



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 19, 2017

Via Electronic Mail [lcofer@mansfieldoil.com] and USPS Regular Mail

Michael Mansfield, Jr., Director of Government
Mansfield Oil Company, Inc.
1025 Airport Parkway, SW
Gainesville, GA 30501

Re: Protest of Notice of Proposal Rejection
Bid Solicitation #17DPP00140: T0077 Number 2 Heating Fuel Oil

Dear Mr. Mansfield:

This letter is in response to your correspondence of September 15, 2017, on behalf of Mansfield Oil Company, Inc. (hereinafter "Mansfield Oil") to the Division of Purchase and Property's (hereinafter "Division") Hearing Unit. In that correspondence, Mansfield Oil protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for the above referenced solicitation. The record of this procurement reveals that Mansfield Oil's Quote {Proposal} (hereinafter "Proposal") was rejected for failing to submit the required pricing information with its Proposal.

In consideration of Mansfield Oil's protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP") #17DPP00140: T0077 Number 2 Heating Fuel Oil, Mansfield Oil's 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 June 1, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the RFP on behalf of State Using Agencies, to solicit Proposals for Number 2 Heating Fuel Oil. RFP § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Master Blanket Purchase Orders (Blanket P.O.s) {Contracts} (hereinafter "Contracts") to those responsible Vendors {Bidders} (hereinafter "Bidders"), whose Proposals, conforming to the RFP, are most advantageous to the State, price, and other factors considered. Ibid. The State intends to award up to two (2) Contracts (one primary and one secondary) for each tank gallon size range, in each county. Ibid.

On July 14, 2017, the Proposal Review Unit opened 15 Proposals received by the submission deadline of 2:00 pm eastern time. A review of the Proposal submitted by Mansfield Oil reveals that Mansfield Oil did not submit a price sheet with the Proposal. Therefore, the Proposal Review Unit issued a Notice of Proposal Rejection.

The Division’s administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Proposal to be accepted. The Division’s governing regulations provide in relevant part: “[i]n order to be eligible for consideration for award of contract, the bidder’s proposal shall ... [b]e submitted on or before the due date and time and at the place specified in the RFP.” N.J.A.C. 17:12-2.2(a), *emphasis added*. If the requirements of N.J.A.C. 17:12-2.2 are not met, a Proposal must be rejected. These regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State’s bidding process.

With the above principals in mind, the RFP cautions Bidders regarding the need to ensure that all required forms, including the price sheet/schedule are properly submitted.

RFP § 4.4 QUOTE {PROPOSAL} CONTENT

The Quote {Proposal} should contain the State supplied price sheet/schedule(s) and all forms/documents required by the Bid Solicitation {RFP}. The Vendor {Bidder} is cautioned to carefully read the Bid Solicitation {RFP} to ensure that all required forms are submitted with the Vendor’s {Bidder’s} Quote {Proposal}. **NOTE: Failure to submit required forms/documents may result in the Vendor’s {Bidder’s} Quote {Proposal} being deemed non-responsive.**

A Vendor {Bidder} submitting a Quote {Proposal} through **NJSTART** must complete its Price Schedule as an attachment using the State-supplied price sheet/schedule(s) accompanying this Bid Solicitation {RFP} and located on the “Attachments” Tab (See Section 4.4.5 of this Bid Solicitation {RFP}).

With respect to the Contract pricing, RFP § 3.4.1 *Index Price for #2 Heating Fuel Oil* states:

The #2 heating fuel oil prices posted in the Oil Price Daily on the date of publication plus the up charges or down charges on the Quote {Proposal} price sheets will be used to determine the price per delivered gallon of heating fuel oil for the date of the delivery. The posted prices are the averages of the low and high end cost (Newark, NJ) of No. 2 Oil.

Accordingly, RFP § 4.4.5 *Price Sheet/Schedule* requires that a Bidder “submit its pricing using the State-supplied Price Sheet accompanying this Bid Solicitation {RFP} and located on the “Attachments” Tab.” Specifically, as shown on the excerpted price sheet/schedule below, Bidders were required to submit an “up charge” or a “down charge” per gallon to the Newark Oil Daily Price for Number 2 Heating Oil. RFP § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*.

