



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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November 25, 2015

Via Email [Robert.Gilinger@supplyworks.com] and regular USPS Mail

Robert Gilinger, Regional Sales Director
Interline Brands, Inc./SupplyWorks
804 East Gate Drive, Suite 100
Mt. Laurel, New Jersey 08054

RE: Protest of Notice of Intent to Award
RFP #16-X-23961: Laundry Chemicals Statewide

Dear Mr. Gilinger:

This correspondence is in response to your letter dated September 30, 2015 on behalf of Interline Brands, Inc./SupplyWorks (SupplyWorks) which was received by the Division of Purchase and Property (Division) on October 1, 2015. In that letter, SupplyWorks protests the September 23, 2015 Notice of Intent to Award (NOI) a contract to Diamond Chemical (Diamond) issued by the Division's Procurement Bureau (Bureau) for the above referenced solicitation. SupplyWorks contends that Diamond's proposal does not conform to the specifications set forth in Request for Proposal #16-X-23961: Laundry Chemicals Statewide. SupplyWorks requests that the Division review the same.

In consideration of this protest, I have reviewed the record of this procurement, including the Request for Proposal (RFP), the proposals submitted, 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 submitted by SupplyWorks.

By way of background, this RFP was issued by the Bureau on behalf of various State using agencies to solicit proposals for environmentally preferable biodegradable laundry chemicals in accordance with the requirements of Executive Order #76. (RFP § 1.1 *Purpose and Intent*.) Specifically, this RFP sought 12 different laundry chemicals, which are divided into three groups. Group 1 is for the Dry Chemical System (price line 1); Group 2 is for the Liquid Chemical System (price lines 2 -11); and, Group 3 is for the Solid Encapsulated Detergent (price line 12). It is the intent of the Bureau to award contract(s) to the responsible bidder(s), whose proposal(s), conforming to the RFP are most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*.) The State intends to extend the contract(s) awarded to cooperative purchasing partners. (RFP § 1.1 *Purpose and Intent*.)

On July 1, 2015, five proposals received by the submission deadline were opened by the Proposal Review Unit. On September 23, 2015 the Bureau issued its NOI. Thereafter, this protest was received. In the protest, SupplyWorks alleges that Diamond's proposal for three of the line items is deficient for the following reasons:

- RFP Section 3.3 *Liquid Heavy Duty Alkaline Builder (Price Line 00003)*
SupplyWorks alleges that Diamond’s proposal does not comply with the specifications because the NaOH levels set forth on the Safety Data Sheet (SDS) exceed the levels specified in the RFP.

- RFP Section 3.4 *Detergent/Bleach Combination Liquid Laundry Detergent (Price Line 00004)*
SupplyWorks alleges that Diamond’s proposal does not comply with the specifications because Diamond’s proposal does not conform to U.S. Department of Transportation’s (DOT) regulations that require chemicals exceeding 8.0% hydrogen peroxide be classified as a rapid oxidizer and labeled as such.

- RFP Section 3.7 *Liquid Antibacterial Softener/Sanitizer (Price Line 00007)*
SupplyWorks alleges that Diamond’s proposal does not comply with the specifications because the product proposed by Diamond for this line item does not have a valid U.S. Environmental Protection Agency (EPA) Registration Number.

In reviewing the products proposed in response to this RFP, the State Contract Manager, indicates that the Division’s Distribution Support Services Unit (DSS) assessed the results of earlier testing performed, the technical data and material SDS submitted with a proposal.

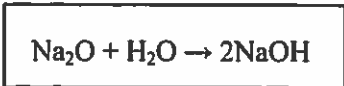
RFP Section 3.3 *Liquid Heavy Duty Alkaline Builder (Price Line 00003)*

RFP Section 3.3 *Liquid Heavy Duty Alkaline Builder* sought a liquid alkaline builder for use in conjunction with liquid detergents. With respect to the chemical composition of the product sought, the RFP required:

Requirement	Minimum Percentage	Maximum Percentage	Test Method ASTM
Total Alkalinity as K ₂ O or Na ₂ O	15.0%	25.0%	D501
Silicate Content as SiO ₂		0.5%	D501
Phosphates	None	None	D501
Specific Gravity	1.2 (Approx. 10.01 – 11.68 LB./Gal)	1.4	
pH	13.0	14.0	E70

[RFP § 3.3.3.3 *Chemical and Physical Requirements*]

This RFP sets forth specific minimum and maximum requirements for Sodium Oxide (Na₂O), not Sodium Hydroxide (NaOH). I note that Sodium Oxide (Na₂O) is the based anhydride of Sodium Hydroxide (NaOH); when water is added to Sodium Oxide (Na₂O), Sodium Hydroxide (NaOH) is produced.



