



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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March 15, 2016

Via Email [boontontire@embarqmail.com] and USPS Regular Mail

Jay Phlegar, President
JDP Automotive d/b/a Boonton Tire & Auto Repair
74 Sparta Avenue
Newton, NJ 07860

Re: Protest of Notice of Intent to Award
RFP 15-X-23841: OEM & Non-OEM Maintenance and Repair Services

Dear Mr. Phlegar:

This letter is in response to your email dated October 2, 2015, to the Hearing Unit of the Division of Purchase and Property (Division) on behalf of JDP Automotive d/b/a Boonton Tire & Auto Repair (JDP). In that letter, JDP protests the September 23, 2015 Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) regarding Solicitation #15-X-23841. In the protest, JDP contends that there are no vendors who are physically located in Sussex County who will be awarded a contract, and this is a concern to the State's using agencies located in Sussex County. JDP requests that the Division review the same and consider adding it to list of vendors for Sussex County.

In consideration of this protest, I have reviewed the record of this procurement, including the Request for Proposals (RFP), the proposals submitted, 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 submitted by JDP.

By way of background, this RFP was issued by the Bureau on behalf of State Agencies¹ to solicit proposals for OEM and Non-OEM Maintenance and Repair Services for Light/Medium Duty Vehicles, 15,000 lb. GVWR or less. It is the intent of the Bureau to award contracts to those responsible bidders, whose proposals, conforming to the RFP are most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*.) Contract awards will be made on a regional basis with each of the State's 21 counties being defined as a region.² (RFP § 3.2 *Regional Jurisdiction*.) Bidders were

¹ The Department of the Treasury – Bureau of Transportation Services (Motor Pool) is the primary using agency for this contract. Motor Pool is responsible for the assignment, use, fueling, maintenance and repair of the State's vehicular fleet. While individual State using agencies have the option of performing maintenance and repair services using the contract vendors; the normal practice of the State using agencies is to utilize the services of the Motor Pool. Motor Pool will make a determination whether the maintenance/repair can be performed in house or whether a contract vendor will be utilized.

² Under the previous contract Solicitation #10-X-20973 awards were made on regional basis with the regions defined as follows: North (Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union and Warren);

permitted to submit a proposal to service one, multiple or all regions. (RFP § 4.4.7.4) Price lines 1 through 57 sought maintenance and repair services to be provided by an Original Equipment Manufacturer (OEM) routinely utilizing OEM parts in the work performed. Price lines 58 through 71 sought maintenance and repair services by non-OEM dealers routinely utilizing non-OEM parts. For price lines 1 through 71, the State intends to award up to ten contracts for each OEM and each Non-OEM price line for each region. (RFP § 3.1.3)

In response to the RFP, JDP submitted a proposal for price lines 58, 59, 60, 61, 69, 70 and 71 to provide Non-OEM services. For each of these lines, JDP proposed an hourly price of \$76.00 per hour. JDP's proposal offered services for Regions 4, 6 and 8 representing Morris, Sussex and Warren counties respectively. After conducting an initial review of the proposals submitted, the Bureau opted to conduct a round of negotiations with the bidders pursuant to RFP Section 6.7, which states in pertinent part:

After evaluating proposals, the Division may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost.

...

Negotiations will be conducted only in those circumstances where they are deemed by the Division or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the bidder is advised to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.

[RFP § 6.7 *Negotiation and Best and Final Offer (BAFO).*]

Accordingly, on May 11, 2015, the Bureau wrote to JDP stating:

In accordance with Section 6.7 of the RFP (Negotiation and Best and Final Offer – BAFO), your firm is being notified in an effort to significantly lower the proposal pricing provided in your firm's subject proposal. The State is looking to maximize its ability to get the best value, based on the requirements and evaluation criteria set forth in the RFP.

Note: Any failure to reduce the current pricing may significantly reduce the likelihood that an award will be made.

As such, please provide us with your firm's best and final proposal pricing.

Central (Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset); South (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem). Additionally, due to issues experienced by the Motor Pool in using the prior contract, this RFP was restructured. The prior contract was task driven which required a using agency to use different contractors for repairs depending on the services sought. For example an agency would have to deliver a vehicle to one vendor for an oil change, another for windshield wiper repair, and a different vendor for a transmission repair. This RFP was restructured to cover a range of OEM and Non-OEM maintenance and repair services which would be performed by a single vendor at the hourly rate proposed. The current RFP also increased the number of contract awards.

Please respond through e-mail or fax (609) 292-5170 as soon as possible, but no later than close of business, May 14, 2015. If no response is received by the due date, the State will consider your firm's original proposal pricing as your best and final offer.

JDP did not respond to the Bureau's request; therefore its proposal was evaluated based upon its original proposal pricing of \$76.00 per hour.

On June 10, 2015, the Bureau wrote to JDP requesting that it submit a Bidder's Certification for Non-OEM Maintenance repairs:

In accordance with Section 4.4.3.2.2 of the Request for Proposal (RFP), your firm is being contacted in an effort to confirm capability of servicing each of the non-OEM categories bid under the subject RFP. RFP Section 3.1.7 requires that bidders must be licensed to operate and perform the maintenance and repair services specified in the RFP and must possess all tools, equipment and personnel to satisfactorily provide such services.

JDP's June 12, 2015, certification revealed that JDP was not licensed to perform maintenance and/or repair services on any Non-OEM brand of gauges (price line 70) or seats (price line 71).

On September 23, 2015, the Bureau issued the NOI. Based upon its proposal pricing, JDP was not in contention for, and was not recommended for a contract award for price lines 58, 59, 60, 61, or 69. For price lines 70 and 71, JDP was not eligible for a contract award because its Bidder's Certification revealed that it was unable to provide the services requested in those price lines.

