



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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July 22, 2016

Via Electronic Mail [pete.hojnowski@habhegger.com] and USPS Regular Mail

Peter Hojnowski, Branch Manager
E.O. Habhegger Co., Inc.
334 N. Washington Street, Unit #20B
Hammonton, NJ 08037

RE: Protest of Notice of Award
RFP #15-X-22978 Aboveground Storage Tanks: Installation, Removal, Repair and Related Equipment

Dear Mr. Hojnowski:

This correspondence is in response to your letter of protest on behalf of E.O. Habhegger Co., Inc. (EOH), received April 23, 2015, referencing the subject Request for Proposal (RFP) and regarding the Notice of Intent to Award issued by the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). In your letter, you protest the slated award of Price Lines 00012 and 00013 to Petroleum Equipment of New Hampshire (PE) contending it submitted products that did not conform to RFP specifications.

I have reviewed the record of this procurement, including the RFP, the proposals in question, and relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of EOH's protest.

On December 2, 2014, the Bureau publicly released and advertised the subject RFP to solicit proposals for Aboveground Storage Tanks: Installation, Repair, Removal, and Accessory Equipment on behalf of the New Jersey Department of Transportation (NJDOT) and Statewide Using Agencies. The RFP included three categories of work, as set forth in RFP Section 3.0 *Commodity Description/Scope of Work*; bidders were not required to bid on all three categories. Category II, which forms the basis of EOH's protest, is "for Fuel Storage Tank related equipment (i.e. fuel dispensers, pumps, filtration and monitoring systems, etc.)."¹ The RFP specified an award would be made to one responsible, responsive bidder for each approved brand or equal in Category II.

The Bureau received 18 proposals by the deadline of February 10, 2015. A number of proposals were rejected for failure to provide mandatory documents, signatures, or pricing information. Upon completing a review of the remaining proposals, the Bureau made the following award recommendation for Category II:

Category II – Lines 00005 – 00014 & 00034

¹ Category I is "for the supply of various brands and sizes of aboveground diesel and gasoline storage tanks complete with outer shell tanks and all inclusive related accessories" and Category III is "for the installation, removal and repairs of aboveground storage tanks described in this RFP." In Category I, the RFP specified an award would be made to one bidder for each approved brand or equal; in Category III, an award would be made to all responsible, responsive bidders conforming to the RFP. (See RFP Section 7.2 *Final Contract Award*.)

E.O. Habhegger Company (00005, 00009, 00010, 00011, 00014)
Fairfield Maintenance (00006)
John W. Kennedy Company (00008)
Petroleum Equipment of New Hampshire (00012, 00013)

NOTE: NO Award – Line 00007. There was 1 proposal received and it was for a Dresser Wayne Dispenser. This is not an Alternate “Brand” as Dresser Wayne Dispensers is covered under Line Item 00006.

The Bureau issued a formal Notice of Intent to Award Letter on April 10, 2015, to all bidders. This protest followed.

EOH protests the award of Price Lines 00012 and 00013 in Category II to PE, alleging that PE’s proposal included products that did not meet RFP specifications. The RFP provided the following information regarding the price lines under protest:

3.2 CATEGORY II – ABOVE GROUND STORAGE TANK RELATED EQUIPMENT

Category II is for fuel storage tank related equipment for a new or upgraded fuel facility. (i.e. fuel dispensers, pumps, filtration and monitoring systems, etc.). Approved equals must meet or exceed RFP specifications and be capable of interfacing with the approved brands listed in this section.

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3.2.5 DIESEL AND GASOLINE PIPE SYSTEM

At the time of installation, the contractor is to supply a double wall stainless steel inside stainless steel factory manufactured piping system. The pipe system will be UL 971A listed and have a Third Party Fire Rating to 2700 degrees Fahrenheit. The pipe will be capable of pressure, vacuum or pitched leak detection systems, and will require no transition boxes from above to below grade installation.

The installing contractor will use ICON UL listed entry boots with Petro Seal fill to ensure the long lasting water tight seal. The Pipe will be quoted per foot in 1”, 1.5” and 3” diameter.

