



State of New Jersey

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

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September 21, 2021

Via Electronic Mail Only J.Armstrong@appliedonline.com

Mr. James Armstrong, President
Applied Analytics, Inc.
One Highway 12
Plaza One
Flemington, NJ 08822

Re: I/M/O Bid Solicitation #21DPP00589 Applied Analytics, Inc.
Protest of Notice of Intent to Award
T0983 Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality
Testing and Monitoring

Dear Mr. Armstrong:

This final agency decision is in response to your letter dated July 29, 2021, submitted by Applied Analytics, Inc. (Applied Analytics). That letter was received by the Division of Purchase and Property's (Division) Hearing Unit on August 2, 2021. In that correspondence Applied Analytics protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #20DPP00589 - T0983 Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality Testing and Monitoring (Bid Solicitation). The record of this procurement reveals that the Quote submitted by Applied Analytics was deemed non-responsive for having submitted "a series or range of discounts" which was prohibited pursuant to Bid Solicitation Section 4.4.5.2. *State-Supplied Price Sheet Instructions*.

By way of background, on October 30, 2020, the Bureau issued the Bid Solicitation on behalf of State Using Agencies and Cooperative Purchasing Program participants. Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality Testing and Monitoring. *Ibid*. 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 December 18, 2020, the Division's Proposal Review Unit opened fifteen (15) Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded fifteen (15) Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*.

After completing its review and evaluation of the Quotes received, on July 26, 2021, the Bureau prepared a Recommendation Report that recommended that Blanket P.O.s be awarded to eleven (11) responsive Vendors {Bidders}. With respect to the Quote submitted by Applied Analytics, the Bureau determined that pursuant to Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions*, the portion of Applied Analytics' Quote addressing ABB Inc. products violated the Bid Solicitation requirement that prohibited the submission of a "series or a range of discounts/markups." Specifically, the Bureau determined that by offering a 2.5% discount for certain ABB Inc. products (ABB, Inc. P/L 2019 DO, pH Analyzer/Instruments & Supplies) and a 10% discount on other ABB Inc. products (ABB, Inc. ACQ/ACS LVD P/L 2019 Water & Water Waste), "Applied Analytics Inc. provided a range of discounts for the ABB Inc. brand."¹

On July 28, 2021, the Bureau issued the NOI advising the Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the July 26, 2021, Recommendation Report.

On August 2, 2021, Applied Analytics wrote to the Division's Hearing Unit stating that it was protesting the Division's determination that its submissions for Price Line #2 "Water Quality Testing Instruments, Equipment and Supplies" related to ABB Inc. products was non-responsive. Specifically, Applied Analytics states:

ABB Inc. is a global manufacturer of a variety of products with multiple facilities. Applied Analytics represents two (2) of ABB's product divisions. ABB Instrumentation located in Warminster, PA; ABB Low Voltage Division located in New Berlin, WI. As noted, each of the two offers were submitted and listed on separate solicitation price sheet tabs to differentiate between the two product groups and respective price lists. Discount extended for ABB Instrumentation 2.5%, tab 1 "ABB Inst" and discount extended for ABB series ACQ / ACS Water and Water Waste Division, LVD Controllers 10%, tab 2 "ABB WWD". There is no discrepancy or an offer proposing a discount range. The respective discount quoted solely applied to specific ABB product line identified under the individually assigned solicitations tab.

In consideration of the Applied Analytics' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, 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.

Pursuant to Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet*, each "Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments Tab". Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions*, outlined the step by step instructions for completing the State-Supplied Price Sheet:

4.4.5.2. STATE-SUPPLIED PRICE SHEET INSTRUCTIONS

The Bid Solicitation and State-Supplied Price Sheet contains two (2) Categories, which are itemized as follows:

Category Number	Price Number	Line	Description
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¹ Applied Analytics Quote, relating to different products or brands, was accepted by the Bureau and Applied Analytics was listed for award.

1	1	Air Quality Testing Instruments, Equipment and Supplies
2	2	Water Quality Testing Instruments, Equipment and Supplies
Agency Use Only	3	Agency Use Price Line for expedited delivery charges, restocking fees or return shipping charges only

Step 3 – The Vendor {Bidder} shall insert a firm, fixed percentage (%) discount or markup from the product catalog/price list, by entering the percentage discount or markup bid in the “Percentage (%) Discount (-) or Markup (+)” field on the price line on the State-Supplied Price Sheet. A Vendor’s {Bidder's} entry in the “Percentage (%) Discount (-) or Markup (+)” field shall be considered a percentage (%). For example, entry of "50" shall be considered "50%" and that of "0.50" shall be considered "0.50%".

...

A series or a range of discounts/markups or fixed prices (firm dollar amount) on the price line shall not be acceptable and shall result in rejection of the Quote for that price line only.

If a Vendor {Bidder} is offering its pricing at the same pricing listed on the pre-printed catalog/price list, the Vendor {Bidder} should provide 0% in the “Percentage (%) Discount (-) or Markup (+)” field on the State-Supplied Price Sheet.

Step 4 – The Vendor {Bidder} shall enter the brand name in the “Brand Name” field in the State-Supplied Price Sheet.

In its Quote, Applied Analytics submitted two (2) separate State Supplied Price Sheets for ABB Inc. products in response to Price Line #2 “Water Quality Testing Instruments, Equipment and Supplies”. First, Applied Analytics submitted a Quote for the product line identified as “ABB, Inc. P/L 2019 DO, pH Analyzer/Instruments & Supplies”, see screen shot below.

