



State of New Jersey

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

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January 21, 2025

Via Electronic Mail only patsy@worldsafe.net

Patsy Pilcher
Institutional Sales
Evenflo Company and Cybex
PO Box 1046
Cullman, AL 35056

Re: I/M/O Request for Proposals Number #24DPP00938 – Evenflo Company, Inc.
Protest of Non-Award
M2002 – Child Safety Seats, NASPO Valuepoint Master Agreement

Dear Ms. Pilcher:

This final agency decision is in response to your correspondence dated January 7, 2025 (“Protest”), submitted on behalf of Evenflo Company, Inc. (“Evenflo”), received by the Division of Purchase and Property’s (“Division”) Hearing Unit on January 7, 2025. In that correspondence, Evenflo protests the determination by the Division’s Procurement Bureau (“Bureau”) that their proposal was deemed to “FAIL” in Stage 2 of the evaluation process and therefore would not be eligible for consideration for award for Request for Proposals Number #24DPP00938 Child Safety Seats, NASPO ValuePoint Master Agreement (“RFP”). The record of this procurement reveals that the proposal submitted by Evenflo (“Proposal”) for the RFP was deemed non-responsive for including additional shipping fees in their Proposal for products and stating that additional shipping fees could apply to products shipped to Alaska, Hawaii and US Territories in violation of provisions of Attachment A, Attachment B and Attachment D, all of which are part of the RFP.

By way of background, on or about August 20, 2024, the Bureau issued the RFP as the Lead State in collaboration with NASPO ValuePoint cooperative purchasing program. Pursuant to RFP Section 1, *Introduction*, the purpose of the RFP was to “establish one or more Master Agreements with qualified child safety seat manufacturers and/or authorized wholesale distributors to provide safe and reliable child safety seats in compliance with or exceeding the requirements set forth in the Federal Motor Vehicle Safety Standards (FMVSS), for infants, toddlers and special needs children for all Participating Entities.”

In accordance with RFP Section IIC, *Important Dates*, and Section IID, *How to ask Questions*, potential bidders were permitted to submit questions regarding the RFP by July 15, 2024. On August 8, 2024, the Bureau posted Bid Amendment #2 which updated the proposal-opening date, and to respond to any questions posed during the Q&A period. No questions were submitted requesting instructions or clarification on completing the State-Supplied Price Sheet, or with respect to shipping fees. Evenflo did not submit any questions during this Q&A period.

On August 20, 2024, the Division's Proposal Review Unit opened the three (3) proposals they received by the submission deadline of 2:00 p.m. Eastern Time. After conducting an initial review of the proposals received for compliance with mandatory Proposal submission requirements, all three (3) proposals were forwarded to the Bureau for evaluation.

In conducting the review of the proposals, the Bureau determined that Evenflo's entire Proposal was non-responsive as further explained in the Bureau Recommendation Report, dated December 12, 2024 ("Recommendation Report"), shown below:

Evenflo took exception to the F.O.B Destination delivery requirement as required in Attachment B – Scope of Work, Section C and Attachment D – Sample Master Agreement.

Evenflo quoted a price per item and separate fee for shipping each item. Furthermore, Evenflo's additional shipping fee only covers the Continental United States, additional fees would apply to Alaska, Hawaii, and US Territories.

In the Protest, Evenflo argues that they should not have received a "FAIL" on Stage 2 – Mandatory Minimum Requirements (exhibit H) because "[a]ll questions were completed and extensive detail included. The document was signed. If we failed to address or answer a specific question, we are confident that it was addressed somewhere in the document in its entirety [sic.]" Protest, pages 1-2.

Although Evenflo 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). In consideration of Evenflo's protest, I have reviewed the record of this procurement, including the RFP, the Proposals received, the relevant statutes, regulations, and case law. 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 Evenflo 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 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)). Pursuant to RFP Section V, *Evaluation and Award Process*, subsection B, during the initial responsive review of a proposal, the Division is charged with ensuring that the Contract is awarded to the bidder(s) whose proposal, "is most advantageous to the Lead State and potential Participating Entities and Purchasing Entities". A responsive proposal is a proposal that is deemed by the Division and/or evaluation committee to have adequately addressed all material provisions of a RFP's terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3. A proposal that is not compliant or responsive to the material requirements of the RFP shall not be eligible for further consideration for award of a contract and the bidder offering said proposal shall receive notice of the rejection of its proposal. N.J.A.C. 17:12-2.7(c).

