



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

33 WEST STATE STREET
P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039

<https://www.njstart.gov>

Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

September 27, 2019

Via Electronic Mail [tim.shields@exelatech.com] and USPS Regular Mail

Tim Shields
Suresh Yannamani
SourceCorp BPS, Inc.
4868 GA Hwy 85, Suite 100,
Forest Park, GA 30297

Re: I/M/O Bid Solicitation #18DPP00190 SourceCorp BPS, Inc.
Protest of Notice of Intent to Award
T2775-Data Entry/Verification Services-DORES

Dear Mr. Shields and Mr. Yannamani:

This letter is in response to your correspondence, on behalf of SourceCorp BPS, Inc. (SourceCorp), to the Acting Director of the Division of Purchase and Property (Division), dated September 3, 2019, protesting the Notice of Intent to Award letter (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #18DPP00190 T2775-Data Entry/Verification Services-DORES (Bid Solicitation) to The Data Entry Company (TDEC).

By way of background, on April 23, 2019, the Bureau issued the Bid Solicitation on behalf of the Division of Revenue and Enterprise Services (DORES) to solicit Quotes for data entry/verification services for DORES in a specified format and time period using systems that are compatible with DORES' processing system. Bid Solicitation § 1.1 *Purpose and Intent*. The intent of the Bid Solicitation is to award a Master Blanket Purchase Order (Blanket P.O.) to that responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation is most advantageous to the State, price and other factors considered. *Ibid*. The State may award any and all price lines. *Ibid*. The State, however, reserves the right to separately procure individual requirements that are the subject of the Blanket P.O. during the Blanket P.O. term, when deemed by the Division's Director to be in the State's best interest. *Ibid*.

In accordance with the Bid Solicitation instructions, potential Vendor(s) {Bidder(s)} were permitted to submit questions to the Bureau, using the Division's *NJSTART* eProcurement system by May 14, 2019 2:00 pm. Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*. The Bureau received thirteen (13) questions. On April 3, 2019, the Bureau issued Bid Amendment #1, revising the Quote submission due date to June 20, 2019. Through the posting of Bid Amendment #1, the Bureau also answered all thirteen (13) questions received.

On June 20, 2019, the Division's Proposal Review Unit opened three (3) Quotes received by the submission deadline of 2:00 pm eastern time from the following Vendors {Bidders}:

1. Computer Consultants International, Inc. (CCI);
2. SourceCorp BPS Inc. (SourceCorp); and
3. The Data Entry Company (TDEC).

After conducting a preliminary review of the Quotes received for compliance with administrative requirements for Quote submission, the Proposal Review Unit forwarded the Quotes to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*. In conducting its preliminary review of the Quotes received, the Bureau found the following:

1. CCI's Quote was deemed non-responsive to the following mandatory material requirements of the Bid Solicitation:
 - a. Bid Solicitation Section 4.4.3.1.1-Project Management Plan
 - b. Bid Solicitation Section 4.4.3.3.1 – Blanket P.O. Schedule
 - c. Bid Solicitation 4.4.3.3.2 – Mobilization Plan
 - d. Bid Solicitation 4.4.3.3.4 – Contingency Plan
2. SourceCorp's Quote was deemed non-responsive because of the following:

As part of the State-Supplied Price Sheet submitted with its Quote, SourceCorp provided a "Unit Price" of "\$0 - \$2,000 TBD" for Price Line 11 – Monthly Connectivity and Communication Line Charge.

Bid Solicitation Section 4.4.5.2, State-Supplied Price Sheet Instructions, states that "The Vendor {Bidder} must provide its unit pricing for all Price Lines (except for Price Line 10) found on the State Supplied Price Sheet. For Price Lines that include Hourly/Key Stroke/Batch pricing, the Vendor {Bidder} MUST provide all three (3) compensation type unit pricing (Hourly Rate, Per Key Stroke, and Per Batch). Failure to provide all pricing required will result in the Vendor's {Bidder's} Quote being deemed non-responsive."

Bid Solicitation Section 2.2, General Definitions, defines Unit Cost or Unit Price as "All-inclusive, firm fixed price charged by the Vendor {Bidder} for a single unit identified on a price line."

