



# 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

<https://www.njstart.gov>

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

PHILIP D. MURPHY  
*Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

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*Lt. Governor*

AMY F. DAVIS, ESQ.  
*Acting Director*

April 8, 2024

*Via Electronic Mail Only to maeve.cannon@stevenslee.com*

Maeve E. Cannon, Esq.  
Stevens & Lee  
100 Lenox Drive,  
Suite 200  
Lawrenceville, NJ 08648

Re: I/M/O Bid Solicitation #24DPP00924 Commercial Technology Contractors, Incorporated  
Protest of Notice of Intent to Award  
T2424 Surveillance and Access Control Systems

Dear Ms. Cannon:

This final agency decision is in response to the letter dated April 2, 2024, submitted by Commercial Technology Contractors Incorporated (CTCI). That Protest Letter was received by the Division of Purchase and Property's (Division) Hearing Unit on April 2, 2024. In that correspondence, CTCI protests the Notice of Intent to Award letter issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #24DPP00924 – T2424 Surveillance and Control Systems (Bid Solicitation). The record of this procurement reveals that the Quote submitted by CTCI was deemed non-responsive for having failed to submit the revised State-Supplied Price Sheet pursuant to Bid Solicitation Section 3.24, *State-Supplied Price Sheet Instructions*, which contained additional mandatory price lines not originally included on the originally supplied State-Supplied Price Sheet.

By way of background, on September 5, 2023, the Bureau issued the Bid Solicitation on behalf of Division of Property Management and Construction (DPM&C) Security Services Unit (SSU). The purpose of the Bid Solicitation was to solicit Quotes for Access Control Security (ACS) and Video Surveillance (VS) Security System Services, including all maintenance, repair, and installation. Bid Solicitation Sec. 1.1 *Purpose and Intent*. It is the intent of the State to award a Contract to that responsible Bidder whose Quote, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. The State may award any or all price lines. The State intends to make multiple awards by zone as follows:

- a. The Northern Zone and Southern Zone will each be awarded a Primary Contractor, a Secondary Contractor, and a Backup Contractor;
- b. Bidders may bid on both zones, but can only be selected for the Primary Contractor or Secondary Contractor award for one (1) zone. For example, Bidder A may be designated as the Primary Contractor for the Northern Zone but may not also be designated as the Primary Contractor for the Southern Zone;

- c. Any Bidder(s) not designated as the Primary Contractor for a particular zone may be designated as the Secondary Contractor for that zone;
- d. Any Bidder(s) not designated as the Primary Contractor or Secondary Contractor for either zone may be considered for an award as the Backup Contractor for one (1) or both zones; and
- e. The State will first consider Primary Contractor and Secondary Contractor awards to those Bidders who have both AIU and iSite certifications before awarding to any Bidders with only AIU certification.

In accordance with Bid Solicitation Section 2.1, *Electronic Questions and Answer Period*, (eQ&A) potential Bidders were permitted to submit questions regarding the Bid Solicitation by September 26, 2023. The Bureau received twenty-four (24) questions, which led to the Bureau revising the Bid Solicitation and State-Supplied Price Sheet, as noted in Bid Amendment 2, posted on October 24, 2023. A second round of eQ&A was available until November 8, 2024, to ask questions related to the revised Bid Solicitation and State-Supplied Price Sheet, and responses were posted on November 22, 2023, in Bid Amendment #3. The Quote opening date was revised to January 10, 2024. None of the questions addressed or questioned Bid Solicitation Section 3.24. *State-Supplied Price Sheet Instructions*.

