



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

33 WEST STATE STREET

P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039

<https://www.njstart.gov>

Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

TAHESHA L. WAY
Lt. Governor

AMY F. DAVIS, ESQ.
Acting Director

October 4, 2024

Via Electronic Mail Only to bmorrison@versteel.com

Phil Englert
National Sales Manager
Ditto Sales d/b/a Versteel
2332 Cathy Lane
Jasper, IN 47546

Re: I/M/O RFQ #15964088 Ditto Sales d/b/a Versteel
Protest of Notice of Proposal Rejection
G2004 Furniture: Office, Dormitory, Residential, Library, Classroom, Lounge and System - Statewide

Dear Mr. Englert:

This final agency decision is in response to the protest letter dated September 10, 2024 ("Letter"), submitted by Ditto Sales d/b/a Versteel ("Versteel"). That Letter was received by the Division of Purchase and Property's ("Division") Hearing Unit on September 11, 2024. In that correspondence, Versteel protests the Notice of Intent to Award ("NOI") issued on August 28, 2024, by the Division's Procurement Bureau ("Bureau") for Request For Quotation #15964088 – G2004 Furniture: Office, Dormitory, Residential, Library, Classroom, Lounge and System - Statewide ("RFQ"). The record of this procurement reveals that the Quote submitted by Versteel was deemed non-responsive on the grounds that "Versteel did not bid on Price Line 10, as required in RFQ Section 8.6.2.", as set forth on page 61 in the Recommendation Report dated July 24, 2024 ("Recommendation Report"). In their Letter, Versteel argues that the RFQ was "complex and confusing". Letter, page 1. Specifically, Versteel argues that the RFQ states that it will only accept quotes from bidders with an active GSA contract under Schedule 71 and fails to note that "Price line 9 & 10 do not have to have a GSA Schedule". Letter, page 1.

With respect to leaving Price Lines 9 and 10 blank on their State-Supplied Price Sheet ("SSPC"), Versteel claims,

Versteel submitted its bid on Price Line #4, consistent with our active GSA Contract under Schedule 71 Furniture & Furnishings. We did not bid on Price Line #10, as doing so would have been in direct contradiction to our GSA contract. At no point was it clarified that Price Lines 9 and 10 do not require an active GSA contract. The RFQ did not provide clear guidance on this matter, and it was never explicitly mentioned that a GSA Contract was not a requirement for the services listed under Price Line 10.

[Letter, page 1.]

By way of background, on November 16, 2022, the Procurement Bureau (“Bureau”) issued the RFQ on behalf of the State of New Jersey. The purpose of the RFQ was to solicit “Quotes for various types of Office, Dormitory, Residential, Library, Classroom and Lounge Furniture, Non-Modular and Files, System and Open Plan/Landscape Furniture, related supplies and installation services necessary to meet the needs of various Using Agencies.” RFQ Sec. 1.1, *Purpose and Intent*. It is the intent of the State to award a Contract to that responsible Bidder(s) whose Quote, conforming to this RFQ is most advantageous to the State of New Jersey (State), price and other factors considered. The State may award any or all price lines.

In accordance with RFQ Section 2.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders to submit questions by December 7, 2022. On June 19, 2023, Amendment 9 was issued which answered 319 questions received during this electronic question and answer period. A second electronic question and answer period allowed bidders to submit additional questions by June 28, 2023. The sixty (60) questions submitted during this second question and answer period were answered via Amendment number 11.

On November 28, 2023, the Bureau opened forty two (42) Quotes, listed in the chart below, which were received by the submission deadline of 2:00 pm eastern time on November 28, 2023.