LINE NO.	COMMODITIES DESCRIPTION	NDP CLASS	CLASS ITEM	UNIT PRICE FOR UP CHARGE OR DOWN CHARGE PER GALLON				DELIVERY DAYS AND (Ordinary Delivery not to exceed five (5) days)
				1 - 2,499 Gallon Tank	2,500 - 4,999 Gallon Tank	5,000 - 9,999 Gallon Tank	10,000 and above Gallon Tank	
1	Atlantic County #2 Heating Fuel Oil	405	12					
2	Bergen County #2 Heating Fuel Oil	405	12					

The *NJSTART* system does not prevent a 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 Bidder. Unfortunately, Mansfield Oil submitted its Proposal without the price sheet/schedule attached. The question to be answered is whether Mansfield Oil is able to submit the missing information post-Proposal opening within the confines of 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, 279 N.J. Super. 566 (App. Div. 1995). There, the court held that:

[t]he RFP specifically approved of bidders' clarifying or elaborating in their proposals in post-opening proceedings but prohibited supplementation, change or correction. 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.

[Id. at 597.]

A review of the documents uploaded by Mansfield Oil to the Division's *NJSTART* eProcurement website, reveals that Mansfield Oil did not upload the price sheet/schedule or any documents evidencing its "up charge" or a "down charge" per gallon to the Newark Oil Daily Price as required by the RFP. Rather, with respect to pricing, Mansfield Oil included a letter with its Proposal which stated in part "the prices quoted are plus or minus the Oil Price Daily Current Day Average of the low and high for Newark, NJ." This generic statement does not satisfy the RFP requirement that a bidder submit a specific "up charge" or "down charge" in U.S. dollars. RFP § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. No other pricing documents were included; and therefore, Mansfield Oil did not "quote" or submit any prices within its proposal. Having failed to attach any document establishing its Proposal pricing, specifically the exact "up charge" or "down charge" in U.S. dollars to be applied to the Newark Oil Daily Price for Number 2 Heating Oil, Mansfield Oil's Proposal is non-responsive. Ibid.

The Bureau would be unable to allow Mansfield Oil to submit the price sheet/schedule after the Proposal submission deadline as doing so would put Mansfield Oil in a position of advantage over other Bidders, and would unlevel the Bidder's playing field, as the State received responsive Proposals in which all necessary information, documents and pricing was provided in the Proposal as required. To do so would result in an impermissible change to the submitted Proposal contrary to the Appellate Division's reasoning in On-Line Games.

This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort put forth by Mansfield Oil in preparing and submitting the Proposal. In the future, Mansfield Oil should be cognizant of the mandatory RFP requirements for the submission of documents and forms, including the price sheet/schedule, and take care to ensure that all mandatory Proposal submission requirements are met.¹

¹ With respect to Mansfield Oil's request to review the submitted documents, Mansfield Oil can review the submitted proposal documents by logging into *NJSTART* and following the instructions in the Division's Quick Reference Guide entitled "Submit a Quote" which is available on the Division's website <http://www.state.nj.us/treasury/purchase/njstart/vendor.shtml>. At this time, Mansfield Oil is unable to review the RFP documents which were uploaded to *NJSTART* by the Bureau. However, an excerpt of the missing price sheet/schedule is shown above on page 2 of this final agency decision.

With respect to Mansfield Oil's question regarding reviewing the submitted documents, you can review your submitted proposal by logging into **NJSTART** and following the instruction in the Division's Quick Reference Guide entitled "Submit a Quote" available on the Division's website <http://www.state.nj.us/treasury/purchase/njstart/vendor.shtml>. At this time, Mansfield Oil is unable to review the RFP documents which were uploaded to **NJSTART** by the Bureau. However, an excerpt of the missing price sheet/schedule is shown above.

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

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
G. Gerstenacker
D. Holt
A. Nelson
D. Rodriguez