



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ROBERT A. ROMANO
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

Telephone (609) 292-4886 / Facsimile (609) 984-2575

November 5, 2015

Via Electronic [edavis@trastarusa.com] and USPS Regular Mail

Elaine Davis, Administrative Assistant
TraStar, Inc.
860 N. Dorothy Dr., Suite 600
Richardson, TX 75801

Re: Protest of Notice of Intent to Award
RFP #15-X-23605: Traffic Signals, Poles, Controls, Electrical Equipment, etc.

Dear Ms. Davis:

This letter is in response to your protest letter dated May 26, 2015, to the Division of Purchase and Property (Division) on behalf of TraStar, Inc. (TraStar). In that letter, TraStar protests the May 18, 2015, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) regarding Solicitation #15-X-23605. In the protest, TraStar contends that the products proposed for line items 00088-00091 conform to the Request for Proposal (RFP) requirements; and therefore, it should have been awarded the contract for these line items. TraStar requests that the Division review the same.

By way of background, the RFP was issued by the Bureau on behalf of the New Jersey Department of Transportation (DOT) to solicit proposals for Traffic Signals, Poles, Controls, Electrical Equipment, LED Signal Indications and Warning Devices. It is the intent of the Bureau to "award contracts to those responsible bidders whose proposals, conforming to this RFP, are most advantageous to the State, price and other factors considered." (RFP § 1.1 *Purpose and Intent*.) This RFP was a procurement of those products currently provided under State contract T-1529. (RFP § 1.2 *Background*.)

On December 10, 2014, 11 proposals received by the submission deadline were opened by the Proposal Review Unit. TraStar submitted a proposal for seven of the 147 items sought in the RFP including price lines 00088-00091.¹ After completing its review of the proposals, the Bureau, in consultation with DOT, determined that TraStar was the lowest responsive bidder as to line item 00133. However, with respect to line items 00088-00091², while TraStar was the apparent low bidder, TraStar's proposal was deemed non-responsive as the "proposed material for all the items within the group has a black exterior. This does not meet NJ Specification BME-LED-NTBLO dated 5/24/10 which states in section 2-3, page 35 of the RFP two coats of yellow standard color No. 12538 baking enamel shall be

¹ TraStar submitted a proposal for the following line items: 00086, 00088, 00089, 00090, 00091, 00132, and 00133.

² RFP § 4.4.7 *Method of Bidding or Price Sheet Instruction, etc.* requires that price line items 00088 through 00091 be awarded as a group to a single vendor.

used for exterior surfaces.” (DOT’s April 20, 2015 Memorandum; Bureau’s May 13, 2015 Recommendation Report.)

On May 18, 2015, the Bureau issued its NOI indicating that a contract would be awarded to TraStar for line item 00133. However, with respect to line items 00088 – 00091, a contract would be awarded to Intelligent Traffic Supply Products LLC (Intelligent). In response to the Bureau’s NOI, on May 26, 2015, TraStar wrote to the Division stating:

[the Bureau’s] letter stated that these items, 88-91, were not being awarded to TraStar because our proposed material had a black exterior, whereas your specifications called for yellow as the standard color.

The cut sheet sent in response to [the] letter request of 1/23/15 pictured black housing, which represents one of the most commonly-ordered colors. However, we routinely use special paint colors whenever a bid or customer requires it, as YELLOW in the case of the State of New Jersey.

The cut sheet was not restrictive in any way regarding the signs’ exterior, which does not affect the price, and we were quite aware when we did submit our bid submittal that any blank-out signs to be supplied to the State of New Jersey would be YELLOW, not black.

[TraStar’s May 26, 2015 letter.]

In consideration of TraStar’s protest, I have reviewed the record of this procurement, including the RFP, TraStar’s and Intelligent’s proposals, DOT’s April 20, 2015 Memorandum and the Bureau’s Recommendation Report, and 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 TraStar.

The RFP requires that “[a]ll material must meet specification requirements and any other specification sketches, drawings and/or manufacturer part numbers referenced in this RFP. Exceptions shall not be permitted.” (RFP § 3.4 *General Requirements*.) With respect to price lines 00088 – 00091, the RFP requires “[t]wo coats of yellow standard color No. 12538 baking enamel shall be used for exterior surfaces.” (RFP § 3.5.7 *Section G Signs and Sign Brackets*; sub-section 2-3, page 35.)

In preparing a proposal, a “bidder must submit its pricing on the State supplied Price Sheet/Schedule and supply any additional pricing information as directed in the RFP Section 4.4.5.” (RFP § 4.4.1.6 *Pricing*.) Section 4.4.5 of the RFP states in pertinent part:

[i]n order for the State to make sound business judgments regarding products and prices offered in response to this RFP, the bidder must supply, with its proposal, the information requested on the RFP’s pricing lines in sufficient detail as to allow the State to determine the firm, fixed proposal pricing and the precise product or service being offered i.e., with no possible misinterpretation of the price or product/service being offered by the bidder. A bidder’s failure to provide, within its proposal, the information deemed by the State to be essential for product identification or price determination will result in rejection of that bidder’s proposal.

