



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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May 12, 2021

Via Electronic Mail Only RRicigliano@crowell.com

Rebecca Monck Ricigliano
Crowell Morning
1001 Pennsylvania Avenue, N.W.
Washington DP, 20004-2595

Re: I/M/O Bid Solicitation #20DPP00554 Acorn Food Services, Inc.
Protest of Notice of Intent to Award
T1243 Food Service for the NJ National Guard Training Center, Sea Girt

Dear Ms. Ricigliano:

This final agency decision is in response to your letter on behalf of Acorn Food Services, Inc. (Acorn) received by the Division of Purchase and Property's (Division) Hearing Unit on March 8, 2021. In that letter, Acorn protests the Procurement Bureau's (Bureau) March 1, 2021, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #20DPP00554 - T1243 Food Service for the NJ National Guard Training Center, Sea Girt (Bid Solicitation).

By way of background, on October 21, 2020, the Bureau issued the Bid Solicitation on behalf of the State of New Jersey, Department of Military and Veterans Affairs (DMAVA). The purpose of the Bid Solicitation was to solicit Quotes for a Vendor {Contractor} to provide food services at DMAVA's Sea Girt Training Center. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award a Master Blanket Purchase Order (Blanket P.O.) to the responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Ibid.

On January 6, 2021, the Division's Proposal Review Unit opened four (4) Quotes submitted by the submission deadline of 2:00 p.m. eastern time. After conducting a preliminary review of the Quotes received, those Quotes which conformed to the mandatory requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 which stated in relevant part:

Pursuant to N.J.A.C. 17:12-2.7, Quotes will be evaluated either by an Evaluation Committee or by a Division staff member assigned to conduct the procurement. After the evaluation is completed, a recommendation will be made to the Director to award a Blanket P.O. to the responsible Vendor {Bidder} whose Quote, conforming to this Bid Solicitation, is most advantageous to the State, price and other factors considered. The Director may accept, reject or modify the recommendation. Whether or not there has been a negotiation process as outlined in Section 6.8 below,

the Director reserves the right to negotiate price reductions with the selected Vendor(s) {Bidder(s)}.

The Evaluation Committee or assigned Division staff member will evaluate Quotes based upon the overall ability of the Vendor {Bidder} to undertake and successfully complete the Scope of Work set forth in the Bid Solicitation as demonstrated by the submitted Quote.

[Bid Solicitation Section 6.7.1, emphasis in the original.]

After completing its review and evaluation, on February 24, 2021, the Bureau prepared a Recommendation Report which recommended that a Blanket P.O. be awarded to Dining Partnership Group, LLC (DPG). On March 1, 2021, the Bureau issued the NOI advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O. to DPG.

On March 8, 2021, prior to the close of the protest period, Acorn submitted a protest challenging the Division's decision to award the Blanket P.O. to DPG.¹ By way of summary, Acorn states DPG's Quote did not demonstrate that the company has the ability to perform the Blanket P.O. and that DPG failed to submit all required forms. Therefore, Acorn asserts that DPG's Quote should have been deemed non-responsive. DPG was provided with the opportunity to respond to the issues raised by Acorn in the protest. On March 17, 2021, DPG responded to the protest stating, in summary, that it stood by its Quote submission which it claimed was fully responsive to the requirements of the Bid Solicitation.

In consideration of Acorn's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, Acorn's protest and DPG's response to the 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.

First, Acorn states that DPG's Quote should have been rejected as DPG does not have the minimum level of experience required by the Bid Solicitation. In support of this allegation, Acorn states:

To overcome its own lack of experience and resources, DPG's quote misrepresents its experience and past performance by co-opting references in multiple respects from the broader Frungillo family of businesses and otherwise inflating even its own limited experience of only nominal relevance. In short, the submitted information cannot and does not support DPG's overall "Good" rating nor the specifics of the evaluation narrative.

[Acorn's protest, p. 6.]

Further, Acorn notes that on the submitted *Vendor {Bidder} Data Sheet*, DPG listed 4 contracts.² Acorn asserts that two of listed contracts are limited to providing school lunches at Oratory Prep and Mount St. Dominic Academy and do not support a DPG's ability to successfully complete the scope of work required

¹ In its response to the protest, DPG questioned whether Acorn's protest was received prior to the close of the protest period. The protest period closed on March 8, 2021 at 5:00pm. Acorn's protest was received by email on March 8, 2021 at 2:41 pm; and therefore, was timely received.

