



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
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

FORD M. SCUDDER
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

December 3, 2015

Via Email [maribelc@generaltrafficequip.com] and USPS Regular Mail

Raymond G. Staffon, President
General Traffic Equipment Corp.
259 Broadway
Newburgh, NY 12550

Re: Protest of Notice of Intent to Award
RFP 15-X-23605: Traffic Signals, Poles, Controls, Electrical Equipment, etc.

Dear Mr. Staffon:

This correspondence is in response to your letter dated May 27, 2015, on behalf of General Traffic Equipment Corp. (General), which was received by the Division of Purchase and Property (Division) on June 1, 2015. In that letter, General protests the May 18, 2015 Notice of Intent to Award (NOI) a contract for Solicitation# 15-X-23605, which was issued by the Division's Procurement Bureau (Bureau). Specifically, General protests that it was not awarded price lines 00001, 00003, 00014, 00016, 00017, 00022, 00023, 00025, 00026, 00093, 00121 and 00144, asserting that it was the low bidder on these lines and provided all necessary information.

BACKGROUND

By way of background, the Request for Proposals (RFP) was issued by the Bureau on behalf of the New Jersey Department of Transportation (DOT) to solicit proposals for Traffic Signals, Poles, Controls, Electrical Equipment, LED Signal Indications and Warning Devices. It is the intent of the Bureau to "award contracts to those responsible bidders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered." (RFP § 1.1 *Purpose and Intent*.) The RFP was issued to address DOT requirements for Traffic Signals, Poles, Controls, Electrical Equipment, LED Signal Indications and Warning Devices and all price line items reference DOT specifications and/or drawing numbers. This RFP is a re-procurement of products currently provided under State contract T-1529. (RFP § 1.2 *Background*.) The Proposal Review Unit opened proposals following the submission deadline of December 10, 2014, at 2:00 p.m. Eleven proposals were received and opened in response to the RFP. General submitted a proposal for 25 of the 147 line items sought in the RFP.¹

¹ General submitted a proposal for the following line items: 00001, 00002, 00003, 00005, 00006, 00007, 00008, 00013, 00014, 00016, 00017, 00020, 00022, 00023, 00025, 00026, 00093, 00094, 00118, 00119, 00121, 00132, 00133, 00140 and 00144.

The RFP required that bidders submit sufficient information with their proposals so that the State is assured of the precise product being offered. RFP Section 4.4.5 *Price Schedule/Sheet* states in pertinent part:

In order for the State to make sound business judgments regarding products and prices offered in response to this RFP, the bidder must supply, with its proposal, the information requested on the RFP's pricing lines in sufficient detail as to allow the State to determine the firm, fixed proposal pricing and the precise product or service being offered, i.e., with no possible misinterpretation of the price or product/service being offered by the bidder. A bidder's failure to provide, within its proposal, the information deemed by the State to be essential for product identification or price determination will result in rejection of that bidder's proposal.

However, RFP Section 4.4.5 permits the Bureau to request additional information or documentation which may be needed to make a determination regarding a product proposed:

Notwithstanding the aforementioned material obligation, in order to support the State's decision-making process, the State may require a bidder to provide additional information or documentation that has been deemed not to be material to product identification or price determination, in which case, the bidder shall, within the time limit set forth in the written request, comply with said request. Each bidder is required to hold its prices firm through issuance of contract.

[RFP § 4.4.5 *Price Schedule/Sheet*]

Such a request is consistent with the Appellate Division's reasoning in 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 (App. Div. 1995), where the court held that:

[t]he RFP specifically approved of bidders' clarifying or elaborating in their proposals in post-opening proceedings but prohibited supplementation, change or correction. **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.

[Id. at 597 (emphasis added.)]

In an effort to clarify the items proposed, on January 23, 2015, the Bureau wrote to General requesting that the company provide "catalog cuts or submittals" for several of the line items. On February 4, 2015, General provided the Bureau with the requested information.

After the proposal review was completed by the Bureau and the experts at DOT, a determination was made that General was the lowest responsive bidder for price lines 00005, 00006 and 00094. However, with respect to line items 00001, 00003, 00014, 00016, 00017, 00022, 00023, 00025, 00026, 00093, 00121, and 00144, General's proposal was deemed non-responsive as the products proposed did not conform to the RFP requirements. (Bureau's May 13, 2015 Recommendation Report.)²

² General was not the low bidder and has not filed a protest for line items 00002, 00007, 00008, 00013, 00020, 00118, 00119, 00132, 00133 or 00140.

