



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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July 22, 2024

Via Electronic Mail Only to Jay.Salyers@MilesPartnership.com

Jay Salyers, Senior Vice President
Miles Partnership, LLLP
6751 Professional Pkwy, Suite 200
Sarasota, FL 34240

Re: I/M/O Bid Solicitation #23DPP00836 Miles Partnership, LLLP
Protest of Notice of Intent to Award
T3067 – Statewide Advertising and Public Relations Services

Dear Mr. Salyers:

This final agency decision is in response to your letter delivered via electronic mail on behalf of Miles Partnership, LLLP (“Miles”) received by the Division of Purchase and Property’s (Division) Hearing Unit on June 20, 2024 (Protest). In that letter, Miles protests the Procurement Bureau’s (Bureau) June 13, 2024, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #23DPP00836 – T3067 Statewide Advertising and Public Relations Services (Bid Solicitation).

By way of background, on July 18, 2023, the Bureau issued the Bid Solicitation on behalf of State Agencies. The purpose of the Bid Solicitation was to solicit Quotes for advertising, marketing, public relations, community outreach, and related services for the State of New Jersey (State). Bid Solicitation Sec. 1.1, *Purpose and Intent*. Bid Solicitation Section 1.2, *Background*, cautioned Bidders that this Bid Solicitation addressed the State’s current requirements.

In accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on August 2, 2023, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. Representatives from eleven (11) potential bidding entities attended according to the Pre-Quote sign-in sheet.

In accordance with Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders until 2:00 P.M. Eastern Time on August 9, 2023. Four (4) Bid Amendments were issued for this Bid Solicitation, which provided revisions to the Bid Solicitation and responses to questions received from potential Bidders.

| # | DATE | DESCRIPTION |
|---|------------|---|
| 1 | 09/12/2023 | Quote Submission Due Date Extended to October 20, 2023 |
| 2 | 10/12/2023 | Quote Submission Due Date Extended to November 17, 2023 |
| 3 | 11/03/2023 | Quote Submission Due Date Extended to December 5, 2023 |
| 4 | 11/14/2023 | Answers to Questions |

On December 5, 2023, the Division’s Proposal Review Unit (“PRU”) opened thirty-nine (39) Quotes. The Quotes submitted by Arise Communications Inc., Purplegator, MMGY Global LLC, were Automatically Rejected by the PRU pursuant to the provisions of N.J.A.C. 17:12-2.2, and no protests received in response to PRU rejections.

The PRU also issued formal notice and a warning letter to five (5) Bidders that they were not in compliance with Business Registration Certificate requirements. The remaining thirty-six (36) Quotes, listed below, were deemed administratively complete by the Proposal Review Unit and released to the Bureau for further review and evaluation.

| | |
|--|--|
| True North Inc. ("True North") | Oxford Communications ("Oxford") |
| LAZWORLD.COM INC ("Lazworld") | Dana Communications Inc. ("Dana") |
| Miles Partnership, LP ("Miles") | Vision Media Marketing Inc. ("VMM") |
| Integrated Marketing Services Inc. ("IMS") | Positive Solutions, LLC ("PS") |
| EFK Group, LLC ("EFK") | Success Advertising Inc. ("SA") |
| AB&C Philadelphia LLC ("AB&C") | Beyond Media Global LLC ("BMG") |
| Brand Enchanting Media LLC ("BEM") | Magnum Integrated Marketing "MIM") |
| Kivvit, LLC ("Kivvit") | Spitball LLC ("Spitball") |
| Birdsall, Voss & Associates, Inc. ("BVA") | Masterpiece Design |
| Forge Apollo LLC ("FA") | Fuerza Strategy Group ("FSG") |
| Rockefeller Group Development Corp ("RGD") | The Setroc Group, Inc. ("TSG") |
| Direct Development | MWW Group LLC ("MWW") |
| KLR Agency ("KLR") | Impact Consulting Enterprises ("ICE") |
| EST Marketing ("EST") | Princeton Partners, LLC ("Princeton Partners") |
| Violet PR ("Violet") | Marketsmith, Inc. ("Marketsmith") |
| Maple and Monroe | Marketing for Change Co. ("MFC") |
| Angry Apples Marketing, LLC ("AAM") | JL Media, Inc. ("JL Media") |
| Targeted Advertising Group Inc. ("TAG") | Tara Dowdell Group LLC ("TDG") |

