



State of New Jersey

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

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February 22, 2024

Via Electronic Mail tjackson@us.jvckenwood.com only

Timi Jackson, General Counsel
JVCKENWOOD USA Corporation
4001 Worsham Avenue
Long Beach, CA 90808

Re: I/M/O Bid Solicitation #23DPP00882– JVCKENWOOD USA Corporation
Protest of Proposal Rejection
T0109 Radio Communication Equipment and Accessories

Dear Ms. Jackson:

This final agency decision is in response to the e-mail correspondence dated February 6, 2024, submitted by JVCKENWOOD USA Corporation (hereinafter “JKUSA”), and received by the Division of Purchase and Property’s (hereinafter “Division”) Hearing Unit on the same date. In that correspondence, deemed a Protest by the Division pursuant to N.J.A.C. 17:12-3.1, JKUSA requests that the Bureau reopen the above Bid Solicitation to allow them to submit a proposal after the January 25, 2024, due date. JKUSA alleges that it was unable to complete the process of uploading and submitting its Quote in a timely manner due to technical difficulties with NJSTART, which they refer to in their correspondence as “system errors”. JKUSA requests that the Division waive the mandatory due date and time listed in the Bid Solicitation and provide an on-ramp for them to submit their proposal beyond said due date.

By way of background, on July 31, 2023, the Division’s Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of New Jersey Office of Information Technology (OIT). The purpose of the Bid Solicitation was to solicit “Quotes from qualified Bidders for the purchase and installation of new radio communication equipment and systems, as well as additions to, upgrades of, and maintenance and support of existing radio communication equipment & systems.” Bid Solicitation §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 are most advantageous to the State of New Jersey (State), price and other factors considered. The State may award any or all price lines.

On January 25, 2024, the Division’s Proposal Review Unit (PRU) opened thirty-four (34) Quotes that were received by the 2:00 pm Eastern time submission deadline. The PRU conducted an initial review of all Quotes received for compliance with mandatory Quote submission requirements. However, no Quote was received from JKUSA by the submission deadline.

In consideration of JKUSA’s 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; as such, an in-person hearing is not warranted. I set forth herein the Division's final agency decision.

The Division's administrative regulations governing the advertised procurement process establish certain requirements that must be met for a proposal to be accepted. The Division's governing regulations provide in relevant part that "In order to be eligible for consideration for award of contract, the bidder's proposal shall...be submitted on or before the due date and time and at the place specified in the RFP." N.J.A.C. 17:12-2.2(a). If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These regulations are strictly enforced to maintain a level playing field for all Bidders and to ensure the integrity of the State's bidding process.

In addition, the Bid Solicitation expressly advises bidders of the requirements for proper submission:

3.1 QUOTE SUBMISSION

In order to be considered for award, the Quote must be received by the Division's Proposal Review Unit, Quote electronically through **NJSTART**, by the required date and time.

The date and time of the Quote opening are indicated on the Bid Solicitation cover sheet and on the "Summary" Tab of the Bid Solicitation webpage within **NJSTART**. If the Quote opening deadline has been revised, the new Quote opening deadline shall be shown on the posted Bid Amendment and on the "Summary" Tab of the Bid Solicitation webpage within **NJSTART**. Quotes not received prior to the Quote opening deadline shall be rejected.

[Emphasis added.]

The Bid Solicitation also advises Bidders to consult with the Division's Quick Reference Guides and supporting material in preparing Quotes for submission:

1. INTRODUCTION AND SUMMARY OF THE BID SOLICITATION

Bidders are strongly encouraged to visit the NJSTART Vendor Support Page, which contains Quick Reference Guides (QRGs), supporting videos, a glossary of **NJSTART** terms, and helpdesk contact information. Bidders should utilize the QRGs before attempting to submit a Quote through **NJSTART**. **It is the Bidder's responsibility to ensure that the Quote and attachments have been properly submitted.** Inquiries concerning the use of **NJSTART** may be directed to njstart@treas.nj.gov. The Division will not respond to substantive questions related to the Bid Solicitation or any other Contract via this email address.

[Emphasis added.]

Not only does this section encourage Bidders to review the Quick Reference Guides provided by the Division, but it includes a hyperlink to the NJSTART portal containing all of the Quick Reference Guides and videos.

