



## State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY  
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October 28, 2019

Via Electronic Mail [melanie.pomerico@otteau.com] and USPS Regular Mail

Melanie Pomerico  
Otteau Group, Inc.  
100 Matawan Road - Suite 320,  
Matawan, NJ 07747

Re: I/M/O Bid Solicitation #19DPP00335 Otteau Group, Inc.  
Protest of Notice of Proposal Rejection  
T2957-Appraisal Services for NJ Department of Environmental Protection

Dear Ms. Pomerico:

This letter is in response to your email of October 23, 2019, on behalf of Otteau Group, Inc. ("Otteau") which was received by the Division of Purchase and Property's ("Division") Hearing Unit. In that email, Otteau protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit on August 23, 2019, for Bid Solicitation #19DPP00335- T2957-Appraisal Services for NJ Department of Environmental Protection ("Bid Solicitation"). The record of this procurement reveals that Otteau's Quote was rejected for failing to include pricing information with its submitted Quote.

By way of background, on July 12, 2019, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of New Jersey Department of Environmental Protection (DEP). Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of this Bid Solicitation is to solicit Quotes for Real Estate Appraisal services by qualified NJ State Certified General Real Estate Appraisers (SCGREAs) required by DEP for the purpose of acquiring properties as open space preservation or flood plain protection by the State of New Jersey (State) on an as needed basis. *Ibid*.

On September 13, 2019, the Division's Proposal Review Unit opened Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Otteau for missing pricing information. Otteau's Quote did not include a Price Sheet.

In response to the Notice of Proposal Rejection, on October 23, 2019, Otteau sent an email to the Division's Hearing Unit stating:

We received the attached rejection, and I am unclear as to why we were denied. I had uploaded the Price Schedule at the time of submitting, and now the attached says it was unrecieved.

Please advise what is required, or what steps need to be taken, so we can still be considered for this bid.

In consideration of Otteau's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Otteau's proposal and protest, 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.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall<sup>1</sup> conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added*.]

Among those attachments required to be submitted with the Quote is the State-Supplied Price Sheet discussed in Bid Solicitation Section 4.4.5.

With respect the submission of Quote pricing, the Bid Solicitation cautioned Vendors {Bidders} regarding the need to ensure that all required forms, including the State-Supplied Price Sheet, are properly submitted. Specifically, Bid Solicitation Section 4.4 *Quote Content* states in part:

Note: Vendors {Bidders} submitting Quotes through NJSTART must complete the State-supplied price sheet/schedule(s) (Volume 3) accompanying this Bid Solicitation and upload it as an attachment on the "Attachments" Tab (See Section 4.4.5 of this Bid Solicitation).

The requirement to use the State-supplied price sheet for Vendor pricing was reiterated in Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet* which states "[t]he Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments" Tab."

To assist Vendors {Bidders} in completing the State-Supplied Price Sheet, the Bid Solicitation further advised in part:

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<sup>1</sup> "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

The Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab.

The Vendor {Bidder} must provide a Firm-Fixed all-inclusive hourly rate for both price lines of a Region in order to be eligible for award of that Region. The Vendor {Bidder} must be willing and able to service the entire Region that is bid. Quotes submitted for less than an entire Region will be rejected and deemed as non-responsive for the respective Region. The Vendor {Bidder} is able to submit a Quote for a single Region, or any combination of Regions.

In the event that a Vendor {Bidder} using *NJSTART* to submit a Quote uploads a State-Supplied Price Sheet and completes the “Items” Tab in *NJSTART* (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet will govern.

[Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions.*]

The review of Otteau’s Quote reveals that it submitted the following attachments:

**Quote 00003551 - Otteau Group Inc**

General   Items   Questions   Subcontractors   Terms & Conditions   Attachments(12)   Evaluations   Preference   Reminders   Summary

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**Files**

Name	Description
<a href="#">Offer and Acceptance Page</a> (view details)	Offer and Acceptance Page
<a href="#">Division of Purchase &amp; Property</a> (view details)	Division of Purchase & Property
<a href="#">Subcontractor Utilization Plan</a> (view details)	Subcontractor Utilization Plan
<a href="#">Ownership Disclosure Form</a> (view details)	Ownership Disclosure Form
<a href="#">Disclosure of Investigations</a> (view details)	Disclosure of Investigations
<a href="#">2 Year Chapter Five</a> (view details)	2 Year Chapter Five
<a href="#">Employee Information Form</a> (view details)	Affirmative Action Information Form
<a href="#">Vendor Bidder Data Sheet</a> (view details)	Vendor Bidder Data Sheet
<a href="#">Lobbying Form</a> (view details)	Lobbying Form
<a href="#">Disclosure of Investments</a> (view details)	Iran Disclosure of Investments
<a href="#">Source Disclosure Form</a> (view details)	Source Disclosure Form
<a href="#">Cooperative Purchasing Form</a> (view details)	Cooperative Purchasing Form

In its protest, Otteau states that it did provide the Pricing Sheet, however the review of the attachments on the *NJSTART* reveals that the Pricing Sheet was not attached at the time of the Quote submission. The Division opened each of the attachments submitted by Otteau and none of these were a Price Sheet.

The question then is whether Otteau’s failure to submit pricing information at the time of its Quote submission is a deviation from the requirements of the Bid Solicitation. In order for Otteau’s Quote to be

considered responsive, Otteau's failure to submit all of the information required by the State-Supplied Price Sheet with its Quote would have to be deemed a minor irregularity. Minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 1.4.10, *Quote {Proposal} Acceptances and Rejections*. It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity." In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, supra, 127 N.J. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, supra, 127 N.J. at 216.]

"If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all." Id. at 222.

As noted above, Otteau did not submit a State-Supplied Price Sheet. The instructions for the State-Supplied Price Sheet required Vendors {Bidders} "must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments" Tab." Bid Solicitation § 4.4.5 *State-Supplied Price Sheet*, emphasis added. Otteau's failure to include the pricing information with its submitted Quote is a material deviation from the requirements of the Bid Solicitation. Allowing Otteau to submit the pricing information, after the Quote submission deadline would place it in a position of advantage over Vendors {Bidders} who submitted the pricing information as required by the Bid Solicitation. After the Quote submission deadline; a Vendor {Bidder} knowing who its competitors are, would be in position of advantage over other Vendors {Bidders} who included the pricing with the submitted Quote and were therefore unaware of who the competitors would be.

Further, permitting Otteau to submit its pricing information after the Quote submission deadline would result in an impermissible supplementation of Otteau's bid submission, which the Division cannot allow as doing so would be contrary to the Court's holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) ("In 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"); In re Motor Vehicle Comm'n Surcharge Sys. Accounting and Billing Servs., No. A-3136-16, at \*32 (App. Div. Feb. 8, 2018) (explaining the Vendor's "original bid was non-conforming, but the Division impermissibly allowed the bid thereafter to be materially altered").

The responsibility for ensuring that all necessary forms and other submittals are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2

*Vendor {Bidder} Responsibility.* The Division sympathizes if another document was inadvertently uploaded instead of the pricing information, however, here, unfortunately, Otteau submitted a Quote without all of the necessary pricing information included. If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. Otteau's failure to submit its Quote Pricing consistent with the requirements of the Bid Solicitation, is a material deviation. Permitting Otteau, or any other Vendor {Bidder}, to submit the required information after the Quote opening deadline has passed, would place that Vendor {Bidder} in a position of advantage over other Vendors {Bidders} who timely submitted the required pricing information with the Quote. I encourage you to review the Quick Reference Guide (QRG), located at <https://www.state.nj.us/treasury/purchase/vendor.shtml>, to ensure you are uploading the correct documents.

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. However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject Bid Solicitation. This is my final agency decision on this matter.

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

Sincerely,



Maurice A. Griffin  
Acting Director

RUD: RD

c: J. Frew  
R. Regan  
K. Popso  
A. Davis  
D. Rodriguez  
A. Nelson