



State of New Jersey

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

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October 4, 2024

Via Electronic Mail Only to egellman@raynorgroup.com

Eric Gellman
Vice President Sales
The Raynor Group/Eurotech
525 Hempstead Turnpike
West Hempstead, NY 11552

Re: I/M/O RFQ #15964088 The Raynor Group/Eurotech
Protest of Notice of Proposal Rejection
G2004 Furniture: Office, Dormitory, Residential, Library, Classroom, Lounge and System -
Statewide

Dear Mr. Gellman:

This final agency decision is in response to the protest email dated September 10, 2024 ("Protest"), submitted by The Raynor Group/Eurotech ("Eurotech"). That Protest was received by the Division of Purchase and Property's ("Division") Hearing Unit on September 11, 2024. In that correspondence, Eurotech 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 Eurotech was deemed non-responsive on the grounds that for Price Line 4, "Raynor left the required field 'Percentage (%) of Post-Consumer Material Content' blank on the State-Supplied Price Sheet" as set forth on page 109 in the Recommendation Report dated July 24, 2024 ("Recommendation Report"). In their Protest, Eurotech admitted that the price sheet they submitted with their Quote was "missing one cell, Cell H4". They further state that it "was not done on purpose and was a total oversight". Eurotech urges the State to ignore this Quote submission omission because they are a small company without a department to handle state contracts and because they have "been waiting for this contract to come due again for so many years and . . . hate to miss the opportunity b/c of such a minor mistake". Protest, 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 10, 2024, prior to the close of the protest period, Eurotech submitted a Protest email requesting that the State reverse the determination that Eurotech’s Quote was non-responsive. The Bureau deemed Eurotech’s Quote non-responsive due to Eurotech’s failure to submit an amount for the column “Percentage (%) of Post-Consumer Material Content” on Price Line 4 of the State-Supplied Price Sheet (“SSPS”). This column on the SSPS was a mandatory requirement pursuant to Bid Solicitation Section 3.8, *Price Sheet Instructions* and was marked as “(Required)” in bold, red font on the SSPS. In their Protest, Eurotech admits that they failed to provide this information however ask that the Division reverse it’s determination of non-responsiveness because it was a “minor mistake” and they have been “waiting for this contract to come due again for so many years”. Protest, page 1.

Although Eurotech 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 Eurotech. 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 Eurotech 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*.

Eurotech argues that there was an "oversight" with respect to "missing one cell, Cell H4 in the G2004 price sheet". Protest page 1.

Pursuant to RFQ Section 3.8, *State Price Sheet Instructions*:

Step 9 - The Bidder shall enter the percentage of post-consumer material content for each brand offered on the State-Supplied Price Sheet.

Bidders may identify a range of percentages for recycled post-consumer material content.

Failure to enter the percentage of post-consumer material content on the Quote price line will result in the rejection for that price line only. Consideration shall be given to recycled products containing the highest percentage of post-consumer material.

Please be advised that Steps 4, 5, 6, 8 and 9 are required fields that must be completed on the State-Supplied Price Sheet.

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).

As shown below, Eurotech did not provide mandatory information for the column “Percentage (%) of Post-Consumer Material Content” on Price Line 4 of the SSPS with their Quote (nor at any point prior to the Quote Opening Date).

RFQ Number: 15964088		BIDDER NAME: Raynor Marketing dba Eurotech					
Cash Discount for Expedited Payment: Refer to Section 3.8.2 Cash Discounts of the RFQ.							
Price Line #	Category/Commodity Description	Brand (Required)	Unit	Percentage (%) Discount (-) from the Product Catalog/Price List - See RFQ Section 4.28 (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)
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 337121P - 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 337127 - 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.	Raynor Marketing dba Eurotech	Percent	50.00%			

[Eurotech’s submitted SSPS].

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 mandatory information on a Price Line is a non-waivable deviation under River Vale. Allowing Eurotech’s Quote to move forward without the required information on Price Line 4 would place it “in a position of advantage over other bidders” in violation of the law set forth under River Vale.

Further, allowing Eurotech to provide its pricing information 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 SSPS was the result of an “oversight” or “not done on purpose” as Eurotech stated in their Protest is immaterial. Allowing Eurotech to “fill in the one cell, H4” as requested in their Protest would be an impermissible supplementation, change and correction to the submitted Quote.

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 Eurotech’s Quote to proceed to award in light of their failure to submit a properly completed SSPS would place Eurotech in a superior position among bidders under this RFQ.

It should be noted that Eurotech also bid on Price Lines 9, 10 and 12 on the SSPS. Pursuant to RFQ, Section 3.8 *State Price Sheet Instructions*, shown below, in order to be considered for an award for Price Lines 9, 10 and 12, a Bidder must bid and be responsive for at least one line of Price Lines 1-8. As Eurotech is non-responsive for the only Price Line they bid (Price Line 4), they cannot be considered for award for Price Lines 9, 10 and/or 12. Therefore, a further analysis of these Price Lines is unnecessary.

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.
If Price Line 1, 2, 3, 4, 5, <u>5A</u> , 6, 7, 8, 9 and/or 10 is deemed non-responsive, the entire group that price line item is part of will be deemed non-responsive.

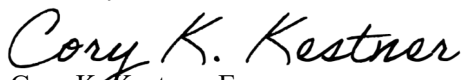
[RFQ Section 3.8, *State Price Sheet Instructions*].

Based upon the findings set forth above, I find no reason to disturb the determination that the Quote submitted by Eurotech 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