² In accordance with Bid Solicitation Section 4.4.3.2 *Vendor {Bidder} Data Sheet*, Vendors {Bidders} were required to submit information detailing relevant information regarding its experience in successfully completing contracts of a similar size and scope to the work required by this Bid Solicitation.

by the Bid Solicitation. Acorn further alleges that the remaining contracts listed on DPG's submitted *Vendor {Bidder} Data Sheet* were contracts not awarded to the bidding entity. Rather, Acorn states that the listed Essex County contracts (#18-060 and #19-241) were awarded to an entirely different entity. In support of this statement, Acorn provided the Essex County award notice indicating that the contracts had been awarded to Mansion Caterers, Inc. t/a Frungillo Caterers (Mansion) and not DPG. See Acorn protest, Exhibits 6 and 7.

In response, DPG states that

Contrary to Acorn's belief, DPG and its employees have a significant amount of experience in the food service industry. Indeed, DPG's quote identifies experience with providing food services for the County of Essex, Oratory Prep, and Mount Saint Dominic Academy. DPG has had no negative actions against it in performing. Despite this, Acorn takes issue with DPG's performance of two contracts with the County of Essex. Specifically, Acorn believes that another entity is performing the two contracts with the County of Essex. Acorn is wrong. These contracts are performed by DPG.

[DPG protest response, p. 2.]

The Hearing Unit's independent review of Essex County's publicly available contract documents and the award notices reveals that contract #18-060 and contract #19-241 were awarded to Mansion and not DPG.³ In response to the protest, DPG asserts that the Essex County contracts were performed by DPG and provided a letter from Essex County's Director of Purchasing in support of its assertion. DPG protest response, Exhibit 5. The Essex County letter, dated March 17, 2021, after the Quote opening date, and after the submission of Acorn's protest, does not provide any explanation as to why or how the contracts awarded to Mansion are being performed by DPG. Neither DPG's response to the protest of the Essex County letter offers any evidence of a relationship between the Mansion and DPG, i.e. parent, subsidiary, affiliate, etc. or any evidence of an assignment of the contract, after award, from Mansion to DPG having taken place.

Further, a review of the Division's *NJSTART* records reveals that Mansion and DPG are not the same entity. Specifically, these vendors have different business addresses, each a different year of incorporation and different tax identification numbers. I note that the contact name and phone number is the same for both entities, but that alone is not sufficient to support DPG's claims that these are the same entity and that the contracts awarded by Essex County to Mansion were performed by DPG. Based upon the publicly available information, it appears that two of the four contracts listed on the *Vendor {Bidder} Data Sheet* are not attributable to the bidding entity DPG, and should not have been considered by the Bureau in evaluation of DPG's submitted Quote.⁴

Second, Acorn asserts that DPG has exaggerated its experience with the State, claiming that DPG's reference to a 20-year partnership with the Skyland Manor is impossible as DPG has been in existence for less than three years. See Acorn protest, pgs. 6-7. Acorn however, has misread DPG's statement on the *Vendor {Bidder} Quote Overview Form*. In fact, DPG states it is the company's leadership that has a 20-

³ http://www.essexcountynjprocure.org/procure/index.php?section=view&rfp_session=311090.65811100-1520881869&search_results=opps and http://www.essexcountynjprocure.org/procure/index.php?section=view&rfp_session=1028290.75715000-1574695709&search_results=opps

⁴ Whether this impacts the award recommendation is an issue that the Bureau will need to resolve.

year relationship with the State. Acorn does not dispute that DPG's leadership has had a long history of providing catering and dining services across the State. The experience of the company's staff is equally as important as the experience of the company, and they are not necessarily the same. Here, the experience of DPG's leadership demonstrates that the company has an experienced team, with a long history of providing catering services in place; and that the leadership team has the ability to "undertake and successfully complete the Scope of Work set forth in the Bid Solicitation." Bid Solicitation Section 6.7 Evaluation Criteria.

Third, Acorn states that DPG's Quote should have been rejected because DPG failed to comply with all of the mandatory Quote submission requirements. Specifically, Acorn states that DPG failed to provide the two different organization charts required by Bid Solicitation Section 4.4.3.6; failed to provide the resume for the Dining Facility Manager as required by Bid Solicitation Section 4.4.3.7; and, did not supply the proof that the Dining Facility Manager holds a ServSafe Manager Certification as required by Bid Solicitation Section 4.4.3.4.1.

With respect to the organization charts, the Bid Solicitation requested that the Vendor {Bidder} include the following:

- A. **Blanket P.O. - Specific Chart.** The Vendor {Bidder} should⁵ include a Blanket P.O. organization chart, with names showing management, supervisory and other key personnel (including Subcontractor management, supervisory, or other key personnel) to be assigned to the Blanket P.O. The chart should include the labor category and title of each such individual; and
- B. **Chart for Entire Firm.** The Vendor {Bidder} should include an organization chart showing the Vendor's {Bidder's} entire organizational structure. This chart should show the relationship of the individuals assigned to the Blanket P.O. to the Vendor's {Bidder's} overall organizational structure.