On January 10, 2024, the Division's Proposal Review Unit opened twelve (12) Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, all twelve Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that six (6) of the quotes were non-responsive for failing to meet some portion of the mandatory Quote information, although CTCI was the only bidder found non-responsive for failing to submit pricing on all Price Lines as required in Bid Solicitation Section 3.24, *State-Supplied Price Sheet Instructions*, as described in the Recommendation Report dated March 14, 2024:

Bidder	Section Reference	Requirement	Bidder Response/Addition/Exception
CTCI	Section 3.24, <i>State-Supplied Price Sheet Instructions</i>	<p>B. The Bidder shall provide pricing for the following price lines:</p> <p>c. If bidding on the North Zone, as defined in Bid Solicitation Section 4.2.1 and the South Zone, as defined in Bid Solicitation, Section 4.2.2, the Bidder must submit pricing for all Price Lines 1-5 and 7-11. The pricing submitted by the Bidder must be all-inclusive hourly rates and pricing must be submitted for Year 1, Year 2, and Year 3. The Bidder must submit a firm-fixed percent markup from Contractor savings of materials as described in Section 4.3.3 for Price Lines 6 and 12.</p>	CTCI submitted a State-Supplied Price Sheet with their Quote bidding on both the North Zone and the South Zone. The State-Supplied Price Sheet submitted by the Bidder was "ATTACHMENT 2 – T2424 Price Sheet 9/5/2023" and not the revised State-Supplied Price Sheet titled "ATTACHMENT 2 – T2424 REVISED Price Sheet 10/24/2023", posted with Bid Amendment #2 on October 24, 2023 on NJSTART, thus omitting additional price lines. The revised State-Supplied Price Sheet was posted on October 24, 2023 and, per Section 2.3, <i>Bid Amendments</i> , it is the sole responsibility of the Bidder to be knowledgeable of all Bid Amendments related to this procurement. "Must" in Section 3.24, <i>State-Supplied Price Sheet Instructions</i> , denoted that this is a mandatory requirement. Thus CTCI was deemed to be non-responsive and the Quote was removed from consideration.

[*Recommendation Report* dated March 14, 2024, pg. 4.]

A closer review of CTCI's State-Supplied Price Sheet shows that CTCI's submitted Quote was non-responsive because CTCI failed to utilize the revised State-Supplied Price Sheet which addressed pricing for Price Line 5, Take-Off for Service Calls (Section 4.3) in the Northern Zone, and Price Line 11, Take-Off for Service Calls (Section 4.3) in the Southern Zone, as required by Bid Solicitation Section 3.24,

*State-Supplied Price Sheet Instructions.* The other eleven (11) Bidders utilized the revised State-Supplied Price Sheet, and their Quotes were able to be evaluated in accordance with the revised Bid Solicitation. Accordingly, remaining Quotes were evaluated, and the Notice of Intent to Award letters were sent to all responsive Bidders on March 18, 2024.

In consideration of CTCI's protest, I have reviewed the record of this procurement, including the revised Bid Solicitation and State-Supplied Price Sheet, Bid Amendments, the Quotes received, 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.

As a threshold issue, the State-Supplied Price Sheet instructions are clear that the Bidder must submit pricing for all price lines.

- B. The Bidder **shall** provide pricing for the following price lines:
  - a. Only if bidding on the North Zone, as defined in Bid Solicitation Section 4.2.1, the Bidder **must** submit pricing for **all** Price Lines 1-5. The pricing submitted by the Bidder **must** be all-inclusive hourly rates and pricing must be submitted for Year 1, Year 2, and Year 3. The Bidder **must** submit a firm-fixed percent markup from Contractor savings of materials as described in Section 4.3.3 for Price Line 6;
  - b. Only if bidding on the South Zone, as defined in Bid Solicitation Section 4.2.2, the Bidder **must** submit pricing for **all** Price Lines 7-11. The pricing submitted by the Bidder **must** be all-inclusive hourly rates and pricing must be submitted for Year 1, Year 2, and Year 3. The Bidder **must** submit a firm-fixed percent markup from Contractor savings of materials as described in Section 4.3.3 for Price Line 12;

[Bid Solicitation Section 3.24, *State-Supplied Price Sheet Instructions*, emphasis added.]