9 to 5 Seating LLC (“9 to 5”)	John Savoy & Son, Inc., d/b/a Savoy Contract Furniture (“Savoy”)
Affordable Interior Systems Inc. (“Affordable Interior”)	Kimball International Brands Inc. (“Kimball”)
Agati Inc. (“Agati”)	Krueger International Inc. (“Krueger”)
Allseating Corporation (“Allseating”)	Krug Inc. (“Krug”)
Allsteel LLC (“Allsteel”)	Metalworks, Inc. d/b/a Great Openings (“Metalworks”)
Arconas Corporation (“Arconas”)	MillerKnoll Inc. (“MillerKnoll”)
Blockhouse Company Inc. (“Blockhouse”)	Nevers Industries Inc. (“Nevers”)
Burhani Enterprises Inc. (“Burhani”)	New England Woodcraft Inc. (“New England”)
Daco Limited Partnership d/b/a Dauphin (“Dauphin”)	Office Master Inc. (OM Seating) (“Office Master”)
Dar-Ran Furniture Industries Inc. (“Dar-Ran”)	OFS Brands Inc. (“OSF”)
Datum Filing Systems Inc. d/b/a Datum Storage Solutions (“Datum”)	PS Furniture Inc. (“PS”)
Ditto Sales Inc. d/b/a Versteel (“Versteel”)	Raynor Marketing d/b/a Eurotech (“Eurotech”)
Exemplis LLC (“Exemplis”)	Safco Products Co. (“Safco”)
Fellows Inc. (“Fellows”)	Special T (“Special T”)
Friant & Associates LLC (“Friant”)	Stance Healthcare Inc. (“Stance”)
Global Industries Inc. (“Global”)	Steelcase Inc. (“Steelcase”)
Groupe LaCasse LLC (“Groupe LaCasse”)	Swiftspace Inc. (“Swiftspace”)
Haworth Inc. (“Haworth”)	The Hon Company (“Hon”)
High Point Furniture Industries Inc. (“High Point”)	Three H Furniture Systems Limited (“Three H”)
Humanscale Corporation (“Humanscale”)	Trinity Furniture Inc. (“Trinity”)
Jasper Seating Company, Inc. d/b/a JSI/Jasper Group (“Jasper”)	Via Inc. (“Via”)

As part of the responsiveness review, the Bureau determined that the Quotes from the following bidders were either unresponsive in part or in their entirety as show in the chart below.

BIDDER	FULLY OR PARTIALLY NON-RESPONSIVE	REASON
Agati	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Blockhouse	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Dar-Ran	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Friant	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Groupe LaCasse	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Haworth	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ. Additionally, Haworth did not bid on Price Lines 9 or 10 as required pursuant to RFQ Sections 1.1 and 8.6.2. Bidding on Price Lines 9 and 10 was a requirement of the RFQ and failure to bid on Price Lines 9 and 10 also renders Haworth's Quote non-responsive.
Nevers	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
PS Furniture	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.

Special T	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Swiftspace	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Three H	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Trinity	Fully non-responsive	Bidder did not have a valid Public Works Contractor Registration certificate on file at the time of Quote Submission Due date (11/28/23) as required by Section 3.3 of the RFQ.
Burhani	Fully non-responsive	Bidder failed to provide Ownership Disclosure information as required pursuant to Section 3.6.2 of the RFQ. Bidder failed to provide a signed Specification Conformance Form with its Quote as required pursuant to Section 3.6.14 of the RFQ. *Finally, Bidder left blank the field of "Percentage (%) of Post-Consumer Material Content" which was required pursuant to Section 3.8 of the RFQ which rendered its Quote non-responsive as to Price Line 4 as well.
Datum	Partially non-responsive	Datum did not hold a valid GSA Contract for SIN Number 337127 (Price Line 3) as required pursuant to RFQ Sections 1.1 and 8.6.2 so Datum is non-responsive as to Price Line 3. Additionally, Datum did not hold a valid GSA Contract for Ancillary Supplies/Services (Price Line 12) as required pursuant to RFQ Sections 1.1 and 8.6.2 so Datum is non-responsive as to Price Line 12.
Versteel	Fully non-responsive	Versteel did not bid on Price Line 10 as required pursuant to RFQ Sections 1.1 and 8.6.2. Bidding on Price Line 10 was a requirement of the RFQ and failure to bid on Price Line 10 renders Versteel's Quote non-responsive.
Fellowes	Partially non-responsive.	Fellowes did not hold a valid GSA Contract for SIN Numbers 337127P (Price Line 2) and for 337127 (Price Line 3) as required pursuant to

		RFQ Sections 1.1 and 8.6.2 so Fellowes is non-responsive as to Price Lines 2 and 3.
Humanscale	Partially non-responsive	Humanscale did not hold a valid GSA Contract for Ancillary Supplies/Services (Price Line 12) as required pursuant to RFQ Sections 1.1 and 8.6.2 so Humanscale is non-responsive as to Price Line 12.
Krug	Partially non-responsive	Krug did not hold a valid GSA Contract for SIN Numbers 33712 (Price Line 1), 337121P (Price Line 2), 337127 (Price Line 3), 33721T (Price Line 6), 339113P (Price Line 7) and 33712LFSB (Price Line 8).
New England	Partially non-responsive	New England did not hold a valid GSA Contract for Ancillary Supplies/Services (Price Line 12) as required pursuant to RFQ Sections 1.1 and 8.6.2 so New England is non-responsive as to Price Line 12.
OFS	Partially non-responsive	OFS did not hold a valid GSA Contract for Ancillary Supplies/Services (Price Line 12) as required pursuant to RFQ Sections 1.1 and 8.6.2 so OFS is non-responsive as to Price Line 12.
Eurotech	Fully non-responsive	Eurotech left the field “Percentage (%) of Post-Consumer Material Content” blank on Price Line 4, which was a required field pursuant to RFQ Section 3.8, thus rendering Price Line 4 non-responsive. Eurotech could not be responsive for Price Lines 9 and/or 10 because those Price Lines required a responsive Quote for at least one Price Line in Price Lines 1-8. Additionally, Price Line 12, Ancillary Supplies/Services is only applicable if a Bidder has a responsive Quote for Price Lines 1-8.