As part of the responsiveness review, the Bureau determined that the Quotes submitted by AB&C, IMS, JL Media, and True North, required a Request for Clarification, in accordance with Bid Solicitation Section 8.4, *Clarification of Quote*, for the Bureau to determine whether or not the Quotes were responsive to mandatory material requirements of the Bid Solicitation as outlined on Pages 4 and 5 in the Recommendation Report. For the reasons more fully explained on those pages in the Recommendation Report, the Bureau determined that each Bidder's clarification response sufficiently addressed the matter in question, and that the Bidders met the requirements of the Bid Solicitation.

The Bureau determined that the Quotes submitted by the Bidders in the following chart were non-responsive due to non-compliance with one or more mandatory elements of the Bid Solicitation. Recommendation Report at pgs. 5-9.

| | |
|--|--|
| Beyond Media Global LLC ("BMG") | Oxford Communications ("Oxford") |
| LAZWORLD.COM INC ("Lazworld") | EST Marketing ("EST") |
| Miles Partnership, LP ("Miles") | Vision Media Marketing Inc. ("VMM") |
| Kivvit, LLC ("Kivvit") | Magnum Integrated Marketing "MIM") |
| Princeton Partners, LLC ("Princeton Partners") | MWW Group LLC ("MWW") |
| Marketsmith, Inc. ("Marketsmith") | Rockefeller Group Development Corp ("RGD") |

The Bureau found that the following Quotes met, and complied with, the mandatory requirements of the Bid Solicitation, and remained available to be evaluated and eligible for Contract award:

| | |
|--|---------------------------------------|
| True North Inc. ("True North") | Dana Communications Inc. ("Dana") |
| Integrated Marketing Services Inc. ("IMS") | Positive Solutions, LLC ("PS") |
| EFK Group, LLC ("EFK") | Success Advertising Inc. ("SA") |
| AB&C Philadelphia LLC ("AB&C") | Spitball LLC ("Spitball") |
| Brand Enchanting Media LLC ("BEM") | Masterpiece Design |
| Birdsall, Voss & Associates, Inc. ("BVA") | Fuerza Strategy Group ("FSG") |
| Forge Apollo LLC ("FA") | The Setroc Group, Inc. ("TSG") |
| Direct Development | Impact Consulting Enterprises ("ICE") |
| KLR Agency ("KLR") | Marketing for Change Co. ("MFC") |

| | |
|-------------------------------------|---|
| Violet PR (“Violet”) | JL Media, Inc. (“JL Media”) |
| Maple and Monroe | Tara Dowdell Group LLC (“TDG”) |
| Angry Apples Marketing, LLC (“AAM”) | Targeted Advertising Group Inc. (“TAG”) |

Thereafter, the remaining responsive Quotes were reviewed and evaluated in accordance with Bid Solicitation Section 8.9, *Evaluation Criteria*. These twenty-four (24) Quotes were evaluated in accordance with the evaluation criteria set forth in Bid Solicitation Section 8.9.1, *Technical Evaluation Criteria*, which stated in part:

- A. The Bidder's demonstration in the Quote that the Bidder understands and is able to complete the requirements of the Scope of Work as sought;
- B. The qualifications and experience of the Bidder's personnel; and
- C. The Bidder's documented experience in successfully completing contracts of a similar size and scope in relation to the work required by the Bid Solicitation.

