



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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January 24, 2014

Via Electronic Mail [fred@mscgonline.com] and USPS Regular Mail

Mr. Fred Moore
M&S Communications Group, LLC
11-2 Ilene Court
Hillsborough, NJ 08844

RE: Protest of Final Agency Decision to Re-solicit Proposals for Segment of Contract
Solicitation #14-X-22717 Cabling Products & Services; Data Center Management Solutions

Dear Mr. Moore:

I am in receipt of your letter dated November 26, 2013, on behalf of M&S Communications Group, LLC ("M&S") challenging my determination, as the Director of the Division of Purchase and Property ("Division"), that the best interests of the State will be served by the Division's re-solicitation of proposals for the Category 8 segment of the *Cabling Products and Services, Data Center Management Solutions* contract that will provide various State and local governmental entities with access to premise wiring services for installation and maintenance of communications wiring. In your letter, you argue that the Request for Proposal ("RFP") was clear, that M&S met all the requirements of the RFP, and that the language of the RFP did not restrict competition. The record of this solicitation establishes that, following a protest properly and timely filed by one of the bidders pursuant to N.J.A.C. 17:12-3 et seq. and review of the procurement record, it was apparent that the RFP and its addenda did not clearly and unequivocally establish, and thereby created ambiguity concerning statewide and regional awards of contract, which had the unacceptable effects of depriving competing bidders of a level playing field and the State of the benefits of the competition it was seeking.

Pursuant to N.J.A.C. 17:12-3.3(d)(1), "[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." In addition, "[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). I have undertaken another review of the record of this procurement, including the RFP, the proposal submitted by M&S, and the relevant statutes, regulations, and case law relative to the issues you have clearly presented in your letter and find no need to conduct an in-person hearing on this matter.

As set forth in my November 7, 2013 final agency decision to re-solicit proposals for the Category 8 segment, I determined that the requirements as specified in the RFP were unclear as to the differentiation between Statewide and regional contractors, resulting in confusion among bidders. Therefore, there were cogent and compelling reasons to mandate: (a) rejection of all proposals submitted in response to Service Category 8; (b) revision of the RFP specifications to reflect, more accurately and clearly, the programmatic needs of the State; and (c) conducting a re-solicitation of the Category 8 segment without provisions that could restrict free and open competition. I reached this decision under the authority set forth in N.J.S.A. 52:34-12, which provides that “[a]ny or all bids may be rejected” when the Director “determines that it is in the public interest so to do.” Section 1.4.10 of the RFP reiterates that “pursuant to N.J.S.A. 52:34-12(a) and N.J.S.A. 52:18A-19 the Director retains the right to reject all bids if it is in the public interest.”

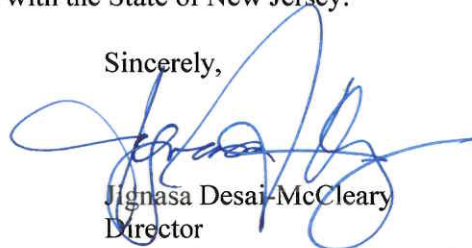
Concerning your point of protest, having determined that the language of the RFP was unclear concerning the differentiation between Statewide and regional contractors, I note that M&S, without intention, may have benefited from the lack of clarity and the resultant confusion of other bidders. The reprourement of this contract is intended to provide a clear and fair process, which will ultimately benefit the taxpayers of New Jersey. For me to sanction the award of a contract to M&S, while I am firmly convinced that competition under a sound procurement and level playing field will produce a better contract and more favorable pricing for the State, would disserve the best interests of the State and its citizens. New Jersey courts have continued to uphold the principle that “[p]ublic bidding statutes exist for the benefit of taxpayers, not bidders, and should be construed with sole reference to the public good.” Nat’l Waste Recycling, Inc. v. Middlesex Cnty. Improvement Auth., 150 N.J. 209, 220 (1997).

With regard to your concern that my final agency decision was made without discussion with M&S, since the decision to cancel the scheduled award of Service Category 8 was based upon discernment of flawed instruction provisions in the RFP and not upon the content of M&S’s proposal, there was no need to reach out to M&S.

Based upon these findings and conclusions, your request for rescission of my determination that the Division’s Procurement Bureau shall re-solicit proposals for Service Category 8 is denied. Instead, I affirm the determination set forth in my November 7, 2013 final agency decision letter. As the request for reconsideration did not contain any new facts that would result in overturning my previous final agency decision, no further action will be taken by this office.

I look forward to M&S’s participation in the reprourement of Service Category 8. We welcome your company’s continuing interest in doing business with the State of New Jersey.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M/RW

c: L. DuBois
K. Moore
J. Strype