



State of New Jersey

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

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Acting Director

October 24, 2025

Via Electronic Mail only to zach@derstines.com

Zach Derstine, CEO
Derstines Inc.
3245 State Rd.
Sellersville, PA 18960

Re: I/M/O Bid Solicitation #25DPP01145 – Derstines Inc.
Protest of Non-Award
T0015 - Fresh Eggs, Perishable, Medium, White, USDA Grade A, for Distribution and Support Services

Dear Mr. Derstine:

This final agency decision is in response to the protest application (“Protest”), submitted by Derstines Inc. (“Derstines”), and received by the Division of Purchase and Property’s (“Division”) Hearing Unit on October 7, 2025. In that correspondence, Derstines protests that its bid should have been selected because it presented a lower price than the awarded Contractor. Specifically, Derstine argues that its “bid is 7.1 cents per dozen less than winning bid. About \$2.13/case or about \$1,086.30 per truckload less money. I don’t believe the state of New Jersey would want to over pay for this product. I bid 22.1 cents less than market price and winning bid was only 15 cents less than market.”

By way of background, the subject Bid Solicitation was issued by the Division’s Procurement Bureau (Bureau) on behalf of the New Jersey Department of Treasury through Distribution and Support Services (DSS) to solicit quotes for “for Fresh Eggs, Perishable, Medium, White, USDA Grade A, for Distribution and Support Services.” Bid Solicitation Section 1.1, *Purpose, and Intent and Background*. Bidders’ electronic questions were due to the Bureau by June 19, 2025.

On July 17, 2025, the Division’s Proposal Review Unit opened three (3) Quotes which were received by the submission deadline of 2:00 pm Eastern Time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, all three Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that one of the three bidders were non-responsive to some Bid Solicitation requirements that deemed that bidder non-responsive and ineligible for award for a portion of the Bid Solicitation. With respect to Derstines’ submitted Quote, it was deemed non-responsive for failing to provide the required initials on the State-Supplied Price Sheet, as required in Bid Solicitation Sections 3.21 and 3.36, Step 5. See Pages 4-6, Recommendation Report dated October 2,

2025. With respect to the State-Supplied Price Sheet, Bid Solicitation Sections 3.21, *Specification Conformance Form*, states:

The Bidder shall certify on the State-Supplied Price Sheet that all items offered in response to this Bid Solicitation conform to the significant factors and subfactors that establish the requirements and specifications set forth in the Bid Solicitation. This includes all EPA, USDA and FDA requirements outlined in this Bid Solicitation.

Additionally, Bid Solicitation Section 3.36, *State Price Sheet Instructions*, Step 5 states:

Step 5 – The Bidder must enter the initials of the Authorized Representative as confirmation that the offered product meets the significant factors and subfactors of the Bid Solicitation's requirements for the subject Price Line. These initials are required regardless of whether or not the product bid is an Approved Product/Supplier or an Equivalent Product/Supplier.

Please be advised that Steps 3, 4, and 5 are required fields that must be completed on the State-Supplied Price Sheet for the price line item bid. A Bidder's failure to complete these fields on the State-Supplied Price Sheet shall render the Bidder's Quote non-responsive for the price line.

[Emphasis in original.]

On its price sheet, contrary to Bid Solicitation Section Sections 3.21, and Bid Solicitation Section 3.36, *State Price Sheet Instructions*, Step 5, as shown on the screenshot below, Derstines failed to enter the required initials of the Authorized Representative as confirmation that the offered products met the Bid Solicitation's requirements.

State of New Jersey DEPARTMENT OF THE TREASURY DIVISION OF PURCHASE AND PROPERTY PROCUREMENT BUREAU 33 WEST STATE STREET P. O. BOX 230 TRENTON, NEW JERSEY 08625-0230						
STATE-SUPPLIED PRICE SHEET						
BID SOLICITATION NUMBER: 25DPP01145						
BID SOLICITATION TITLE: T0015 Fresh Eggs, Perishable, Medium, White, USDA Grade A, for Distribution and Support Services (DSS)						
Date: 6/3/2025						
Bidder's Name: Derstine's Inc.						
Cash Discount for Expedited Payment (Refer to Bid Solicitation Section 3.36.2): payment terms are net 30 days						
Price Line Number	Commodity Description	Quantity	Unit	Up-Charge (+) or Down-Charge (-) to the Urner Barry Price per Dozen Eggs (Required)	Supplier's Location (Required)	Delivery Days After Receipt of Order (Not to Exceed 14 Calendar Days) - See Bid Solicitation Section 5.6
1	Fresh Eggs, Medium, White, USDA Grade A, Packed in a Master Case of 30 Dozen Eggs per Case. Please refer to Bid Solicitation Section 4.1 for detailed specifications. For DSS delivery only. DSS# 3925-005-01982	1	Dozen	-.221	Puglisi, NJ	10