The Scoring Legend for the Technical Evaluation of Quotes was: “5 – Excellent”; “4 – Very Good”; “3 – Good”; “2 – Fair”; and “1 – Minimally Responsive”, and each responsive Bidder received a single score between 1-5 based on the above scoring legend and the Bureau’s evaluation of the Quote based on the above Evaluation Criteria. The evaluation methodology and score sheet were finalized and time-stamped prior to the opening of Quotes. Recommendation Report Pg. 10. Following the evaluation and scoring of the responsive Quotes, Bidders BVA, FA, FSG, and Maple and Monroe were found to be outside the Competitive Range, and were ineligible for further consideration.¹ Recommendation Report Pgs. 25-26.

To evaluate pricing pursuant to Bid Solicitation Section 8.9.2, *Price Evaluation*, Bidders were evaluated and ranked from lowest to highest based upon the three (3) year average of the percentages provided for Price Line 1 Media Placement Mark-Up located on Tab 1, with Price Line 1 also evaluated for reasonableness. The pricing submitted for Price Lines 5 through 29 related to hourly rates would be evaluated to confirm all Bidders submitted reasonable hourly rates.

In accordance with Bid Solicitation Section 8.12, *Best and Final Offer (BAFO)*, the Bureau requested a BAFO from all responsive Bidders determined to be in the Competitive Range. Ten Bidders provided BAFO responses as shown on pages 25 and 26 in the Recommendation Report. Bidders were thereafter ranked from lowest to highest per Section 8.9.2 as follows:

| BIDDER | BAFO – PRICE LINE 1 | PRICING RANK |
|--------------------|---------------------|--------------|
| EFK | 3% | 1 |
| MFC | 3.25% | 2 |
| TAG | 4% | 3 |
| ICE | 5% | 4 |
| KLR | 6% | 5 |
| TSG | 7% | 6 |
| Spitball | 7% | 7 |
| Dana | 7% | 8 |
| PS | 7.67% | 9 |
| JL Media | 8% | 10 |
| SA | 8% | 11 |
| True North | 8% | 12 |
| Violet | 9% | 13 |
| AB&C | 10% | 14 |
| Direct Development | 10% | 15 |
| TDG | 11.67% | 16 |
| IMS | 12% | 17 |

¹ Additionally, Bidders BVA, FA, and FSG were ineligible for award due to the lack of a valid Business Registration Certificate.

| | | |
|--------------------|--------|----|
| Masterpiece Design | 14% | 18 |
| BEM | 15.33% | 19 |
| AAM | 36.3% | 20 |

The Bureau considered all pricing from the Bidders in the Competitive Range to be reasonable and acceptable, with the exception of AAM's Media Placement Mark-Up percentage of 36.3% for Price Line 1, which was determined to be a significant outlier from the other nineteen (19) Bidders in the Competitive Range. As a result, AAM's pricing was deemed to not be acceptable to the State, and AAM's Quote was removed from further consideration of award.

Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on June 13, 2024, the Bureau issued the NOI advising all Bidders that it was the State's intent to award a Contract to the following Bidders:

| Intended Awardee | Intended Awardee |
|------------------------------------|---------------------------------|
| AB&C Philadelphia LLC | Masterpiece Design |
| Brand Enchanting Media LLC | Positive Solutions, LLC |
| Dana Communications Inc. | Spitball LLC |
| EFK Group, LLC | Success Advertising Inc. |
| Impact Consulting Enterprises | Tara Dowdell Group LLC |
| Integrated Marketing Services Inc. | Targeted Advertising Group Inc. |
| JL Media, Inc. | The Setroc Group, Inc. |
| KLR Agency | True North Inc. |
| Marketing for Change Co. | Violet PR |

On June 20, 2024, prior to the close of the protest period, Miles submitted a Protest challenging the Division's determination that the Quote submitted by Miles was non-responsive because Miles "followed the supplied formatting as requested but were disqualified because of it." Miles Protest Pg. 1. Specifically, Miles argues that they "followed the supplied formatting as requested but were disqualified because of it. Therefore, we would like to respectfully request an opportunity to resubmit our form, overwrite your formatting to replace the (" - ") dashes with \$0.00 and have our proposal and Quote evaluated again." Therefore, Miles requests the opportunity to resubmit the State-Supplied Price Sheet "\$0.00" inserted on the relevant price lines, and have its proposal and Quote evaluated and considered for award.

