



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039

CHRIS CHRISTIE
Governor

ANDREW P. SIDAMON-ERISTOFF
State Treasurer

KIM GUADAGNO
Lt. Governor

JIGNASA DESAI-MCCLEARY
Director

Telephone (609) 292-4886 / Facsimile (609) 984-2575

January 27, 2014

Via Fax [631-243-6666] and USPS Mail

Steven Brown, President and CEO
United Facility Services Corp., dba
EASTCO Building Services, Inc.
130 Brook Avenue
Deer Park, NY 11729

Subject: RFP 14-X-22557 - Protest of Scheduled Awards of Contract T1276
Facilities Mgt. Services – Trenton Office Complex, Bank St. Garage, W. Trenton Complex

Dear Mr. Brown:

This letter is in response to your letter of protest dated September 3, 2013, by which, on behalf of United Facility Services Corp. dba EASTCO Building Services, Inc. (“Eastco”) you have contested the scheduled award of the Request for Proposal (“RFP”)-defined Group 3 (West Trenton Complex) to Triangle Services (“Triangle”) and the scheduled award of Groups 1 (Trenton Office Complex) and 2 (Bank Street Parking Garage) to ACCSES-NJ (“A-NJ”)¹, as announced by the Procurement Bureau, the unit of the Division of Purchase and Property (“Division”) which conducts the Division’s advertised, competitive procurement program. Eastco asserts that the scheduled award of Group 3 should not proceed as scheduled because the proposed pricing and staffing levels offered by Triangle are too low to meet the requirements of the scope of services necessary to perform the contract. Regarding the intended award of the subject contract’s Groups 1 and 2 to A-NJ, Eastco contends that: (a) A-NJ’s notice of its declaration of set-aside was untimely and that the offer by A-NJ was created through conspiratorial, unethical and improper activities on the parts of A-NJ, Meridian and FEDCAP² in an effort to ensure that Meridian retains its role as the facilities manager at the contract venues; (b) the RFP’s requirements for compliant proposals for Groups 1 and 2 were ambiguous, defective and misleading; and (c) A-NJ’s non-response to a request for Best and Final Offer (“BAFO”) should have precluded its consideration for award of contract.

¹ ACCSES New Jersey is the entity that serves as the State’s Central Non-profit Agency (“CNA”) through which multiple rehabilitation centers throughout New Jersey provide contracted commodities and/or services.

² FEDCAP, or Fedcap Rehabilitation Services, Inc. and its Fedcap Facilities Management division, is the entity ACCSES-NJ proposed as its facility management services provider to oversee and manage all services and provide custodial, groundskeeping and parking garage services in performance of awarded contracts.

A review of the subject procurement records and consideration of information provided by the Procurement Bureau staff member conducting the subject procurement relative to the points of protest presented in Eastco's letter have provided the information necessary for me to render an informed final agency determination at this time regarding the scheduled award of contracts for the Trenton Office Complex (Group 1) and the Bank Street Garage (Group 2) segments of the subject procurement. Due to the Division's need for further review and consideration of certain issues raised by Eastco and by A-NJ concerning the scheduled award of the West Trenton Complex (Group 3) to Triangle, a final agency decision on the Group 3 segment of the scheduled award will be separately and subsequently addressed by the Division. Here then is my final agency decision concerning Eastco's challenge of the Procurement Bureau's announced intent to award contracts for Groups 1 and 2 to A-NJ.

For the record, the Procurement Bureau's *Recommendation Report*, which is the document that describes the proposals evaluation process conducted jointly by representatives of the Procurement Bureau and the Department of the Treasury's Division of Property Management and Construction ("DPMC") and provides the reasoning for the recommended awards of contract, set forth the following post-Best and Final Offer ("BAFO") price rankings for the four bidders who offered proposals for Groups 1 and 2 and explained its reasoning for recommending award to A-NJ:

BAFO price ranking is as follows:

Group 1 TOC Complex	
George S. Hall	\$ 1,696,726.65
Triangle Services-Maintech	\$ 1,814,198.50
ACCSES NJ	\$ 1,874,097.08*
United Facility Services-Eastco	\$ 2,123,680.50

Group 2 Bank Street Garage	
ACCSES NJ	\$ 140,872.36
Triangle Services-Maintech	\$ 171,362.50
George S. Hall	\$ 195,389.61
United Facility Services-Eastco	\$ 301,508.10

Although ACCSES NJ is not the lowest overall price form Complex 1, the evaluation pricing falls within the 15% of the lowest responsive bidder and is therefore eligible for award for Complex 1 under N.J.A.C 10:00-1.1 et. seq. [sic]

With regard to Eastco's assertion that A-NJ's submission of a "set-aside request" one day prior to the proposal submission deadline date of July 2, 2013 constitutes an untimely declaration of the contract as a set-aside, the record indicates that, in accord with the provisions of N.J.S.A. 30:6-23 et seq., known as the *Rehabilitation Facilities Set Aside Act* ("Set-Aside Act") Executive Order #67 (2005), and N.J.A.C. 10:99-1.1 et seq. titled *Rehabilitation Facilities Set-Aside Act Rules*, the New Jersey Department of Human Services' Commodities and Services Council