SourceCorp deviated from the requirements of the Bid Solicitation by submitting a range of pricing for the Unit Price of Price Line 11. The Bid Solicitation defines Unit Price as being an all-inclusive and firm fixed price on a price line. Section 4.4.5.2 of the Bid Solicitation clearly states that the Vendor {Bidder} must provide unit pricing for all Price Lines (except Price Line 10), and that failure to provide all required pricing will result in the Vendor {Bidder} being deemed non-responsive.

The Bureau then moved to determine whether the deviation in SourceCorp's Quote was material and non-waivable. The Bureau determined that the deviation deprived the State of assurance that the Blanket P.O. would be entered into, performed and guaranteed according to the specifications of the Bid Solicitation, and that waiving the deviation would un-level the playing field between SourceCorp and other Vendors

{Bidders}. Subsequently, the Bureau determined that SourceCorp deviated from material requirements of Bid Solicitation, and its Quote was deemed to be non-responsive. SourceCorp's Quote was then removed from consideration for award and not further evaluated.

3. TDEC

The Bureau determined that TDEC was responsive to the mandatory requirements of the Bid Solicitation.

[See Evaluation Committee Report, pgs. 5-7]

On August 20, 2019, the Bureau issued a NOI advising all Vendors {Bidders} that it was State's intent to award a Blanket P.O. to TDEC.

On September 3, 2019, SourceCorp wrote to the Division's Acting Director, protesting the NOI for the following reasons:

1. The price quoted by Source was a range of \$0-\$2000 TBD per month. While the State is technically correct in that SourceCorp's response was incorrect because it needed to be a single price, the State provided no room for options to be presented.
2. It is clear that the State reviewed the cost separately without reviewing the proposal response and thus it did not realize why a range was presented. Additionally, there was no clear direction as to how a bidder could provide options for multiple price choices, thus the reason the range was provided.
3. If given the opportunity, Source could have simply provided the single monthly price for any of these options and Source would request that opportunity at this time. Finally, Source is asking for that opportunity and reconsideration so that it may make a competitive bid against the lone vendor chosen only on the technical merit of compliance and not allow a single technicality to serve as a disqualification.

In consideration of SourceCorp's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the protest, the 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 final agency decision on the merits of the protest submitted by SourceCorp. I set forth herein my final agency decision.

First, in its protest, SourceCorp argues that in even though it put a range of \$0-2000 TBD per month for Price Line 11, the State provided "no room for options to be presented." See SourceCorp Protest Letter, pg. 1. The Bid Solicitation language was clear that Vendors {Bidders} were required to submit Quote pricing as a firm fixed price, not a range. Specifically, Bid Solicitation 4.4.5.2 *State-Supplied Price Sheet Instructions* stated in pertinent part that:

The Vendor {Bidder} **must¹ provide its unit pricing for all Price Lines (except for Price Line 10)** found on the State-Supplied Price Sheet. For Price Lines that include Hourly/Key Stroke/Batch pricing, the Vendor {Bidder} **MUST** provide all three (3) compensation type unit pricing (Hourly Rate, Per Key Stroke, and Per Batch). **Failure to provide all pricing required will result in the Vendor’s {Bidder’s} Quote being deemed non-responsive.**

[Emphasis added.]

Further, Bid Solicitation Section 2.2. *General Definitions* define Unit Cost or Unit Price as an “[a]ll-inclusive, firm fixed price charged by the Vendor {Bidder} for a single unit identified on a price line. Similarly, Bid Solicitation Section 3.12 *Payment* states, in pertinent part, that “Price Line 11 shall be the all-inclusive rate for monthly connectivity and communication lines.”