Although Miles has not requested an in-person presentation as permitted by N.J.A.C. 17:12-3.3(e), it should be noted that "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the Evaluation Committee Report, the Bureau's Recommendation Report, the relevant statutes, regulations, case law, and the protest submitted by Miles. The issues raised in the protest were sufficiently clear such that a review of the record of this procurement 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 Miles on the written record, as such an in-person hearing is not warranted. I set forth herein the Division's Final Agency Decision.

DISCUSSION

The New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey's statutory procurement scheme is "to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered

competition.” Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)).

When evaluating Quotes received, the Division is charged with ensuring that the Contract is awarded to that responsible Bidder whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Bid Solicitation Section 1.1 *Purpose and Intent*. A responsive Quote is a Quote that is deemed by the Division and/or evaluation committee to have adequately addressed all material provisions of a Bid Solicitation’s terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3. A Quote that is not complaint or responsive to the material requirements of the Bid Solicitation shall not be eligible for further consideration for award of a Contract and the bidder offering said Quote shall receive notice of the rejection of its Quote. N.J.A.C. 17:12-2.7(c).

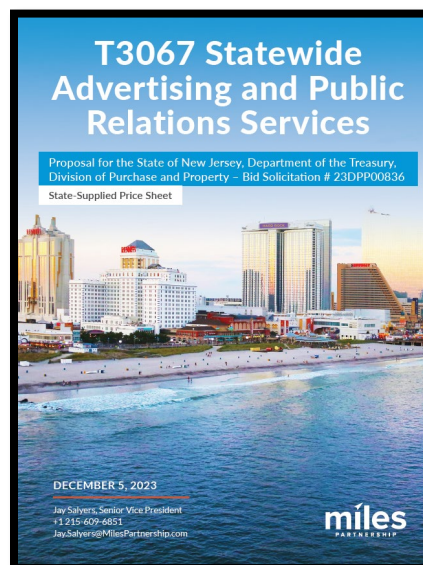
It is firmly established in New Jersey that material deviations may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co., *supra*, 138 N.J. at 315, the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, the court declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity.” In re Protest of Award of On-Line Games Prod. and Operation Servs. Contract, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, *supra*, 127 N.J. Super. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. Super. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” On-Line Games, *supra*, 279 N.J. Super. at 595 (citing River Vale, *supra*, 127 N.J. Super. at 222).

Here Miles’s did not submit the State-Supplied Price Sheet as provided by the Bureau, but instead provided a PDF version of the State-Supplied Price Sheet inserted inside a PDF document with a cover page as follows:



[Miles State-Supplied Price Sheet Cover Page.]

The relevant pages from Miles' State-Supplied Price Sheet PDF are PDF pages 3 (numbered Page 2 of 4) and 5 (numbered Page 4 of 4), which appear as follows:

