

PA Milk Marketing Board
Carol A. Hardbarger

An Update on Federal Dairy Contract Bidding

A while ago I wrote an article that addressed the unfortunate consequences of several incidents of violations of the Milk Marketing Law relative to below-minimum-price bids on federal contracts. These contracts were for milk purchased by USDA for delivery to PA food banks and, if you remember, the violations involved cancellation of a month's worth of those deliveries. A non-offending dealer was able to supply at least some of the milk through donations which was greatly appreciated.

At the time I wrote that article we were at the beginning of an additional violation. I expressed my hope that we would be able to facilitate donations again so that the hundreds of thousands of PA citizens that depend on our food banks did not have to go without access to nutritious milk. This hope was based on the circumstances that evolved during conversations between USDA and the dealer that had underbid a previous contract.

My hopes were unfounded. The donations did not occur due to bureaucratic pitfalls and difficulty in facilitating communications between my office and the respective contract officers at the federal level.

It is now over a year since we discovered the first violation for bidding below PA minimum wholesale prices, and we have dealt with seven total violations since that discovery. My office has undertaken a huge effort to communicate with companies eligible to bid on federal dairy contracts, including those that are out-of-state, so that there is complete understanding of the commonwealth's laws regarding this issue. We have gone so far as to calculate the relevant minimum prices at the time of the bid submission due date, posting a spreadsheet on our website and mailing it out to an extensive email distribution list.

A few months ago we interacted with USDA and I wish to thank Senator Casey for his involvement in that process. I believe we now have somewhat of an understanding between that agency and ours about how we can work together to prevent underbidding in the future. As I have said many times in the past when arguing for a rapid response team for the dairy industry, crises are best handled when individuals with power to make decisions are involved.

The main goal of the board and staff regarding bidding on federal dairy contracts is that there should be an even "playing field." We want to prevent out-of-state companies that are unfamiliar with our laws and regulations from underbidding on contracts and eliminating our PA processors from the competition. We hope that after all these months we will achieve some measure of success.

What we learned about the process was that, with so many bids coming in for an extensive list of contracts, the automatic default is to select the lowest bidder. Think about that. If all the PA processors are bidding at legal minimum, some out-of-state dealer can bid below that and automatically be awarded the contract.

I do want to state here that our experience over the past year indicates that those companies that underbid did so out of lack of knowledge or due to some internal mistake. Indeed, we even had one of our PA processors submit an illegal bid due to an internal calculation error.

I figure that, theoretically, if all parties are bidding at the legal minimum (or potentially higher than the minimum), all the bids would be the same unless a company bids above minimum. If that happens, there is a default to random selection of what company will be awarded the contract.

This gives our PA processors, and ultimately the PA producers from whom they purchase raw milk, a fair chance.

To date I have sent two letters to all eligible dairy vendors across the US and we have created a special page on our website (www.mmb.pa.gov) to post information about federal contracts. This site includes copies of the letters sent as well as the spreadsheet outlining legal minimum bids for the submission due in February of this year.

We are committed to providing the legal minimum bid prices to interested parties within 48 hours of the release of a Request for Bids from USDA.

PMMB and staff are protective of competition as long as it is fair and all parties have a chance. This includes our views and efforts on the process for bidding on federal contracts for dairy deliveries within Pennsylvania.

We are always available to respond to questions and concerns. I can be reached at 717-210-8244 or by email at chardbarge@pa.gov.