The terms "shall" and "must" denote a mandatory requirement as further set forth in the Bid Solicitation's glossary:

**Must** – Denotes that which is a mandatory requirement.

**Shall** – Denotes that which is a mandatory requirement.

[Bid Solicitation Section 9, *GLOSSARY*]

With respect to providing a "Take-Off" as part of a Contractor response to a request for service, a Contractor must submit Take-Offs to the SSU prior to beginning any work, and Take-Off pricing must be billed based on Price Lines 5 and 11. Bid Solicitation Section 43.2.1, *Normal Service*. Specifically that section states in pertinent part that

Prior to beginning any service, the Contractor may provide a Take-Off in order to assess the requested work and identify what labor and materials are needed to complete the service call. If the Contractor provides a Take-Off, Take-Offs **must** be submitted to the SSU prior to beginning any work.

**The Contractor is to only utilize Take-Off for Service Calls (Price Line 5 and 11) when billing for Take-Offs. No other price lines can be used for billing purposes for Take-Offs.**

[Bid Solicitation Section 4.3.2.1, *Normal Service*, emphasis added]

Reading the State-Supplied Price Sheet Instructions in conjunction with Bid Solicitation Section 4.3.2.1, *Normal Service*, and Bid Solicitation Section 9, *Glossary*, as intended, these sections dictate that the Bidders are required to provide pricing for all price lines in either the North Zone, Price Lines 1 – 6, the South Zone, 7-12, or both to demonstrate that they are in a position to provide all services required under the Bid Solicitation.

CTCI argues in its protest essentially that Take-Offs are optional, and that the pricing is irrelevant because it will not utilize or provide them as a vendor on the contract. More specifically, CTCI states that

[T]he use and billing of takeoffs are optional to the vendor and not a necessity to complete the work or the billing for the State. In fact, the takeoff is simply the contractor's ability to charge the State for the formulation of a quotation to perform certain service work. It is entirely at the option of the vendor. CTCI has never charged for takeoffs and as permitted to in this RFP, never will, as evidenced by its response to this RFP. There is no rational basis to foreclose the receipt of free takeoff services when offered. As a previous incumbent of many years for this contract, the State has a long history with CTCI, in which CTCI has never charged for takeoffs. This is confirmed by CTCI's proposal, which finds no reference to takeoffs and instead confirms that CTCI provides in house technical support and scoping of projects as part of its project management process, not as a separate service or charge.<sup>1</sup>

Since CTCI charges nothing for takeoffs, its bid is the equivalent of a blank line or no bid for the revised price sheet lines 5 and 11. CTCI's submission of the original price sheet, which does not have the line items for takeoffs, is the equivalent of submitting no bid for the takeoff line items. CTCI cannot charge for takeoffs and the State cannot be charged for them in the absence of a line item. The State knows that there is a firm fixed price for CTCI's line items in the Southern, Northern and statewide services categories, and that there is simply no bid for takeoff costs. As indicated in Section 3.24.1 of the RFP "if the Bidder is not submitting a price for a Zone or for the mini-bid process then the Bidder must indicate 'no bid' or leave blank for those associated Price Lines on the State-Supplied Price Sheet accompanying this bid solicitation." Here, the use of the original price sheet without those line items is the equivalent of a blank submission or "no bid" in accordance with Section 3.24.1. As CTCI does not charge for take offs, the use of the original price sheet is the equivalent

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<sup>1</sup> CTCI includes a footnote at this location in its protest letter stating "See CTCI proposal at 3.16." However, that section of CTCI's Quote does not discuss the subject at issue, and only generally states over two pages that CTCI will provide qualified staff to perform the requested work. This is insufficient to address the failure to supply the required revised State-Supplied Price Sheet, and to complete all required price lines.

of leaving a blank or a no bid for those price lines. CTCI's submission is in absolute compliance with this RFP language.

[CTCI Protest Letter dated April 2, 2024, Pgs. 2-3, emphasis in original.]