| Price Schedule Bid Solicitation #23DPP00836 T3067 Statewide Advertising and Public Relations Services | | | | | |
|---|----------------------------------|-----------------|-----------------------|-----------------------|-------------------------|
| Bidder Name: | | | Miles Partnership | | |
| Refer to Bid Solicitation Section 3.22.2 for Bidder instructions. The Bidder shall provide pricing in the yellow highlighted cells. | | | | | |
| Line # | Description | Unit of Measure | Contract Year One [1] | Contract Year Two [2] | Contract Year Three [3] |
| 5 | President | Hour | \$ 150.00 | \$ 155.00 | \$ 160.00 |
| 6 | Senior Account Executive | Hour | \$ 140.00 | \$ 145.00 | \$ 150.00 |
| 7 | Account Executive | Hour | \$ 130.00 | \$ 135.00 | \$ 140.00 |
| 8 | Advertising Account Manager | Hour | \$ 130.00 | \$ 135.00 | \$ 140.00 |
| 9 | Public Relations Account Manager | Hour | \$ 130.00 | \$ 135.00 | \$ 140.00 |
| 10 | Comptroller | Hour | \$ - | \$ - | - |
| 11 | Media Planner/Buyer | Hour | \$ - | \$ - | - |
| 12 | Senior Art Director | Hour | \$ 140.00 | \$ 145.00 | \$ 150.00 |
| 13 | Creative Art Director | Hour | \$ 140.00 | \$ 145.00 | \$ 150.00 |

Page 2 of 4

| | | | | | |
|----|------------------------|------|-----------|-----------|-----------|
| 26 | Web Designer | Hour | \$ 125.00 | \$ 130.00 | \$ 135.00 |
| 27 | Social Media Director | Hour | \$ 140.00 | \$ 145.00 | \$ 150.00 |
| 28 | Traffic Manager | Hour | \$ - | \$ - | \$ - |
| 29 | Administrative Support | Hour | \$ - | \$ - | \$ - |

Page 4 of 4

The submission of a dash on Miles' State-Supplied Price Sheet clearly and expressly conflicts with the instructions made in the Bid Solicitation Section 3.22.2, *Tab 2: Hourly Rates Price Sheet Instructions*, which states:

The Bidder shall:

- A. **Submit All-Inclusive Hourly Rates for all three (3) Contract Years of Price Lines 5 through 29 to reflect the cost per hour for all labor titles;**
- B. Equate its firm's internal staff qualifications to the labor titles included in Tab 2 of the State Price Sheet, as applicable;

- C. Determine the value and placement of personnel based on experience and expertise;
- D. Not alter the State Price Sheet in any way or add additional labor titles; and
- E. Include all project management requirements pursuant to Section 4.0 of the Bid Solicitation in the All-Inclusive Hourly Rate for all labor titles. No additional fees will be paid.

[Emphasis added.]

On the one hand, Miles submitted a State-Supplied Price Sheet as required by the Bid Solicitation. However, Bid Solicitation Section 3.22, *State-Supplied Price Sheet Instructions*, reminds potential bidders that the “[f] Failure to submit all required information in the manner specified will result in the Quote being deemed non-responsive and ineligible for award.” Miles states that it entered “\$0.00” into the relevant boxes, which then converted the inserted numbers into a dash. This is a fact that cannot be proven by the State-Supplied Price Sheet supplied by Miles with its Quote because the individual cells cannot be reviewed in the PDF document.

Miles submitted a State-Supplied Price Sheet that failed to provide a bid for a required Price Line. This is not a “pricing error”, but a failure to provide pricing in accordance with the Bid Solicitation’s clear instructions. Additionally, a Bidder making a pricing error is only allowed to “confirm its pricing”, and not to alter it once Quotes have been opened. Permitting Miles to provide revised pricing after the Quote opening date would result in an impermissible change or correction to its Quote, which the Division cannot allow as doing so would be contrary to the Court’s holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (holding that “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”); see also, Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974) (stating “If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.”) Thus, Miles’ Quote contained a non-waivable deviation rendering the Quote non-responsive. Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974).

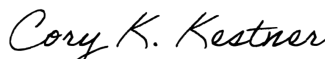
CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the Contract be awarded as outlined in the Recommendation Report. Accordingly, I sustain the June 13, 2024, Notice of Intent to Award. This is my final agency decision.

Thank you for your company’s interest in doing business with the State of New Jersey. I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

This is the Division’s final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Cory K. Kestner
Chief Hearing Officer

c: R. Regan
W. Higgins
M. Maguire
T. Maner