State of New Jersey Department of Treasury, Procurement Bureau 33 West State Street, P.O. Box 230 Trenton, NJ 08625				
STATE-SUPPLIED PRICE SHEET - T0983 Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality Testing and Monitoring - Statewide (Bid Solicitation Number: 21DPP00589)				
Vendor's (Bidder's) Name:		Cash Discount for Expedited Payment (Refer to Bid Solicitation Section 4.4.5.6):		
Price Line Number	Category	Percentage (%) Discount (-) or Markup (+) from the Prices Offered on the Brand's Price List - See Bid Solicitation Section 4.4.5.2 (REQUIRED)	Brand Name - See Bid Solicitation Section 4.4.5.2 (REQUIRED)	Delivery Days After Receipt of Order (ARO) - See Bid Solicitation Section 4.4.5.4
1	Air Quality Testing Instruments, Equipment and Supplies			
2	Water Quality Testing Instruments, Equipment and Supplies	(-2.50%)	ABB Inc. P/L 2019 DO, pH Analyzer/ Instruments & Supplies	30Days
3	For Agency Use Only - For expedited delivery charges, restocking fees or return shipping charges only. Vendors (Bidders) shall not bid on this price line.			

Second, Applied Analytics submitted a Quote for the product line identified as “ABB, Inc. ACQ/ACS LVD P/L 2019 Water & Water Waste”, see screen shot below

State of New Jersey Department of Treasury, Procurement Bureau 33 West State Street, P.O. Box 230 Trenton, NJ 08625				
STATE-SUPPLIED PRICE SHEET - T0983 Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality Testing and Monitoring - Statewide (Bid Solicitation Number: 21DPP00589)				
Vendor's (Bidder's) Name:		Cash Discount for Expedited Payment (Refer to Bid Solicitation Section 4.4.5.6):		
Price Line Number	Category	Percentage (%) Discount (-) or Markup (+) from the Prices Offered on the Brand's Price List - See Bid Solicitation Section 4.4.5.2 (REQUIRED)	Brand Name - See Bid Solicitation Section 4.4.5.2 (REQUIRED)	Delivery Days After Receipt of Order (ARO) - See Bid Solicitation Section 4.4.5.4
1	Air Quality Testing Instruments, Equipment and Supplies			
2	Water Quality Testing Instruments, Equipment and Supplies	(-10.0%)	ABB Inc. ACQ/ACS LVD P/L 2019 Water & Water Waste	30Days
3	For Agency Use Only - For expedited delivery charges, restocking fees or return shipping charges only. Vendors (Bidders) shall not bid on this price line.			

Since both Quotes were for Price Line #2 Water Quality Testing Instruments, Equipment and Supplies, and both Quotes are for ABB Inc. products, the Procurement Bureau determined that Applied Analytics provided “a series or range of discounts” for the same brand; and therefore, the Quote submitted by Applied Analytics was deemed non-responsive pursuant to Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions*.

In its protest Applied Analytics explains that it represents two (2) of ABB's product divisions.

- 1) ABB Instrumentation located in Warminster, PA;
- 2) ABB Low Voltage Division located in New Berlin, WI.

While these entities have a common parent company, they are two distinct divisions with separate product catalogs and pricing for different product lines.²

In determining whether ABB's submission violated the terms of the Bid Solicitation, it is important to understand the intent of the language and the reason that "a series or range of discounts" was prohibited. If a Vendor {Bidder} submits a range of discounts/markups on a price line, a Using Agency will not know what price or discounts/markups will apply at the time of purchase. The purpose of the language is to ensure that all Using Agencies are aware of and receive the same discount/mark-up for the same product. Here however, Applied Analytics did not submit a range of discounts/markups on a price line or applied to a product catalog/price list. Rather, with respect to the products manufactured by ABB, Inc. Applied Analytics submitted a specific discount that applied a specific product line produced by ABB, Inc.

In its submission, in response to price line 2, and as shown in the screen shots above, in accordance with Step 3 of the price sheet instructions, Applied Analytics indicated a "firm, fixed percentage (%) discount or markup from the product catalog/price list, by entering the percentage discount or markup bid in the "Percentage (%) Discount (-) or Markup (+)" where required on the State-supplied price sheet. Further, in accordance with Step 4 of the price sheet instructions, Applied Analytics indicated the brand name of the products proposed as required. Importantly, there is no definition for "brand name" included within the Bid Solicitation.

Applied Analytics provided two separate State-Supplied Price Sheets. Each price sheet represented a specific ABB product line, as such, the discounts proposed for each product line were not the same. With each State-Supplied Price Sheet Applied Analytics provided a separate and distinct brand price list/catalog. With this information, a Using Agency, when making a purchase, is certain as to the price or discounts/markups will apply to a specific product at the time of purchase. As such, the intent of the Bid Solicitation language that prohibits the submission of a series or a range of discounts/markups is not violated.

In light of the findings set forth above, I overturn the Bureau's determination that the submission of two price lists/catalogs for two separate product lines by Applied Analytics was non-responsive to the requirements of the Bid Solicitation. Accordingly, I remand this matter back to the Bureau for review and evaluation and the issuance of an award to Applied Analytics if appropriate.

² This explanation is not in conflict with the Appellate Division's reasoning in *In re of 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.") Applied Analytics did not supplement or alter in any way the material that it had already submitted to the Division with its Quote. Rather, Applied Analytics clarified that the two price lists/catalogs were for two separate product lines.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov. I encourage you to log into **NJSTART** to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD/DK

- c. J. Kerchner
- K. Thomas
- R. Bowen