



State of New Jersey

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

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June 26, 2024

Via Electronic Mail Only to grahamp@americanhose.net

Graham Page, C.I.O.
American Hose & Hydraulics Co., Inc.
700 21st Avenue
Paterson, NJ 07511

Re: I/M/O Bid Solicitation #24DPP00961- American Hose & Hydraulic
Protest of Notice of Proposal Rejection T2188
Parts and Repairs for Road Maintenance Equipment

Dear Mr. Page:

This final agency decision is in response to the letter dated April 18, 2024, submitted by American Hose & Hydraulic Co., Inc. (American Hose). That Protest Letter was received by the Division of Purchase and Property's (Division) Hearing Unit on April 19, 2024. In that correspondence, American Hose protests the Notice of Proposal Rejection issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #24DPP00961 – T2188 Parts and Repairs for Road Maintenance Equipment (Bid Solicitation). The record of this procurement reveals that the Quote submitted by American Hose was deemed non-responsive on the grounds of "[m]issing price information" pursuant to Bid Solicitation Section 3.36, *State-Supplied Price Sheet Instructions*.

By way of background, on January 19, 2024, the Procurement Bureau issued the Bid Solicitation on behalf of Statewide Using Agencies and Cooperative Purchasing Participants. The purpose of the Bid Solicitation was to solicit "Quotes for Original Equipment Manufacturer (OEM) and non-OEM parts and repairs for road maintenance equipment." Bid Solicitation Sec. 1.1, *Purpose and Intent*. It is the intent of the State to award Contracts to those responsible Bidders whose Quotes, 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.

On April 2, 2024, the Division's Proposal Review Unit opened 17 Quotes which were received by the submission deadline of 2:00 PM Eastern Standard Time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, it was determined that American Hose's Quote was non-responsive for failing to submit a State Supplied Price Sheet as required in Bid Solicitation Section 3.36, *State-Supplied Price Sheet Instructions*.

In consideration of the American Hose protest, I have reviewed the record of this procurement, including the Bid Solicitation, 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.

Section 3.36 of the Revised Bid Solicitation states that “The Bidder must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab,” and that “[a] Bidder’s failure to provide, within its Quote, the information deemed by the State to be essential for product identification or price determination shall result in rejection of that Bidder’s Quote.”

The term “must” denotes a mandatory requirement as further set forth in the Bid Solicitation’s glossary:

Must – Denotes that which is a mandatory requirement.

[Bid Solicitation Section 9, *GLOSSARY*]

The term “shall” also denotes that which is a mandatory requirement as further set forth in the Bid Solicitation’s glossary:

Shall – Denotes that which is a mandatory requirement.

[Bid Solicitation Section 9, *GLOSSARY*]

American Hose failed to submit a State-Supplied Price Sheet with their initial Quote, and instead submitted an American Hose price list. Bid Solicitation Section 3.36, *State-Supplied Price Sheet Instructions*, requires that Bidders submit a completed Price Sheet with the initial Quote and that the failure to submit the same shall result in the rejection of a Bidder’s Quote. The failure to submit pricing in the State-Supplied Price Sheet results in the rejection of a Bidder’s Quote. The submission of this information after the initial Quote has been submitted is not sufficient to satisfy the requirement of Bid Solicitation Section 3.36.

In their April 18, 2024 protest letter, American Hose appealed to the Hearing Unit for “leniency,” claiming that they had filled out the State-Supplied Price Sheet but had failed to submit it with their bid. American Hose did not submit a State Supplied Price Sheet, but asked what steps would need to be taken in order to do so. While the Hearing Unit has no reason to doubt American Hose did fill out a State Supplied Price Sheet and mistakenly failed to submit it with their bid, the language of Bid Solicitation Section 3.36 unambiguously requires the rejection of a Quote if the pricing information is not contained within the State-Supplied Price Sheet in the initial Quote. By failing to submit a completed price sheet, American Hose did not comply with a mandatory condition of the Bid Solicitation because its Quote did not contain all of the information required on the State-Supplied Price Sheet. The instructions in Bid Solicitation Section 3.36 were unambiguous, stating that failing to submit a completed and sufficiently detailed Price Sheet shall result in the rejection of the Bidder’s Quote. As such, American Hose’s 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).

In light of the findings set forth above, I sustain the conclusions in the Bureau’s April 18, 2024 Proposal Rejection Letter, that the American Hose Quote was non-responsive for failing to submit a State-Supplied Price Sheet as required by the Bid Solicitation and uphold the April 18, 2024, Notice of Proposal Rejection.

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,

A handwritten signature in black ink that reads "Cory K. Kestner". The signature is written in a cursive, flowing style.

Cory K. Kestner, Esq.
Acting Chief Hearing Officer

CKK: PCV

c. K. Thomas
 C. Murphy
 E. Flynn