



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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April 17, 2017

Via Electronic Mail [ron@crs4rec.com] and USPS Regular Mail

Ron Romens, President  
Commercial Recreation Specialists  
807 Liberty Drive, Suite 201  
Verona, WI 53593

Re: Protest of Notice of Intent to Award  
Solicitation #16DPP00019: Park and Playground Equipment (T-0103)

Dear Mr. Romens:

This letter is in response to your correspondence dated March 31, 2017, on behalf of Commercial Recreation Specialists ("CRS"), received by the Hearing Unit of the Division of Purchase and Property ("Division") on April 3, 2017. In that letter, CRS challenges the March 29, 2017, Amended Notice of Intent to Award ("Amended NOI") a Master Blanket Purchase Order {Contract} (hereinafter "Contract") to General Recreation ("General") for Solicitation #16DPP00019: Park and Playground Equipment (T-0103), CRS requests that the Division review the same and award Price Line 4 for the Shade Systems™ brand to it. In connection with its protest, CRS states that it is available for an in-person hearing.

With respect to CRS' request for an in-person hearing regarding the issues raised in its protest, I note that pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). In consideration of CRS' protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP"), the Quotes {Proposals} (hereinafter "Proposals") submitted, the Bureau's Recommendation Reports, and the relevant statutes, regulations, and case law. The issue(s) raised in CRS' protest were sufficiently clear such that a review of the record of this procurement 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 CRS on the written record.

### BACKGROUND

By way of background, the RFP was issued by the Division's Procurement Bureau ("Bureau") on June 24, 2016 on behalf of State Using Agencies and Cooperative Purchasing Partners to solicit Proposals for park and playground equipment. RFP § 1.1 *Purpose and Intent*. There were 48 categories of park and playground equipment sought in the RFP which were itemized in RFP § 3.1 *Park and Playground*

**Equipment Categories.** In order to accommodate the needs of the State Using Agencies and the Cooperative Purchasing Partners, the State was divided into three (3) Regions – North, Central and South.<sup>1</sup> RFP §1.2.3. Vendors {Bidders} (hereinafter “Bidders”) were permitted to submit proposals for either one (1), two (2), or all three (3) regions of the State. RFP § 4.4.7.4.1. It is the intent of the State of make one (1) award per brand, per region, for each category of park and playground equipment. RFP § 1.1 *Purpose and Intent.* This solicitation was a procurement of products similar to those provided under T-0103, which expired on August 14, 2016. RFP § 1.2 *Background.*

On July 29, 2016, Proposals received by the submission deadline of 2:00 p.m. were opened by the Proposal Review Unit and subsequently all administratively responsive proposals were forwarded to the Bureau for review and evaluation.

Three Bidders submitted Proposals for Price Line 4 - Arbors (Shade Trellises) and Shade Structures (Fabric or Metal) for the Shade Systems™ brand as follows:

<b>Bid Tabulation – Park and Playground Equipment 16DPP00019 (T-0103) Price Line 4 - Arbors (Shade Trellises) and Shade Structures (Fabric or Metal)</b>				
<b>Bidder</b>	<b>Brand</b>	<b>% Discount</b>	<b>Region Served</b>	<b>Price List Date</b>
General Recreation, Inc. (General)	Shade Systems™	12.00%	Statewide	TNS010116-1/1/16
Commercial Recreation Specialists (CRS)	Shade Systems™	██████	Statewide	July 2016
KOMPAN, Inc. (KOMPAN)	Shade Systems™	██████	Statewide	Shade Systems 2016

Because the prices lists submitted were not identical, the Bureau was required to perform a market basket analysis as required by RFP § 4.4.7.5 which states:<sup>2</sup>

In a situation where different Vendors {Bidders} have quoted based upon different types of manufacturer’s price lists for the same brand (for example, retail, wholesale, jobber and invoice) the State will evaluate each of the Vendors’ {Bidders’} submissions by conducting a comparison, which will consist of choosing a market basket of ten (10) items from each Vendor’s {Bidder’s} price list submission and applying the % discount or markup bid. The Quotes {Proposals} will be ranked based on the lowest combined pricing for the items selected. The method for selecting the market basket will be set prior to Quote {Proposal} opening and will not be revealed to Vendors {Bidders} until time of award.

