



State of New Jersey

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March 23, 2018

Via Email [jonathan.witty@todaymediacustom.com] and USPS Regular Mail

Jonathan Witty, President
Media Two, LLC (d/b/a Today Media Custom Communications)
1014 West 36th Street
Baltimore, MD 21211

Re: IMO Bid Solicitation #17DPP00121
Protest of Notice of Intent to Award
Bid Solicitation Title: T2647 Printing: New Jersey Travel Guide, Production and Ad Sales

Dear Mr. Witty:

This letter is in response to your correspondence of January 26, 2018, to the Division of Purchase and Property's ("Division") Hearing Unit on behalf of Media Two, LLC d/b/a Today Media Custom Communications ("Media Two"). In that letter, Media Two protests the January 12, 2018, Notice of Intent to Award ("NOI") a Master Blanket Purchase Order ("Blanket P.O.")¹ to Miles Partnership, LLP d/b/a Miles Partnership, LP ("Miles Partnership") for Bid Solicitation #117DPP00121: T2647 Printing: New Jersey Travel Guide, Production and Ad Sales ("Bid Solicitation"). Media Two alleges that the "proposed award decision does not provide the client agency, the Division of Travel and Tourism (DTT) with the most experienced and proven partners to execute its primary marketing piece for the State, the annual Official New Jersey Travel Guide". Media Two protest, p. 1. Media Two requests that the Division rescind the January 12, 2018 NOI and award it the Blanket P.O.

¹ For consistency, this final agency decision uses terminology employed by the State of New Jersey's **NJSTART** eprocurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

NJSTART Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

BACKGROUND

By way of background, the subject Bid Solicitation was issued on April 20, 2017, by the Division's Procurement Bureau ("Bureau") on behalf of the New Jersey Department of State – Division of Travel and Tourism. The purpose of the Bid Solicitation was to solicit Quotes for publishing services - including content writing, advertising sales, layout and design, typesetting, proofreading, verification of listings, printing, delivery, and any other services associated with producing the State of New Jersey's 2019 New Jersey Official Travel Guide. Bid Solicitation § 1.1 *Purpose and Intent*. The intent of the Bid Solicitation is to award a Blanket P.O. to that responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Ibid.

In accordance with Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*, potential Vendors {Bidders} were permitted to submit questions regarding the Bid Solicitation through May 4, 2017. The Bureau answered the questions received through the posting of Bid Amendment #1 on May 25, 2017.

On June 9, 2017, two Quotes received by the submission deadline were opened and reviewed for administrative completeness by the Division's Proposal Review Unit. Both Quotes were forwarded to the Bureau. The Bureau provided the Quotes to the Evaluation Committee ("Committee") for review and evaluation consistent with the criteria set forth in the Bid Solicitation Section 6.7.1 *Technical Evaluation Criteria* which stated:

Each criterion will be scored and each score multiplied by a predetermined weight to develop the Technical Evaluation Score.

- a. Personnel: The qualifications and experience of the Vendor's {Bidder's} management, supervisory, and key personnel assigned to the Blanket P.O. {Contract}, including the candidates recommended for each of the positions/roles required.
- b. Experience of firm: The Vendor's {Bidder's} documented experience in successfully completing Blanket P.O.s {Contracts} of a similar size and scope in relation to the work required by this Bid Solicitation {RFP}.
- c. Ability of firm to complete the Scope of Work based on its Technical Quote {Proposal}: The Vendor's {Bidder's} demonstration in the Quote {Proposal} that the Vendor {Bidder} understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Blanket P.O. {Contract}.

On July 27, 2017 and August 1, 2017, the Committee, comprised of two voting members, one member of the Department of State and one member from the Bureau, met to review the Quotes received. Thereafter, on January 11, 2018, the Committee issued the Evaluation Committee Report ("Committee Report") with its findings. The Committee concluded that both Quotes submitted were technically competitive as each Quote demonstrated the Vendors' {Bidders'} ability to complete the project as outlined in the Bid Solicitation. The Committee recommended an award to "Miles Partnership since its Quote {Proposal} offer[ed] the State the great[est] cost savings for each additional copy (ordered beyond the initial production run of 430,000 copies)." Committee Report, p. 16.

Consistent with the Committee Report, on January 11, 2018, the Bureau issued a Recommendation Report which likewise recommended that the Director award the contract to Miles Partnership. On January 12, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O. to Miles Partnership.

