



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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December 10, 2020

Via Electronic Mail Only tpeter@irs-restoration.com

Thomas Peter
Insurance Restoration Specialists, Inc.
30 Abeel Road
Monroe Township, NJ 08831

Re: I/M/O Bid Solicitation #19DPP00369 Insurance Restoration Specialists, Inc.
Protest of Notice of Intent to Award
T2881 Water Date Restoration Services - Statewide

Dear Mr. Peter:

This final agency decision is in response to your email of November 9, 2020, on behalf of Insurance Restoration Specialists, Inc. (IRS) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, you protest the November 5, 2020, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #19DPP00369 – T2881 Water Date Restoration Services - Statewide (Bid Solicitation).

By way of background, on January 9, 2020, the Bureau issued the Bid Solicitation on behalf of all State Agencies and Cooperative Purchasing Program Participants. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes from qualified Vendors {Bidders} to perform water damage and restoration services for State and Cooperative Purchasing Program participant owned properties. *Ibid*. The intent of the Bid Solicitation is to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. *Ibid*. The Bid Solicitation was designated as a partial Small Business set-aside Blanket P.O. for Small Business Category I, II or III. The State intended to make multiple Blanket P.O. awards for each Region Award Grouping, with two (2) awards set-aside for qualifying Small Businesses in each Region. However, if no responsive Quotes with acceptable pricing were received from qualified Small Businesses, the Division would award those set-aside Blanket P.O.s to non-Small Business Vendors {Bidders}.

On February 13, 2020, the Division's Proposal Review Unit opened eight (8) Quotes received by the submission deadline. After conducting an initial review of the Quotes for the compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded the Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*.

On October 28, 2020, after completing the review and evaluation of the submitted Quotes, the Bureau prepared a Recommendation Report which recommended that Blanket P.O. awards be made to Active Environmental, Asbestos Mold Services, Corp., and A Women Owned Contractor, Inc. (AWOC), whose submitted Quotes were most advantageous to the State, price and other factors considered. Accordingly, on November 5, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the Bureau's Recommendation Report dated October 28, 2020.

On November 11, 2020 the Division's Hearing Unit received IRS' protest. By way of summary, IRS protests the determination that its submitted Quote was non-responsive to the requirements of the Bid Solicitation; questions the pricing submitted by AWOC; questions AWOC's ownership structure and the ability of the company to complete the work sought by the Bid Solicitation; and, alleges that AWOC and Active Environmental do not have the required DPMC C103 Microbial Remediation Classification. Additionally, IRS requests an in-person meeting.

First, with respect to IRS' request for an in-person presentation, I note that pursuant to N.J.A.C. 17:12-3.3(e), "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). In consideration of IRS' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, the relevant statutes, regulations, and case law. The issues raised in IRS' protest were sufficiently clear such that a review of the record of this procurement 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 submitted by IRS on the written record, as such an in-person hearing is not warranted. I set forth herein the Division's final agency decision.

Next, with respect to IRS's protest of the Bureau's intended Blanket P.O. awards to AWOC, while IRS's protest was under review by the Division's Hearing Unit, on December 8, 2020, counsel for AWOC wrote to the Division requesting that AWOC be permitted to withdraw its submitted Quote pursuant to N.J.A.C. 17:12-11(b). In support of its request AWOC states that it relied upon out-of-date materials in the calculation of the prevailing wage rates applicable to the contract. AWOC states that "it would be unconscionable to enforce the contract resulting from AWOC's proposal as the prevailing wage rates proposed are in some cases close to or more than one-half of the prevailing wage rate required." In reviewing AWOC's request, I have determined that AWOC's request was made in good faith, and that the State will not be significantly prejudiced by granting the withdrawal of the Quote. Accordingly, I have granted AWOC's request to withdraw its submitted Quote pursuant to N.J.A.C. 17:12-11(b). In light of the fact that I have granted AWOC's request to withdraw the submitted Quote, IRS' protest points against AWOC are moot, and need not be addressed in this decision.

Turning to IRS's protest of the Bureau's determination that IRS' submitted Quote was non-responsive to the requirements of the Bid Solicitation, as noted in the Bureau's Recommendation Report, IRS' submitted Quote was deemed non-responsive because:¹

¹ IRS' Quote was not deemed non-responsive for IRS's failure to include a copy of the company's Public Works Registration Certificate with the Quote. By reviewing databases maintained by the State, the Bureau was able to confirm that IRS did have a Public Works Registration Certificate at the time of Quote opening. Additionally, the Hearing Unit's review of IRS' Quote reveals that the Public Works Registration Certificate was included with the Quote as indicated in IRS' protest.

