

State of New Jersey

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DEPARTMENT OF THE TREASURY
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November 5, 2015

Via Email [cbetti@betson.com] and USPS Regular Mail

Christopher Betti, Vending Sales Manager H. Betti Industries, Inc. 303 Paterson Plank Road Carlstadt, NJ 07072

Re:

Request for Reconsideration

RFP# 16-X-24006: Vending Machine Equipment for the Commission for the Blind and

Visually Impaired (CBVI)

Dear Mr. Betti:

This correspondence is in response to your reconsideration letter dated October 26, 2015, emailed to the Hearing Unit of the Division of Purchase and Property (Division) on behalf of H. Betti Industries, Inc. (HBI). In that letter, HBI requests that the Division accept price line information which was omitted from its original proposal in response to Solicitation# 16-X-24006.

In contemplation of this request for reconsideration, I have reviewed the record of this procurement, including the Request for Proposal (RFP), HBI's proposal, 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 this request for reconsideration. I set forth herein the Division's final agency decision.

By way of background, on September 30, 2015, after conducting the intake review, the Proposal Review Unit issued a Notice of Proposal Rejection to HBI pursuant to N.J.A.C. 17:2-2.2 for failing to include all necessary pricing information with its proposal submission. This RFP required that "Bidders must submit a cost proposal for ALL Price Lines one (00001) through twelve (00012) as follows or the entire proposal shall be rejected." (RFP Section 4.4.7 Method of Bidding.) On September 30, 2015, HBI submitted a protest stating:

Attached is the notice of proposal rejection, due to the missing price information. Also attached is what was uploaded containing pricing information.

Please review and let me know if there is anything else I can provide to get this corrected. Please explain why this was rejected and can we resubmit.

¹ "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a proposal as non-responsive." (RFP § 2.1 General Definitions.)

On October 7, 2015, the Division issued its final agency decision stating HBI's failure to include all of the required pricing information with its proposal was a material deviation; and therefore, HBI's proposal was non-responsive. See <u>Twp. of River Vale v. Longo Constr. Co.</u>, 127 N.J. Super. 207 (Law Div. 1974).

Now, in its request for reconsideration, HBI asks the Division to accept the supplemental price line information as a complement to its proposal. As noted in the October 7, 2015 final agency decision, permitting HBI to supplement its proposal by provide pricing information after the proposal opening is contrary to the Appellate Division's reasoning in In re-Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, where the court held that "[i]n 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." 279 N.J. Super. 566, 597 (App. Div. 1995). Courts have consistently held that proposals may not be supplemented ad the proposal submission deadline. "Allowing alteration of the original proposal, post-opening, contradicts our public bidding scheme and undermines the integrity of the bidding process." In re Jasper Seating Co., Inc., 406 N.J. Super. 213, 224 (App. Div. 2009). As noted in the Division's October 7, 2015 decision, because the RFP specifications mandated that price lines 00001 – 00012 ALL be bid or the entire proposal would be rejected, the Division cannot permit HBI to supplement and correct its proposal by providing the pricing information after the proposal submission deadline.

Notwithstanding HBI's interest in competing for this procurement, it would not be in the State's best interest to allow a bidder who did not appropriately complete and submit all of the required forms with its proposal, as required by the RFP, to be eligible to participate in the procurement process. The deficiency at issue cannot be remedied after the proposal submission deadline as acceptance of HBI's proposal under these circumstances would be contrary to the provisions of the governing law. I anticipate that this contract will be re-solicited in the near future. I therefore encourage you to monitor the Division's website for bidding opportunities.

Based upon the foregoing, I must deny HBI's request for reconsideration. This is the Division's final agency decision on this matter. Thank you for your interest in doing business with the State of New Jersey, I invite to register your business with NI START at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

Maurice A. Griffin Chief Hearing Officer

MAG: RUD

c: A. Miller

J. Kemery

D. Reinert