On January 26, 2018, the Division received Media Two’s protest challenging the intended Blanket P.O. award to Miles Partnership. By way of summary, Media Two alleges (1) that the Committee Report was unclear as to the consideration given to bonus or free copies it proposed in its submitted Quote; (2) that there is no indication in the Bid Solicitation how the Vendor’s {Bidder’s} Quote price would be weighed against the technical Quote; and, (3) that the intended awardee submitted an unbalanced bid when it submitted a Quote price for the additional copies that has little relation to the actual expenses incurred.² Media Two Protest, pp. 2 - 3. Media Two contends “that the proposed award decision does not provide the client agency, the Division of Travel and Tourism (DTT), with the most experienced and proven partner to execute its primary marketing piece for the State, the annual Official New Jersey Travel Guide.” Media Two Protest, p. 1. Media Two “believes that its Quote is most advantageous to the State, price and other factors considered,” and requests that the Division rescind the January 12, 2018 NOI and award it the Blanket P.O. Media Two Protest, p. 4.

In consideration of Media Two’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, 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. I set forth herein the Division’s Final Agency Decision.

DISCUSSION

A. Consideration of Free Copies

The subject Bid Solicitation was a reprourement of similar services previously provided under T2647, entitled *Printing: New Jersey Travel Guide, Production and Ad Sales – Department of State, Division of Travel and Tourism* which expired on July 30, 2017. Bid Solicitation § 1.2.1 *Advertising Benchmark*. The Bid Solicitation cautioned all potential Vendors {Bidders} that DTT’s needs had changed and the subject Bid Solicitation addressed DTT’s current requirements. Accordingly, Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period* provided all potential Vendors {Bidders} with the opportunity to submit questions to the Bureau regarding the updated specifications. Six questions were received by the Bureau which were answered through the posting of Bid Amendment #01 on May 25, 2017. Relevant to the subject protest, a potential vendor posed a question regarding free copies to be provided to the State over the initial production run. As indicated below, the Bureau responded that while Vendors {Bidders} could provide free copies of the Travel Guide to the State over the initial production run, Vendors {Bidders} were advised that free copies was not a requirement of the current Bid Solicitation.

#	Page #	RFP Section Reference	Question (Bolded) and Answer
6	38	Section 4.4.5 Price Schedule/Sheet	<p>Past RFPs asked that bidders specify: 1) the number of free copies to be provided to New Jersey above the base 400,000-copy requirement, and 2) the cost of extra copies ordered after the initial printing. Is the State’s intention to remove the free-copies component from the Price Schedule?</p> <p>The base 400,000-copy requirement has been changed to 430,000 copies. Please refer to Section 3.1 – “General Requirements,” of revised Bid Solicitation {RFP} entitled “T2647 Revised RFP 05/25/17.”</p>

² In its protest, Media Two states that it was challenging Miles Partnership’s submission of Quote that unlevelled the playing field. In fact, Media Two’s protest point amounts to a challenge that Miles Partnership’s Quote price was an unbalanced bid, and it will be addressed as such in Section C below.

#	Page #	RFP Section Reference	Question (Bolded) and Answer
			The free-copies component is not a requirement of this Bid Solicitation {RFP}. Vendors {Bidders} may provide additional copies at no cost to the State.

With respect to additional copies over the initial production run of 430,000 copies, the Bid Solicitation required that Vendors {Bidders} indicate on the State supplied price sheet/schedule attachment, the price to be paid by the DTT for additional copies of the Travel Guide in production run quantities of 10,000, 25,000, and 35,000. Bid Solicitation § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. The proposed pricing submitted by the two Vendors {Bidders} is as follows:

Batch Size	Media Two		Miles Partnership	
	Price Per Copy	Price Per Batch	Price Per Copy	Price Per Batch
10,000	\$ 1.35	\$ 13,500	\$ 0.30	\$ 3,000
25,000	\$ 0.80	\$ 20,000	\$ 0.30	\$ 7,500
35,000	\$ 0.685	\$ 23,975	\$ 0.30	\$ 10,500

In its protest, Media Two states that neither the Bureau nor the Committee considered the impact of the free copies on the initial or subsequent print requests when evaluating the Quotes received. Media Two Protest, p. 2. Media Two believes that the 5,000 free copies creates a significant added value to the contract that could eliminate or reduce DTT’s need to print additional travel guides after the initial production run.³ Further, Media Two states that the free copies should have been considered in connection with the pricing for additional copies of the guides; and had the free copies been given consideration, Media Two’s pricing for subsequent production runs would have been less than reflected in the Committee Report. Media Two protest, p. 2.

