



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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November 30, 2016

Via Electronic Mail [pete.hojnowski@habhegger.com] and USPS Regular Mail

Peter Hojnowski, Branch Manager
E.O. Habhegger Co., Inc.
334 N. Washington Street, Unit #20B
Hammonton, NJ 08037

RE: Protest of Notice of Award
RFP #15-X-22978 Aboveground Storage Tanks: Installation, Removal, Repair and Related Equipment

Dear Mr. Hojnowski:

This correspondence is in response to your letter of protest submitted on behalf of E.O. Habhegger Co., Inc. (EOH), dated and received August 22, 2016, referencing the subject Request for Proposal (RFP) and regarding the Notice of Intent to Award (NOI) Letter issued by the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). In your letter, you protest the slated award of Price Line 00006 to Petroleum Equipment of New Hampshire (PE), contending that EOH should be awarded this price line because it submitted a greater percentage discount than PE.

I have reviewed the record of this procurement, including EOH's protest, the RFP, the pertinent proposals, 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 EOH's protest.

By way of background, on December 2, 2014, the Bureau publicly advertised the subject RFP to solicit proposals for Aboveground Storage Tanks: Installation, Repair, Removal, and Accessory Equipment on behalf of the New Jersey Department of Transportation (NJDOT) and Statewide Using Agencies. As set forth in RFP Section 3.0 *Commodity Description/Scope of Work*, the RFP included three categories of work; bidders were not required to bid on all three categories (Categories I, II, and III).¹ Category II, (Price Lines 00005- 00014,

¹ Category I (Price Lines 00001- 00004, 00034) is "for the supply of various brands and sizes of aboveground diesel and gasoline storage tanks complete with outer shell tanks and all-inclusive related accessories" and Category III (Price Lines 00015- 00032) is "for the installation, removal and repairs of aboveground storage tanks described in this RFP." In Category I, the RFP specified an award would be made to one bidder for each approved brand or equal; in Category III, an award would be made to all responsible, responsive bidders conforming to the RFP. (See RFP Section 7.2 *Final Contract Award*.)

and 00034), which included Price Line 00006, is “for Fuel Storage Tank related equipment (i.e. fuel dispensers, pumps, filtration and monitoring systems, etc.)” The RFP specified an award would be made to one responsible, responsive bidder for each approved brand or equal in Category II.

The Bureau received 18 proposals by the deadline of February 10, 2015. A number of proposals were rejected for failure to provide mandatory documents, signatures, or pricing information. Upon completing a review of the remaining proposals, the Bureau made the following award recommendation for Category II:

Category II – Lines 00005 – 00014

E.O. Habegger Company (00005, 00009, 00010, 00011, 00014)
Fairfield Maintenance (00006)
John W. Kennedy Company (00008)
Petroleum Equipment of New Hampshire (00012, 00013)

NOTE: NO Award – Line 00007. There was 1 proposal received and it was for a Dresser Wayne Dispenser. This is not an Alternate “Brand” as Dresser Wayne Dispensers is covered under Line Item 00006.

The Bureau issued a formal NOI to all bidders on April 10, 2015 (NOI-1), awarding the Category II Price Lines as indicated above. On April 13, 2015, Fairfield Maintenance requested to withdraw its Category II pricing due to an error. The Bureau accepted this request for withdrawal, thus rescinding the intended award of Price Line 00006 to Fairfield Maintenance.

Several protests were received during the protest period specified in NOI-1. Concerning Category II, EOH protested the intended award of Price Lines 00012 and 00013 to Petroleum Equipment of New Hampshire (PE). In the July 22, 2016 final agency decision, I found the award to PE must be rescinded, as its proposed MegaFlex DEF-Trac system did not conform to the RFP requirement that secondary pipes be stainless steel. I also directed the Bureau to clarify whether EOH’s proposed Flexwell-HL Brugg system proposed for Price Line 00014 conformed to the RFP UL listing and fire rating requirements. Following reevaluation and clarification, the Bureau determined that EOH’s proposed product for Price Line 00014 conformed to the RFP requirements and issued a supplemental NOI on August 19, 2016 (NOI-2) addressing Price Lines 00006, 00012, 00013, and 00014, indicating the intent to award the following in Category II:

- Petroleum Equipment Service of New Hampshire LLC (PE)
 - Price Line 00006 – Dresser Wayne Fuel Storage Tanks and Related Equipment.

