



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR

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January 27, 2017

Via Electronic Mail [[office@tepspower.com](mailto:office@tepspower.com)] and USPS Regular Mail

Ms. Melissa Mulharan  
Tep's Power Equipment  
1007 N. High St.  
Millville, NJ 08332

RE: Protest of Notice of Award  
RFP #16-X-24053 Parts and Repairs for Lawn and Grounds Equipment (T-2187)

Dear Ms. Mulharan:

This correspondence is in response to your letter of protest submitted on behalf of Tep's Power Equipment (TPE), dated and received November 2, 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 that letter, you protest the slated award of T-2187, contending that the awarded bids were "unfair/unequal" and "listed as having price lists with a date of 2009." Specifically, you state that a dealer submitting pricing from 2009 cannot be "fairly compared" to a dealer, such as TPE, that submitted current pricing, as prices from 2009 "would severely undercut anyone with a current price list."

I have reviewed the record of this procurement, including TPE'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 TPE's protest.

By way of the background, the subject RFP was issued by the Bureau on behalf of State agencies to solicit proposals for parts and repairs for lawn and grounds equipment. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award contracts to those responsible bidders whose proposals, conforming to [the] RFP are most advantageous to the State, price and other factors considered." *Ibid*. As specified by the RFP, "[f]or each OEM parts and repair group and each non-OEM parts and non-OEM repairs group, a maximum of three awards per region, one primary, one secondary and one tertiary, shall be made." RFP § 4.4.7.5. This is a repurchase for similar equipment to those provided under term contract T-2187.

The RFP advised bidders to submit a manufacturer's preprinted price list as of the proposal opening date, if available. RFP § 4.4.3.2.1. The RFP also stated: "In the event that two or more bidders submit similar type price lists (example: all bidders provided retail price list) for the same brand with different dates, the most recent price list will be adopted as the basis for proposal evaluation and contract award." RFP § 4.4.3.2.3.

The Bureau received 26 proposals by the proposal submission due date of February 16, 2016. Three proposals were administratively rejected in accordance with N.J.A.C. 17:12-2.2(a). Following an evaluation of the remaining 23 proposals, the Bureau issued the NOI on November 1, 2016.<sup>1</sup> In total, 20 bidders were recommended for an award.

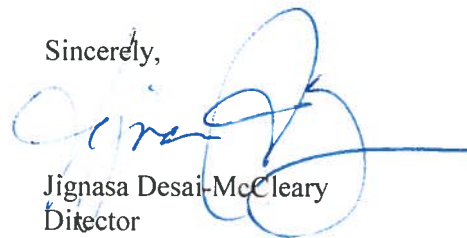
TPE states in its letter of protest that "all contracts were listed as having price lists with a date of 2009[;]" however, TPE appears to be confused about the information it obtained. The previous T-2187 contract, resulting from RFP #10-X-21171 (valid from June 29, 2010 to October 28, 2016)<sup>2</sup> that was available on the Division's website up until its date of expiration (October 28, 2016), included awards based on price lists dated 2009. The Hearing Unit's independent review of the proposals submitted by the intended awardees listed in the NOI for the current solicitation shows that all of these price lists were dated between 2014 and 2016. As the new contract for Parts and Repairs for Lawn and Ground Equipment has not yet been awarded, a price list for a new contract does not appear on the Division's website.

The record also reveals that, related to TPE's protest, TPE was ineligible to receive an award as its proposal did not provide "the applicable certifications from the parts manufacturer/distributor for each group bid, including a certification that the bidder is capable of servicing all systems and components of the brand of equipment bid" as required by RFP Section 4.4.3.3 for groups 45, 46, and 64. In response to its bid for groups 11, 14, 49, and 50, TPE's proposal failed to include a percentage discount as required by RFP Section 4.4.7.1. TPE was not in contention for an award of the remaining price lines it bid, as its proposal did not include pricing to qualify it as the primary, secondary, or tertiary awardee.

Based on the foregoing, I must deny TPE's protest. This is my final agency decision.

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](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary  
Director

JD-M:DF

c: J. Kerchner  
K. Thomas  
V. Bequer

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<sup>1</sup> The Bureau did not issue an intent to award for nine of the 66 groups prescribed in the RFP, as the State received no responsive bids for these groups.

<sup>2</sup> T-2187 was valid an initial period of June 29, 2010 to June 28, 2013. Following the use of extensions and a transition period, the contract was valid till October 28, 2016.