On September 11, 2024, prior to the close of the protest period, Versteel submitted a Letter via email protesting their non-award. Versteel argues that the RFQ was “complex and confusing”, that it was not clear in the RFQ that Price Lines 9 and 10 did not require an active GSA contract, and that if “Versteel had been aware that Price Line 10 did not require an active GSA Contract, our response would have been different”. Letter, pages 1-2.

Although Versteel has not requested an in-person presentation as permitted by N.J.A.C. 17:12-3.3(e), it should be noted that “[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). I have reviewed the record of this procurement, including the RFQ, the Quotes received, the relevant statutes, regulations, case law, and the protest submitted by Versteel. The issues raised in the 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 Versteel on the written record, as such an in-person hearing is not warranted. I set forth herein the Division's Final Agency Decision.

DISCUSSION

The New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey's statutory procurement scheme is "to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)).

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

(a) In order to be eligible for consideration for award of contract, the bidder's proposal **shall** conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that **must** be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), emphasis added.]

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

The subject procurement was comprised of the RFQ, other documents and mandatory forms which were specifically addressed in RFQ Section 3, *Quote Submission Requirements*.

Versteel argues that it was unclear that "a GSA Contract was not a requirement for the services listed under Price Line 10". Letter, page 1. However, a review of RFQ, Section 3.8, *State Price Sheet Instructions*, lists a U.S. General Services Administration ("GSA") Special Information Number ("SIN") for Price Lines 1-8. There is no GSA SIN number listed for Price Lines 9, 10 or 12. Price Line 11 is reserved and not used in this RFQ. A screenshot of a portion of the RFQ shown below illustrates this point showing the language for Price Lines 6 through 12 . Price Lines 1-5 are formatted in the same manner with the SIN

number following the Price Line. This same information with respect to Price Lines and SIN numbers is also found in RFQ Section 1.1, *Purpose, Intent and Background*.

Price Line 6 – SIN 33721T - Training Room, Auditorium and Theater Furniture - Training room, auditorium furniture and theater furniture including floor mounted ascending tier seating. Accessories designed to be used with the offered furniture are acceptable. Products meet applicable safety, performance and flammability requirements.

Price Line 7 – SIN 339113P - Packaged Healthcare Furniture - Includes packaged furniture solutions necessary for customers to furnish an entire healthcare office, exam room, waiting room, long-term care room, etc. Contractors should be experienced in offering total tenant outfitting solutions.

Price Line 8 – SIN 337127LFSB – Library Furniture - Includes: Furniture specifically designed for library use; such as: Library shelving; desks, carrels; chairs/seating (folding and non-folding); library activity tables; book carts; children's library furniture; folding tables and chairs and folding table and chair trucks.

Price Line 9 – Installation Services – Prevailing Wage

Price Line 10 - Design, Layout, Inventory and Various Related Services – Non-Prevailing Wage

Price Line 11 – Reserved.

Price Line 12 – Ancillary Supplies/Services

[RFQ Section 3.8].

Versteel argues that “At no point was it clarified that Price Lines 9 and 10 do not require an active GSA contract.” Letter, page 1. Despite their claim that they did not and could not know if a GSA SIN number was required for Price Lines 9 and 10, Versteel bid on Price Line 9.

