



State of New Jersey

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

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September 5, 2025

Via Electronic Mail only to sbf89@aol.com

Steven Friedland
Mullen Marketing LLC
PO Box 528
Hayward, WI 54843

Re: I/M/O Bid Solicitation #25DPP01150 – Mullen Marketing LLC
Protest of Non-Award
T1105 - Foods: Meat- Cured, Fresh, Chilled and Frozen, for Distribution and Support Services –
Partial Re-Bid

Dear Mr. Friedland:

This final agency decision is in response to the protest application (“Protest”), submitted by Mullen Marketing LLC. (“Mullen”), and received by the Division of Purchase and Property’s (“Division”) Hearing Unit on August 3, 2025. In that correspondence, Mullen protests that Mullen’s bid should not have been rejected for providing a price per pound in the “Unit Price – Price per Case” column for Price Line 10 on the State-Supplied Price Sheet. Specifically, Mullen argues that it wrote the price per pound because it does not know the final weight of a package, and the Division’s Procurement Bureau should have calculated the price.

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 “minutes steaks, beef bologna and pork roll*, which were not awarded during the last procurement for T1105 (Bid Solicitation #22DPP00704) - Foods: Meat – Cured, Chilled and Frozen for Distribution and Support Services. *In the case of pork roll, this is a new item that was not part of the last procurement for T1105.” Bid Solicitation Section 1.1, *Purpose and Intent*. Bidders’ electronic questions were due to the Bureau by March 7, 2025.¹ The Bureau posted Bid Amendment #1, with answers to the questions received from potential Bidders, on March 16, 2025.

On March 28, 2025, the Division’s Proposal Review Unit opened six (6) 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 six Quotes were forwarded to the Bureau for evaluation.

¹ No specification challenge was filed by Mullen in response to the request for “Unit Price – Price per Case” on the State-Supplied Price Sheet, and no questions were received from Mullen regarding the subject Price Line before submitting its Quote.

In conducting the review of the Quotes, the Bureau determined that two of the six bidders were non-responsive to some Bid Solicitation requirement that deemed those bidders non-responsive and ineligible for award for a portion of the Bid Solicitation. With respect to Mullen’s submitted Quote, it was deemed non-responsive for individual Price Line 10 for inserting a unit price per pound instead of a unit price per case for Price Line 10 on the State-Supplied Price Sheet. See Pages 5-6, Revised Recommendation Report dated July 24, 2025. With respect to State-Supplied Price Sheet Price Line 10, Bid Solicitation Section 3.36, *State Price Sheet Instructions*, Step 3 states:

Step 3 – For Price Lines 5, 10 and 11, the Bidder shall insert a firm, fixed price in U.S. dollars in the “Unit Price – Price per Case” field on the State-Supplied Price Sheet for each product/price line bid. The Unit Price bid must include any freight/shipping/handling costs. If a Bidder leaves a “Unit Price – Price per Case” field blank, it shall mean that the Bidder is not offering a Quote for that line item.

A Bidder may bid on one, two or all three Price Lines. A Bidder is not required to bid on all Price Lines on the State-Supplied Price Sheet in order to be considered responsive.

A Unit Price may be offered on the State-Supplied Price Sheet up to two (2) decimal places to the right of the decimal point. Price sheet formatting will automatically round Unit Prices containing more than two (2) decimal places to the right of the decimal point so as not to exceed this limit.

On its price sheet, contrary to Bid Solicitation Section 3.36, *State Price Sheet Instructions*, Step 3, as shown on the screenshot below, Mullen failed to enter the Net Weight per Case for Price Line 10.

