equipment Accessories Supplies and Maintenance Statewide

Dear Mr. Reinhart:

This correspondence is in response to your letter dated July 25, 2017, on behalf of Para Scientific Company (hereinafter "Para Scientific"), which was received by the Division of Purchase and Property's (Division) Hearing Unit on July 27, 2017. In that letter, Para Scientific challenges certain specifications of the subject Bid Solicitation {Request for Proposal} #16DPP00064: Scientific Equipment Accessories Supplies and Maintenance Statewide (hereinafter "RFP").

In consideration of Para Scientific's specification challenge, I have reviewed the record of this procurement, including the RFP, 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 an informed agency determination regarding Para Scientific's specification challenge.

By way of background, the subject RFP was advertised by the Division's Procurement Bureau (hereinafter "Bureau") on March 22, 2017, on behalf of State Using Agencies.¹ RFP § 1.1 *Purpose and Intent*. The purpose of the RFP is to solicit Quotes {Proposals} (hereinafter "Proposals") for Scientific Equipment, Accessories, Supplies, Chemicals and Reagents, Instrument Rental and Maintenance, including both educational/instructional and professional/laboratory grade equipment, accessories, and supplies, as applicable. *Ibid.* The State intends to award Master Blanket Purchase Orders (Blanket P.O.s) {Contracts} (hereinafter "Contracts") to those responsible Vendors {Bidders} (hereinafter "Bidders") whose Proposals, conforming to this RFP, are most advantageous to the State, price and other factors considered. *Ibid.* One award will be made per brand for each price line, representing Categories 1 through 4. RFP § 7.2 *Final Blanket P.O. {Contract} Award*. The State intends to award Price Lines 5 (Maintenance Agreements) and Price Line 6 (Hourly Rate for Maintenance) to all Bidders awarded Categories 1 through 4.

¹ The State intends to extend awarded Contracts to the Division's Cooperative Purchasing Program participants. RFP § 1.1 *Purpose and Intent*.

In accordance with the requirements of this RFP, questions were to be submitted electronically through the Q&A Tab in *NJSTART* by April 5, 2017. RFP § 1.3.1 *Electronic Question and Answer Period*. The record of this procurement reveals that 134 questions were received from potential bidders during the Question and Answer Period (hereinafter “Q&A period”) all of which were responded to by the Bureau through its posting of Amendment #6 on July 6, 2017. Although Para Scientific submitted its letter after the close of the Q&A period and after the Bureau posted responses to all questions received during the Q&A period, the Division’s Hearing Unit accepts Para Scientific’s July 25, 2017, letter as a specification challenge.²

In its Protest letter, Para Scientific raises the following issues related to the specifications for the subject RFP: (1) that the State is favoring large distributors; (2) that there should be preference granted for small business; and, (3) that the State should make Contract awards based upon regions. With respect to each of the challenges raised by Para Scientific, I find as follows:

First, Para Scientific takes issue with RFP § 4.4.3.2 *Manufacturer's/Distributor's Catalog and Price List* and with the Bureau’s response to Question #88 posed during Q&A period, alleging that the State is favoring large distribution companies over small and/or medium size businesses. Specifically, Para Scientific states that large distributors “must be treated on a level playing field with the non-large distributors and provide a manufacturer’s price list and authorization letter that they represent the manufacturer for this specific solicitation.” See, Para Scientific letter, p. 1. Para Scientific continues stating that “if the large distribution company cannot provide these two requirements – authorization letter and manufacturer’s latest price list – then those products should be extracted” from the proposal and not awarded to that large distributor. *Ibid.*

Para Scientific misconstrues the RFP language and Bureau’s response to the question. In response to the question posed by a potential Bidder regarding the submission of a manufacturer’s catalog/price list, the Bureau responded as follows:

#	Page #	RFP Section Reference	Question (Bolded) and Answer
88	33	Section 4.4.3.2 Manufacturer’s Catalog and Price List	<p>For large distribution companies, there are no manufacturer catalogs or manufacturer price lists that can be provided to the State. Will the State allow Supplier’s catalog and price list to be submitted in the place of Manufacturer’s catalog and price list?</p> <p>Yes, provided the part numbers and brands are easily discernible and comparable to the information contained in the manufacturer price list. Also refer to Section 4.4.3.2.4 of the Bid Solicitation {RFP}.</p> <p>Please see revised Bid Solicitation {RFP} Section 4.4.3.2 for additions, deletions, clarifications, and modifications.</p>

Amended RFP § 4.4.3.2 *Manufacturer's/Distributor's Catalog and Price List* states in pertinent part that “[t]he Vendor {Bidder} should submit with its Quote {Proposal} the manufacturer’s latest preprinted price list or catalog with pricing, inclusive of installation charges, hereby referred to as the price list, as of the Quote {Proposal} opening date, for each brand bid on the price line”.³ Further, RFP § 4.4.3.2.4 states “[i]f a manufacturer’s price list is not published, then the manufacturer’s prices listed on its letterhead, dated and with authorized signature are acceptable”.