Price Line #	Category/Commodity Description	Brand (Required)	Unit	Percentage (%) Discount (-) from the Product Catalog/Price List - See RFQ Section 4.2B (Required)	Percentage (%) Markup (+) of Prevailing Wage Rate - See RFQ Section 4.4 (Required)	Hourly Rate - See RFQ Section 4.4 (Required)	Percentage (%) of Post-Consumer Material Content - See RFQ Section 4.2 (Required)	Delivery Days After Receipt of Order (ARO) - See RFQ Section 5.6
1	SIN 33712 - Complete Daycare, Preschool and Classroom Solutions - Daycare, preschool, and classroom furniture including but not limited to storage units/cabinets, high chairs, cribs and accessories, desks and student chairs, toys and accessories.		Percent					
2	SIN 33712P - Packaged Household Dormitory and Quarters Furniture - Includes packaged furniture solutions necessary for customers to furnish sleeping rooms, suites, lounges, dayrooms, common areas, etc.		Percent					
3	SIN 33712T - Institutional Furniture - Includes laboratory Furniture Systems, industrial furniture systems, and storage.		Percent					
4	SIN 33721 - Office Furniture - Includes all furniture placed in an office, such as chairs, desks, etc.	Ditto Sales Inc., db/a Versteel	Percent	0%; Note: This offer includes Versteel Standard GSA Discount Rate and applicable Volume Discounts			4% to 57.50%	45 to 90 ARO
5	SIN 33721P - Packaged Office Furniture - Includes packaged furniture solutions for customers needing to furnish an office.		Percent					
5A	SIN 339113H - Healthcare Furniture - Includes furniture designed and marketed for hospital and/or long-term patient care use, such as hospital patient room furniture, hospital and geriatric chairs, medical head-walls, and patient service columns for general patient care.		Percent					
6	SIN 33721T - Training Room, Auditorium and Theater Furniture - Training room, auditorium furniture and theater furniture including floor mounted ascending tier seating. Accessories designed to be used with the offered furniture are acceptable. Products meet applicable safety, performance and flammability requirements.		Percent					
7	SIN 339113P - Packaged Healthcare Furniture - Includes packaged furniture solutions necessary for customers to furnish an entire healthcare office, exam room, waiting room, long-term care room, etc. Contractors should be experienced in offering total tenant outfitting solutions.		Percent					
8	SIN 337127LFSB - Library Furniture - Includes: Furniture specifically designed for library use; such as: Library shelving; desks, carrels; chairs/seating (folding and non-folding); library activity tables; book carts; children's library furniture; folding tables and chairs and folding table and chairs.		Percent					
9	Installation Services - Prevailing Wage	10%	Percent					
10	Design, Layout, Inventory and Various Related Services - Non-Prevailing Wage	n/a	Hourly Rate					

[Versteel SSPS].

Additionally, Versteel did not submit any questions during the Electronic Question and Answer period. A question was asked by a bidder during the first Electronic Question and Answer period with respect to Price Lines 9 and 10, and whether a GSA contract was required to bid for those price lines. The question was answered via Bid Amendment #9 as shown below.

69	1.1, 3.8 and 8.6.2	Question: 1.1 States that Bidders must submit bids for any/all in product lines 1-8, AS WELL AS lines 9 and 10 which reflect Installation and Design Services. These services are not awarded on our GSA Contract. Please confirm that bidding on lines 9 and 10 is mandatory and that they can be offered “open market” in response to this RFQ without being awarded on a GSA Contract. Answer: As per RFQ Section 1.1, Section 3.8, and Section 8.6.2, Bidders must offer Quote pricing for Price Lines 9 and 10 to be considered for award. However, a GSA award for installation and/or design services is NOT required to be considered for award. Additionally, as per RFQ Section 4.4, contracted GSA installation or removal rates will not apply and will not be awarded.
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[Bid Solicitation Amendment #9, page 19].

Versteel next argues that the State had an opportunity to clarify the issue of whether a GSA Contract was required in the request for clarification letter the State sent to Versteel on June 19, 2024. On June 19, 2024, the State wrote to Versteel to clarify the information Versteel included for Price Line 10 on the SSPS (“Clarification Letter”). The Clarification Letter states in pertinent part:

On the State-Supplied Price Sheet submitted by Ditto with their Quote, the word “N/A” was written for Price Line 10, Design, Layout, Inventory and Various Related Services – Non-Prevailing Wage. By stating “N/A” on Price Line 10 is Ditto stating it is not offering any services for Price Line 10, or is Ditto offering the services at no charge (\$0) for that Price Line.

[Clarification Letter, page 1].

Versteel responded to the Clarification Letter via email on June 20, 2024 that they do “not offer Design/Layout/Inventory services commercially nor are the offered under our . . . GSA Contract. Versteel is not offering these services for Price Line 10.” Versteel Email, June 20, 2024.

Pursuant to RFQ Section 3.8, *State Price Sheet Instructions*, bidders were required to bid on at least one of Price Lines 1-8 and additionally, were required to bid on Price Line 9 and Price Line 10 to be considered a responsive bidder.

