



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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July 11, 2017

Via Email [jmckinley@cnaservices.org] and regular USPS Mail

Joanne M. McKinley, Business Development Manager
ACCSES NJ/CNA Services
150 West State Street, Suite 120
Trenton, New Jersey 08608

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

Dear Ms. McKinley:

This letter is in response to your September 30, 2016 correspondence on behalf of ACCSES NJ / CNA Services (ACCSES) to the Hearing Unit of the Division of Purchase and Property (Division). In that correspondence, ACCSES protests the September 1, 2016 Notice of Intent to Award (NOI-3) issued by the Division's Procurement Bureau (Bureau) for Solicitation #16-X-23961: Laundry Chemicals Statewide.¹ Specifically ACCSES protests the intended award of a contract Diamond Chemical Company Inc. (Diamond) for Group 2.

At the outset, I note that the Bureau canceled this solicitation on July 10, 2017. Accordingly, all Bidders are advised to review the Division's website for future solicitations related to the Statewide procurement for laundry chemicals.

However, by way of background I note the following: this RFP was issued by the Bureau on behalf of 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 were divided into three groups. Group 1 was for the Dry Chemical System (price line 1); Group 2 was for the Liquid Chemical System (price lines 2 - 11); and, Group 3 was for the Solid Encapsulated Detergent (price line 12). RFP § 3.0 *Commodity Description/Scope of Work*. It was the intent of the Bureau to award contract(s) to the responsible bidder(s), whose proposal(s), conforming to the RFP were most advantageous to the State, price and other factors considered. RFP § 1.1 *Purpose and Intent*. The State intended to extend the contract(s) awarded to cooperative purchasing partners. Ibid.

On July 1, 2015, the Division's Proposal Review Unit opened the five proposals received by the submission deadline. On September 23, 2015, the Bureau issued the first NOI (NOI-1), indicating that it

¹ On August 31, 2016 a request for documents related to the subject procurement was received from Spartan Chemical Co. Accordingly, on September 2, 2016, September 14, 2016 and September 22, 2016 the Bureau issued Amended NOI-3s to extend the protest period to allow for sufficient time for the gathering, review and release of the records requested.

was the intent of the Division to award all three Groups to Diamond. On October 1, 2015, SupplyWorks a/k/a Interline Brands, Inc. (SupplyWorks) submitted its first protest contesting the award of price lines 3, 4, and 7 to Diamond. On November 25, 2015, the Division issued a final agency decision upholding the award of price lines 3 and 7 to Diamond; however, the award of price line 4 was remanded to the Bureau for further evaluation.

Based upon the Division's final agency decision, on November 30, 2016 the Bureau requested a clarification from Diamond related to its proposed product for price line 4 – DBC 2010. Upon reviewing the information submitted by Diamond in response to the clarification request, the Bureau determined that Diamond's proposed product for price line 4 did not conform to the specifications; as such, since all price lines in Group 2 had be awarded to the same bidder, Diamond was ineligible for a contract award for Group 2. RFP §§ 4.4.7 *Pricing Sheet Instructions* and 7.2 *Final Contract Award*. Therefore, the Bureau rescinded NOI-1 and on December 14, 2015 issued a second NOI (NOI-2) indicating an intent to award a contract to ACCSES Services for the Group 2.

On December 23, 2015, Diamond submitted a protest in response to NOI-2 stating that its proposed product, DBC 2010, was properly labeled according to the applicable Department of Transportation regulations; therefore, Diamond contended that the Bureau's conclusion that its proposed product for price line 4 did not conform to the specifications was in error. With that protest, Diamond submitted the report of an independent laboratory analysis conducted by Stresau Laboratory Inc. That report concluded that Diamond's product, DBC 2010, is not considered a Division 5.1 Liquid Oxidizer as defined by Code of Federal Regulations, Title 49 or the United Nations Transport of Dangerous Goods criteria. Based upon the testing performed, Diamond stated that its product is properly classified and labeled. DSS did not dispute the results of the Stresau laboratory report or Diamond's conclusion regarding classification or labeling of DBC 2010. Based upon the additional information submitted, and DSS' review of that information, Division concluded that Diamond's proposed product for price line 4, DBC 2010, was not a liquid oxidizer as defined by the Code of Federal regulations, Title 49, or the United Nations Transport of Dangerous Goods Criteria; and therefore, the product conformed to the specifications.

Accordingly, on August 25, 2016, the Division issued its final agency decision on Diamond's protest.

Following issuance of the August 25, 2016 final agency decision, on September 1, 2016, the Bureau issued NOI-3, indicating an intent to award a contract to Diamond for all Groups. This protest from ACCSES followed. On November 1, 2016 Diamond submitted its response to the protest.

In connection with its review of this protest and a protest submitted by Supplyworks, the Hearing Unit requested that the Bureau undertake a thorough review of the RFP specifications, the approved brands listed on the price sheet, and the proposals submitted. Based upon this review, the Bureau concluded that the list of approved brands did not correspond to the RFP specifications. In addition, a review of the specifications revealed that certain requirements could not be met by any of the products proposed by any of the five bidders. Accordingly, on July 10, 2017, the Bureau issued a letter to all bidders advising it had cancelled the subject procurement and rescinded the intended contract award. The letter further advised that it was the Bureau's intent to revise the specifications and issue a new solicitation.

In light of the Bureau's cancellation of this procurement, I find that ACCSES' protest points are moot and need not be addressed at this time. This is my final agency decision with respect to this matter.

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,

A handwritten signature in blue ink, appearing to read "M. Griffin", is written over a faint, light blue rectangular stamp or watermark.

Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
C. Murphy
H. Diamond