Subsequent to the issuance of the NOI, the Bureau received correspondence from the New Jersey State Park Police – District 3 Headquarters, the New Jersey State Park Service – Northern Region Office and the Newton Police Department regarding the outstanding service provided by JDP under the prior contract. In each letter, the writer expressed that JDP had contacted the government entity and relayed that JDP was not listed as an intended awardee on the September 23, 2015 NOI and that no company physically located within Sussex County was listed as an intended awardee on the NOI. The Bureau responded to each of the government entities stating:

JDP Automotive D/B/A/ Boonton Tire (JDP) met the requirements for the non-OEM categories, but was not in contention for an award due to ten bids already having been awarded for each region based on price. JDP was not eligible for an award for price line items 70 and 71 because JDP indicated in its bidders certification that it could not service the price line items/categories bid, thereby making its proposal for price line items 70 and 71 non-responsive. Please note that a bidder was not required to maintain a repair facility in the county or counties it bid one in order to be considered a responsive bidder. Awards for each region were made in accordance with RFP Section 3.2.1, which provides: "Bidders must be able to service all State agency locations and counties, if extending to cooperative purchasing members, within the region."

On October 2, 2015, JDP submitted a protest letter to the Division stating that it was concerned that there were no contracts awarded to vendors physically located in Sussex County and that vendors who were awarded contracts to serve Sussex County are located further away which presents a problem for using agencies. Additionally, JDP offered to reduce its pricing to \$72.00 per hour in an effort to accommodate concerns of the using agencies in Sussex County.

First, this RFP did not require that a vendor be physically located in the county where the service will be provided. Rather, the RFP requires that “bidders must be able to service all State agency locations and counties, if extending to cooperative purchasing members, within the region.” (RFP § 3.2.1)³ Additionally, under the current solicitation, a using agency can use a contractor located in an adjacent region. (RFP § 3.2.3) Prior to the issuance of the NOI, the Bureau contacted the Department of the Treasury – Bureau of Transportation, the primary using agency under this contract; the Bureau of Transportation did not express any concerns regarding the proximity of the intended awardees to the various using agencies. In addition, based upon the Hearing Unit’s independent review, it has been determined with respect to the price lines for which JDP submitted a proposal that there is at least one intended awardee that has a location in Sussex County. I also note here that the Town of Newton has its own procurement authority to solicit a vendor for maintenance and repair services.

Second, in its protest JDP states that it is willing to lower its price to \$72.00 per hour, the price that it has charged to using agencies over the past 6 years. As noted above, JDP, along with all other bidders was afforded an opportunity to lower its proposal pricing through the BAFO process. (RFP § 6.7 *Negotiation and Best and Final Offer.*) JDP did not respond to the Bureau’s BAFO request; as such, its proposal was evaluated based upon its original proposal pricing which did not put it in contention for a contract award.

Permitting JDP to reduce its price after the issuance of the NOI would un-level the playing field by giving JDP an advantage not afforded to other vendors; and would be contrary to the Appellate Division’s reasoning in In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, where the court held that “[i]n clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. 279 N.J. Super. 566, 594 (App. Div. 1995). 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.” On-Line Games, supra, 279 N.J. Super. at 597. Permitting JDP to change its proposal by reducing its pricing after the issuance of the NOI and public access to the competitors’ pricing would be contrary to applicable law.

The Hearing Unit’s independent review of the record reveals that for price lines 58, 59, 60, 61 and 69 JDP’s proposal price did not place it in the competitive range of bidders among the ten (10) proposals that conformed to the RFP requirements and offered the best price to the State for regions 4, 6, or 8.⁴

With respect to price lines 70 and 71, JDP’s Bidder’s Certification indicated that it could not service the categories for price lines 70 and 71. (RFP § 3.1.7 and § 4.4.3.2.2) JDP’s proposal is therefore non-responsive for these price lines.

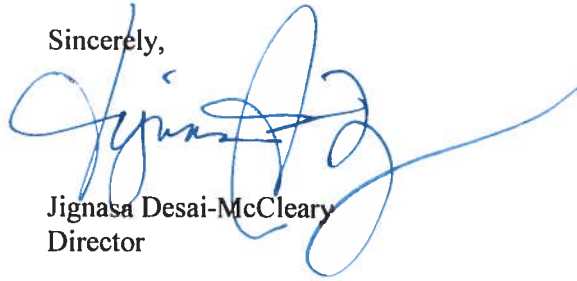
In light of the foregoing, I find that JDP’s pricing was not in the competitive range for price lines 58-61 and 69 and that JDP’s proposal was non-responsive for price lines 70 and 71. I therefore sustain the Bureau’s NOI. This is my final agency decision with respect to the protest submitted by JDP.

³ This differs from the requirements of the prior solicitation 10-X-20973, in which bidders were required to be proximately located in the region (North, Central or South) to be served. (RFP 10-X-20973 § 3.1.2) JDP had a contract under the Solicitation #10-X-20973 to provide OEM and Non-OEM maintenance and repair. This contract expired on July 29, 2015.

⁴ If JDP has submitted a response to the Bureau’s BAFO request – timely reducing its proposal price to \$72.00 per hour – it would not have been in contention for a contract award for price lines 58, 59, 60 and 61. However, for price line 69, if JDP had submitted a response to the Bureau’s BAFO request – timely reducing its proposal price to \$72.00 per hour – it would have been in contention for a contract award for that price line.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with *NJ START* at www.njstart.gov, the State of New Jersey's new eProcurement system. In the future, I recommend that JDP take care to respond to the State's requests as taxpayer savings are an important factor in the public procurement process.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: P. Michaels
K. Thomas
S. Ghorbani