



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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March 20, 2018

Via Electronic Mail [Kristin.Yelverton@dssmith.com] and USPS Regular Mail

Kristin Yelverton, NE Regional Sales Manager
Rapak, Inc. - Plastics Division
1201 Windham Parkway, Suite D
Romeoville, IL 60446

Re: I/M/O Bid Solicitation #18DPP00193 Rapak, Inc.
Protest of Notice of Proposal Rejection
T2923 – Liquid Packaging Bags

Dear Ms. Yelverton:

This letter is in response to your email of February 27, 2018, on behalf of DSS Rapak, Inc. (hereinafter “Rapak”), in which you request that the Division of Purchase and Property reconsider its February 26, 2018, final agency decision which upheld the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit to Parish Manufacturing, Inc. (hereinafter “Parish”) for Bid Solicitation #18DPP00193: T2923 – Liquid Packaging Bags (hereinafter “Bid Solicitation”)¹.

By way of background, on December 14, 2017, the Division’s Procurement Bureau (hereinafter “Bureau”) issued the Bid Solicitation on behalf of the New Jersey Department of Corrections Agri-Industries (hereinafter “NJDOC”), to solicit Quotes for liquid packing bags for processed milk and fruit juices. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award a Master Blanket Purchase

¹ For consistency, this final agency decision uses terminology employed by the State of New Jersey’s **NJSTART** eprocurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

NJSTART Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

Order (hereinafter "Contract") to that responsible Vendor {Bidder}, whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price, and other factors considered. Ibid.

On January 12, 2018, the Division's Proposal Review Unit opened three Quotes received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Parish for failure to submit the *Ownership Disclosure Form, Disclosure of Investment Activities in Iran Form* and pricing information with its Quote. In fact, a review of Parish's Quote reveals that it did not upload any forms, documents or other attachments to its Quote. Rather, it submitted a blank or empty Quote.

On January 23, 2018, the Division's Hearing Unit received an email, from Rapak, challenging the Notice of Proposal Rejection issued to Parish. After reviewing the protest and the Quotes submitted in response to Bid Solicitation #18DPP00193, the Division concluded Rapak had not submitted a Quote by the proposal opening deadline and that the Division could not accept Rapak's protest submission to the Division's Hearing Unit as a timely submitted Quote. Such acceptance would un-level the playing field as the Division received Quotes from other Vendors {Bidders} by the submission deadline. Additionally, the Division concluded that while Parish had submitted a Quote, its submitted Quote did not include the mandatory *Ownership Disclosure Form, Disclosure of Investment Activities in Iran Form* or the pricing information sought by the Bid Solicitation. As such, I concluded that Parish's Quote was properly rejected by the Division's Proposal Review Unit.

On February 27, 2018 Rapak wrote to the Hearing Unit stating that it appears that the Division has "misunderstood" the relationship between itself and Parish. Specifically, Rapak stated:

Unfortunately, it appears your understanding of the relationship of Parish and Rapak is misunderstood. There was a letter sent to the State of NJ in April 2017 – please see attached. This letter states that DSS Rapak (Rapak) acquired Parish Manufacturing Inc. effective January 17, 2017.

Please let me know how we can work to resolve this situation.

Additionally, Rapak provided a copy of a letter it sent to the NJDOC in April 2017 which stated:²

As we discussed on April 20, 2017 it was requested to document the following. DSS Rapak (Rapak) acquired Parish Manufacturing Inc. effective January 17th 2017. Rapak intends to utilize the contract that existed with Parish Manufacturing and NJ Dept. of Corrections. This contract with Parish Manufacturing expires August 11, 2017. We understand orders will be sent to our address at Parish Manufacturing address, 7430 New Augusta Road, Indianapolis, IN. And payments will be sent to the same.

A request for reconsideration

should be utilized only for those cases which fall into that narrow corridor in which either 1) the [tribunal] has expressed its decision based upon a

² I note that Rapak could have provided this information with its original protest but failed to do so. Therefore, the Division would be within its discretion to reject this request for reconsideration. However, for the sake of completeness, I will address Rapak's additional information herein.

palpably incorrect or irrational basis, or 2) it is obvious that the [tribunal] either did not consider, or failed to appreciate the significance of probative, competent evidence. . . .

Alternatively, if a litigant wishes to bring new or additional information to the [tribunal's] attention which it could not have provided on the first application, the [tribunal] should, in the interest of justice (and in the exercise of sound discretion), consider the evidence. Nevertheless, motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour. Thus, the [tribunal] must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration.

[Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996), citing, D'Atria v. D'Atria, N.J. Super. 392, 402-402 (Ch. Div. 1990)(stating "[r]econsideration is a matter within the sound discretion of the Court, to be exercised in the interest of justice.)]

Based upon the submission of this additional information, the Division's Hearing Unit undertook a review of the documents associated with the prior procurement (Bid Solicitation #14-X-23136). That review revealed that on January 17, 2017, Rapak sent an email to NJDOC advising that it had acquired Parish. See, Reim January 17, 2017 email. NJDOC responded, advising Rapak that it needed to contact to the Bureau in order to update its Vendor Information. See, Kerns January 18, 2017 email.

With respect to mergers and acquisitions, the State of New Jersey Standard Terms and Conditions provides in relevant part:

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

[State of New Jersey Standard Terms and Conditions § 5.10 *Mergers, Acquisitions*, emphasis added.]

Having received information that Rapak had acquired Parish, on January 20, 2017, the Bureau wrote to Parish advising that a contract assignment needed to be completed. In that letter, the Bureau advised Parish that several documents needed to be completed, executed and submitted to the Bureau before the assignment could be processed. No response was received. Therefore, on March 28, 2017, the Bureau sent a letter to Rapak advising that contract assignment needed to be completed. The March 28, 2017 letter again listed the documents that needed to be completed, executed and submitted to the Bureau before the

assignment could be processed. No response was received from either Parish or Rapak and therefore a contract assignment was never processed.³

I note that even if Rapak and Parish had perfected the contract assignment, the recent Quote submitted by Parish would have nonetheless been rejected by the Division's Proposal Review Unit.

As discussed in the Division's February 26, 2018, final agency decision the New Jersey Legislature has mandated that: (1) to be eligible to enter into a Contract with the State, a Vendor {Bidder} must supply its ownership information, prior to or with its Quote; and, (2) a Vendor {Bidder} must certify with its Quote submission that it is not identified as a person or entity engaging in investment activities in Iran. See, N.J.S.A. 52:25-24.2 and N.J.S.A. 52:32-58(a).

In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission or certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. As noted above, Parish did not submit any information with its Quote; therefore, Parish failed to supply its ownership information and to certify that it is not engaged in investment activities in Iran. Therefore, the Division's Proposal Review Unit properly rejected Parish's Quote.

A review of Rapak's *NJSTART* profile reveals that Rapak did complete and upload the *Ownership Disclosure Form, Disclosure of Investment Activities in Iran Form* to its profile. Even if the Division could rely upon Rapak's profile documents, which it cannot, Parish's Quote was properly rejected by the Division's Proposal Review Unit because Parish's failure to include all of the pricing information requested by the Bid Solicitation with its Quote.

As described in detail in the February 28, 2018 final agency decision, Parish's failure to include all of the pricing information requested by the Bid Solicitation with its Quote is a material deviation from the requirements of the Bid Solicitation. See, *Meadowbrook Carting Co. v. Borough of Island Heights*, 138 N.J. 307, 315 (1994) citing, *Twp. of River Vale v. Longo Constr. Co.*, 127 N.J. Super. 207 (Law Div. 1974). "If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all." *River Vale*, supra, 127 N.J. Super. at 222. Permitting Rapak, Parish, or any other Vendor {Bidder}, to submit information regarding the brand, model and manufacturer after the Quote opening deadline has passed would place that Vendor {Bidder} in a position of advantage over other Vendors {Bidders} who timely submitted the required pricing information with the Quote; and therefore cannot be permitted. As such, Parish's proposal was properly rejected by the Division's Proposal Review Unit.

Notwithstanding Rapak and Parish's interest in competing for this procurement, the deficiencies at issue cannot be remedied after the Quote submission deadline passed. Permitting Rapak or Parish to correct these identified deficiencies would be contrary to the provisions of the Division's governing statutes, regulations and case law. In light of the findings set forth above, I have no choice but to deny your request for reconsideration.

³ As noted in the Division's February 26, 2018, final agency decision, a review of the records maintained by the State of New Jersey indicate that Rapak and Parish are separate entities. Rapak and Parish have distinct Federal Employee Information Numbers; have separate New Jersey Business Registration Certificates; and, are registered as separate vendors in *NJSTART*.

Thank you for your continuing 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,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
G. Gerstenacker
A. Puza
A. Nelson
D. Rodriguez