In response to the RFP, for this line item bidders could provide Spartan Clothesline Fresh Laundry Break #7001 or an acceptable equivalent. Diamond proposed Alkali Concentrate 2010. Diamond’s SDS, submitted with the proposal, indicates that the Sodium Hydroxide (NaOH) component in Alkali Concentrate 2010 is 20-32%. Diamond’s SDS does not address the minimum and maximum

levels of Sodium Oxide (Na₂O) in the product proposed. SupplyWorks contends that the product proposed by Diamond does not conform to the RFP requirements because the product exceeds the maximum amount of NaOH permitted in the RFP specifications.

The record reveals that DSS evaluated all SDS and Technical Data Sheets for products submitted by all bidders for price line 3. The Bureau determined based upon its review of the RFP requirements and the technical evaluation recommendation by DSS that Diamond's product complied with all RFP requirements and awarded price line 3.

In response to the protest, Diamond states:

SupplyWorks' statement regarding this item is inaccurate. The SDS states a maximum level of sodium hydroxide at thirty-two percent (32%). This calculates to a maximum Na₂O level of 24.32% which is below the maximum specification percentage of twenty-five percent (25). The product clearly meets the specification.

[Diamond's October 14, 2015 letter (emphasis in the original.)]

In connection with SupplyWork's protest, DSS again reviewed Diamond's proposal and states:

The actual specifications required the total alkalinity (Na₂O) percentage to be 15% to 25%. Not the percent Sodium Hydroxide (NaOH).

Total alkalinity as Na₂O always calculates out to be 76% of the Sodium Hydroxide (NaOH) ingredient when the Sodium Hydroxide is added as a concentrated 100% ingredient.

So, when Diamond Chemical Company stated in their [Safety Data Sheets] formula that they added anywhere from 20% to 32% concentrated Sodium Hydroxide (NaOH), that equates to a total alkalinity range of 15.2% to 24.3%.

This is perfectly acceptable and almost dead on the specification requirement of 15 to 25% total alkalinity.

[DSS' October 14, 2015 email correspondence to the Bureau.]

Based my review of the record and as indicated above, I find that Diamond meet the RFP requirements for price line 3 and that there is no RFP requirement for Sodium Hydroxide (NaOH) and therefore there is no deviation from the RFP requirements as protested by SupplyWorks

Accordingly, with respect to Price Line 00003, the NOI is sustained.

RFP Section 3.4 Detergent/Bleach Combination Liquid Laundry Detergent (Price Line 00004)

RFP Section 3.4 *Detergent/Bleach Combination Liquid Laundry Detergent* sought a product designed for brightening whites and colors without the use of chlorine bleach. Bidders could provide the approved brand Spartan Clothesline Fresh Oxygen Detergent #7201 or an acceptable equivalent. In response to this RFP Diamond proposed DBC 2010. In the protest, SupplyWorks states that "Diamond Chemical DBC 2010 SDS quotes 35-45% [Hydrogen Peroxide] H₂O₂ but makes no warnings about it being a rapid oxidizer, per DOT regulations this product should be marked and placarded as an oxidizer when H₂O₂ concentrations exceed 8.0%." (DSS' October 14, 2015 email correspondence to the Bureau.)

In response to the protest, Diamond states “Contrary to SupplyWorks’ allegation, the DOT classification stated on our SDS is [100%] accurate. This product is a detergent/bleach combination and is DOT classified properly.” (Diamond’s October 14, 2015 letter.)

The record is unclear whether the figures provided by Diamond related to the final total percentage (%) of H₂O₂ contained in the finished product DBC 2010, product code #29065, whether a diluted solution of H₂O₂ is being added to the formulation that represents 35 to 45% of the constituents and whether this product meets the minimum specification requirement of 5% available oxygen.

Based upon my review of the record, the NOI for price line 00004 is rescinded. The Bureau is directed to conduct a further review and evaluation of the proposals submitted and request clarification from Diamond as noted above and from all bidders as necessary and ensure that the product conforms to all applicable regulations.

RFP Section 3.7 Liquid Antibacterial Softener/Sanitizer (Price Line 00007)

RFP Section 3.7 *Liquid Antibacterial Softener/Sanitizer* sought a liquid compound that is a combination fabric softener and sanitizer. The RFP and the price sheet noted that the approved brand was Spartan Clothesline Fresh Fabric Softener/Sanitizer #7007 or acceptable equivalent. In response to the RFP, Diamond proposed Sani-Sof Liquid. With its proposal, Diamond provided the SDS and product information sheets.