If a deviation is found when evaluating a proposal, "the issue is whether a specific non-compliance constitutes a substantial [i.e. 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 Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. at 216. Material defects cannot be cured after the opening of bids, even by the good faith of the parties. Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974). The reason material deviations may not be waived is “obvious”; if a waiver were to occur, “the bidders would no longer stand on a basis of equality and the advantages of competition [would be] lost.” Twp. of Hillside v. Sternin, 25 N.J. 317, 325 (1957). In Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307 (1994), the New Jersey Supreme Court adopted a two-prong 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.

[Id. at 315, citing River Vale, 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, 279 N.J. Super. at 595 (citing River Vale, 127 N.J. Super. at 222).

The RFP sought pricing for five categories of child safety seats: Category 1 – Forward Facing Seats; Category 2 – Rear Facing Only; Category 3 – Booster Seats; Category 4 – Special Needs; and Category 5 – Additional/Optional Offerings. Evenflo did not provide a Proposal for Category 4, but did provide a Proposal for Categories 1, 2, 3, and 5. Upon review of the submitted Proposal, the Division agrees with the Bureau’s determination that Evenflo’s entire Proposal deviated from the specifications set forth in the RFP, and that the RFP makes clear that certain requirements are mandatory and not subject to discretion.

RFP Attachment A, NASPO RFP Terms and Conditions, Section IV, *Proposals*, subsection D, *Cost Proposal/State-Supplied Price Sheet*, number 4, states in relevant part:

4. Offeror’s proposed costs must be inclusive of all fees and charges, including but not limited to fees or charges for **shipping, delivery**, credit card payments, and personnel. All costs proposed by Offeror must also be inclusive of the NASPO ValuePoint administrative fee. Proposed costs incorporated into a Master Agreement resulting from this RFP **represent not-to-exceed pricing** and minimum discounts, where applicable.

[Emphasis added].

RFP Attachment B, Scope of Work, Section II, *Contractor Responsibilities and Tasks*, subsection C, *Delivery Requirements*, states in relevant part:

The contractor shall provide FOB Destination, Freight Prepaid to all purchasing entities. FOB Destination, Freight Prepaid – the contractor shall make freight arrangements and deliver to any destination with the United States. **Freight must be included in the price per unit.** No additional handling fees, other charges or minimum order amount shall be permitted.

[Emphasis added].

RFP Attachment D, Sample Master Agreement, Section VII, *Shipping and Delivery*, subsection 8.1, *Shipping Terms*, states in relevant part:

All deliveries will be F.O.B. destination, freight pre-paid with **all transportation and handling charges paid by the Contractor.**

[Emphasis added].

In each of the four (4) categories they bid, Evenflo added to the State-Supplied Price Sheet (“SSPS”) that the “Percentage Discount is calculated off of price NOT including shipping; contact Account Manager for more information”. Evenflo SSPS, Category 1, emphasis in the original, as shown below. Note, that Evenflo’s price sheets for Categories 2, 3 and 5 contain the same language regarding the price quoted not including shipping:

State-Supplied Price Sheet RFP #24DPP00938 M2002 Child Safety Seats - NASPO ValuePoint Master Agreement								
Bidders Name: EVENFLO COMPANY, INC.								
Category 1 Forward Facing Seats Price List								
Item Number or Product ID Number (Required)	Product Name/Title (Required)	Item Sub-Category: Combination, Convertible WITH harness threading required, or Convertible WITH NO harness rethreading required (Required)	Manufacturer's Name or Brand Name (Required)	List Price (Required)	Percentage (%) Discount (Required)	Net Price (Automatically calculated) INCLUDES SHIPPING	Delivery Days After Receipt of Order (ARO) - See Attachment I Instructions Section C	Volume Discounts (Optional) - See Attachment I Instructions Section C
123ABC	SafeFirst Seat	Convertible WITH Harness	SkySeats Inc.	119.99	17%	99.59	5 business days	Purchase Order of 10, additional 1%
Current: 3081198 Future: C8500412198	SECUREKID COMBINATION BOOSTER SEAT, FACTORY SELECT 2-PACK	COMBINATION SEAT	EVENFLO	117.48**	23%	102.69	10-14 BUSINESS DAYS	NA
Current: 3482198 Future: C8500312198	MAESTRO SPORT COMBINATION BOOSTER SEAT, FACTORY SELECT 2-PACK	COMBINATION SEAT	EVENFLO	97.10**	23%	80.69	10-14 BUSINESS DAYS	NA
Current: 3062198 Future: C8500112198	CHASE COMBINATION BOOSTER W/HARNESS, FACTORY SELECT 2-PACK	COMBINATION SEAT with harness threading required	EVENFLO	\$84.10**	30%	\$64.69	10-14 BUSINESS DAYS	na
Current: 3712198 Future: C8200312198	BURERIDE/TITAN 65 CONVERTIBLE, FACTORY SELECT 2-PACK	CONVERTIBLE SEAT with harness threading required	EVENFLO	97.10**	30%	80.69	10-14 BUSINESS DAYS	NA
Current: 34812144COM Future: C8200512144	SONUS 65 CONVERTIBLE CAR SEAT, CITY LIGHTS	CONVERTIBLE SEAT with harness threading required	EVENFLO	119.99	35%	101.69	10-14 BUSINESS DAYS	NA
Current: 3481198* Future: C8200511198	SONUS 65 CONVERTIBLE WITH SENSORSAFE TECHNOLOGY, FACTORY SELECT	CONVERTIBLE SEAT with harness threading required	EVENFLO	\$129.60**	30%	99.69	10-14 BUSINESS DAYS	NA
Current: 34512335 Future: C8300312335	SYMPHONY ALL-IN-ONE, CHARCOLA SHADOW	1. CONVERTIBLE SEAT with NO harness threading required 2. COMBINATION SEAT 3. HIGH BACK BELT POSITIONING BOOSTER	EVENFLO	174.99	33%	169.99	10-14 BUSINESS DAYS	NA
Current:	Tribute Convertible	CONVERTIBLE SEAT with harness threading required	EVENFLO	79.99**	32%	64.69	10-14 BUSINESS DAYS	na
* also listed under OPTIONAL Cat 5 due to special feature				***Institutional Car Seat Models are not available at retail and therefore do not have a MSRP. The price listed here is an estimate for bidding purposes only.	Percentage Discount is calculated off of price NOT including shipping; contact Account Manager for more information	PRICE HERE INCLUDES SHIPPING		
1. All information contained in this document is Private & Confidential. Redacted copy provided. 2. EVENFLO is happy to provide sales and distribution to all 50 States, District of Columbia, and U.S. territories. Prices included here apply to the Continental United States only. Additional transportation charges may apply to Hawaii, Alaska and U.S. Territories. 3. The								

Additionally, Evenflo noted on their SSPS for Categories 1, 2, 3, and 5 that while they were “happy to provide sales and distribution to all 50 States, District of Columbia, and US territories. Prices included here apply to the Continental United States only. Additional transportation charges may apply to Hawaii, Alaska and U.S. Territories” as shown at the bottom of Evenflo’s SSPS above. Note, that Evenflo’s price sheets for Categories 2, 3 and 5 contain the same language of potential additional shipping charges for Hawaii, Alaska and U.S. Territories.

The addition of the shipping fee listed in the bottom of the SSPS, and the assertion that there could be additional fees to deliver to Hawaii, Alaska and U.S. Territories, renders Evenflo's bid non-responsive for all Categories in which they bid as these additional fees conflict with the requirements in Attachment A, Attachment B, and Attachment D as set forth above, and are a non-waivable deviation from the requirements of the RFP.

In their Protest, Evenflo states that the required attachment (Exhibit H) was fully completed, executed and submitted with their initial offer and therefore they "do not see any reason for it being deemed a FAIL" in Stage 2. As indicated in RFP Section V.A, proposals would be opened in stages. Thus, a proposal which failed in Stage 2 could not move forward and be considered for award. In the section, *Response to Mandatory Minimum Requirements* of Attachment H, Evenflo agrees to C. "accept and fulfill orders from all eligible Purchasing entities", and to D. "provide sales and distribution to all 50 States, District of Columbia, and US territories". The manner in which Evenflo would fulfill these two mandatory requirements is contrary to multiple sections of the RFP, so while Evenflo might fulfill these orders, the manner in which they propose to do so (by adding shipping charges) is a non-waivable deviation from the requirements of the RFP. Therefore, the Division agrees that their Proposal should not have moved forward for further evaluation and award.

In light of the findings set forth above, I sustain the conclusions in the Bureau's December 12, 2024, Recommendation Report, that Evenflo's entire Proposal was non-responsive to the requirements of the RFP and uphold the Bureau's award as outlined in the December 20, 2024, Notice of Intent to Award letter.

Thank you for your company's continuing interest in doing business, I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Proposal 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
Chief Hearing Officer

CKK:CMD

c: K. Thomas
C. Murphy
H. Billings