Bidders must provide the following information on the State-Supplied Price Sheet:

1. Up-Charge or Down-Charge (in US Dollars) to the price per dozen eggs, as published in the Urner Barry Northeast Daily Publication.
2. Name and location of egg supplier.

For complete State-Supplied Price Sheet Instructions, please refer to Bid Solicitation Section 3.36.

In fact, it appears Derstines submitted a price sheet from a prior procurement, or generated its own form, and did not utilize the official State-Supplied Price Sheet provided by the Bureau. Thereafter, the remaining responsive Quotes were reviewed and evaluated in accordance with Bid Solicitation Section 8.9, *Evaluation Criteria*.

After completing its review and evaluation of the Quotes, the Bureau submitted its Recommendation Report recommending that a Contract for Price Line 1 be awarded to Soso Dominion (Soso). Accordingly, on October 7, 2025, the Bureau issued the NOI advising the Bidders that it was the State's intent to award the Contract consistent with the Recommendation Report.

On October 7, 2025, Derstines wrote to the Division's Hearing Unit protesting the Bureau's determination because it argued that its pricing was lower than the awarded Contractor's pricing. In support of its protest point, Derstines states in pertinent part:

My bid is 7.1 cents per dozen less than winning bid. About \$2.13/case or about \$1,086.30 per truckload less money. I don't believe the state of New Jersey would want to over pay for this product. I bid 22.1 cents less than market price and winning bid was only 15 cents less than market. The market egg pricing is very confusing and I am concerned that we may have a new person reviewing the prices at New Jersey. please let me know.

[Derstines Protest, October 7, 2025.]

In consideration of Derstines' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received and Derstines' protest, the relevant statutes, regulations, and case law. This review of the record 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.

The review of Derstines' submitted Quote revealed that the submitted Price Sheet did not include the required information within the required cell for Price Line 1 requiring initials to certify the products conformity with the Bid Solicitation's requirements. As indicated above, Bid Solicitation Section 3.36, *State Price Sheet Instructions*, Step 5, required that the Bidder "enter the initials of the Authorized Representative as confirmation that the offered product meets the significant factors and subfactors of the Bid Solicitation's requirements for the subject Price Line." Because Derstines did not provide the required certifying initials on the State-Supplied Price Sheet for Price Line 1 in the required field, it additionally then failed to meet the requirements of Bid Solicitation Section 3.21. Despite the fact that Derstines may have intended to submit a responsive Price Sheet for the disputed Price Line, the submitted Price Sheet reveals that Derstines did not do so.

The **NJSTART** system does not prevent a Bidder from submitting a Quote and State-Supplied Price Sheet without all of the required forms, documents, and information completed and attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals are properly completed and uploaded into **NJSTART** necessarily and appropriately rests solely with the Bidder; as such the Bid Solicitation advised:

The Bidder assumes sole responsibility for the complete effort required in submitting a Quote in response to this Bid Solicitation. No special consideration will be given after Quotes are opened because of a Bidder's failure to be knowledgeable as to all of the requirements of this Bid Solicitation. The State assumes no responsibility and bears no liability for

costs incurred by a Bidder in the preparation and submittal of a Quote in response to this Bid Solicitation or any pre-contract award costs incurred.

[Bid Solicitation Section 3.2, *Bidder Responsibility*.]

Derstines' Protest does not address its non-responsiveness to the Bid Solicitation's requirements that are outlined in the Recommendation Report; instead, Derstines essentially only argues that the State should grant it an award because it provided better pricing. These arguments run contrary to the clear Bid Solicitation instructions to provide the information in the manner required for each cell on the State Supplied Price Sheet as noted above, as well as New Jersey case law. It also ignores the fact that the other Bidders were able to provide the information as requested despite Derstines' failure to do so.