In SourceCorp’s State-Supplied Price Sheet submission it failed to follow the instruction for the submission of Quote pricing set forth in Bid Solicitation 4.4.5.2 *State-Supplied Price Sheet Instructions*. Rather than identify a firm fixed price to be charged by the Vendor {Bidder} for Price Line #11, SourceCorp indicated a range from “\$0 - \$2000 TBD” for Price Line #11:

State-Supplied Price Sheet Bid Solicitation #18DPP00190 T2775 - Data Entry/Verification Services - Division of Revenue and Enterprise Services					
Vendor {Bidder} Name:		SOURCECORP BPS, Inc.			
Instructions:		Refer to Bid Solicitation Section 4.4.5 for Vendor {Bidder} instructions. The Vendor {Bidder} shall provide pricing in the yellow highlighted cells.			
Price Line #	Item Description	Additional Description Examples	Quantity	Unit Type	Unit Price
11	Monthly connectivity and communication line charge			Month	\$0 - \$2,000 TBD

The question then is whether SourceCorp’s submission of pricing range is a deviation from the requirements of the Bid Solicitation. In order for SourceCorp’s Quote to be considered responsive, SourceCorp’s failure to submit the pricing as required by the Bid Solicitation would have to be deemed a minor irregularity. Minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 1.4.10, *Quote Acceptances and Rejections*. It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Stermin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity.” In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, supra, 127 N.J. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

¹ “**Must** – Denotes that which is a mandatory requirement.” Bid Solicitation Section 2.2. *General Definitions*.

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” *Id.* at 222.

Here, SourceCorp’s failure to include a firm fixed price for Price Line 11 is a material deviation from the requirements of the Bid Solicitation. First, the deviation deprives the State from the assurance that the contract will be performed according to the specified requirements, more specifically that for the Price Line 11 the State will be charged a firm fixed price, as required by the Bid Solicitation 4.4.5.2 *State-Supplied Price Sheet Instructions*. Second, accepting SourceCorp’s price range for Price Line 11 adversely affects competitive bidding, because it would give SourceCorp the option to change its unit price for Price Line 11 throughout the contract, while other Vendors {Bidders} would be bound by the firm fixed price they provided in their Quotes. Therefore, the Bureau correctly deemed SourceCorp’s Quote non responsive to the requirements of the Bid Solicitation.

I note that in its Protest Letter SourceCorp admits that it did not provide pricing as required by the Bid Solicitation. See SourceCorp Protest Letter pg.1. Therefore, there is no dispute that SourceCorp’s Quote was non-conforming.

Next, SourceCorp argues that “there was no clear direction as to how a bidder could provide options for multiple price choices, thus the reason the range was provided.” SourceCorp further notes that had the State reviewed the price sheet with the submitted Quote it would have understood why a price range was presented. Nothing on SourceCorp’s price sheet or its Quote indicated that it was providing varying pricing depending upon the delivery method selected. In support of its position that the State only provided some pricing instruction, SourceCorp refers to Question #10 from Bid Amendment #1:

If the Vendor wants to use the IPSEC for the communication plan, should they put “No Bid” on Line 11?

If the Vendor {Bidder} intends to utilize a methodology such as IPSEC for the communication plan, and there is no monthly cost to charge the State for the services of monthly connectivity and communication lines under Price Line 11, the Vendor {Bidder} must indicate “No Charge” for this Price Line.

Please refer to Bid Solicitation Section 4.4.5.3, *Use of “No Bid” Versus “No Charge” on the State-Supplied Price Sheet*.

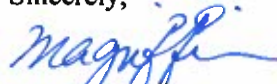
The answer to Question #10 was in response to a specific question posed by a potential Vendor {Bidder}. If SourceCorp had a question about how to submit alternate pricing, it should have submitted question to the Bureau during the Question and Answer period.

Lastly, SourceCorp requests that it be provided an opportunity to “provide the single monthly price” to the State at this time. In I/M/O Protest of Award of On-Line Games Prod. & Operation Svs. Contract, Bid No. 95-X-20175, the court held that a post-opening commitment to supply an essential missing element for a bid is not a clarification but rather is an “impermissible supplementation ... and flies in the face of our public bidding scheme.” 279 N.J. Super. 566, 598 (App. Div. 1995). In contrast, clarification is permissible. “In clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is already there.” *Id.* at 597. Notwithstanding SourceCorp’s interest in competing for this procurement, to allow SourceCorp to provide pricing post Quote opening date would result in impermissible supplementation, because providing firm fixed price for Price Line #11 was a mandatory requirement of the Bid Solicitation.

This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote. However, based upon the foregoing, I sustain the Bureau’s Notice of Intent to Award to TDEC.

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

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RD

c: A. Davis
R. Regan