("Council"), which is the State entity overseeing the subject statewide rehabilitation program, made the decision to pursue the award of the T1276 contract at its quarterly meeting held on June 3, 2013. In attendance at that meeting were a Division representative and a Procurement Bureau representative. Thus, the Division and its Procurement Bureau were formally informed of the Council's approval of A-NJ's intent to seek the award of the subject T1276 contract as of that date. In confirmation of that circumstance, Page 5 of RFP 14-X-22557 advised all bidders as follows:

SPECIAL NOTICE TO ALL BIDDERS

This procurement is subject to a comparative examination with a set – aside request that may be submitted prior to proposal opening by the Association for Choices in Community Support and Employment Services (ACCSES NJ CNA Services) to the Department of Treasury, Division of Purchase and Property. In accordance with N.J.A.C. 10:99-1.1 et. seq., [sic] the aforementioned organization is permitted to have specific contracts set aside specifically for them. As such, any pricing within a proposal submitted by ACCSES NJ CNA Services, must be within 15% of the lowest responsive bidder in order to be eligible for that product or service to qualify to be set-aside. Note: If conducting a Best and Final Offer (BAFO), ACCSES NJ/CNA would also have the opportunity to offer a second submission.

Thus, it is clear that the Procurement Bureau was timely informed of the likelihood of A-NJ's effort to secure the subject contract and that, in turn, the Procurement Bureau advised vendors considering competing for the contract of that possibility.

Attending to Eastco's allegation that the offer by A-NJ was created through conspiratorial, unethical and improper activities on the parts of A-NJ and its subcontractors, Meridian and FEDCAP, in an effort to ensure that Meridian retains its current role as the contracted facilities manager at the Trenton Office Complex and Bank Street Garage venues, I note that it is a common practice for bidders to fortify their efforts to secure a State contract by forming a complementary contractor-subcontractor alliance or joint venture to meet specified requirements of a particular RFP. With no indication of an intent or action on the part of A-NJ to subvert the formal procurement or contract provisions, there is no basis to conclude that Eastco's general assertion that A-NJ's proposed plan to engage Meridian and FEDCAP as subcontractors is, as Eastco has conjectured, contrary to set-aside procurement requirements.

Concerning Eastco's contention that the RFP's requirements for compliant proposals for RFP Groups 1 and 2 were ambiguous, defective and misleading, it is established that a bidder's participation in a competition for an award of a public contract may not, after participating in a competitive bidding process and submitting a proposal, then challenge the procurement or contract requirements or provisions as cause to cancel the scheduled award of contract to another competing bidder. As with all formal procurements conducted by the Procurement Bureau, the subject RFP provided potential bidders with the opportunity to secure clarification of any aspect of the procurement or contract requirements as provided in RFP Paragraph 1.3.1, *Electronic Question and Answer Period*, as set forth below:

The Division will electronically accept questions and inquiries from all potential bidders via the web at <http://ebid.nj.gov/QA.aspx>.

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders must not contact the Using Agency directly, in person, by telephone or by e-mail, concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Division's website after the cutoff date. (See RFP Section 1.4.1 for further information.)

If, after the completion of the Question and Answer period a potential bidder has additional concerns, those concerns may be presented to DPP for consideration by the timely filing of a challenge to the specifications no later than seven business days prior to the scheduled deadline for proposal submission, as provided and proscribed by DPP's administrative code, specifically at N.J.A.C. 17:12-3.2, which is accessible at DPP's website. Thus, Eastco's contention that the RFP was ambiguous, defective and misleading cannot solely be the cause for rescission of the scheduled awards of contracts.

In consideration of Eastco's assertion that A-NJ's non-response to a request for Best and Final Offer ("BAFO") should have precluded its consideration for award of contract, I note that the RFP, at Subsection 6.8, *Negotiation and Best and Final Offer (BAFO)*, advised all bidders as follows in pertinent part:

. . . the Division may invite one bidder or multiple bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not equal to or lower in price than the pricing offered in the bidder's original proposal will be rejected as non-responsive and the State will revert to consideration and evaluation of the bidder's original pricing.

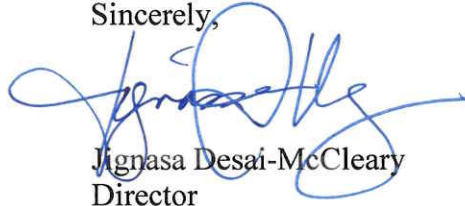
As is evident in the wording above, the BAFO process invites, but does not compel, a bidder to offer more favorable pricing. There is no requirement that a bidder offer lower pricing in order to be eligible for an award of contract. Rather, it is clear from the text of RFP Subsection 6.8 that a bidder's originally proposed pricing will be utilized in the event there is no lowering of its pricing.

Based upon the circumstances and facts set forth above, I find no substantive reason to undo the scheduled award of contracts for facility management services at Group 1 (Trenton Office Complex and Group 2 (Bank Street Garage) to A-NJ. This is my final agency decision on the points of Eastco's protest relating to Groups 1 and 2. The Division's determination concerning Group 3 will be issued separately when the hearing process for that scheduled award is completed.

Steven Brown, President and CEO
United Facility Services Corp., dba
EASTCO Building Services, Inc.
Page 5 of 5

Accordingly, the Procurement Bureau is directed to proceed promptly with the award of contract process for Groups 1 and 2 so that the new facility management services at the two complexes can be implemented as soon as possible.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:RW

c: M. Cannon, Esq., Hill Wallack, representing A-NJ [fax only: 609-452-1888]
L. DuBois
R. Beauregard
L. Spildener