



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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February 12, 2014

Via Electronic Mail [AGraham@PTSdcs.com] and USPS Regular Mail

Andrew Graham
Director—Data Center & AV Solutions
PTS Data Center Solutions, Inc.
568 Commerce St.
Franklin Lakes, NJ 07417

RE: Protest of Award of Contract T1778
RFP #14-X-22717¹ Cabling Products & Services; Data Center Management Solutions

Dear Mr. Graham:

This letter is in response to your email received January 17, 2014, referencing the subject Request for Proposal (“RFP”) and regarding the award of the subject contract by the Division of Purchase and Property (“the Division”). In your email, you protest the award of the subject contract and contend that PTS Data Center Solutions, Inc. (“PTS”) did not receive notice of the subject RFP because the Division improperly assigned eRFP notification codes for this RFP. I note the Notice of Intent to Award the subject contract was mailed on August 28, 2013. Therefore, in accordance with N.J.A.C. 17:12-3.3, the protest period concluded on September 11, 2013, rendering your letter of protest untimely. Nevertheless, I offer the following comments.

I have reviewed the record of this procurement, including the RFP, PTS’s proposal, and 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 determination on the merits of PTS’s protest.

The record of this procurement notes the subject RFP was assigned the following National Institute of Governmental Purchasing (NIGP) Commodity Codes and Sub Classes:

¹ Pursuant to the June 12, 2013 Addendum #2, Part 2 of this RFP, the correct solicitation number is 14-X-22717, not 13-X-22717 as stated on the RFP cover page.

- 285 81: Electrical equipment and supplies (except cable and wire) — tools and accessories, electricians' and lineman's (including cable fault locators, cable pullers, press boosters and heads, hotsticks, testing equip. wire crimping tools, etc.).
- 280 29: Electrical cables and wires (not electronic) — communications/telecommunications cable and wire.
- 285 95: Electrical equipment and supplies (except cable and wire) — wiring devices: adapters, caps, connectors, extension cords, fluorescent and hp starters, outlets, plates and covers, plugs, receptacles, safety cord lock, switches, terminals, etc.
- 962 18: Miscellaneous services, no. 2 (not otherwise classified) — cable construction, installation and maintenance (fiber optic, communication, computer, etc.).
- 915 97: Communications and media related services — wiring services, data/voice.

In accordance with the State of New Jersey's eRFP procedures, a notification of the subject RFP was sent to any vendor who had signed up to receive any of the listed commodity codes. You contend that this RFP would have been more appropriately coded: 204 Computer Hardware and Peripherals for Microcomputers and 206 Computer Hardware and Peripherals for Mini and Mainframe Computers. Despite your contentions, however, there is no clear NIGP Commodity Code for Data Center Management Solutions. As described in the scope of work for Service Category Seven (7), the requirements included:

[E]nterprise-wide solutions (hardware/software) with the capabilities and tools to help the State employ an integrated set of systems and processes to holistically manage the data center from a business service perspective — including all physical infrastructure components, such as equipment, space, power, cooling and connectivity. This data center infrastructure resource management system shall have the ability to consolidate nearly all of the information related to data center operation into one central, visual repository, which allows data center management to identify the physical location and relationship of all equipment. This category also includes any services required for the installation, configuration, customization and training on Data Center Infrastructure Management (DCIM) tools.

Notwithstanding the above-mentioned scope of work and commodity codes, the eRFP Notification Service website cautions subscribers: “The eRFP Email Notification Service does not guarantee that your firm will be notified of all applicable bidding opportunities. To ensure you are aware of Advertised Bid Opportunities, potential bidders are encouraged to frequent the Current Bidding Opportunities [webpage] for upcoming bidding opportunities and to obtain/download specific Request for Proposals.”

Additionally, N.J.A.C. 17:12-2.1 “Advertising” provides:

- (a) Advertising is required when the contract amount is expected to exceed the public bidding threshold or is not subject to the relevant exceptions of N.J.S.A. 52:34-6, 9, or 10. Public notice of the bidding opportunity shall be placed on the Division's website and with other media, including newspapers, as required by law at N.J.S.A. 52:34-12 and

determined by the State Treasurer to provide best notice thereof to bidders. Advertisements shall be made a minimum of seven business days in advance of the announced deadline for receipt of proposals to encourage free and open competition.

- (b) If, during the course of an advertised procurement pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such alterations shall be set forth in addenda to the RFP and shall be advertised a minimum of seven business days in advance of the announced deadline for receipt of proposals.
- (c) In addition to statutorily mandated public advertising, the Division shall also publish notices of bidding opportunities on the Division's website.
- (d) As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service known as the e-RFP Notification Service. Vendors and other interested parties can register to receive direct e-mail notices pertaining to the Division's procurements for goods or services based upon specific commodity classes or codes. **As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for e-RFP Notification Service registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division.**

[(Emphasis added.)]

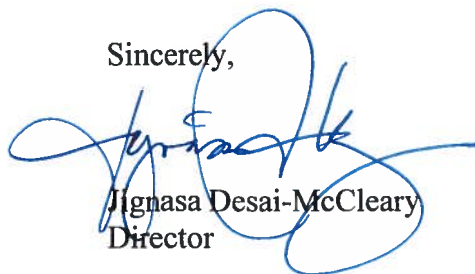
My review of the procurement record indicates that the subject RFP and attachments were made public on the Division's website on or about April 25, 2013, and notice of this RFP was also advertised in the *Star-Ledger* on the same date. As indicated on the RFP cover page, the opportunity to submit RFP-related questions was provided until May 24, 2013, and the proposal submission date was 2:00 p.m. on July 10, 2013. As with all formally procured State contracts administered by the Division's Procurement Bureau, access to the T1778 contract is through participation in the Division's public procurement process.

The record also reveals that 14 proposals were successfully submitted through the Division's eBid system by the proposal submission deadline of July 10, 2013. Nine additional proposals were rejected as incomplete or deficient, bringing the total to 23 vendors who responded electronically to this RFP. More specifically, five vendors submitted proposals in response to Service Category Seven (7). The record indicates that three of these vendors did not subscribe to the eRFP notification system. The remaining two vendors were subscribed to receive NIGP Commodity Codes associated with this procurement.

Based on the findings and conclusions set forth above, which establish that this procurement opportunity was advertised and posted in accordance with the requirements of governing law, I must deny your request to reprocur the subject RFP. This is my final decision on this matter.

This is an unfortunate situation, as the State encourages competition and welcomes your participation in future procurement opportunities. I also recommend that your company regularly check our website² and the *Star-Ledger* for such opportunities, as well as review what other NIGP Commodity Codes may apply to your expertise. Thank you for your continued interest in doing business with the State of New Jersey.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

c: K. Moore
P. MacMeekin
J. Strype

² Current bidding opportunities can be found at <http://www.nj.gov/treasury/purchase/>.