Supplyworks contends that Diamond’s proposed product does not have a valid EPA registration number which violates the RFP requirements. In support of the protest, SupplyWorks provided screenshots of the Environmental Protection Agency’s (EPA) site suggesting that Diamond’s product is not registered. RFP Section 3.7.3.4 *Odor* states “[t]his product must exhibit a valid EPA registration number.” (Emphasis in the original.)

In response to the protest, Diamond states:

This product does, in fact, have an EPA registration number (1839-108-4238) and is also registered for use in the State of New Jersey. Please see our product information sheet attached as well as a copy of our NJ pesticide registration (marked Exhibit “A”) which clearly show Diamond’s Federal EPA registration and the NJ product number 00009002 as well as the registration year (2015). As it is a sub-registered product, it does not appear on the particular EPA website. In fact, the Spartan product, Clothesline Fresh Fabric Softener/Sanitizer is **the exact same product** as ours which is evidenced by the first series of numbers in Spartan’s EPA registration (1839-108 - see Spartan Clothesline Fresh Softener/Sanitizer product information sheet attached marked Exhibit “B”). These numbers are the same first seven (7) numbers as Diamond’s. The last four numbers (5741 - Spartan) show the individual company’s sub registration. Just as our product does not appear on this specific Federal EPA website, neither does Spartan’s product, as both products utilize the same registrant and the same formula. **Both products are identical.**

[Diamond’s October 14, 2015 letter (emphasis in the original.)]

In connection with the Bureau and DSS’ review of this protest, the EPA was contacted regarding the registration number provided by Diamond with the proposal. The EPA’s Office of Pesticide

Programs – Registration Division confirmed that EPA Registration Number 1839-108 is active. In addition, the registration number is shown as active on the EPA’s website.¹

The screenshot shows the EPA Pesticide Product Label System (PPLS) website. The page title is "Product Labeling Pesticide Product Label System (PPLS)". The main heading is "Details for SOSAN COMMERCIAL FABRIC SOFTNER/SANITIZER". The EPA Registration Number is 1839-108. The company name is STEPAN COMPANY, located at 22 W. FRONTAGE RD, NORTHFIELD, IL 60093. The current status is "Active - Conditionally Registered (JUNE 17, 2008)". The alternate name is "AUTO-CHLOR SOFT SAN". Below this, there is a section for "Labels and Amendments" with a search bar and a "Go" button. A table lists the registration details:

PA Reg. No.	Product Name	Approval Date
1839-108	SOSAN COMMERCIAL FABRIC SOFTNER/SANITIZER	June 14, 2010 (PDF)
1839-108	SOSAN COMMERCIAL FABRIC SOFTNER/SANITIZER	June 28, 2000 (PDF)
1839-108	SOSAN COMMERCIAL FABRIC SOFTNER/SANITIZER	March 27, 1992 (PDF)
1839-108	SOSAN COMMERCIAL FABRIC SOFTNER/SANITIZER	March 17, 1982 (PDF)

Moreover, Stepan Company (Stepan), listed on the EPA’s website as the primary holder of the registration, confirmed to DSS that Diamond and Spartan Chemical Company (Spartan) are authorized distributors of Stephan’s original product So/San Commercial Fabric Softener/Sanitizer.² Both Diamond and Spartan are authorized to sell and distribute So/San Commercial Fabric Softener/Sanitizer under their own private label names and to utilize EPA Registration #1839-108 adding their own distributor number as the last 4 digits. Diamond, as an authorized distributor, sells and distributes Stephan’s So/San Commercial Fabric Softener/Sanitizer under Diamond’s private label name Sani-Sof Liquid.³

Accordingly, since Diamond is authorized to sell and distribute Stephan’s So/San Commercial Fabric Softener/Sanitizer under its own private label name and because Diamond does have a valid EPA

¹ http://iaspub.epa.gov/apex/pesticides/f?p=PPLS:8:32891207498719::NO::P8_PUID,P8_RINUM:15203,1839-108.

² Stepan, developed the chemical formulation and holds the patent for So/San Commercial Fabric Softener/Sanitizer the product with EPA Registration Number 1839-108.

³ Diamond’s EPA Registration Number for its proposed product, Sani-Sof Liquid, is 1839-108-4238 as noted in its proposal.

Registration Number for its proposed product - Sani-Sof Liquid, the NOI for Price Line 00004 is sustained.

In light of the findings set forth above, I sustain the Bureau's NOI for line items 00003 and 00007. With respect to line item 00004, that line item is rescinded and the Bureau is directed to conduct a further review and evaluation of the proposals submitted and request clarification from bidders if necessary. This is my final agency decision with respect to the protest submitted by SupplyWorks.

Thank you for your company's interest in doing business with the State of New Jersey and for registering your company with *NJSTART*, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Chief Hearing Office

MAG: RUD

c: D. Reinert
J. Kemery
R. Shure, Diamond Chemical