10	Beef Bologna, Cooked, Delivered Frozen or Refrigerated, for Frozen Storage. 2, 4 or 6 Bologna Pieces per Case. Please refer to Section 4.1 of the Bid Solicitation for product specifications. DSS # 3957-033-01015 (2 pcs), DSS # 3957-027-01010 (6 pcs)	1	CASE	\$3.95 Per Lb	4/6-7 Lbs Case	Glenrock	0500-4	SBF	
11	Pork Roll, Cooked and Cured, Semi-Dried or Fresh, Delivered Frozen or Refrigerated, for Frozen Storage. 6 lb. Rolls per Case, Minimum 2 Rolls or Maximum 6 Rolls per Case. Refer to Section 4.1 of the Bid Solicitation for product specifications. DSS# 3957-060-60002	1	CASE						

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

1. Unit Price - Price per Case. The Bidder shall insert a firm, fixed price in U.S. dollars in the "Unit Price" field.
2. Net Weight per Case. The Bidder shall insert the net weight per case for the product bid in the "Net Weight per Case" field.
3. Brand or Manufacturer Name - The Bidder shall insert the brand name or manufacturer name for the product bid in the "Brand or Manufacturer Name" field.
4. Product Number or Product Description - The Bidder shall insert the product number or product description for the product bid in the "Product Number or Product Description" field.
5. Conformance Certification - The Bidder shall provide the Authorized Representative's initials as confirmation that the offered product meets the significant factors and subfactors of the Bid Solicitation's requirements for the subject Price Line.

Please refer to Bid Solicitation Section 3.36 for complete State-Supplied Price Sheet instructions.

Price Line Items 5, 10 and 11 are individual price line items and will be awarded individually. Bidders may bid on one, two, or all three of these price line items. Bidders are not required to bid on all of these price lines in order for the quote to be considered for an award.

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 10 be awarded to Jamac Frozen Food Corp. (Jamac). The Bureau’s Recommendation Report additionally recommended that Contracts be awarded for other price lines to Jamac and Robbins Sales Company Inc. (Robbins) as delineated on Page 2

of the Revised Recommendation Report. Accordingly, on July 23, 2025, the Bureau issued the NOI advising the Bidders that it was the State's intent to award Blanket P.O.s consistent with the Recommendation Report.

On August 3, 2025, Mullen wrote to the Division's Hearing Unit protesting the Bureau's determination that Mullen was non-responsive for its failure to provide the Net Weight per Case for Price Line 10 in its Quote. In support of its protest point, Mullen states in pertinent part:

I am writing this Letter of Protest regarding the above Bid. It stated my Bid was rejected because I didn't write the price per case. That is IMPOSSIBLE to do. I clearly wrote the price per pound and further clearly wrote the amount of pounds would be 4 pieces and each piece weighs between 6 and 7 pounds. That is the honest, actual and only correct answer to the question. I cannot state a firm price per case until I know what each case weighs - this is known as catch weight cases. I hope the result of this Bid (especially knowing my price was lower than the next lowest) will be reconsidered as you realize it is not only unfair, but it was evident from the pounds and price per pound where my pricing was and it could be compared to all other bids given that information. Please refer to all attachments: RFP- Some Solicitations from the distribution center and the language asked for in the BID. There are no firm prices per case but rather price per pound while still asking for the NO. Per Master Case. AND Mullen Marketing last invoice requiring 12,000 pounds but given the random sizes of pieces/cases the actual weight shipped and billed came to 11,973.05 with 319 cases shipped. This illustrates how piece size determines price per case and is done at the time of shipping. I could not have answered the price per case- I hope that is now clear to you. Please take all of this into consideration (the explanation, the attachments, the facts and my being the lowest bidder) and reconsider this and award the bid to Mullen Marketing.

[Mullen Protest, August 3, 2025.]

In consideration of Mullen's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received and Mullen's 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.

To assist Bidders in completing the State-Supplied Price Sheet, the Bid Solicitation advised in part:

The Bidder must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments" Tab. Each Bidder is required to hold its pricing firm through the issuance of the Contract.

In order for the State to make sound business judgments regarding products and prices offered in response to this Bid Solicitation, **the Bidder must supply, with its Quote, the information requested on the Bid Solicitation's pricing lines in sufficient detail as to allow the State to determine the firm, fixed Quote pricing and the precise product or service being offered, i.e., with no possible misinterpretation of the**

price or product/service being offered by the Bidder. A Bidder's failure to provide, within its Quote, the information deemed by the State to be essential for product identification or price determination shall result in rejection of that Bidder's Quote. Notwithstanding the aforementioned material obligation, in order to support the State's decision-making process, the State may require a Bidder to provide additional information or documentation that has been deemed not to be material to product identification or price determination, in which case, the Bidder shall, within the time limit set forth in the written request, comply with said request. Each Bidder is required to hold its prices firm through issuance of the Contract.