With respect to statement that the neither the Bureau nor the Committee considered its proposal to provide 5,000 free copies of the Travel Guide over the initial production run of 430,000; as noted above, in response to a question posed by a potential Vendor {Bidder} the Bureau advised that free copies of the travel guide was not a requirement of the Bid Solicitation. This was a change from the prior procurements of the subject contract. Therefore, the Bureau was well within its discretion to not consider one Vendor’s {Bidder’s} proposal to provide free guides which were neither required nor requested in the subject Bid Solicitation.

Further, even if the Bureau had considered Media Two’s proposal to provide 5,000 free copies of the travel guide over the initial production run, the price proposed by Miles Partnership, for the subsequent production runs, as indicated in the charts below, represented a significant cost savings, even though the State would be required to pay Miles Partnership for the full number of copies in a subsequent production run.

Batch Size (After 5,000 free copies)	Media Two	
	Price Per Copy	Price Per Batch
5,000	\$ 1.35	\$ 6,750
20,000	\$ 0.80	\$ 16,000
30,000	\$ 0.685	\$ 20,550

³ In its Quote, Media Town proposed that on request it would provide 5,000 free copies above base; not 5,500 as indicated in its protest.

Batch Size (No Free Copies)	Miles Partnership	
	Price Per Copy	Price Per Batch
10,000	\$ 0.30	\$ 3,000
25,000	\$ 0.30	\$ 7,500
35,000	\$ 0.30	\$ 10,500

The statutes governing public procurement provide that when the State advertises a contract and accepts bids, “award shall be made . . . to that responsible bidder whose, bid conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered.” N.J.S.A. 52:34-12(a)(g). Here, I find that Bureau’s award recommendation was consistent with that mandate.

B. Weighting of Evaluation Criteria

Second, Media Two states that there was “no indication [in the Bid Solicitation] of how Price (Volume 3) is weighted against Technical Quote/Organizational Support and Experience (Volume 2).” Media Two Protest, p. 2. Media Two states that this “is a critical issue since Volume 2 addresses the vendor’s experience, staffing and strategy – that is, the factors essential to effective project performance.” Ibid.

The Division’s governing regulations require that for all Bid Solicitations “that set forth evaluation criteria, values, or utility models to be applied by the evaluators in assessing the proposals, and that do not reveal specific, assigned weights or elements, the evaluation committee or assigned Division staff member shall, prior to the opening of proposals, determine, document, and date-stamp such weighted evaluation criteria, values, or utility models.” N.J.A.C. 17:12-2.7(b). Price is not an evaluation criteria to be reviewed when determining whether a Vendor’s {Bidder’s} Quote is responsive to the requirements of the Bid Solicitation. Rather, after the evaluation of Quote received is complete, the Bureau makes an award recommendation to the Director for that Vendor {Bidder} whose proposal “conforming to this Bid Solicitation {RFP}, is most advantageous to the State, price and other factors considered.” Bid Solicitation § 6.7.4 *Evaluation of Quotes {Proposals}*; see also N.J.S.A. 52:34-12 (g).

A review of the Evaluation Committee Report here reveals that Media Two and Miles Partnership both submitted technically competitive proposals, each demonstrating an ability to complete the scope of work outlined in the Bid Solicitation. Committee Report, p. 16. Specifically, the Committee noted:

The Committee determined that both submitted Quotes {Proposals} were deemed technically competitive: Media Two scored 1,600 technical points out of a possible 2,000 points (with an average technical score of 800), and Miles Partnership scored 1,400 technical points out of a possible 2,000 (with an average technical score of 700), and each has demonstrated the Vendor’s {Bidder’s} ability to complete the project as outlined in RFP Section 3.0, Scope of Work.

[Ibid.]

Because both Quotes received were responsive to the requirements of the Bid Solicitation and both Quotes received evaluation scores which were technically close, the Committee reviewed and considered the Quote pricing submitted by each Vendor {Bidder}. Based upon that review, the Bureau recommended that the Blanket P.O. be awarded to Miles Partnership as its Quote pricing offered the State the greatest cost savings for the “production run quantities” of the travel guide ordered after the initial production run of 430,000 copies.