- E.O. Habegger Co. Inc.
 - Price Line 00012 – Diesel and Gasoline Pipe System – 1”
 - Price Line 00013 – Diesel and Gasoline Pipe System – 1 1/2”
 - Price Line 00014 – Diesel and Gasoline Pipe System – 3”

Having been awarded Price Lines 00012 and 00013 following the rescission and reevaluation of the price lines, EOH now protests the award of Price Line 00006 in NOI-2 and alleges that because it proposed a 23% discount on Price Line 00006, but PE only offered a 21.5% discount, EOH should be the intended awardee for Price Line 00006 as the lowest responsible bidder. Prior to addressing EOH’s protest point, I note that the Hearing Unit’s review of the record in response to this protest discovered a discrepancy in the RFP that must be addressed.

RFP Section 3.2, *Category II – Above Ground Storage Tank Related Equipment*, provided specifications for particular fuel storage tank related equipment. RFP Section 3.2.1.1 provided the specifications for Gasboy models (price line 00005), Dresser Wayne models (price line 00006), and approved equals (price line 00007). Those specifications stated, in pertinent part:

A stage III balanced vapor recovery system with coaxial hose to be OPW and CARB/EVR approved. All components from the nozzle to the splitter valve as well as, any internal parts inside the dispenser are to be supplied and furnished from a single manufacturer;

[RFP § 3.2.1.1 *Gasboy Models, Dresser Wayne Models, or Approved Equal.*]

At the request of the Hearing Unit, NJDOT reviewed the RFP specifications and advised the following:

Stage III Recovery does not exist and is a typo. The specification should have read “Stage II Balanced Vapor Recovery.”

Based upon NJDOT’s response, the Division must determine whether this specification error could have caused bidder confusion, thus unleveling the playing field.

Our Supreme Court has reiterated “[t]he public interest underlies the public-bidding process in this State.” Barrick, supra, 218 N.J. at 258. The “public bidding statutes exist ‘for the benefit of the taxpayers and are construed as nearly as possible with sole reference to the public good.’” Ibid. (quoting Keyes Martin & Co. v. Dir., Div. of Purchase & Prop., 99 N.J. 244, 256 (1985)). The purpose of the public bidding process is to “secure for the public the benefits of unfettered competition.” Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). As noted by the Supreme Court, in all publicly procured contracts the “conditions and specifications must apply equally to all prospective bidders. Otherwise, there is no common standard of competition.” Hillside Twp. v. Sternin, 25 N.J. 317, 32 (1957). The Court further explained: “Every element which enters into the competitive scheme should be required equally for all and should not be left to the volition of the individual aspirant to follow or to disregard and thus to estimate his bid on a basis different from that afforded the other contenders.” Ibid.

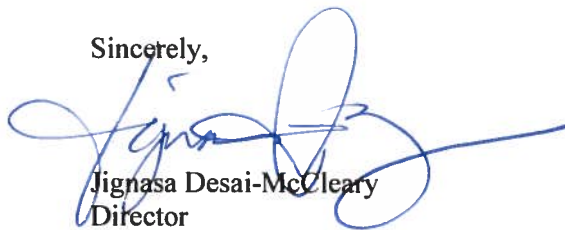
I find that this specification error, though inadvertent, did not properly identify the State’s needs for items provided on Price Lines 00005, 00006, and 00007 by creating confusion and requiring a product that did not exist. Potential bidders many have decided not to bid based on the flawed specifications, while others may have assumed that the specification should have read “Stage II.” This undermined the interest of our public bidding process.

Based on the foregoing, I find that Price Lines 00005, 00006, and 00007 of the RFP must be cancelled. The Bureau is directed to rescind the award of Price Line 00005 to EOH, and the intent to award of Price Line 00006 to PE. No award was previously made on Price Line 00007. Based upon the foregoing, I need not address EOH’s points of protest for NOI-2 as they are now moot.² This is my final agency decision.

² Additionally, as advised by NJDOT, I note it is unclear whether PE’s included Retail Price List specified the type of hose and nozzle to be included in the vapor recovery system.

Thank you for your continued interest in doing business with the State of New Jersey and for registering your business with NJSTART at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jignasa", with a long horizontal flourish extending to the right.

Jignasa Desai-McCleary
Director

JD-M:DF

c: G. Olivera
K. Woolford
R. Regan
Tom Dion, Petroleum Equipment of New Hampshire