



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 30, 2020

Via Electronic Mail Only mmfrankel@verizon.net

Jacob Frankel
M&M Frankel Disposables
5303 18th Avenue
Brooklyn, NY 11204

Re: I/M/O Bid Solicitation #19DPP00421 M&M Frankel Disposables
Protest of Notice of Intent to Award
T0012 Food Service Items: Disposable, Paper and Plastic for Distribution and Support Services

Dear Mr. Frankel,

This letter is in response to your September 18, 2020, email on behalf of M&M Frankel Disposables (M&M) to the Division of Purchase and Property (Division). In that letter, M&M protests the Notice of Intent to Award letter (NOI) issued on September 11, 2020, by the Division's Procurement Bureau (Bureau) for Bid Solicitation #19DPP00421 T0012 Food Service Items: Disposable, Paper and Plastic for Distribution and Support Services (Bid Solicitation).

By way of background, on August 28, 2019, the Bureau issued the Bid Solicitation on behalf of the Department of the Treasury, Distribution and Support Services (DSS), to solicit Quotes for disposable food service items. See Bid Solicitation Section 1.1 *Purpose and Intent*. The intent of the Bid Solicitation was to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation, are most advantageous to the State, price and other factors considered. Ibid.

On September 26, 2019, the Proposal Review Unit opened eleven (11) Quotes received by the submission deadline of 2:00 pm EST, from the following Vendors {Bidders}:

1. Daxwell
2. Lodging Kit Company
3. M&M Frankel Disposables
4. Dover Premier, LLC
5. Benjamin Foods
6. PJP Co. Penn Jersey Paper (Penn Jersey)
7. South Jersey Paper Products (South Jersey Paper)
8. Environmental Professionals Associates
9. Imperial Bag & Paper Co, LLC (Imperial)

10. WB Mason Co. Inc. (WB Mason)
11. Trinity Sales & Marketing, LLC

After conducting a preliminary review of the Quotes received, the Proposal Review Unit forwarded the Quotes to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.6 *Evaluation Criteria*.

On August 26, 2020, the Bureau completed the Recommendation Report that recommended Blanket P.O. awards to M&M, Imperial, WB Mason, Penn Jersey, and South Jersey Paper. Accordingly, on September 11, 2020, the Bureau issued the NOI advising all Vendors {Bidders} that it was the State's intent to award the Blanket P.O.s consistent with the Recommendation Report.

On September 18, 2020, M&M submitted a protest to the Division stating:

We would like to bring to your attention that the bid line #7 of the food service bid #19DPP00421 that was awarded to Imperial is fraudulent as they do not sell the brand Penny Plate. We contacted the manufacturer to verify and they confirmed that they do not sell their products to that company. We also contacted Imperial directly to inquire and they confirmed that they do not carry that brand.

I am certain that the specs of their aluminum pan will not match the required specifications. We strongly protest this award. Therefore, we would like to request a resubmittal of bids for this item.

[See M&M's September 18, 2020 email.]

The protest was forwarded to Imperial who was given an opportunity to respond to the allegations raised. On September 18, 2020 Imperial responded to the protest stating:

This email is being sent regarding a dispute for bid solicitation 19DPP00421, line 7. Imperial Dade stocks and actively purchases the item in question. We have provided a screen shot of the item in our internal ERP system showing on hand inventory. In addition, I have also attached recent po's further corroborating the item is purchased by Imperial Dade.

We hope the information provided is sufficient to address the concerns put forth.

In consideration of the M&M's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the protest, the relevant statutes, regulations, and case law. The issues raised by M&M are 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 based on the written record. I set forth herein my final agency decision.

A review of the record of this procurement reveals that Bid Solicitation Section 3.1 *Product Specifications* set forth detailed requirements for the disposable products sought. As to price line 7, the Bid Solicitation specified as follows:

Price Line	Item Description	Specifications	Packaging	Approved Products
7	Aluminum Trays, Carry-Out, Three (3) Compartments with Semi Heat Resistant cover, 250 per Case	<p>Tray Material: The material shall be aluminum</p> <p>Capacity: Aluminum Trays shall have a minimum capacity of 20 fluid ounces and maximum capacity of 25 fluid ounces</p> <p>Cover Material: The lid cover material shall be comprised of foil board</p> <p>Dimensions: The dimensions shall be a minimum length of 8 inches to maximum of 9 inches; minimum width of 5.85 inches; minimum depth of 1.4 inches to maximum of 2 inches</p> <p>Weight: The weight shall be a minimum of 1.05 ounces (29.76 grams) to maximum of 1.75 ounces (49.60 grams)</p>	250 trays per Case	<p>D&W Wilkinson C26</p> <p>Durable #210-35-L250</p> <p>Handi- Foil #210L</p> <p>Penny Plate #0739-030NC-C002</p> <p>Penny Plate #0739-035NC-C001</p> <p>Penny Plate #7139-035NC-C001</p>

Further, the Bid Solicitation noted that “[t]he approved brands/products identified herein have been deemed by the State to meet all specifications however, any products that meet or exceed the specifications will be considered as equivalents. See Section 4.4.5.2 for additional information.”

Eight (8) Vendors {Bidders} submitted Quotes in response to price line 7. Four (4) of the Vendors {Bidders} proposed products that did not meet the specifications identified in Bid Solicitation Section 3.1 *Product Specifications*. M&M was one of the Vendors {Bidders} who’s submitted product for price line 7 did not meet the product specifications set forth in the Bid Solicitation; therefore, M&M was not eligible for an award of price line 7. In response to price line 7, Imperial submitted a Quote for Penny Plate #0739-030NC-C002, one of the approved products listed in the Bid Solicitation. Having submitted the lowest price responsive Quote for price line 7, Imperial was listed as the intended awardee on the NOI.

In the protest, M&M alleges that Imperial’s Quote for price line 7 is fraudulent stating that Imperial does not sell the Penny Plate brand. See M&M’s September 18, 2020, email. In support of its statement M&M states that it contacted the manufacturer who stated that it does not sell its products to Imperial and that it contacted Imperial who stated that it does not sell the Penny Plate brand. *Ibid.* M&M did not provide any documentary support for its allegation.

In response to the protest, Imperial stated that it “stocks and actively purchases” the Penny Plate brand. In support of its statement, Imperial provided a screenshot of its inventory system and a recent invoice from Penny Plate demonstrating that it does purchase products from Penny Plate.

In further support of its protest, on September 29, 2020, M&M wrote to the Division’s Hearing Unit stating that “that there is no production date available for the item. If the item will not be on the market for an unspecified amount of time, this brand should be removed from the bid.” In support of this statement, M&M included an excerpt of an email correspondence with its supplier regarding the product sought. A

review of that email correspondence reveals that M&M's supplier advised that "[t]here is any issue with production...[p]lease note Penny Plate does not have a sample of below item at this time. This item is currently on backorder. They will let us know when it is back in production."

The information provided by M&M in support of the protest indicates that the product is on back order because of the manufacturer's production issue. The manufacturer's production issue does not render Imperial's submitted Quote as fraudulent and does not require the removal of the product from among those items awarded to Imperial. Should the manufacturer's production issues persist, then the Bureau is free to revisit the issue of this item's availability in accordance with the Bid Solicitation's requirements.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation for award. Accordingly, I sustain the September 11, 2020, Notice of Intent to Award.

Thank you for your company's continuing interest in doing business with the State of New Jersey. I encourage you log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. This is my final agency decision with respect to the protest submitted by M&M Frankel Disposables.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RD

c: J. Kerchner
K. Thomas
G. Gerstenacker
S. Brandbergh
Imperial Bag & Paper