<sup>1</sup> The North Region includes Bergen, Essex, Hudson, Passaic, Sussex, Union and Warren counties; the Central Region includes Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset counties; and the South Region includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem counties. RFP § 3.3 *Regional Jurisdiction.*

<sup>2</sup> RFP § 4.4.7.7 permitted Bidders to submit any type of price list (retail, wholesale, jobber, invoice, etc.) with their proposal. Here, the price lists submitted by CRS and General were the manufacturer’s retail price list for the Shade Systems™ brand and while the submitted price lists had different dates, each contained the same pricing. The price list submitted by KOMPAN however, while entitled “retail” on KOMPAN’s proposal, was not the manufacturer’s retail price list, but rather appeared to be KOMPAN’s own catalog retail price list for the Shade Systems™ brand.

In accordance with the evaluation methodology which was set by the Bureau on June 16, 2016, prior to the proposal opening date, to conduct the market basket analysis, the Bureau selected ten random high priced identical products with the same model numbers and descriptions from each Bidders' price list and applied the percentage discount proposed by each Bidder. However, in the original market basket analysis, the Bureau applied the wrong discount for General Recreation; instead of 12.00%, the Bureau mistakenly applied 0.00%, which resulted the following market basket calculations:

T-0103 Price Line 4 - Shade Systems: Commercial Recreation Specialists (Commercial) and General Recreation Inc. (General) (Price List effective 1/01/16) vs KOMPAN Inc. (KOMPAN USD Price List 2016)

Shade Systems 1/01/16 Price List	Commercial's Final Price -	General's Final Price -	KOMPAN Price List	KOMPAN's Final Price -
Product #				
R5060 14' HIGH				
R5060 8' HIGH				
S6060 14' HIGH				
S6060 12' HIGH				
S6060 10' HIGH				
S6060 8' HIGH				
R5060 12' HIGH				
R5060 10' HIGH				
S5050 14' HIGH				
R4060 14' HIGH				
SUM				
<b>RANK</b>	<b>1</b>	<b>2</b>	<b>3</b>	

Based upon the above market basket analysis, on March 27, 2017, the Bureau issued a Notice of Intent to Award (NOI), indicating that a contract would be awarded to CRS for Price Line 4 - Arbors (Shade Trellises) and Shade Structures (Fabric or Metal) for the Shade Systems™ brand.

Subsequent to the issuance of the March 27, 2017 NOI, the Bureau reviewed the market basket analysis for Price Line 4 and realized that the incorrect percentage discount had been applied for General. Accordingly, the Bureau performed the market basket analysis again applying the correct percentage discount to the same ten items from each Bidders' price list, which resulted in the following market basket calculations:

T-0103 Price Line 4 - Shade Systems: Commercial Recreation Specialists (Commercial) and General Recreation Inc. (General) (Price List effective 1/01/16) vs KOMPAN Inc. (KOMPAN USD Price List 2016)

Shade Systems 1/01/16 Price List	Commercial's Final Price -	General's Final Price - 12% off	KOMPAN Price List	KOMPAN's Final Price -
Product #				
R5060 14' HIGH				
R5060 8' HIGH				
S6060 14' HIGH				
S6060 12' HIGH				
S6060 10' HIGH				
S6060 8' HIGH				
R5060 12' HIGH				
R5060 10' HIGH				
S5050 14' HIGH				
R4060 14' HIGH				
SUM				
<b>RANK</b>	<b>2</b>	<b>1</b>	<b>3</b>	

Based upon the corrected market basket analysis, on March 29, 2017 the Bureau issued an Amended NOI indicating that a Contract would be awarded to General for Price Line 4 - Arbors (Shade Trellises) and Shade Structures (Fabric or Metal) for the Shade Systems™ brand.

The Bureau took the necessary and appropriate steps to correct the market basket analysis and issued the Amended NOI listing General as the intended awardee for Price Line 4 – for the Shade Systems™ brand within two (2) days of issuing the original NOI.

The Hearing Unit's independent review of the RFP, Proposals submitted, the Bureau's market basket analyses, and the Recommendation Reports confirms, that as noted above, the proposed discount of 12% offered by General was not properly utilized during the original market basket analysis, and after properly applying the 12% discount, awarding the contract to General would be most advantageous to the State, price and other factors considered.<sup>3</sup>

In light of the forgoing, and while I regret the unfortunate set of circumstances that caused the need for the Amended NOI, I must deny your protest and sustain the Bureau's March 29, 2017, Amended NOI indicating that a contract would be awarded to General for Price Line 4 - Arbors (Shade Trellises) and Shade Structures (Fabric or Metal) for the Shade Systems™ brand. This is my final agency decision on this matter.

Thank you for your interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: J. Kerchner  
K. Thomas

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<sup>3</sup> Both CRS and General were Vendors {Contractors} on the prior Contract which expired on August 14, 2016 and neither Vendor {Contractor} has any complaints on file in the Division's Contract Compliance and Audit Unit database.