All Bidders must offer Installation Services – Prevailing Wage (Price Line 9) All Bidders must offer Design, Layout, Inventory and Various Related Services – Non-Prevailing Wage. (Price Line 10) Bidders must bid on Price Lines 1 through 8 in any combination (one, some or all price lines) in order to be considered for an award. Bidders must also bid on Price Lines 9 and 10 to be considered for an award. If a Bidder does not bid on Price Lines 1 through 8, in any 8 combination (one, some or all price lines), and/or does not bid on Price Lines 9 and 10, its Quote will be considered non-responsive. Bidders should bid on Price Line 12 if awarded a related GSA contract for Ancillary supplies/services.

[RFQ Section 3.8].

The term “must” denotes a mandatory requirement as further set forth in the RFQ’s glossary:

Must – Denotes that which is a mandatory requirement.

[RFQ Section 9. *GLOSSARY*]

The term “shall” also denotes that which is a mandatory requirement as further set forth in the RFQ’s glossary:

Shall – Denotes that which is a mandatory requirement.

[RFQ Section 9. *GLOSSARY*]

During the initial responsive review of a Quote, the Division is charged with ensuring that the Contract is awarded to that responsible Bidder, whose Quote, conforming to the RFQ, is most advantageous to the State, price and other factors considered. RFQ Section 1.1 *Purpose and Intent*. A responsive Quote is a Quote that is deemed by the Division to have adequately addressed all material provisions of a RFQ’s terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3. A Quote that is not compliant or responsive to the material requirements of the RFQ shall not be eligible for further consideration for award of a Contract and the bidder offering said Quote shall receive notice of the rejection of its Quote. N.J.A.C. 17:12-2.7(c). Here, Versteel did not submit mandatory pricing for Price Line 10 on the State-Supplied Price Sheet with their Quote (nor at any point prior to the Quote Opening Date).

When evaluating a Quote, if a deviation is found, the question is whether the deviation is material. It is firmly established in New Jersey that material deviations may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co., 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, the court declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity.” In re Protest of Award of On-Line Games Prod. and Operation Servs. Contract, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, 127 N.J. Super. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. Super. at 216.]

“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.” On-Line Games, *supra*, 279 N.J. Super. at 595 (citing River Vale, *supra*, 127 N.J. Super. at 222).

Not submitting pricing on a mandatory Price Line is a non-waivable deviation under River Vale. Versteel claims in their Letter that “Had Versteel been aware that Price Line 10 did not require an active GSA Contract, our response would have been different. The ambiguity in the RFQ’s criteria directly impacted our ability to submit a fully compliant bid.” Letter, page 2. However, in their June 20, 2024 email,

Versteel stated in no uncertain terms that they do not provide the services required in Price Line 10 of the SSPS. Allowing Versteel to provide a different response now and a “fully compliant bid” after the Quote submission deadline would result in an impermissible supplementation of the Quote, which the Division cannot allow as doing so would be contrary to the Court’s holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In On-Line Games, the Appellate Division held that “in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP”. Id. Whether the missing information from the SSPC was the result of a confusion on Versteel’s part is immaterial. Here, the Division cannot accept Versteel providing additional pricing information, as doing so is an impermissible supplementation, change and correction to the submitted Quote. Additionally, as Versteel does not provide these services, the State cannot be sure the contract will be performed according to the specified requirements under River Vale.

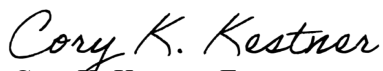
New Jersey procurement law requires that “specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency. . . .” N.J.S.A. 52:34-12. This principle is based on the long-recognized “policy behind the competitive bidding statutes, i.e., assurance against favoritism, improvidence, extravagance and corruption in the bidding process.” Palamar Constr., Inc. v. Pennsauken, 196 N.J. Super. 241, 251 (App. Div. 1983) (citing Terminal Construction Co. v. Atlantic City Sewerage Auth., 67 N.J. 403, 410 (1975)). “These policies, in turn, are meant to ensure that all bidders are equally situated in their competition for the public contract.” Palamar, supra, 196 N.J. Super. at 251 (citing Hillside Twp. v. Sternin, 25 N.J. 317, 322 (1957)). “The conditions and specifications must apply equally to all prospective bidders. Otherwise, there is no common standard of competition.” Id. Allowing Versteel’s Quote to proceed to award in light of their failure to submit a properly completed SSPC would place Versteel in a superior position among bidders under this RFQ.

Based upon the findings set forth above, I find no reason to disturb the determination that the Quote submitted by Versteel was non-responsive to the requirements of the RFQ. Accordingly, I sustain the August 28, 2024, Notice of Intent to Award. This is my final agency decision.

Thank you for your company’s continuing interest in doing business with the State of New Jersey, I encourage you to 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 the Division’s final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,


Cory K. Kestner, Esq.
Acting Chief Hearing Officer

CKK:CMD

c. K. Thomas
C. Murphy