C. Unbalanced Bid

In support of its protest, Media Two states “that in order for bidding entities to make fair and smart decisions that maximize benefit to client agencies and the public in general, the bid process should be equitable, with a level playing field for competitors.” Media Two Protest, p. 3.

As the incumbent vendor, Media Two states that it is well aware that DTT has never requested additional copies; therefore, armed with that knowledge it could have entered “zero” on the price schedule for the lines associated with the additional print batches. Ibid. However, Media Two states that it chose not to do so and instead submitted its market based costs.

Media Two further alleges that Miles Partnership proposed pricing was not a market based figure, but rather “place-holder pricing – not so low as to be manifestly impossible but low enough to ensure that it will come in well below any reasonable, market-based bid figures presented by competitors.” Media Two Protest, p. 4. Media Two’s statement is akin to an allegation that Miles Partnership submitted an unbalanced bid; specifically, that Miles Partnership’s proposed price is unbalanced because it would be operating at a loss. In support this statement, Media Two obtained quotes for printing services from Miles Partnership’s subcontractor. Those quotes indicated much higher production run costs than had been proposed by Miles Partnership in its Quote. Specifically, Media Two obtained the following price quotes:

Batch Size	Media Two Using Miles Partnership’s Subcontractor
	Price Per Batch
5,000	\$ 15,602.62
20,000	\$ 23,201.51
30,000	\$ 28,951.19

In response to the protest, Miles Partnership provided a statement from its subcontractor stating “[t]he pricing in the quote provided to Media Two is not reflective of the pricing that we offer to Miles [Partnership]. Based on the volume of work they place with us and our long standing relationship with them, Miles [Partnership] is offered a discount that is reflective of that relationship.” Miles Partnership response to Protest, p. 2.

The New Jersey Courts have defined an ‘unbalanced bid’ as one where a Bidder submits a nominal price for some work and enhanced prices for other work. Turner Construction Company v. New Jersey Transit Corporation, 296 N.J. Super. 530, 537 (App. Div. 1997). However, the Courts have also concluded that “reasonable unbalancing is perfectly proper.” Id. at 538, citing, Riverland Construction Co. v. Lombardo Contracting Co., 154 N.J. Super. 42 (App. Div. 1977). “[T]he submission of an unbalanced bid standing alone does not invalidate the bid.” Turner, supra, 296 N.J. Super. at 538; citing, Frank Stomato v. City of New Brunswick, 20 N.J. Super. 340, 344 (App. Div. 1952). In Turner, the court held

The submission of a zero bid is similar to that of a nominal penny bid. A nominal bid is not inherently evil or destructive of fair and competitive bidding. Every contractor may apply his own business judgment in the preparation of a public bid, and his willingness to perform one of the items for a nominal amount is but his judgmental decision in an effort to underbid his competitors.

As we stated in Riverland

[i]n the absence of a factual showing that such a decision subverts the principles of fair and competitive bidding there is no reason to invalidate the resulting bid. The pejorative connotation of the

phrase “unbalanced bid” comes into play only when the nominal bid on one item is unbalanced because of an excessive bid on other items, or because of other elements pointing to fraud, collusion, unfair restriction of competition or other substantial irregularity. Reasonable unbalancing is perfectly proper.

[Turner, supra, 296 N.J. Super. at 538, *internal quotes and citations omitted.*]

In evaluating the Quotes submitted by Vendors {Bidders}, the Division is not evaluating pricing in terms of Vendor {Bidder} profitability. Rather, the Division evaluates Quotes to ensure that Blanket P.O.s are awarded to that responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. RFP § 1.1 *Purpose and Intent*.

Here, the Bureau’s evaluation of Miles Partnership’s Proposal did not reveal nominal or zero pricing with respect to any line item. Miles Partnership is free to exercise its business judgment regarding the price it will charge to the State additional copies of the Travel Guide. “Reasonable unbalancing is perfectly proper,” and there is no evidence that Miles Partnership has engaged in fraud, collusion, unfair restriction of competition, or other substantial irregularity – necessary for a finding that a Bidder submitted an unbalanced bid. There being no evidence that Miles Partnership has engaged in fraud, collusion, unfair restriction of competition, or other substantial irregularity, I conclude that the Quote pricing submitted by Miles Partnership is not an unbalanced bid.

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation. Accordingly, I sustain the January 12, 2018 NOI. This is my final agency decision with respect to the protest submitted by Media Two.

Thank you for your company’s continuing interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: D. Burgess
A. Davis
K. Anderson-Thomas
V. Taylor