



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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May 22, 2017

Via Electronic Mail [jna@nycap.rr.com] and USPS Regular Mail

Jamie Northrop
Clarus Glassboards, LLC
8715 Harmon Road
Fort Worth, Texas 76117

Re: Protest of Notice of Proposal Rejection
Solicitation #17DPP00111: T0114 Library and School Supplies

Dear Mr. Northrop:

This letter is in response to your email of May 16, 2017, on behalf of Clarus Glassboards, LLC (hereinafter "Clarus") which was received by the Hearing Unit of the Division of Purchase and Property (hereinafter "Division"). In that letter, Clarus protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Solicitation #17DPP00111: T0114 Library and School Supplies. The record of this procurement reveals that Clarus' Quote {Proposal} (hereinafter "Proposal") was rejected because Clarus submitted a blank *Offer and Acceptance Page*.

In consideration of Clarus' protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP"), Clarus' Proposal, 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.

By way of background, on March 3, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the above referenced RFP on behalf of State Using Agencies and Cooperative Purchasing Partners, to solicit Proposals for library and school supplies. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award a Master Blanket Purchase Order (Blanket P.O.) {Contract} (hereinafter "Contract") to each responsive Vendor {Bidder} who submits a Proposal that meets the category definition and requirements set forth in RFP § 3.1 *Library & School Supplies*. *Ibid.* Specifically, the RFP sought the following five (5) categories of goods - Category 1: Arts and Crafts Equipment/Supplies; Category 2: Manual/Electronic Boards, Bulletin Boards & Chalkboards; Category 3: Teaching Aids, All Grades; Category 4: School Audio & Visual Equipment & Supplies; and, Category 5: Library Supplies. RFP § 3.1 *Library & School Supplies*.

On April 25, 2017, the Proposal Review Unit opened the Proposals received by the submission deadline of 2:00 p.m. After conducting an initial review of the Proposals submitted, the Proposal Review

Unit found that Clarus' Proposal included a blank *Offer and Acceptance Page*. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection.

On May 16, 2015, Clarus wrote to the Division stating:

Clarus Glassboards recently received a Notice of Proposal Rejection Letter in response to the Quote submitted online in response to Solicitation T0114 – Library and Schools Supplies and is requesting a review by the Division Hearing Unit.

The basis for rejection was an unsigned Offer and Acceptance Letter. A blank template version was mistakenly uploaded in place of the signed original document that we had prepared.

This was a completely unintended administrative error in uploading the incorrect file into the NJ Quote system on my part. We had completed and signed the Offer and Acceptance document (copy attached) which was created on April 17th in advance of the April 24th NJStart submittal. While I was completing the upload I inadvertently selected the work file version instead of the signature copy version of the document. I accept complete responsibility for this clerical oversight.

With the protest, Clarus submitted the completed and signed *Offer and Acceptance Page*.

The subject solicitation was comprised of the RFP and other documents, including the *Offer and Acceptance Page* which was specifically addressed in RFP § 4.4.1.1 *Offer and Acceptance {Signatory} Page* and which states in pertinent part:

4.4.1.1 OFFER AND ACCEPTANCE {SIGNATORY} PAGE

The Vendor {Bidder} shall complete, including signature of an authorized representative of the Vendor {Bidder}, and submit the Offer and Acceptance Page {Signatory Page} accompanying this Bid Solicitation {RFP} (whether submitted through NJSTART or as a hard copy). If the Vendor {Bidder} is a limited partnership, the Offer and Acceptance Page {Signatory Page} must be signed by a general partner. All information requested must be submitted. If the Vendor {Bidder} is a joint venture, the Offer and Acceptance Page {Signatory Page} must be signed by a principal of each party to the joint venture. **Failure to comply will result in rejection of the Quote {Proposal}.**

[*Emphasis added.*]

Furthermore, as a courtesy to all Vendors {Bidders}, the Division provided a Checklist as an accompaniment to the RFP. This Checklist is a resource showing, among other things, forms required to be submitted with the Vendor's {Bidder's} Proposal. The relevant portion of the Checklist is captured below. As indicated on the Checklist, among the forms required to be submitted with the Vendor's {Bidder's} Proposal is the *Offer and Acceptance Page*.

**New Jersey Department of the Treasury
 Division of Purchase and Property**

NJSTART PROCUREMENT PROGRAM CHECKLIST

Solicitation (RFP) Number: **17DPP00111** - Solicitation (RFP) Title: **T0114 - Library & School Supplies**

This checklist was created as a guide to assist Vendors (Bidders) in preparing a complete and responsive Quote (Proposal) as part of the NJSTART Procurement Program. It is only advisory in nature.

It is the Vendor's (Bidder's) responsibility to ensure that all requirements of the Bid Solicitation (RFP) have been met.

Forms with an **NJSTART** icon can be accessed through the Maintain General Information section of the Vendor Profile. Forms that have a **PCP** icon next to them can be accessed on the Division website or by clicking on the icon.

FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BY SECTION 4.4.1 THAT MUST BE SUBMITTED WITH THE VENDOR (BIDDER) QUOTE (PROPOSAL)		
Offer and Acceptance - MUST BE PHYSICALLY OR ELECTRONICALLY SIGNED AND COMPLETED. SEE RFP SECTIONS 1.3.4 AND 4.4.1.1		
Disclosure of Investment Activities in Iran - Full Version - SEE SECTION 4.4.1.2.2		
Disclosure of Investment Activities in Iran - Use with completed NJSTART Category ONLY - SEE SECTION 4.4.1.2.2		
Ownership Disclosure - Full Version - SEE SECTION 4.4.1.2.1		
Ownership Disclosure - Use with completed NJSTART Category ONLY - SEE SECTION 4.4.1.2.1		

Pursuant to the Division's governing regulations, a Vendor's {Bidder's} Proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." N.J.A.C. 17:12-2.2. As set forth in RFP § 4.4.1.1 and the Checklist, the submission of a completed and signed *Offer and Acceptance Page* with the Vendor's {Bidder's} Proposal was required. The *Offer and Acceptance Page* also notified the Vendor {Bidder} that the form must be submitted with the Proposal.

In reviewing the record of this procurement, the Hearing Unit confirmed that the *Offer and Acceptance Page* was available for download and submission. Here however, while Clarus uploaded an *Offer and Acceptance Page* with its Proposal, the document, as shown on the figure below, was not completed or signed. Clarus admits the same, noting that it was a clerical error in attaching the file.

OFFER AND ACCEPTANCE

State of New Jersey
 Department of the Treasury
 Division of Purchase and Property
 33 West State Street, P.O. Box 230
 Trenton, New Jersey 08625-0230

Bid Solicitation RFP #: _____
 Bid Solicitation RFP Title: _____
 Blanket P.O. (Contract) Title: See Section 5.2 of the Bid Solicitation (RFP) Down to Cooperative Purchasing

OFFER To be completed by the Vendor (Bidder).

TO THE STATE OF NEW JERSEY:
 The Bidder (Bidder) hereby offers and agrees to furnish the goods, products, or services in compliance with all terms with a Master Blanket Purchase Order (Blanket P.O.) Contract as defined in Section 2.3 of the Bid Solicitation (Request for Proposal) (RFP).

Vendor (Bidder): _____	Title: _____
Address: _____	E-Mail Address: _____
City, State, ZIP: _____	Phone Number: _____
Authorized Signature: _____ <small>(Print Name and Title)</small>	Fax Number: _____
Printed Name: _____	FEIN: _____

By signing and submitting this Offer, the Vendor (Bidder) certifies and confirms that:

- Neither the Vendor (Bidder), nor its representatives, agents or lobbyists have initiated any inappropriate contact with any Executive Branch employee during the procurement to attempt to affect the bidding process and shall not do so after submission of its Quote (Proposal).
- The Vendor (Bidder) has read, understands, and agrees to all terms, conditions, and specifications set forth in the Bid Solicitation (RFP), including but not limited to the acceptance of the State of New Jersey Standard Terms and Conditions, the provisions set forth in Section 4.4.1.1 (MacBride Principles Certification), Section 4.4.1.2 (No Subcontractor Certification), Section 4.4.1.3 (Non-Collusion), and Section 4.4.1.4 (New Jersey Business Ethics Guide Certification).
- The Vendor's (Bidder's) failure to meet any terms and conditions of the Blanket P.O. (Contract) as defined in the Bid Solicitation (RFP) shall constitute a breach and may result in suspension or debarment from further State bidding.
- A defaulting Vendor (Contractor) may also be liable, at the option of the State, for the difference between the Blanket P.O. (Contract) price and the price bid by an alternate vendor of the goods or services in addition to other remedies available, and
- By signing and submitting this Offer, the Vendor (Bidder) consents to receipt of any and all documents related to this Bid Solicitation (RFP) and the resulting Blanket P.O. (Contract) by electronic medium or facsimile.

THIS FORM MUST BE SIGNED, COMPLETED AND INCLUDED WITH THE VENDOR'S (BIDDER'S) QUOTE (PROPOSAL).

The **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Proposal without all required forms and documentation attached or without the documents being fully completed as mandated by the specifications. The responsibility for the contents of the Proposal, forms, or submittals necessarily and appropriately rests solely with the Vendor {Bidder}. Here, unfortunately, Clarus submitted its Proposal without the *Offer and Acceptance Page* being completed and signed as required.

Notwithstanding Clarus' interest in competing for this procurement, to allow a Vendor {Bidder} who did not appropriately complete, sign and submit all of the required forms with its Proposal, as required by the RFP, to be eligible to participate in the procurement process would un-level the Vendor's {Bidder's} playing field. The deficiency at issue cannot be remedied after the Proposal submission deadline as acceptance of Clarus' Proposal under these circumstances would be contrary to the provisions of the governing statute and provide Clarus with disclamation options not available to other Vendors {Bidders}. 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 contract. This is my final agency decision on this matter.

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 Proposal.

Thank you for your interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
J. Karamali
A. Nelson
D. Rodriguez