



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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October 27, 2016

Via Electronic Mail [krussell@myadapco.com] and USPS Regular Mail

Jason Trumbetta, Vice President
ADAPCO
550 Aero Lane
Sanford, FL 32771

RE: Protest of Notice of Intent to Award
Bid Solicitation {RFP} #16DPP00013 *Chemicals & Insecticides for Mosquito Control – NJDEP*
(Term Contract #T0153)

Dear Mr. Trumbetta:

This correspondence is in response to your letter of protest dated and received June 20, 2016, referencing the subject Bid Solicitation {Request for Proposal} (hereinafter “RFP”) and regarding the Notice of Intent to Award letter (NOI) issued by the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). On behalf of ADAPCO, you protest the slated award of price line numbers 1-5, 38, 50, 90, 91, 95, and 96 to Clarke Mosquito Control (Clarke), request the Division review the tie-breaking criteria used in making these awards, and propose the Division award these lines to both Clarke and ADAPCO rather than make a single award.¹

I have reviewed the record of this procurement, including the RFP, ADAPCO’s and Clarke’s proposals, and 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 determination on the merits of ADAPCO’s protest.

By way of background, the subject RFP was issued through the Division’s NJSTART eProcurement system on behalf of the New Jersey Department of Environmental Protection (NJDEP) “to solicit proposals for the supply and delivery of insecticides and chemicals for mosquito control.” RFP §1.1 *Purpose and Intent*. The intent of the RFP is “to award Master Blanket Purchase Order(s) (Blanket PO(s)) {Contract(s)} to (those) responsible Vendor(s) {Bidder(s)} whose proposal(s), conforming to this [RFP] (are) most advantageous to the State, price and other factors considered.” *Ibid.* The RFP provided that bidders “may choose to bid on any one (1) or more products listed on the ‘Official Price Sheet’” and that “[i]ndividual awards will be made per line item.” RFP §4.4.7 *Method of Bidding/Price Sheet Instructions*. The RFP also specified that “[p]ricing will be evaluated and awarded for each line item in accordance with Sections 6.6 and 6.6.2 in the attached ‘Official Price Sheet.’” *Ibid.*

RFP Section 6.6, *Evaluation Criteria*, provided the following criteria be used in evaluating proposals: a) price; b) experience of the bidder; and c) the bidder’s past performance under similar

¹ Clarke was afforded an opportunity to respond to the allegations in the letter of protest on August 22, 2016.
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contracts, including if applicable, the Division's vendor performance database. RFP Section 6.6.2 further set forth:

6.6.2 EVALUATION OF THE QUOTES (PROPOSALS)

After the Evaluation Committee completes its evaluation, it recommends to the Director for award the responsible Vendor(s) {Bidder(s)} whose quote {proposal}, conforming to this Bid Solicitation {RFP}, is most advantageous to the State, price and other factors considered. The Evaluation Committee considers and assesses price, technical criteria, and other factors during the evaluation process and makes a recommendation to the Director. . . .

The Bureau received three proposals by the proposal submission deadline of March 24, 2016. All proposals conformed with administrative requirements. A request for a Best and Final Offer (BAFO) of proposal pricing was requested of all bidders; however, no bidder lowered its pricing. Thereafter, all three proposals were evaluated in accordance with RFP Sections 6.6 and 6.6.2.

As explained in the Bureau's Recommendation Report, "[p]ricing ties were resolved utilizing [RFP] Section 6.6 (Evaluation Criteria). The primary criteria used were experience of the Vendor {Bidder} and the Vendor's {Bidder's} past performance under similar Blanket POs {Contracts}." The Recommendation Report noted that Clarke was awarded two previous T0153 term contracts, A75374 and A83688, for a total duration of seven years, three months, and 10 days. In that time, it completed 34 purchase orders and had no CCAU complaints filed against it. ADAPCO also held two T0153 contracts, A75372 and A83686, for a total of seven years.² In that time, it completed eight purchase orders and had no CCAU complaints filed against it. Relying on this information, the Recommendation Report set forth the following:

Based on the tie break ranking, it is recommended that Clarke be awarded price line items 1 through 5, 38, 50, 90, 91, 95 and 96, based on Clarke's previous successful experience under T-0153, the duration of its T-0153 Blanket PO {Contract} and number of purchase orders successfully administered. A review of Clarke's performance file with the Division's [CCAU] revealed that it had no formal complaints on file, which exemplifies Clarke's performance under the Blanket POs {Contracts} it was awarded.

Following evaluation, a NOI letter was issued on June 13, 2016, advising all bidders of the intent to award as follows:³

Vendor:	Price Line Items:
ADAPCO Inc.	6-10, 12-14, 16-19, 23-25, 27, 28-32, 35, 36, 39-49, 51, 64, 65, 73, 74, 78-80, 82-86, 88, 89, 92-94, 97-119, 121, 123, 125, 126, 128-133, 137, 138
Clarke Mosquito Control Products	1-5, 11, 15, 20-22, 34, 38, 50, 52-63, 66-72, 76, 77, 81, 90, 91, 95, 96, 139-144
Valent Biosciences Corp.	75, 145

In its June 20, 2016 letter, ADAPCO submits four points of protest to support its contention that it should also receive an award of price lines 1-5, 38, 50, 90, 91, 95, and 96. In consideration of the protest, the Division's Hearing Unit conducted an independent review of the subject solicitation and evaluation. For the reasons that follow, I find that the tie-breaking criterion used in this instance was inappropriate and address ADAPCO's remaining arguments.

² The Hearing Unit noted that it is unclear why there is a discrepancy in the duration of the T0153 contracts.

