



State of New Jersey

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May 27, 2016

Via Electronic [vfonti@icdmail.com] and USPS Regular Mail

Vincent Fonti
Industrial Controls Distributors
17 Christopher Way
Eatontown, New Jersey 07724

Re: Protest of Notice of Intent to Award
RFP #: 16-X-24043: Heating, Ventilation and Air Conditioning Repair Parts

Dear Mr. Fonti:

This correspondence is in response to your March 22, 2016 email enclosing a letter of protest dated March 21, 2016 (Protest Letter), and your March 23, 2016 email enclosing a letter indicating authorized distributor status, on behalf of Industrial Controls Distributors (ICD) received by the Division of Purchase and Property's (Division) Hearing Unit. In that Protest Letter, ICD protests the Notice of Intent to Award (NOI) a contract for Solicitation #16-X-24043: Heating, Ventilation and Air Conditioning Repair Parts issued by the Division's Procurement Bureau (Bureau). Specifically, ICD protests the award of price lines 00034, 00035, and 00036 for Honeywell products and price lines 00043, 00044, and 00045 for Johnson Controls products to the intended awardee.¹

By way of background, the Request for Proposal (RFP) was issued by the Bureau on August 14, 2015, on behalf of various State agencies to solicit proposals for repair parts for use in the maintenance of heating, ventilation and air conditioning (HVAC) systems at Using Agencies throughout the State. (RFP § 1.1 *Purpose and Intent*.) This solicitation is a reprocurement of similar products offered under the current contract (T0537). (RFP § 1.2 *Background*.) It is the intent of the State to award contracts per brand, per region 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*.)

The RFP provided that a single award will be made for each brand for each geographic region and that bidder may submit a proposal for one or more regions for counties as listed below:

¹ ICD's protest letter indicates that communications between ICD and the State was lacking, as ICD had requested that its main contact be changed to Vincent Fonti and that this was not done. The Hearing Unit investigated and was advised by the Bureau that the Bureau has no record of a contact change request from Mr. Fonti. The Bureau indicates that emails were delivered to the contact listed by ICD, a Mr. Gutierrez, until a February 24, 2016 email was received from Rebecca Clarke, stating that Mr. Gutierrez had left the company in October 2015, and advising that correspondence should be directed George Govlick.

NORTHERN REGION	CENTRAL REGION	SOUTHERN REGION
Bergen	Burlington	Atlantic
Essex	Hunterdon	Camden
Hudson	Mercer	Cape May
Morris	Middlesex	Cumberland
Passaic	Monmouth	Gloucester
Sussex	Ocean	Salem
Union	Somerset	
Warren		

(RFP § 4.4.7 *Method of Bidding*.) Price lines were created for each brand in each corresponding region. Ibid.

On September 22, 2015, in response to the RFP, the Division's Proposal Review Unit received 10 proposals. Nine of these proposals were deemed responsive to the RFP specifications and were reviewed and evaluated by the Bureau based upon the criteria outlined in RFP § 6.6 *Evaluation Criteria*.

Based upon the Bureau's evaluation of the nine proposals, a NOI was issued to award price lines to seven of the nine responsive Bidders. Unfortunately, ICD and one other bidder were not recommended for award because neither was a low bidder for any of the price lines.

In consideration of ICD's protest, I have reviewed the record of this procurement, along with the relevant statutes, regulations, and case law. This review 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 ICD, which is addressed below.

In its protest of price lines 00034, 00035, and 00036, ICD questions whether the intended awardee, Charles F. Connolly Distribution Company (Connolly) is authorized to sell the complete Honeywell manufacturers price list, if it was submitted, as there are parts on the complete list "that only an Authorized Systems Distributor can sell in the state (sic) of New Jersey." (Protest Letter, pg. 1.) ICD provides what it calls an "excerpt of [its] submitted manufacturer's price list" which is replicated in the table below, and indicates that it includes common Honeywell items that Connolly is not authorize to sell in New Jersey, but which ICD is authorized to sell:

WEB-600E-O/U	WEB-600E Controller with Open License. Requires WEBS-AX release 3.6 or higher
WEB-600E-US-O/U	WEB-600E-US Controller with Open License. Manufactured in the USA. Requires WEBS-AX Release 3.6 or higher
WEB-600E-US/U	WEB-600E-US Controller. Manufactured in the USA. Requires WEBS-AX release 3.6 or higher.
WEB-600E/U	3.6 OR HIGHER

ICD makes a similar argument for price lines 00043, 00044, and 00045 for Johnson Controls parts. Specifically, ICD states that only a Johnson Controls "premiere distributor" can sell the complete manufacturers price list. ICD again provides an excerpt of its "submitted manufacturer's price list" in table format as follow:

LP-FX6011E-1	FX603 W/FX WORKBENCH; THE FX603 IS A SUPERVISORY CLASS CONTROLLER USED TO MONITOR
LP-FX6011E-1G	FX60E W/FX WORKBENCH- USA; THE FX60E IS A MADER (SIC) IN THE USA SUPERVISORY CLASS CONTROLLER

LP-FX6011N-0G	FX60 MADE IN USA; FX60 MADE IN USA
LP-FX6021E-1	FX60E W/FX WORKBENCH; THE FX60E IS A SUPERVISORY CLASS CONTROLLER USED TO MONITOR

ICD asserts that since Connolly is not authorized to bid on the manufacturer's parts listed in the bid proposal as required by RFP § 4.3.2.2 (*Manufacturer's Certification*),² Connolly cannot satisfy the RFP requirements.

In consideration of ICD's protest, the Hearing Unit directed the Bureau to request verification from Connolly that, pursuant to RFP § 4.4.3.2, it was an authorized distributor for both Johnson Controls and Honeywell. In response to this request, Connolly provide letters from both Johnson Controls and Honeywell verifying that Connolly was in good standing and an authorized distributor of each respective brand. Thus contrary to ICD's assertion, Connolly is authorized to sell both Johnson Controls and Honeywell repair parts.

As to ICD's assertion that Connolly is not authorized to sell the specific parts list in the tables included in its letter of protest and reproduced above, I note that the RFP required bidding by brand, rather than by part, and indicated that for "each brand, a price line has been created for each geographic region. . . ." (RFP § 4.4.7 *Method of Bidding*.) Bidders were required to indicate the percentage discount offered from the most current published price list for each price line for which the Bidder was offering a bid. *Ibid.* For each price line, the bidder was also required to include the price list date and/or the price list ID/number. *Ibid.* A review of Connolly's proposal and submitted price sheet reveals that Connolly provided for each price line a current price list and included the ID/number, the price list date, and the required discount, as required by the RFP.

In light of the findings set forth above, I find that Connolly satisfied the RFP requirements. I therefore sustain the NOI. This is my final agency decision with respect to the protest submitted by ICD.

Thank you for your company's interest in doing business with the State of New Jersey. I invite to you to take this opportunity to register your business with *NJSTART* at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Chief Hearing Officer

c: J. Kerchner
G. Gerstenacker
V. Klawitter

² This section also indicates that the "Bidder's signature on the bid proposal certifies that the Bidder is authorized to bid on the brand(s) submitted in the Bidder's bid proposal" and that if requested, the "Bidder must submit the manufacturer's certificate no later than five (5) business days after an oral or written request by the State. Failure to do so will result in the rejection of the bid proposal." (RFP § 4.4.3.2 *Manufacturer's Certification*.)