



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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March 3, 2023

Via Electronic Mail only elizabeth.aebly@graybar.com

Elizabeth Aebly-Kaney
Graybar Electric Company, Inc.
800 Huyler Street
Teterboro NJ 07608

Re: I/M/O Bid Solicitation #22DPP00747– Graybar Electric Company, Inc.
Protest of Notice of Intent to Award
T1778 – Communications/ Telecommunications Cable, Wire, and Associated Products

Dear Ms. Aebly-Kaney:

This final agency decision is in response to your correspondence dated January 26, 2023, submitted on behalf of Graybar Electric Company, Inc. (Graybar). In that correspondence Graybar protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #22DPP00747 – T1778 Communications / Telecommunications Cable, Wire and Associated Products (Bid Solicitation). The record of this procurement reveals that the Quote submitted by Graybar was deemed non-responsive for having failed to "describe its approach and plans for accomplishing the work" as required in Bid Section 3.14, *Technical Quote*, and failed to complete mandatory fields on the State Price Sheet, specifically the Extended Warranty Column for categories 1, 2, 3, 4, 5 and 7 as required by Bid Solicitation Section 4.6 *Warranty Requirements*.

By way of background, on April 14, 2022, 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 for the purchase of telecommunication cable, wire, and associated equipment and services including, but not limited to:

- A. Category 1 – Cable, Wire, and Optical Fiber;
- B. Category 2 – Custom Length Cables;
- C. Category 3 – Associated Cable and Wire Hardware;
- D. Category 4 – Test Equipment;
- E. Category 5 – Installation Tools;
- F. Category 6 – Training; and

G. Category 7 – Data Center Management Solutions and Installation.

It is the intent of the State to award Contracts to those responsible Bidders whose Quotes, conforming to this Bid Solicitation are most advantageous to the State of New Jersey (State), price and other factors considered. The State may award any or all price lines. *Ibid*.

In accordance with Bid Solicitation Section 2.1 *Electronic Questions and Answer Period*, potential Bidders were permitted to submit questions regarding the Bid Solicitation by May 11, 2022. On June 23, 2022, the Bureau posted Bid Amendment #1 with the answers to questions posed, two of which specifically raised questions as to the Warranty Requirements section of the Price Sheet:

6	Price Sheet	<p>What is the difference between product % discount and extended warranty column?</p> <p>Product Percent (%) Discount off of OEM Price Catalog column represents the Contractor’s {Bidder’s} proposed discount rate to be applied to the MSRP of the product catalogs of each brands bid.</p> <p>Extended Warranty Percent (%) Discount off of OEM Price Catalog column represents the Bidder’s proposed discount rate to be applied to the MSRP of the Extended Warranty catalogs of each brands bid.</p>
8	3.28	<p>On the pricing form it states an Extended Warranty % Discount. Does this mean if the vendor offers an Extended Warranty for items the State is looking for a discount for this warranty</p> <p>Yes</p>

On July 27, 2022 the Division’s Proposal Review Unit opened seven (7) Quotes which were received by the submission deadline of 2:00 p.m. Eastern Time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, all seven Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that Graybar’s submitted Quote was non-responsive for two (2) reasons. First, Graybar failed to “describe its approach and plans for accomplishing the work” as required in Bid Section 3.14, *Technical Requirements*,

The Bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work. The Bidder must set forth its understanding of the requirements of this Bid Solicitation and its approach to successfully complete the Contract. The Bidder should include the level of detail it determines necessary to assist in the of the Bidder’s Quote.

Second, contrary to the instructions in Bid Selection Section 3.28, Graybar failed to complete mandatory fields on the State Price Sheet, specifically the Extended Warranty Column for categories 1, 2, 3, 4, 5 and 7:

The Bidder must submit its pricing using the State Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab. The Bidder must also submit its pricing using the format set forth in the Schedules Table accompanying this Bid Solicitation. Failure to submit all information required will result in the Quote being considered non-responsive.

The remaining responsive Quotes were then evaluated in accordance with Bid Solicitation Section 8.9 *Evaluation Criteria*. After completing its review and evaluation the Bureau prepared a Recommendation Report that recommended that Contracts be awarded to three (3) Bidders. Accordingly, on January 11, 2023, the Bureau issued the NOI advising the Bidders that it was the State’s intent to award Blanket P.O.s consistent with the January 5, 2023, Recommendation Report.

In consideration of the Graybar’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, 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.

The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion. Specifically the Bid Solicitation Section 9.0 *Glossary* states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

This mandatory language is found in Bid Solicitation Section 3.14 *Technical Quote* wherein it makes clear that “the Bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work.” Further this Technical Quote section is itself found within Bid Solicitation Section 3.0 *Quote Submission Requirements*. Reading this sections together as they are grouped, along with the mandatory language, makes clear that the Technical Quote information is a mandatory requirement at the time of Quote submission. In addition there were no questions raised during the Q&A process indicating that any Vendor was unclear of this requirement.