The protested Price Lines are as follows:

<i>Line No</i>	<i>Commodity-Service Description</i>	<i>Quantity</i>	<i>Unit</i>	<i>UNIT COST</i>
00012	Commodity Code: 830-69-075403 [TANKS (METAL, PLASTIC, WOOD, AND...)] ITEM DESCRIPTION: DIESEL AND GASOLINE PIPE SYSTEM DOUBLE WALL STAINLESS STEEL INSIDE SS 1 INCH DIAMETER. UL 971A 3RD PARTY FIRE RATING 2700 DEG AS PER SECTION 3.2.5 OF THE RFP BIDDER TO PROVIDE COST PER FOOT	1	FT	
00013	Commodity Code: 830-69-086766 [TANKS (METAL, PLASTIC, WOOD, AND...)] ITEM DESCRIPTION: DIESEL AND GASOLINE PIPE SYSTEM DOUBLE WALL STAINLESS STEEL INSIDE SS 1 1/2 INCH DIAMETER. UL 971A 3RD PARTY FIRE RATING 2700 DEG AS PER SECTION 3.2.5 OF THE RFP BIDDER TO PROVIDE COST PER FOOT	1	FT	
00014	Commodity Code: 830-69-086767 [TANKS (METAL, PLASTIC, WOOD, AND...)]	1	FT	

	ITEM DESCRIPTION: DIESEL AND GASOLINE PIPE SYSTEM DOUBLE WALL STAINLESS STEEL INSIDE SS 3 INCH DIAMETER. UL 971A 3RD PARTY FIRE RATING 2700 DEG AS PER SECTION 3.2.5 OF THE RFP BIDDER TO PROVIDE COST PER FOOT			
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The record reveals that PE proposed the MegaFlex DEF-Trac system for Price Lines 00012 and 00013. Following this protest, NJDOT reviewed the material data sheets for this brand and determined that the proposed system did not conform to the RFP requirements. Specifically, NJDOT found that although the primary pipes are stainless steel, the secondary pipes are not. Further, NJDOT found that the data sheet did not provide proof of meeting the UL listing or fire rating requirements. PE's product therefore materially deviated from the RFP requirements. Based on this determination, I find PE's proposal for these price lines to be non-responsive and the intended award to PE cannot stand.

In addition, NJDOT reviewed Price Line 00014, and determined that although EOH's proposal offered three different types of Brugg brand systems for this price line, all three systems did not conform to RFP requirements. Corresponding RFP Section 3.2.5 *Diesel and Gasoline Pipe System* specified: "the contractor is to supply a double wall stainless steel inside stainless steel factory manufactured piping system. The pipe system will be UL 971A listed and have a Third Party Fire Rating to 2700 degrees Fahrenheit." NJDOT indicates that in two of the systems offered by EOH, Secon-X and Flexwell LPG/MP, the primary pipe was stainless steel but the secondary pipe was not. The third system, Flexwell-HL, had both primary and secondary stainless steel pipes, but the material data sheet did not provide proof of the UL listing and fire rating requirements. While the Secon-X and Flexwell LPG/MP systems do not conform to RFP specifications and the intended award of these systems must be rescinded, it is unclear whether the third proposed system, the Flexwell-HL, conformed to the UL listing and fire rating requirements based on the material data sheet provided. I therefore direct the Bureau seek clarification as to whether or not the Flexwell-HL system conformed to all specifications of Price Line 00014.

Furthermore, the intended awardee on Price Line 00006, Fairfield Maintenance, Inc., discovered an error on its part and requested to withdraw its proposal for Category II. Therefore, it is recommended that the Bureau reevaluate Price Lines 00006, 00012, 00013, and 00014 in Category II in keeping with the findings of this decision. The Bureau may continue with award of contract for the remaining price lines as applicable. This is my final agency decision.

I appreciate you alerting the Division of the discrepancies noted above. Thank you for your continued interest in doing business with the State of New Jersey and for registering your business with NJSTART at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

- c: G. Olivera
- K. Woolford
- R. Regan
- Tom Dion, Petroleum Equipment of New Hampshire