Unfortunately, CTCI misreads the relevant language in the Bid Solicitation sections, and its obligations as a bidder. Moreover, CTCI misapplies the language found in Bid Solicitation Section 3.24.1, *Use of "No Bid" on the State-Supplied Price Sheet*, by arguing that it would perform the work free of charge, so not providing pricing is the equivalent of CTCI leaving the section blank. In fact, the State-Supplied Price Sheet instructions expressly state that the price lines are not discretionary when bidding on an entire zone or the "mini-bid" process:

- B. The Bidder **shall** provide pricing for the following price lines:
  - a. **Only if bidding on the North Zone**, as defined in Bid Solicitation Section 4.2.1, the Bidder **must** submit pricing for all Price Lines 1-5. The pricing submitted by the Bidder **must** be all-inclusive hourly rates and pricing must be submitted for Year 1, Year 2, and Year 3. The Bidder **must** submit a firm-fixed percent markup from Contractor savings of materials as described in Section 4.3.3 for Price Line 6;
  - b. **Only if bidding on the South Zone**, as defined in Bid Solicitation Section 4.2.2, the Bidder **must** submit pricing for all Price Lines 7-11. The pricing submitted by the Bidder **must** be all-inclusive hourly rates and pricing must be submitted for Year 1, Year 2, and Year 3. The Bidder **must** submit a firm-fixed percent markup from Contractor savings of materials as described in Section 4.3.3 for Price Line 12;

[Bid Solicitation Section 3.24, *State-Supplied Price Sheet Instructions*, emphasis added.]

Similarly, the first sentence of Bid Solicitation Section 3.24.1 expressly requires that a bidder follow the requirements from Section 3.24 by stating that "**All price lines must** be filled out in accordance with the instructions above." Emphasis added. Therefore, a bidder cannot choose to enter "No Bid" on a price line that must be completed to satisfy the State-Supplied Price Sheet instructions.

Accordingly, Bid Solicitation Section 3.24, *State-Supplied Price Sheet Instructions*, and Bid Solicitation Section 4.3.2.1, *Normal Service*, require that Bidders submit a Quote for each price line. While a Bidder could propose to provide work to the state free of charge, or to later not provide the Take-Off Service as part of a specific service request, it could not decline to provide pricing in accordance with the Bid Solicitation. This Bid Solicitation's functionality within the Scope of Work and State-Supplied Price Sheet is not discretionary, but necessary and incident to the work that the using agency needs completed by a Contractor, and CTCI misreads the Bid Solicitation to grant itself discretion to ignore or decline submit a fully-conforming Quote or to perform the services required under this portion of the Bid Solicitation.

In order for CTCI's Quote to be considered responsive, CTCI needed to submit a revised State-Supplied Price with the required information with its Quote. While minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 8.1, *Right to Waive*, it is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Stemin, 25 N.J. 317,324 (1957). In Meadowbrook Carting Co. v. Bor. of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the

court in River Vale, supra, for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, Judge Pressler 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 the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No.95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, supra, 127 N.J. 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. 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.” Id. at 222.

By failing to submit a revised State-Supplied Price Sheet, and thus pricing for the Take-Off Price Lines, CTCI did not bid on work that is required to be performed under the terms of the Bid Solicitation. CTCI’s Quote contained a non-waivable deviation rendering the Quote non-responsive. River Vale, supra, 127 N.J. Super. at 222. The State cannot be guaranteed that the work to be performed by the bidder would be in accordance with the Bid Solicitation’s mandatory requirements, and permitting the bidder to supplement or correct its defective Quote post-opening would grant that bidder an advantage and unlevel the playing field with other bidders.

In light of the findings set forth above, I sustain the conclusions in the Bureau’s March 14, 2024, Recommendation Report, that the CTCI’s Quote was non-responsive, and uphold the March 18, 2024, Notice of Intent to Award.

Thank you for your company’s continuing 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, Esq.  
Acting Chief Hearing Officer

c. M. Dunn  
J. Pastuzyn  
B. Cegerenko