



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

OFFICE OF THE DIRECTOR

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August 14, 2019

Via Electronic Mail [mripaulritter@gmail.com] and USPS Regular Mail

Paul Ritter
General Manager
Morristown Car Wash
285 East Hanover Ave.
Morristown, NJ 07960

Re: I/M/O Bid Solicitation #19DPP00371 Morristown Car Wash
Protest of Notice of Proposal Rejection
T0390- Vehicle Washing and Cleaning Services

Dear Mr. Ritter:

This letter is in response to your email of August 13, 2019, on behalf of Morristown Car Wash ("MCW") which was received by the Division of Purchase and Property's ("Division") Hearing Unit. In that email, MCW protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit on August 9, 2019, for Bid Solicitation #19DPP00371 – T0390 Bid Solicitation #19DPP00371 Vehicle Washing and Cleaning Services ("Bid Solicitation"). The record of this procurement reveals that MCW's Quote was rejected for failing to include pricing information with its submitted Quote.

By way of background, on May 9, 2019, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of Using Agencies to solicit Quotes for Brick and Mortar Vehicle Washing and Cleaning Services and Mobile Vehicle Washing and Cleaning Services. Bid Solicitation § 1.1 *Purpose and Intent*.¹ It is the State's intent to award Master Blanket Purchase Orders ("Blanket P.O.s") to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation, are most advantageous to the State, price and other factors considered. Ibid.

On June 18, 2019, the Division's Proposal Review Unit opened 9 Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to MCW for missing pricing information. MCW's Quote included a blank Pricing Schedule.

¹ This is a supplementary reprocurement to Bid Solicitation #18DPP00227, which was publicly advertised and posted to NJSTART on March 23, 2018. Blanket P.O.s resulting from Bid Solicitation #18DPP00227 were awarded on November 27, 2018 for Vehicle Washing and Cleaning Services. The Division did not receive a sufficient number of responsive Quotes to provide adequate service for the 21 counties included in the previous Bid Solicitation, which resulted in this supplementary Bid Solicitation.

In response to the Notice of Proposal Rejection, on August 13, 2019, MCW sent an email to the Division's Hearing Unit stating:

I am sending this letter of protest requesting that my Bid for 19DPP00371 be accepted. When I filled all the paperwork on the NJSTART site, I forgot to fill out the Brick and Mortar Pricing Schedule sheet. I've attached that form with this letter. Please consider our bid as whole and complete with submission of the form. Thank you for your consideration and I look forward to working with the State of New Jersey on this project.

In consideration of MCW's protest, I have reviewed the record of this procurement, including the Bid Solicitation, MCW's proposal and protest, 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. I set forth herein the Division's Final Agency Decision.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall² conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added*.]

Among those attachments required to be submitted with the Quote is the State-Supplied Price Sheet discussed in Bid Solicitation Section 4.4.5.

With respect the submission of Quote pricing, the Bid Solicitation cautioned Vendors {Bidders} regarding the need to ensure that all required forms, including the State-Supplied Price Sheet, are properly submitted. Specifically, Bid Solicitation Section 4.4 *Quote Content* states in part:

Note: Vendors {Bidders} submitting Quotes through NJSTART must complete the State-supplied price sheet/schedule(s) (Volume 3) accompanying this Bid Solicitation and upload it as an attachment on the "Attachments" Tab (See Section 4.4.5 of this Bid Solicitation).

² "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

The requirement to use the State-supplied price sheet for Vendor pricing was reiterated in Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet* which states “[t]he Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab.”

To assist Vendors {Bidders} in completing the State-Supplied Price Sheet, the Bid Solicitation further advised in part:

The Vendor {Bidder} must submit its pricing using the State-supplied price sheet/schedule(s) accompanying this Bid Solicitation and located on the “Attachments” Tab.

This Bid Solicitation includes the following two (2) price schedules: Brick and Mortar Vehicle Washing and Cleaning Price Schedule (Brick and Mortar) and Mobile Vehicle Washing and Cleaning Price Schedule (Mobile). Vendors {Bidders} may submit pricing and be eligible for award of one (1) or both price schedules.

The Vendor {Bidder} Brick and Mortar location must be located within the county being bid upon. Vendors {Bidders} **must provide unit pricing for Price Lines 1-3** in order to be eligible for award of Brick and Mortar services in the respective county. **Failure to provide ALL unit pricing for Price Lines 1-3 shall result in the Vendor {Bidder} being deemed non-responsive for the Brick and Mortar award for the respective county being bid upon.** Vendors {Bidders} are not required to provide pricing for the optional price lines 4-16 in order to be eligible for award of the Brick and Mortar services; however, Vendors {Bidders} must provide unit pricing in order to be eligible for award of each respective optional price line (price lines 4-16).

A Vendor {Bidder} may submit multiple Brick and Mortar Price Schedules if its Quote includes multiple locations and each location is part of the same entity. If the multiple locations include multiple entities, each entity must submit its own individual Quote, or submit a Quote as a Joint Venture in accordance with Bid Solicitation Section 1.4.8. Vendors {Bidders} must provide the address of each location provided as part of its Quote.

[Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions*.]

While MCW did submit the State-Supplied Price Sheet with its Quote, the submitted price sheet did not contain any pricing information as required by the Bid Solicitation.