[RFP § 4.4.5 *Price Schedule/Sheet*.]

Consistent with the requirements of the RFP, TraStar identified the type of signs proposed by listing the manufacturer, brand and model number on the price sheet. (RFP § 4.4.5 *Price Schedule/Sheet*.)

The RFP does permit the Bureau to request additional information or documentation which may be needed to make a determination regarding a product proposed:

In order to support the State's decision-making process, the State may require a bidder to provide additional information or documentation that has been deemed not to be material to product identification or price determination in which case, the bidder shall, within the time limit set forth in the written request, comply with said request.

[RFP § 4.4.5 *Price Schedule/Sheet*.]

Such a request is consistent with 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), where 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 (emphasis added).]

Accordingly, on January 23, 2015, the Bureau wrote to TraStar requesting that TraStar submit "catalog cuts or submittals providing more information for the following price line items bid by your company: Price Lines 00086, 00089, 00090, 00091, and 00133." On February 2, 2015, TraStar responded stating:

The items you requested cut sheets on are special order LED blank-out signs, which aren't manufactured until we receive a PO. As a result, we are unable to send you cut sheets, which require pictures of signs yet to be built. We have made the Red Signal Ahead, No Left Turn, No Right Turn, and No Turn on Red signs before, but cut sheets were not requested on any of those occasions, so we don't have any pictures to make new cut sheets with.

In a separate email, I will forward cut sheets of some of our previous signs so you'll have a general idea of our workmanship.

[TraStar's February 4, 2015 email.]

TraStar did provide a cut sheet showing its JMX Series LED blank-out Signs and Lane Control Signs, the same model signs it proposed in its response to the RFP. In its February 4, 2015 email, TraStar explained that the requested items are special order and not manufactured until a PO is received; therefore it could not provide exact cut sheets. Instead, in an effort to demonstrate its workmanship, TraStar provided a cut sheet of other similar JMX Series LED blank-out Signs, in black, rather than in yellow.³

³ In its May 26, 2015 protest letter, TraStar confirmed "[t]he cut sheet was not restrictive in any way regarding the signs' exterior, which does not affect the price, and we were quite aware when we did

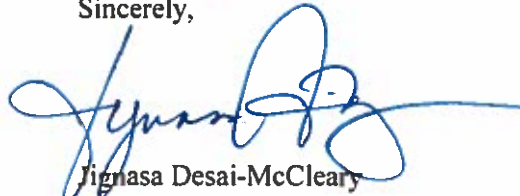
Though the signs are depicted on the cut sheet in black, the Bureau's conclusion that the "proposed material bid for all items within the group has a black exterior" is not supported by the record as TraStar explained in its correspondence that although it provided the cut sheet in black, the black-out signs would be provided in the required yellow. Following TraStar's correspondence regarding what would be provided, if the DOT and Bureau still had questions about the products, further clarification should have been sought from TraStar.

With respect to the proposal submitted by the intended awardee, Intelligent identified the type of signs proposed by listing the manufacturer and model number on the *Price Sheet* as required by the specifications. No other detailed information regarding the products proposed was provided. On January 22, 2015, the Bureau wrote to Intelligent requesting cut sheets for several items.⁴ However, no information was requested as to line items 00088, 00089, 00090 or 00091, and therefore none was provided. As it did with TraStar, in order to verify that the proposed products conform to the RFP requirements, the Bureau should have requested cut sheets for the products proposed by Intelligent regarding line items 00088, 00089, 00090 or 00091. Accordingly, in connection with the review of this lines items, clarification should have been sought from Intelligent regarding the line items proposed.

I note that in connection with this protest, a thorough review of all proposals submitted for line items 00088 – 00091 was conducted by the Division's Hearing Unit. Based upon that review, and as noted above, the Bureau's NOI for price lines 00088 – 00091 is rescinded and the matter returned to the Bureau for further review and consideration. This is my final agency decision with respect to the protest submitted by TraStar, Inc.

Thank you for your interest in doing business with the State of New Jersey. I invite you to take this opportunity to register your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system and encourage you to monitor the Division's website for bidding opportunities.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: D. Reinert
J. Kemery
D. Holt
K. Flynn, President, Intelligent Traffic Supply Products, LLC

submit our bid submittal that any blank-out signs to be supplied to the State of New Jersey would be YELLOW, not black."

⁴ In its January 22, 2015 letter, the Bureau requested that Intelligent "submit catalog cuts or submittals providing more information for the following price line items bid by your company: Price Lines 00001, 00002, 00003, 00005, 00006, 00007, 00008, 00010, 00011, 00078, 00080, 00082, 00083, 00099, 00100, 00132, and 00140."