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)). Consistent with this purpose, the New Jersey procurement law provides that "any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do." N.J.S.A. 52:34-12(a).

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**¹ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

- 6. Include all RFP-required pricing information.

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

The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion. Specifically the Bid Solicitation Section 9.0, *Glossary* states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

This mandatory language is found in Bid Solicitation Section 3.36, *State Price Sheet Instructions*, Step 5, and makes clear that:

Step 5 – The Bidder must enter the initials of the Authorized Representative as confirmation that the offered product meets the

¹ "Shall – Denotes that which is a mandatory requirement." Bid Solicitation Section 9, *Glossary*.

significant factors and subfactors of the Bid Solicitation's requirements for the subject Price Line. These initials are required regardless of whether or not the product bid is an Approved Product/Supplier or an Equivalent Product/Supplier.

Please be advised that Steps 3, 4, and 5 are required fields that must be completed on the State-Supplied Price Sheet for the price line item bid. A Bidder's failure to complete these fields on the State-Supplied Price Sheet shall render the Bidder's Quote non-responsive for the price line.

[Emphasis in original.]

The clear language in this step in Bid Solicitation Section 3.36 requiring initials to confirm the product's conformity to the Bid Solicitation's requirements, along with the Glossary definition explaining the mandatory nature of "shall" and "must" requirements, makes clear that the required Price Line information was a required component of the Bid Solicitation.

In reviewing the Quote submitted by Derstines, the Bureau recognized that Derstines had failed to submit information as required by the Bid Solicitation instructions. The Hearing Unit's independent review of the Bid Solicitation instructions for the submission of this required information finds that the instructions were clear. The Bidder was clearly informed in the instructions that it must provide the initials of the Authorized Representative as confirmation that the offered product meets the significant factors and subfactors of the Bid Solicitation's requirements for the subject Price Line on the State-Supplied Price Sheet, and that failure to submit the required information would result in the Bidder's Quote being deemed non-responsive and ineligible for award. Bid Solicitation Section 3.36 *State Price Sheet Instructions*. Therefore, the Bureau correctly determined that the Quote submitted by Derstines was non-responsive because Derstines did not submit a fully completed price sheet as required; and therefore, Derstines was not eligible for an award. This decision is in line with the Division's primary goal of ensuring that the public bidding process allows for unfettered competition. Meadowbrook, supra, 138 N.J. at 313.

In order for Derstines' Quote to be considered responsive, Derstines needed to submit all of the information required by the Bid Solicitation with its Quote. While minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 8.1 *Right to Waive*, it is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Stemin, 25 N.J. 317,324 (1957). In Meadowbrook Carting Co. v. Bor. of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in River Vale, supra, for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, Judge Pressler 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 the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No.95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, supra, 127 N.J. 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. 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.” Id. at 222.

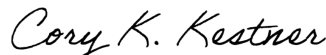
Here, unfortunately, Derstines submitted its Price Sheet in support of its Quote with information that did not meet the specifications outlined in Bid Solicitation Section 3.36 for the Price Line at issue. Despite Derstines’ position regarding its pricing, because Derstines failed to provide the all of the required information in all of the required cells on the Price Sheet, the State cannot be assured that the Blanket P.O. could be performed in accordance with the specified requirements of the Bid Solicitation based on the information provided with Derstines Quote and Price Sheet, and providing Derstines with the opportunity to modify its bid documents with additional information post-Quote opening would adversely affect competitive bidding by placing Derstines in a position of advantage over the other bidders, and would undermine the necessary common standard of competition. River Vale, supra, 127 N.J. at 216. Derstines’ failure to include the proper information with its Quote submission and as requested by the Bureau is a material deviation from the requirements of the Bid Solicitation. See N.J.A.C. 17:12-2.2(a)(6).

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the Contracts be awarded as outlined in the Revised Recommendation Report. Accordingly, I sustain the October 7, 2025, Notice of Intent to Award. This is my final agency decision.

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.

Thank you for your company’s continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov. 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 my final agency decision on this matter.

Sincerely,



Cory K. Kestner
Acting Chief Hearing Officer

c: K. Thomas
C. Murphy
U. Magaya
K. Fortuna