In addition the Bid Solicitation, the Division also posted to the NJSTART web-portal a Bid Solicitation Checklist to guide the Vendors in the submission process. The Checklist states:

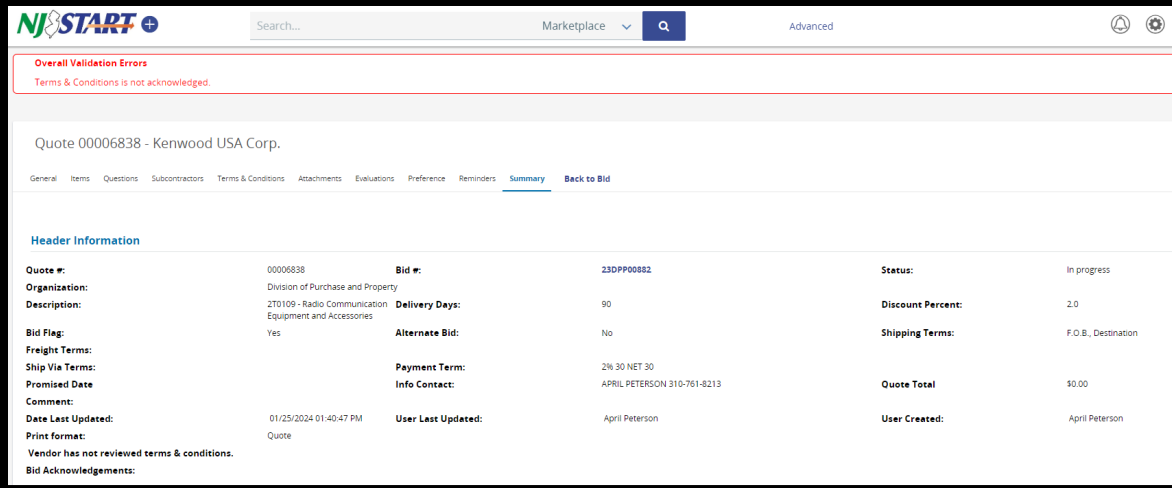
THIS CHECKLIST WAS CREATED AS A GUIDE TO ASSIST BIDDERS AND MAY NOT IDENTIFY ALL OF THE DOCUMENTS, FORMS OR OTHER INFORMATION REQUIRED FOR SUBMITTING A COMPLETE AND RESPONSIVE QUOTE. IT IS THE BIDDER'S RESPONSIBILITY TO ENSURE THAT ALL REQUIREMENTS OF THE BID SOLICITATION HAVE BEEN MET.

In addressing the language in the checklist relating to a Protest, the Courts have stated:

These statements on the checklist, taken together with the mandatory language in other parts of the RFP, provided notice it was the bidder's responsibility to ensure all the required forms were submitted.....

In re Bid Solicitation #18DPP00205, No. A-0515-18T3, 2019 N.J. Super. Unpub. LEXIS 1468 (Super. Ct. App. Div. June 26, 2019).

In reviewing the NJSTART's records with respect to JKUSA's Quote, it is clear that the Vendor was utilizing the NJSTART portal on the Quote Opening Date (01/25/2024):



NJSTART Search... Marketplace Advanced

Overall Validation Errors
Terms & Conditions is not acknowledged.

Quote 00006838 - Kenwood USA Corp.

General Items Questions Subcontractors Terms & Conditions Attachments Evaluations Preference Reminders **Summary** Back to Bid

Header Information

Quote #:	00006838	Bid #:	23DPP00882	Status:	In progress	
Organization:	Division of Purchase and Property		Delivery Days:	90	Discount Percent:	2.0
Description:	270109 - Radio Communication Equipment and Accessories		Alternate Bid:	No	Shipping Terms:	F.O.B., Destination
Bid Flag:	Yes	Payment Term:	2% 30 NET 30	Quote Total	\$0.00	
Freight Terms:		Info Contact:	APRIL PETERSON 310-761-8213	User Created:	April Peterson	
Ship Via Terms:		User Last Updated:	April Peterson			
Promised Date						
Comment:						
Date Last Updated:	01/25/2024 01:40:47 PM					
Print Format:	Quote					
Vendor has not reviewed terms & conditions.						
Bid Acknowledgements:						

However, at the close of the 2:00 p.m. submission deadline JKUSA had not submitted its Quote pursuant to the instructions and requirements. It is also noted that at the close of the submission deadline for any given Bid Solicitation, NJSTART automatically removes the submission button / functionality. Uploading documents to the NJSTART portal is one step in the process of submitting a Quote to the State of New Jersey but until and unless the Vendor completes the submission process the Division's Proposal Review Unit (PRU) is not able to view or consider the uploaded information.

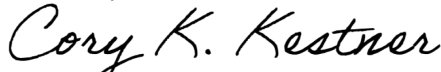
Although the Vendor indicates that it was experiencing technical difficulties submitting information via NJSTART, it is again noted that thirty-four (34) other Vendors successfully uploaded Quotes on or before the Quote submission deadline. The Division cannot waive or relax the submission requirements for one Vendor at the expense of the other compliant Vendors. “Requiring adherence to material specifications maintains a level playing field for all bidders competing for a public contract.” Barrick v. State, 218 N.J. 247, 259 (2014).

In light of the findings set forth above, I must deny JKUSA’s request to be considered for eligibility to participate in the competition for this contract. This is my final agency decision. This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote.

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
Acting Chief Hearing Officer

CKK:MAR

c: M. Dunn