² In the future, Para Scientific should be cognizant of the RFP deadlines as this specification challenge could have been properly addressed during the Q&A Amendment had the questions been timely submitted by the April 5, 2017 deadline.

³ Amended RFP language is shown in red and underlined.

While the question posed by the potential Bidder is phrased in terms of a “large distribution company”, the RFP language (both the original and amended language), and the Bureau’s response to Question #88, speaks to all potential Bidders regardless of the size of the company.⁴ Contrary to Para Scientific’s belief, all Bidders are on a level playing field. The intent of the RFP language and the Bureau’s response to question 88 is to give all Bidders an alternate means of submitting the product price list where a pre-printed manufacturer’s catalog or price list does not exist. As such, no modification to the RFP is necessary.

Second, Para Scientific states that this solicitation should have a small business preference and specifically requests that “the State adopt a five percent (5%) [price] advantage for small businesses without diversification or geographic complications entering into the consideration.” With respect to Para Scientific’s request for a price advantage for small businesses I note that there is no statutory or regulatory authority which would permit the Division to give a price advantage to small businesses solely based on the fact that a company is a small business.

The Hearing Unit’s review of the State’s small business database reveals that there are ten (10) companies with active small business registrations who are also registered with the commodity codes associated with this procurement. Para Scientific is not one of those companies; therefore, even if this RFP was set aside for small businesses, Para Scientific would not be qualified as a responsive small business Bidder.⁵ I note that in the prior Contract, which expired on April 30, 2017, there were 39 Contractors and the State Agencies utilizing the Contract spent approximately \$58 million dollars for goods covered by the Contract.⁶ Only one company registered as a small business submitted a proposal in response to that prior procurement. Considering this information, it would not be in the best interest of the State to solicit this Contract as a small business set aside as there is little likelihood that there will be a sufficient number of small businesses awarded contracts so as to satisfy the requirements of State Using Agencies and Cooperative Purchasing Partner utilizing this contract. See, N.J.A.C. 17:13-1.1 stating that the “State contracting agencies are expected to apply their business judgment when establishing set-aside goals for individual contracts”. Here, small businesses are allowed to and encouraged to submit a Proposal to this and any other Bid Solicitation they deem they are qualified to bid on regardless of whether there is a small business preference. As such, no modification to the RFP is necessary.

Third, Para Scientific states that Contracts should be awarded by the State based upon three (3) – five (5) different geographic regions/zones per price line/category. In response to the protest, the Bureau advises that the Contract is not being evaluated or awarded based on geographic regions. The prior Contract for Scientific Equipment was awarded in 2010. During that time, there were no complaints received by the Bureau that an agency was unable to place an order or receive maintenance service because the Contract was a Statewide award; nor was there any indication from any State Agency could have received better pricing if the award was made on a regional rather than a Statewide basis. With this information, the Bureau determined that there was no price or business advantage for making Contract awards using geographic regions/zones. Accordingly, Contract awards will be made per brand, for each of Category (1 through 4) to those responsible Bidders whose Proposals, conforming to this RFP, are most advantageous to the State, price and other factors considered. RFP § 1.1 *Purpose and Intent* and RFP § 7.2 *Final Blanket P.O. {Contract} Award*. As such, no modification to the RFP is necessary.

⁴ RFP § 2.2 *General Definitions* defines “Bidder” as “[a]n entity offering a Quote {Proposal} in response to the Division’s Bid Solicitation {RFP}”.

⁵ In order to qualify as a small business for the purpose of bidding on a New Jersey contract, a vendor must be registered with the New Jersey Division of Revenue & Enterprise Services – Small Business Registration & M/WBE Certification Services Unit at <https://www.njportal.com/DOR/SBERegistry/>.

⁶ This amount does not include purchases made by Cooperative Purchasing Program Partners.

Based upon the foregoing, and although I understand Para Scientific's concerns, I find no reason to amend the specifications of the RFP. This is my final agency decision. 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,

A handwritten signature in blue ink that reads "magriff". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Maurice Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
C. Murphy