³ The Bureau did not recommend an award for price lines 26, 33, 37, 87, 120, 122, 124, 127, 134, 135, and 136, as the State received no proposals for these line items.

The RFP specified that proposals would be evaluated based on a) price; b) experience of the bidder; and c) the bidder's past performance under similar contracts, including if applicable, the Division's vendor performance database. The procurement record shows that Clarke and ADAPCO submitted identical pricing on price lines 1-5, 38, 50, 90, 91, 95, and 96. Neither submitted reduced pricing following the Bureau's request for a BAFO. Concerning evaluation criterion b), the Bureau noted that Clarke had two prior T0153 contracts for a total of seven years, three months, and 10 days; ADAPCO had two prior T0153 contracts for a total duration of seven years. Concerning category c), neither bidder had any complaints filed against them on record in the Division's vendor performance database.

Although, the Bureau looked to the total number of purchase orders placed under each contract to "break the tie," this was not an evaluation criterion nor did the RFP specify the manner in which a tie would be broken. Proposals were to be evaluated on price, bidder experience, and past performance. Here, both bidders had similar experience, being awarded the same term contracts with the State, and both had performed satisfactorily. Absent appropriate tie-breaking criteria in the RFP, the requisite manner to break a tie in this instance is outlined in the Division's administrative code, which states:

- (a) In the event that proposals submitted by two or more bidders are tied with respect to price, and the application of the other evaluation criteria specified in the RFP does not provide a basis to distinguish between or among the tied proposals, the Director shall award the contract based on a review of the following factors listed in order of priority:
 1. Tie-breaking provision(s) set forth in the RFP;
 2. A usable cash- or volume-based discount that renders one proposal more favorably priced;
 3. Delivery advantage, specifically shorter proposed time frames for delivery and/or closer proximity to the point of delivery;
 4. Active registration on the date of proposal opening as an approved small business with the Department of the Treasury unit responsible for administering the State's small business registration program; and
 5. In-State location.
- (b) When application of the above distinguishing factors does not result in a breaking of the tie status, the Director may, if practicable, make multiple awards.

[N.J.A.C. 17:12-2.10.]

The record shows the Bureau did not consider the aforementioned criteria. I also note that the RFP did not require a single award per each price line; rather, the RFP was purposely revised as follows: "Pricing will be evaluated and awarded to the lowest cost Vendor (Bidder) for each line item in accordance with Sections 6.6 and 6.6.2 in the attached 'Official Price Sheet.'" RFP §1.1 *Purpose and Intent* (alterations in original). RFP Section 4.4.7 specified that "[i]ndividual awards will be made per line item." (Emphasis added.) Therefore, the RFP did not specify only one bidder award for each line item. As such, there was no requirement to break the price tie.

ADAPCO makes a similar argument in its third protest point, wherein it submits that two companies, ADAPCO and Univar, were awarded the Altosid line items under the previous T0153 contract and that the new award "could allow the same consistency in accordance with N.J.A.C. 17:12-2.10 and since precedent has been set."

Regardless of any prior solicitations or contract awards, all bidders to the current solicitation were advised: "This [RFP] has been revised since the last time those chemicals for mosquito control were advertised for bid. Therefore, be sure to read the entire RFP and all associated documents." RFP §1.2.1,

Notable Changes Since the Last RFP/Contract Award. RFP Section 4.4.7, *Method of Bidding/Price Sheet Instructions*, further stated: “Individual awards will be made per line item.”

Since the record shows that the Bureau did not apply the N.J.A.C. 17:12-2.10 tie breaking criteria, I am remanding these price lines to the Bureau for such evaluation and recommendation.

In ADAPCO’s second point of protest, it submits that it is “one of only a few vendors allowed to distribute Altosid [products] within the State of New Jersey” and that “Altosid products are under an Agency Agreement with the manufacturer Central Life Sciences whereby all authorized distributors must submit the same prices to all end users.” ADAPCO attached a copy of a letter qualifying it as an authorized distributor to its letter of protest.

Under the terms of the RFP, bidders were not required to provide proof of authorization to distribute Central Life Sciences products. Rather, a bidder was required to submit items as outlined in RFP Section 4.4.3 *Technical Quote {Proposal}*.

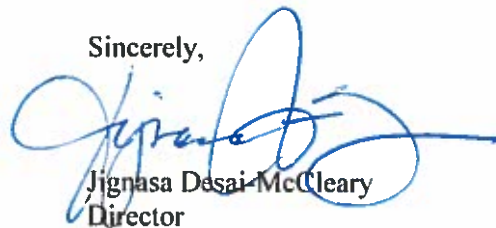
A review of the proposals shows that both ADAPCO and Clarke submitted all required documents. Furthermore, although not a determining factor, a review of the letter included with ADAPCO’s letter of protest also lists Clarke as an authorized distributor of Altosid products. Therefore, this point by ADAPCO attempting to distinguish itself as an authorized New Jersey distributor is without merit.

In its fourth and final point, ADAPCO states that Ted Bean, its Certified Pesticide Dealer, is a graduate of Pennsylvania State University and uses his degree in chemistry to “assure the quality of the integrated mosquito management programs through rigorous controlled testing platforms[,]” which is “critical to controlling the program quality[.]” ADAPCO also asserts that it has offered a high level of service and conducts significant amounts of training within the Mosquito Abatement industry. The Division takes no issue with ADAPCO’s statement on its service record and its proposal submission and notes that ADAPCO is the intended awardee for 87 of the 103 price lines of this solicitation.

Based on the foregoing, the intended award of price line numbers 1-5, 38, 50, 90, 91, 95, and 96 is remanded to the Bureau for award consistent with the foregoing. This is my final agency decision.

Thank you for your 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 new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

c: J. Kerchner
K. Thomas
C. Murphy