



State of New Jersey

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October 15, 2020

Via Electronic Mail Only glatham@njal.com

George Latham
New Jersey Analytical Laboratories, LLC
812 Silvia Street
Ewing, NJ 08628

Re: I/M/O Bid Solicitation #20DPP00503 New Jersey Analytical Laboratories, LLC
Protest of Notice of Proposal Rejection
T2504 Laboratory Services New Jersey Department of Transportation (NJDOT)

Dear Mr. Latham:

This letter is in response to your email of October 12, 2020, on behalf of New Jersey Analytical Laboratories, LLC (NJAL) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, NJAL protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #20DPP00503 – T2504 Laboratory Services New Jersey Department of Transportation (Bid Solicitation). The record of this procurement reveals that NJAL's Quote was rejected for failing to include pricing information with its submitted Quote.

By way of background, on August 5, 2020, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of New Jersey Department of Transportation to solicit Quotes for providing analytical laboratory testing services from firms with laboratory experience in the monitoring of wells for ground, storm, and drinking water. Bid Solicitation § 1.1 *Purpose and Intent*.

On September 30, 2020, the Division's Proposal Review Unit opened NJAL's Quote which was received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quote received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to NJAL for missing pricing information.

In response to the Notice of Proposal Rejection, on October 12, 2020, NJAL submitted a protest to the Division's Hearing Unit stating:

We are corresponding with you regarding the above bid solicitation from the NJDOT. NJAL (New Jersey Analytical Laboratories) painstakingly prepared the bid on the NJStart website and included all of the necessary documentation that was required. Upon upload, many days before the bid opening date, we apparently uploaded a blank price excel sheet. This, unfortunately, resulted in our proposal being rejected. Please review the

attached spreadsheet. This was completed many days before the opening date. The “date modified” on this spreadsheet will confirm this.

I apologize for this oversight and hope that you will review and consider our bid.

In consideration of NJAL’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, NJAL’s Quote 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 shall¹ 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;
 - ...
 - 6. Include all RFP required pricing information.

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

With respect the submission of Quotes, 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:

The Quote should be submitted with the content of each section as indicated below.

- Section 1 - Forms (Sections 4.4.1 and 4.4.2).
- Section 2 - Technical Quote (Section 4.4.3);
- Section 3 - Organizational Support and Experience (Section 4.4.4);
- Section 4 - Any other documents to be included by the Vendor {Bidder};
- Section 5 - State-Supplied Price Sheet (Section 4.4.5); and
- Section 6 - State of New Jersey Security Due Diligence Third Party Information Security Questionnaire (Section 4.4.3.3).

¹ “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*.

Note: Vendors {Bidders} must complete the State-Supplied Price Sheet (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).

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.”

As noted above, NJAL’s Quote was rejected for failing to include pricing information.² However, a review of NJAL’s Quote reveals that none of the required attachments were included with the NJAL’s submitted Quote #00004885:³

Quote 00004885 - New Jersey Analytical Laboratories Limited Liability Company

General Items Questions Subcontractors Terms & Conditions **Attachments** Evaluations Preference Reminders Summary

Files

No File Attachments

Forms

No Form Attachments

Close Window

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The **NJSTART** eProcurement system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals are properly uploaded into **NJSTART**, and for ensuring that a Quote has been submitted, necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.

Although the Division has broad discretion to select among qualified and responsive Vendors {Bidders} in public contracting matters, the discretion afforded to the Director, “is not limitless.” See, *In re Request for Proposals #17DPP00144*, 454 N.J. Super. 527, 559 (App Div. 2018). “In line with the policy goal of thwarting favoritism, improvidence, extravagance, and corruption, the Division may not award a contract to a bidder whose proposal deviates materially from the RFP’s requirements.” *Ibid.*, quoting, *Barrick v. State*, 218 N.J. 247, 258-59 (2014)). For that reason, the Division’s governing regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State’s bidding process. Notably, “to be eligible for consideration for award of contract, the bidder’s proposal shall conform to the following requirements or be subject to designation as a non-

² NJAL’s Quote #00004885 was not rejected for missing the Ownership Disclosure Form or the Disclosure of Investment Activities in Iran Form because those items were completed with NJAL’s **NJSTART** Vendor Profile.

³ A review of the **NJSTART** eProcurement system reveals that NJAL created a second Quote (#00004878); however, that Quote was not submitted.

responsive proposal for non-compliance” including “all RFP-required certifications, forms, and attachments, completed and signed as required” and “all RFP-required pricing information.” N.J.A.C. 17:12-2.2(a)(4), (6). If the requirements of N.J.A.C. 17:12-2.2(a) are not met, a Quote “shall be subject to automatic rejection.” N.J.A.C. 17:12-2.2(b).

Unfortunately, as noted above, NJAL’s submitted Quote (#00004885) was submitted without any documents, forms or other attachments included.⁴ Specifically, NJAL’s submitted Quote did not contain the mandatory pricing information required by Bid Solicitation Section 4.4.5, the State of New Jersey Security Due Diligence Third Party Information Security Questionnaire required by Bid Solicitation Section 4.4.3.3; Technical Quote required by Bid Solicitation Section 4.4.3; or the Organization Support and Experience required by Bid Solicitation Section 4.4.4. NJAL cannot now amend its Quote submission, to include the pricing information or any other required submission, 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 *On-Line Games* the Appellate Division held that “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”.

Despite NJAL’s desire to submit a Quote for the subject solicitation, under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, NJAL’s Quote was properly rejected by the Division’s Proposal Review Unit for failure to submit the mandatory pricing information with its 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 the Division’s final agency decision with respect to the protest submitted by NJAL.

Sincerely,

Rachel Doobrajh

Rachel U. Doobrajh
Acting Chief Hearing Officer

c: B. Tran
 L. Spildener
 M. Tagliaferri
 D. Rodriguez
 A. Nelson

⁴ Should ARG wish to review the submitted Quote, the Division has created and provided to the bidding community a QRG entitled *How to Review a Submitted Quote*. <https://www.state.nj.us/treasury/purchase/njstart/pdf/HowtoReviewaSubmittedQuote.pdf>. That QRG provides step by step instructions with screenshots on how to confirm that a Quote has been submitted with all required documents, forms, certifications, etc. attached as required by the Bid Solicitation. Additionally, ARG may review the “In progress” Quotes by following the instruction on the *Submit a Quote* QRG.