



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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March 11, 2016

Via Email (engineer1gmh@gmhassociates.com) and USPS Regular Mail

Kurt Myhre
VP Bidding, Estimating and Quality Control Engineering
G.M.H. Associates of America, Inc.
5 Cheltenham Way, Bldg. 15
Trenton, New Jersey 08638

Re: Protest of Notice of Intent to Award
Solicitation #16-X-24158
Water Treatment Plant Filter Tank Media Replacement – New Jersey Department of Corrections

Dear Mr. Myhre:

This correspondence is in response to your email dated February 25, 2016 to the Hearing Unit of the Division of Purchase and Property (Division) on behalf of G.M.H. Associates of America, Inc. (G.M.H.). In that letter, G.M.H. protests the Notice of Intent to Award (NOI) a contract for Solicitation #16-X-24158 Water Treatment Plant Filter Tank Media Replacement issued by the Division's Procurement Bureau (Bureau).

By way of background, this Request for Proposal (RFP) was issued on December 2, 2015 by the Bureau on behalf of the New Jersey Department of Corrections (DOC) to solicit proposal(s) for a qualified bidder(s) to remove, supply, and install new filter media in three pressure filters used at the water treatment plant located at the Albert C Wagner Youth Correctional Facility (Wagner) in Bordentown, NJ. (RFP § 1.1 *Purpose and Intent*.)

The facility is an on-site, State-owned potable water treatment plant that services Wagner and the Garden State Youth Correctional Facility. The plant includes a pre-chlorination system, three (3) onsite wells, three (3) pressurized greensand filtration tanks, and two (2) water towers of approximately seven hundred-fifty-thousand (750,000) gallons combined. (RFP § 1.2.1 *Water Treatment Facility*.) In accordance with this RFP, the contractor(s) shall be required to provide all materials, equipment, and qualified personnel to: (1) completely remove all existing filter media from all three filters; (2) thoroughly clean the tank interior by water blasting, pressure washing, scrubbing; and (3) install the new filter media. (RFP § 3.0 *Scope of Work*.) The intent of this RFP is to award contracts to those responsible bidders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*.)

On January 7, 2016, seven proposals received by the submission deadline were opened by the Proposal Review Unit. After completing the technical review of the proposals submitted, on January 19, 2016, the Bureau wrote to the three lowest responsive bidders requesting that each "submit a best and final offer (BAFO) with respect to the referenced Request for Proposal (RFP), as specified in RFP Section

6.7. This response will be evaluated in conjunction with the original proposal submission made in response to the referenced RFP.” This request was made in accordance with RFP § 6.7 *Negotiation and Best and Final Offer (BAFO)* which states in part:

...the Division may invite one bidder or multiple bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not equal to or lower in price than the pricing offered in the Bidder’s original proposal will be rejected as non-responsive and the State will revert to consideration and evaluation of the Bidder’s original pricing.

...

After evaluation of proposals and as applicable, negotiation(s) and/or BAFO(s), the Division will recommend, to the Director, the responsible Bidder(s) whose proposal(s), conforming to the RFP, is/are most advantageous to the State, price and other factors considered. The Director may accept, reject or modify the recommendation of the Division. The Director may initiate additional negotiation or BAFO procedures with the selected Bidder(s).

All of the bidders contacted declined to reduce their original proposal pricing.

On February 24, 2016, the Bureau issued the NOI which indicated that a contract would be awarded to Level-I Construction, Inc. On February 25, 2016, G.M.H. submitted its protest to the Division stating in pertinent part that G.M.H. is “protesting the award of contract 16-X-24158 Water Treatment Plant Filter Tank Media Replacement - NJDOC on the grounds that the bidder totals were not read aloud at the bid opening.”¹

I have reviewed the record of this procurement, including the RFP, the proposals submitted, 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 submitted by G.M.H. I set forth herein the Division’s final agency decision.

With respect to the reading of bidders’ pricing at a bid opening, the Division’s governing regulations state in pertinent part “[f]or RFPs having a negotiation component, only the names and addresses of the bidders will be publicly announced at the proposal opening.” N.J.A.C. 17:12-2.6(e). Further, RFP § 1.4.5 *Proposal Submission* states:

On the date and time proposals are due under the RFP, all information concerning the proposals submitted may be publicly announced and those proposals, except for information appropriately designated as proprietary and/or confidential, shall be available for inspection and copying. **In those cases where negotiation is contemplated, only the names and addresses of the Bidders submitting proposals will be announced and the contents of the proposals shall remain**

¹ With its February 25, 2016 email, G.M.H also requested that it be sent a copy of the bid tally for all bidders, and indicated that it “would also like to be sent copies of each bidder’s Business Registration certificate, NJ Affirmative Action Reporting Requirements, Chapter 51 and EO117 forms, Disclosure of Investigations and Other Actions Involving bidder Form, Subcontractor Utilization Plan, Disclosure of Investments in Iran form, Ownership Disclosure form, Price Sheets, and RFP Signatory page.” This request was forwarded to the Division’s OPRA Unit for a response.

proprietary and/or confidential until the Notice of Intent to Award is issued by the Director.

[Emphasis added.]

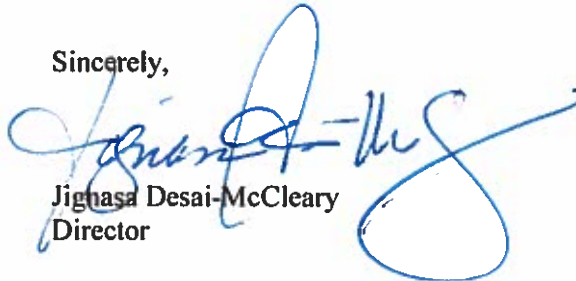
Moreover, RFP § 6.7 *Negotiation and Best and Final Offer (BAFO)* states in pertinent part: **“NOTE: If the Division contemplates negotiation, proposal prices will not be publicly read at the proposal submission opening. Only the name and address of each Bidder will be publicly announced at the proposal submission opening.”** (*Emphasis in original.*)

Here, as directed by the Division’s governing regulations and the RFP, during the January 7, 2016 proposal opening, the contents of the proposals submitted were not read out loud as the Division contemplated conducting negotiations with bidders pursuant to RFP § 6.7. Because there was no requirement that proposal prices be read out loud at the proposal opening for this procurement, there was no violation of the applicable statutes, regulation or the specification; and, therefore this procurement was conducted in conformance with the applicable laws and regulations.

In light of the findings set forth above, I sustain the Bureau’s NOI. This is my final agency decision with respect to the protest submitted by G.M.H.

Thank you for your company’s interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,



Jighasa Desai-McCleary
Director

JD-M: RUD

c: G. Olivera
J. Signoretta