[Bid Solicitation Section 3.36, *State Price Sheet Instructions*, emphasis added.]

The review of Mullen's submitted Quote revealed that the submitted Price Sheet did not include the required information within the required field titled "Unit Price – Price Per Case" for Price Line 10. As indicated above, Bid Solicitation Section 3.36, *State Price Sheet Instructions*, required that the Bidder submit "the information requested on the Bid Solicitation's pricing lines in sufficient detail as to allow the State to determine the firm, fixed Quote pricing and the precise product or service being offered, i.e., **with no possible misinterpretation of the price or product/service being offered by the Bidder.**" Emphasis added. Because Mullen did not provide the "Unit Price – Price Per Case" on the State-Supplied Price Sheet for Price Line 10 in the required field, it additionally then failed to include a single "Net Weight Per Case" in that required field. These failures on Mullen's part mean Mullen's State-Supplied Price Sheet was subject to misinterpretation, and the State would not be certain of "the price or product/service being offered by the Bidder." Despite the fact that Mullen may have intended to submit a responsive Price Sheet for the disputed Price Line, the submitted Price Sheet reveals that Mullen 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*.]

As noted above, in the protest, Mullen admits that it did not submit a properly completed Price Sheet; however, Mullen essentially argues that the State should ignore the fact that Mullen failed to include required information, inserted incorrect information where other required information should be placed, and then do the work that Mullen failed to do for 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 Mullen’s argument that it could not for its own individual reasons.

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**² 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 3 and Step 4, and makes clear that:

Step 3 – For Price Lines 5, 10 and 11, the Bidder **shall insert a firm, fixed price in U.S. dollars in the “Unit Price – Price per Case” field on the State-Supplied Price Sheet for each product/price line bid.** The Unit Price bid must include any freight/shipping/handling costs. If a Bidder leaves a “Unit Price – Price per Case” field blank, it shall mean that the Bidder is not offering a Quote for that line item.

A Bidder may bid on one, two or all three Price Lines. A Bidder is not required to bid on all Price Lines on the State-Supplied Price Sheet in order to be considered responsive.

² “Shall – Denotes that which is a mandatory requirement.” Bid Solicitation Section 9, *Glossary*.

A Unit Price may be offered on the State-Supplied Price Sheet up to two (2) decimal places to the right of the decimal point. Price sheet formatting will automatically round Unit Prices containing more than two (2) decimal places to the right of the decimal point so as not to exceed this limit.

* * *

Step 4 – For Price Lines 5, 10 and 11, the Bidder **shall** enter the net weight per case in the “Net Weight per Case” field on the State-Supplied Price Sheet for each product/price line bid.

[Emphasis added.]

The clear language in these steps in Bid Solicitation Section 3.36 requiring pricing based on a price per case and the net weight of the case, 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 Mullen, the Bureau recognized that Mullen had failed to submit pricing information as required by the Bid Solicitation instructions. The Hearing Unit’s independent review of the Bid Solicitation instructions for the submission of pricing information finds that the instructions were clear. The Bidder was clearly informed in the instructions that it must provide pricing for all price lines in the required Unit of Measurement, and must also submit the Unit Price Per Case, Product Name or Product Number, and the Net Weight Per Case 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 Mullen was non-responsive because Mullen did not submit a fully completed price sheet as required; and therefore, Mullen 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 Mullen’s Quote to be considered responsive, Mullen 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, Mullen 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 Mullen’s position, because Mullen 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 Mullen’s Quote and Price Sheet, and providing Mullen with the opportunity to modify its bid documents with additional information post-Quote opening would adversely affect competitive bidding by placing Mullen in a position of advantage over the other bidders, and would undermine the necessary common standard of competition. River Vale, supra, 127 NJ. at 216. Mullen’s 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 July 23, 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