[Bid Solicitation Section 4.4.3.6 *Organization Charts*, emphasis added.]

In response to the protest, DPG admits that it only included 1 organization chart with its Quote, but states that the Bid Solicitation did not require that it submit two separate organization charts. Further, DPG states that the single organization chart met the needs of both sections A and B of Bid Solicitation Section 4.4.3.6, in that DPG's key personnel to be assigned the Blanket P.O. and DPG's entire organization structure were shown. Here, DPG is correct, submission of organization charts, while requested, was not mandatory. If submitted, as here, one chart could satisfy the Division's request for information.⁶

As to Bid Solicitation Section 4.4.3.7 *Resumes*, again, the Bid Solicitation requested, but did not require that a Vendor {Bidder} include resumes with the submitted Quote, stating "[d]etailed resumes should be submitted for all management, supervisory, and key personnel to be assigned to the Blanket P.O." Bid Solicitation § 4.4.3.7 *Resumes*, emphasis added. Assuming arguendo that the Dining Facility Manager is a key person, the Bid Solicitation did not mandate that the resume be provided. Accordingly, the fact

⁵ Bid Solicitation Section 2.2 *General Definitions* states "Should - Denotes that which is permissible or recommended, not mandatory" and "Shall - Denotes that which is a mandatory requirement."

⁶ I note that while Acorn submitted two organization charts with its submitted Quote, it similarly only identified by name its management staff, and did not specifically identify by name any other worker to be assigned the facility.

that DPG did not include a resume for the Dining Facility Manager with the Quote is not detrimental, and does not render DPG's Quote non-responsive.

Turning now to the Bid Solicitation Section 4.4.3.4.1 *ServeSafe Manager Services*, which stated as follows:

Prior to Blanket P.O. award, the Vendor {Bidder} must provide proof of Servsafe Manager Certification for its designated Dining Facility Manager. The Vendor {Bidder} should provide proof of Servsafe Manager Certification with its Quote. If the proof is not supplied with the Quote, the State may still require the Vendor {Bidder} to submit it. If the Vendor {Bidder} fails to comply with the request within seven (7) business days, the State may deem the Quote non-responsive.

Vendors {Bidders} were requested, but not required, to provide proof of the certification with the Quote. Rather, the Bid Solicitation required that proof of the certification be provided prior to the Blanket P.O. award. With the Quote, DPG did include the ServSafe Certification for Francisco Fernandes. Because Bid Solicitation only required that the Dining Facility Manager hold a ServSafe Certification the Bureau assigned Mr. Fernandes to the position of Dining Facility Manager. In response to the protest, DPG confirmed that Mr. Fernandes is the "prospective individual that DPG would assign to the account...if awarded the Blanket P.O." See DPG protest response, p. 4. The Bid Solicitation did not require that the Dining Facility Manager be identified in the Quote. Rather, the Bid Solicitation advised Vendors {Bidders} that that all Dining Facility Managers or persons in charge shall be interviewed and approved by the State Contract Manager at least 15 days prior to assuming the position at the facility. Bid Solicitation § 3.3.1 *Dining Facility Management*. Therefore, the fact that DPG did not specifically identify Mr. Fernandes as the designated Dining Facility Manager, is not fatal flaw to DPG's Quote, as the position is subject to verification prior to award and to the review and approval of the State Contract Manager post award.

As noted above, the evaluation criteria used by the Bureau was the "overall ability of the Vendor {Bidder} to undertake and successfully complete the Scope of Work set forth in the Bid Solicitation as demonstrated by the submitted Quote." Bid Solicitation Section 6.7.1. Certainly, the information contained on the *Vendor {Bidder} Data Sheet* is important to that analysis; and the Bureau's ultimate awarded score of a "3 - Good" to DPG may or may not have been different if the two Essex County contracts which were awarded to Mansion were not included in that analysis.⁷ Accordingly, I remand this matter back to the Bureau for further review and evaluation. This is my final agency decision on this matter.

Sincerely,



Gregg Olivera
Deputy Director

GO: RUD

c: M. Dunn
R. Regan
C. Rubi
Dining Partnership Group, LLC c/o T. Scrivo, Esq.

⁷ In conducting this review, the Bureau may consider contacting Essex County's Director of Purchasing to resolve the discrepancy between Essex County's publicly available contract documents and the award notices which indicate that contract #18-060 and contract #19-241 were awarded to Mansion; and the March 17, 2021 letter advising that the contracts have been performed by DPG.