Similarly, the information on the State Price Sheet is required to be submitted with the Quote and the mandatory language is repeated multiple times in Bid Solicitation Section 4.6 *Warranty Requirements*:

Warranty requirements

The Contractor shall provide warranty of products and services as follows:

Warranty Service Level Requirements		
Hardware Category	Term	Other Requirements
Category 1 – Cable, Wire, and Optical Fiber; and	Manufacturer’s standard warranty (One (1) year minimum)	Eligible for manufacturer’s extended warranty plans for a minimum of 15 years
Category 2 – Custom Length Cables	Manufacturer’s standard warranty (One (1) year minimum)	Eligible for manufacturer’s extended warranty plans for a minimum of 15 years
Category 3 – Associated Cable and Wire Hardware	Manufacturer’s standard warranty (One (1) year minimum)	Eligible for manufacturer’s extended warranty plans for a minimum of 15 years
Category 4 – Test Equipment	Manufacturer’s standard warranty (One (1) year minimum)	Eligible for manufacturer’s extended warranty plans in one (1) year increments.
Category 5 – Installation Tools	Manufacturer’s standard warranty (One (1) year minimum)	Eligible for manufacturer’s extended warranty plans in one (1) year increments.
Category 7 – Data Center Management Solutions and Installation	Manufacturer’s standard warranty (One (1) year minimum)	Eligible for manufacturer’s extended warranty plans in one (1) year increments.

All structured cabling equipment in categories 1, 2, and 3 shall carry the manufacturer’s standard warranty and must be eligible for manufacturer’s extended warranty plans for a minimum of 15 years. The warranty and/or guarantee documents shall accompany the equipment when delivered. Any equipment to be replaced must be new and the same as or equal to the original product.

All structured cabling equipment in categories 4, 5, and 7 shall carry the manufacturer’s standard warranty and must be eligible for manufacturer’s extended warranty plans quoted in one (1) year increments. The warranty and/or guarantee documents shall accompany the equipment when delivered. Any equipment to be replaced must be new and the same as or equal to the original product.

[Emphasis added.]

If after reviewing the Bid Solicitation a Vendor has any questions or seeks additional information, Bid Solicitation Section 2.1 provides for an *Electronic Question and Answer Period* during which “the Division will electronically accept questions and inquiries from all potential Bidders.” As indicated above, at least two questions were received related to the Warranty Requirement one of which specifically addressed this issue.

On June 23, 2022, the Bureau posted Bid Amendment #1 with the answers to questions posed. The answers to the questions become part of the Bid Solicitation when they are incorporated as Bid Amendments pursuant to Bid Section 2.3

BID AMENDMENTS

In the event that it becomes necessary to clarify or revise this Bid Solicitation, such clarification or revision will be by Bid Amendment. Any Bid Amendment will become part of this Bid Solicitation and part of any Contract awarded. Bid Amendments will be posted as a file attachment on the “Summary” page of the Bid Solicitation in *NJSTART* after the cut-off date.

There are no designated dates for release of Bid Amendments. Those Bidders who are on the bid holder list either through commodity code registration in *NJSTART* or by acknowledging the bid in *NJSTART* should receive notification of any Bid Amendment(s). If a Bidder is not on the bid holder list, Bid Amendments are still viewable on the “Summary” page of the Bid Solicitation in *NJSTART*.

It is the sole responsibility of the Bidder to be knowledgeable of all Bid Amendments related to this procurement. An interested Bidder should check the *NJSTART* “Open Bids” Tab on a daily basis to ensure review of the most updated information.

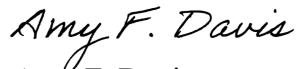
The combination of the clear bid language in Section 3.28 that “[f]ailure to submit all information required will result in the Quote being considered non-responsive,” the mandatory definitions in the Glossary, and the clarification incorporated via Bid Amendment #1, make clear that the price sheet column, “Extended Warranty Percent (%) Discount off of OEM Price Catalog,” was a required component of the Bid Solicitation and the State Supplied Price Sheet. By failing to submit pricing, Graybar’s Quote contained a non-waivable deviation rendering the Quote non-responsive. Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974).

In light of the findings set forth above, I sustain the conclusions in the Bureau’s January 5, 2023, Recommendation Report, that Graybar’s Quote was non-responsive as to the failure to provide the required technical quote and warranty pricing information and uphold the January 11, 2023, Notice of Intent to Award. 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.

Thank you for your company's continuing interest in doing business, 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.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Amy F. Davis
Acting Director

AFD: DPK

c: M. Dunn
S. Brandbergh