Bid Solicitation #19DPP00371 Brick and Mortar Vehicle Washing and Cleaning Price Schedule T0390 - Vehicle Washing and Cleaning Services (SUPPLEMENTAL)				
Vendor (Bidder) Name:				
Car Wash County:				
Car Wash Address:				
Instructions:	Refer to Bid Solicitation Section 4.4.5 for Vendor (Bidder) Instructions.			
Item#	Description	Quantity	Unit of Measure	Unit Cost
MANDATORY Lines 1,2,3 Vehicle Washing and Cleaning Services (Bid Solicitation Sections 3.1-3.1.3)				
1	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a firm, fixed unit cost for a complete interior only cleaning.	1	Each	
2	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a firm, fixed unit cost for a complete exterior only cleaning.	1	Each	
3	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a firm, fixed unit cost for a complete interior and exterior cleaning.	1	Each	
Optional Vehicle Detailing Services (Bid Solicitation Section 3.1.5)				
4	Detail Washing Service Normal Size Vehicle (under 10,000 GVW) - Supply a firm, fixed unit cost for a complete interior and exterior cleaning.	1	Each	
5	Detail Washing Service Oversize Vehicle (10,000-16,501 GVW) - Supply a firm, fixed unit cost for a complete interior and exterior cleaning.	1	Each	
6	Detail Washing Service Oversize Vehicle (16,502-26,001 GVW) - Supply a firm, fixed unit cost for a complete interior and exterior cleaning.	1	Each	
7	Detail Washing Service Oversize Vehicle (26,002 GVW) - Supply a firm, fixed unit cost for a complete interior and exterior	1	Each	
Optional Oversized Vehicle Washing and Cleaning Services (Bid Solicitation Section 3.1.4)				
8	Oversized Vehicle Wash Services (10,000-16,501 GVW) - Supply a firm, fixed unit cost for a complete interior only	1	Each	
9	Oversized Vehicle Wash Services (10,000-16,501 GVW) - Supply a firm, fixed unit cost for a complete exterior only cleaning.	1	Each	
10	Oversized Vehicle Wash Services (10,000-16,501 GVW) - Supply a firm, fixed unit cost for a complete interior and exterior	1	Each	
11	Oversize Vehicle Wash Services (16,502 -26,001 GVW) - Supply a firm, fixed cost for complete interior only cleaning.	1	Each	
12	Oversize Vehicle Wash Services (16,502-26,001 GVW) - Supply a firm, fixed unit cost for complete exterior only cleaning.	1	Each	
13	Oversize Vehicle Wash Services (16,502 -26,001 GVW) - Supply a firm, fixed unit cost for complete interior and exterior cleaning.	1	Each	
14	Oversize Vehicle Wash Services (26,002 GVW and up) - Supply a firm, fixed unit cost for interior only cleaning.	1	Each	
15	Oversize Vehicle Wash Services (26,002 GVW and up) - Supply a firm, fixed unit cost for exterior only cleaning.	1	Each	
16	Oversize Vehicle Wash Services (26,002 GVW and up) - Supply a firm, fixed unit cost for interior and exterior cleaning.	1	Each	

In its protest, MCW concedes that it forgot to fill out the required Pricing Sheet, and requests that the Bureau accept its late price sheet and consider its Quote as "whole and complete with the submission of the form."

The question then is whether MCW's failure to submit pricing information at the time of its Quote submission is a deviation from the requirements of the Bid Solicitation. In order for MCW's Quote to be considered responsive, MCW's failure to submit all of the information required by the State-Supplied Price Sheet with its Quote 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 {Proposal} 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. Sternin, 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:

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.

As noted above, MCW submitted a blank State-Supplied Price Sheet. The instructions for the State-Supplied Price Sheet required Vendors {Bidders} “**must** submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab.” Bid Solicitation § 4.4.5 *State-Supplied Price Sheet*, emphasis added. MCW’s failure to include the pricing information with its submitted Quote is a material deviation from the requirements of the Bid Solicitation. Allowing MCW to submit the pricing information, after the Quote submission deadline would place it in a position of advantage over Vendors {Bidders} who submitted the pricing information as required by the Bid Solicitation. After the Quote submission deadline; a Vendor {Bidder} knowing who its competitors are, would be in position of advantage over other Vendors {Bidders} who included the pricing with the submitted Quote and were therefore unaware of who the competitors would be.

Further, permitting MCW to submit its pricing information after the Quote submission deadline would result in an impermissible clarification of MCW’s bid submission, which the Division cannot allow as doing so would be contrary to the Court’s holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (“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 there. It is the alteration of the original proposal which was interdicted by the RFP”); In re Motor Vehicle Comm’n Surcharge Sys. Accounting and Billing Servs., No. A-3136-16, at *32 (App. Div. Feb. 8, 2018) (explaining the Vendor’s “original bid was non-conforming, but the Division impermissibly allowed the bid thereafter to be materially altered”).


The responsibility for ensuring that all necessary forms and other submittals are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, MCW submitted a Quote without all of the necessary pricing information included. If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Vendors

{Bidders} and to ensure the integrity of the State's bidding process. MCW's failure to submit its Quote Pricing consistent with the requirements of the Bid Solicitation, is a material deviation. Permitting MCW, or any other Vendor {Bidder}, to submit the required information after the Quote opening deadline has passed, would place that Vendor {Bidder} in a position of advantage over other Vendors {Bidders} who timely submitted the required pricing information with the Quote.

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, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject Bid Solicitation. This is my final agency decision on this matter.

Thank you for your company's 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 eProcurement system.

Sincerely,



Rachel U. Doobraj
Acting Chief Hearing Officer

RUD: RD

c: J. Frew
R. Regan
K. Popso
A. Davis
D. Rodriguez
A. Nelson