The Vendor {Bidder} listed three (3) Subcontractors on its *Subcontractor Utilization Form*. The Vendor's {Bidders}' Subcontractors' work included: carpet and flooring (Subcontractor #1 Messina Brothers Carpet), painting (Subcontractor #2 J.W. Painting Services), and general contracting work (Subcontractor #3 Loyola Construction LLC). The work being performed by Subcontractors #2 and #3 require Public Works pursuant to the Bid Solicitation; therefore, the Quote does not meet the requirements of Section 4.4.1.8 of the Bid Solicitation which states, "At the time of the Quote due date, the Vendor {Bidder} and Subcontractors performing public work as defined in N.J.S.A. 34:11-56.26 must be registered in accordance with the Public Works Contractor Registration Act (PWCRA), N.J.S.A. 34:11-56.48 *et seq.*"

Additionally, IRS indicated "N/A" on Price Line 50 on its submitted State-Supplied Price Sheets for the Northern, Central, and Southern Regions and therefore does not meet the requirements of section 4.4.5.2 of the Bid Solicitation which states, "The Vendor {Bidder} must bid on all price lines within a Region to be considered for award of the respective Region."

In an effort to correct the deficiencies that lead to the determination that the Quote was non-responsive, in the protest, IRS requests that the three subcontractors be removed from the subcontractor list. Specifically, IRS states:

Sub-Contractors: we provide 3 subcontractors in our bid (on the Subcontractors Utilization Form) and did not confirm that they were registered as Public Works contractors. IRS is requesting that they be removed from the list and will not be used on any State contract projects unless they obtain the proper documentation. In the future, if a subcontractor is to be used for specific tasks, we will assure you that they will have the Public Works registration and we would provide proof and written request to the appropriate agency before we use that subcontractor. IRS has our own construction crews/carpenters and typically we perform most of the water damage building material reconstruction repairs in-house.

IRS cannot now amend its Quote submission to remove its subcontractors, 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 *On-Line Games* the Appellate Division held that "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". IRS' request to remove its listed subcontractors in an effort to make its Quote responsive to the requirements of the Bid Solicitation is a change to the submitted Quote not permitted by the Court's holding in *On-Line Games*.

IRS additionally requests that its notation of "N/A" on the Quote price sheet be amended to "0", stating:

Price Sheet: In Price Line item 50 on the price sheet, item description: "Truck and driver for water disposal" we put N/A and not a "0" for that item. We do not provide this service so we placed an N/A in the price

columns and should have placed a "0" to avoid the deficiency. Even with the N/A in place the terminal line still quoted as a 0 value.

[Emphasis added.]

A review of the Bid Solicitation reveals that Vendors {Bidders} were required to submit pricing for all price lines within a region. See Bid Solicitation Section 4.4.5.2(A). Further, as to price line 50, the Bid Solicitation further specified:

- C. **Price Lines #16 – 66:** The Vendor {Bidder} must² submit all-inclusive hourly rates for all equipment listed for the North Region. The Vendor {Bidder} equipment rates shall include fuel and normal maintenance, since the Using Agency will not provide separate compensation for fuel and normal maintenance; and

[Bid Solicitation Sections 4.4.5.2.2, 4.4.5.2.3, and 4.4.5.2.4.]

As noted above, IRS' request to alter its price sheet in an effort to make its Quote responsive to the requirements of the Bid Solicitation is a change to the submitted Quote not permitted by the Court's holding in *On-Line Games*. Further, IRS states that it does not provide the listed services; therefore, regardless of the notation on the price sheet of "N/A" or "0"; IRS' Quote would be non-responsive to the requirements of the Bid Solicitation as the Transportation Rental Fee for a Truck and Driver for water disposal is a mandatory requirement of the Bid Solicitation scope of work.

Accordingly, the Bureau properly concluded that the Quote submitted by IRS was non-responsive to the requirements of the Bid Solicitation.

Finally, IRS alleges that Active Environmental is not qualified to perform the work sought by this Bid Solicitation because Active Environmental does not have the required Microbial Remediation classification code C103 issued by the Division of Project Management and Construction (DPMC). That classification was not a requirement of Quote submission nor was it a requirement of Blanket P.O. award. Rather, Bid Solicitation Section 3.4.4 *MOLD* requires that Vendors {Contractors} and subcontractors performing mold remediation be classified prior to performing the work required. Accordingly, Active Environmental is able to obtain the Microbial Remediation classification code C103 from DPMC after contract award. The only requirement is that Active Environmental or an identified subcontract have the appropriate classification code, prior to performing the work required.

In light of the findings set forth above and fact that I have granted AWOC's request to withdraw the submitted Quote, I sustain the Bureau's November 5, 2020, NOI indicating that Blanket P.O. awards will be made to Active Environmental and Asbestos Mold Services, Corp. This is my final agency decision on this matter.

² Bid Solicitation Section 2.2 General Definitions state that "Must – Denotes that which is a mandatory requirement."

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov. I encourage you to log into **NJSTART** to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: M. Dunn
R. Regan
K. Popso