



Oregon

Theodore R. Kulongoski, Governor

Department of Administrative Services

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September 8, 2008

V. Dale Bond, Audit Manager
Office of the Secretary of State
255 Capitol Street, NE, Suite 500
Salem, Oregon 97310

Re: Management Letter No. 107-2008-09-01

Dear Ms. Bond:

Thank you for your letter of September 3, 2008 regarding the results of your investigation into the allegations made through the Government Waste Hotline related to the solicitation for the Food Supplies Category of the Janitorial Supplies, Industrial Paper and Related Services Contract. Your letter concluded with two recommendations that Department of Administrative Services (Department) management: 1) ensure it fully complies with RFP's when evaluating proposals in relation to mandatory requirements, and 2) consider the effect that protests in one category of a multiple product RFP might have on other product categories. My response below addresses these two recommendations.

Mandatory Requirements for Pricing: I have reviewed the information you supplied related to your investigation along with our Department's file. Respectfully, I disagree with your conclusion that the Department did not fully comply with the mandatory provisions of the RFP when evaluating the proposals by failing to find that the sole proposal on the Food Supplies Category was "non-responsive" because it did not include a "manufacturer's price list."

Section D.8 of the RFP set out the Mandatory Requirements for the proposals. One Mandatory Requirement was submission of "pricing ... which shall include the dated manufactures [sic] list price". (RFP, Section D.8.1.) Later references to pricing in the RFP referred to both *pricing with a manufacturer's list price* and alternatively, to *a manufacturer's price list*. Ultimately, what the Department needed was set prices from a manufacturer with a date and application of the proposer's discount in order to fairly evaluate offers and award a contract. The Department got that ultimate information with the one proposal submitted in this category, just as it did with the other awarded categories.



The Food Supplies Category was a small portion of the overall RFP¹. The Department received only one proposal in this category.² The pricing submitted by the one proposer included set prices with a date and application of the proposer's discount. As you point out in your letter, the proposal "included the proposer's own distributor's price list" rather than a separately-labeled manufacturer's price list. (Note: As part of the supply chain between manufacturer and local suppliers, distributors would have to set prices based on the manufacturer's pricing.)

Your letter suggests that the Department could have strictly enforced the prescriptive reading of the RFP and determined the one proposal was not responsive because the proposer did not submit a separately-labeled "manufacturer's price list." In these situations, the Department has to make a judgment call about what is in the best interest of the State. On the one hand, if the Department had taken the strict enforcement approach, the Department would incur the additional time and expense of re-soliciting at least this portion of the Goods and Services in the RFP. Agencies would be without the benefit of a statewide contract for Food Supplies for the duration of the re-solicitation process. Further, because only one supplier submitted a proposal, the Department had no knowledge of other interested proposers or even whether the one supplier would re-propose. On the other hand, the Department could determine whether the one proposal submission substantially complied with the requirements of the RFP and was responsive because it met the essential elements required to fairly evaluate the offer. The Department made its decision and took this option.

Given the information available at the time, I believe State Procurement Office staff made the right decision in this case. It was a decision that is legally supportable and served the best interest of the State.

State Procurement Office staff reviewed and clarified during the award process that the Proposer created its pricing using information received from the manufacturer and that the submission met the essential purpose of the requirement. Your letter notes that the Department also confirmed that it is generally customary for food supply manufacturers to provide pricing to direct distribution partners on request. Staff confirmed this specifically with the Solo Cup Company, one of the primary food supply manufacturers. The Governor's Hotline complainant should have participated in this discussion during the solicitation process, as other suppliers did. If they had made the Department aware of their issue, it could have been timely resolved to support their ability to propose.

¹ The RFP contained 24 categories of products. The Department received requests to change price list documentation in four categories and ultimately changed the requirement for three categories, including industrial paper, sanitary products and bags & liners.

² The supplier that filed the original complaint with the Government Waste Hotline did not propose and in fact, did not communicate with the Department at all during the solicitation period. Electronic records from the Oregon Procurement Information Network show that all solicitation and addendum documents beginning January 17, 2007 and ending with the solicitation closing on March 29, 2007 were sent to the supplier by e-mail.

Effects on Other Product Categories: In your second recommendation, you suggest the Department consider the effect that protests in one category of a multiple product RFP might have on other product categories. While this may be a good recommendation in many situations, requests for dated, verifiable manufacturer-generated pricing for contract award evaluation purposes is standard practice in procurement work. This RFP covered 24 categories; the issue of price list documentation came up in only a few categories. As you noted, the Department did receive and respond to concerns about price list documentation for industrial paper and sanitary products. The Department subsequently changed the requirement for a manufacturer's price list for those categories in addenda to the solicitation. These addenda were sent to all suppliers on the electronic mailing list, including the supplier that lodged the Government Hotline complaint.

If there truly had been an issue in obtaining manufacturer list prices for food supplies, the prospective proposers should have made their need known to the Department. The Department gave prospective proposers ample opportunities in the solicitation process to request clarification of unclear requirements and to protest the specifications. In addition to other routine opportunities in the solicitation process, each of the addenda offered additional openings for questions and protests if needed.

In closing, I appreciate the time and efforts of your staff in this case. Respectfully however, I cannot agree with your conclusions or final recommendations. If you have any further question or I can provide any additional information, please do not hesitate to contact me or Melissa Canfield, Internal Operations Manager of the State Procurement Office at (503) 378-4639 or Melissa.canfield@das.state.or.us. Thank you for the opportunity to respond.

Sincerely,



Kris Kautz
Deputy Director
Department of Administrative Services

cc: Scott Harra, Director
Chuck Hibner, Oregon Audits Division Director
Jan Dean, State Services Division Administrator
Dianne Lancaster, Chief Procurement Officer
Melissa Canfield, Internal Operations Manager
Pamela Stroebel Valencia, Chief Audit Executive