On May 18, 2015, the Bureau issued its NOI indicating that a contract would be awarded to General as the lowest responsive bidder for price lines 00005, 00006 and 00094. However, with respect to the remaining line items contained in General's proposal, the Bureau intended to award contracts to other vendors. In response to the Bureau's NOI, on May 27, 2015, General submitted a protest letter to the Division stating:

Please be advised that in the "notification of award" (sic) recently received on the above referenced bid, we were only awarded items #00005, 00006 & 00094.

It is our intention to formally protest a portion of the award as issued to other suppliers with respect to items # 00001, 00003, 00014, 00016, 00017, 00022, 00023, 00025, 00026, 00093, 00121 & 00144 as we were low bidder on these items and as requested, we provided samples and/or catalog specification sheets for the D.O.T.'s evaluation. Please consider this letter our notice of formal protest. Please advise us as to the next step in this process.

One item, #00121, was awarded to a supplier at a unit price of \$2,350.00. WE bid \$12.50 each. I don't think New Jersey should be throwing their money away like that.

In our defense, we are claiming that the item specifications we provided for the D.O.T.'s evaluation not only met the N.J.D.O.T. specifications, but exceeded them significantly in material content, while not compromising the N.J.D.O.T standard aesthetic form. We are also claiming that our models of these three items will perform better in "the field" than our competitors units would. Thirdly, it is expected that the Div. of Purchase and Property would encourage a second source for these items instead of the sole source situation that may currently exist on at least two of these items.

In further support of its protest, General claims it was previously awarded contracts for all of the products identified in its current proposal, and that those products were utilized by the DOT "without compromise or issue." (General's May 27, 2015, Protest Letter). However, I note that a review of the October 18, 2010 Recommendation Report for the contract award for the immediately preceding solicitation for T-1529 reveals that General was only awarded a contract for two line items. Further, the fact that General was previously awarded a contract to supply products in response to similar specifications is not determinative. See generally, In re Protest of Award of N.J. State Contract A7118 for Light Duty Auto. Parts, 422 N.J. Super. 275, 291 (App. Div. 2011) (stating that contractors do not have a continuing right to be a supplier to the State, "no guarantee that they would emerge as the successful bidders in any subsequent round of competitive bids" despite the fact that they had won previous awards.)

FINDINGS

In consideration of General's protest, I have reviewed the record of this procurement, including the RFP, proposal and catalog information submitted by General, Intelligent Traffic Supply Products, LLC (Intelligent), Flemington Aluminum and Brass, Inc. (Flemington) and Signal Control Products, Inc. (Signal), the Bureau's Recommendation Report, and the relevant statutes, regulations, and case law.³

³ With respect to the line items under protest, Intelligent is the intended awardee for line items 00001 and 00003; Flemington is the intended awardee for line items 00014, 00016, 00017, 00022, 00023, 00025, 00093 and 00121; and Signal is the intended awardee for line items 00026 and 00144.

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 submitted by General.

Line Item 00001
Traffic Signal Indication Parts Replacement Visors – 8”

The specification for this item required that “[t]he polycarbonate traffic signal visors shall have twist on mounting tabs and shall be eight inch (8”) long open-bottom tunnel type for eight inch (8”) heads and ten inch (10”) long, tunnel type for twelve inch (12”) heads. Visor shall be tilted downward seven (7) degrees from horizontal.” (RFP § 3.5.1 *Section A Traffic Signal Indications/Parts, Specifications of Traffic Signal Visors, Construction-II: 2-1*, page 23.) In its proposal, General listed: GTE Corp. - Model # TV-SP-Y. Pursuant to the Bureau’s request, General provided catalog pages for the proposed product.

After reviewing the proposal and catalog pages submitted, the Bureau deemed General’s proposal non-responsive because General “proposed a visor with the length of 7-3/4 inches, which does not meet NJ Specification No. BME-TS-VISOR; dated 4/28/10, section 2-1.” (Bureau’s May 13, 2015 Recommendation Report).

While the catalog page references an eight inch (8”) visor, a review of the dimensions on page two of General’s catalog submittal reveals that the visor dimension is seven and three quarter (7¾”) inches. 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.” On-Line Games, *supra*, 279 N.J. Super. at 594 (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. DOT states that the requirement for an 8” visor is based upon industry standards and was incorporated into the State’s *Specifications for Adjustable Face Vehicle Traffic Contract Polycarbonate Signal Head*⁴ in July 2001. Here, the failure to provide the product with the specified dimension is a material deviation from the RFP requirements. Moreover, permitting General to provide a visor which does not conform to the RFP specifications places it in a position of advantage over other bidders who did not submit a proposal for this line item because they could not provide an eight inch (8”) visor as required by the specifications, but could have provided a seven and three quarter (7¾”) inch visor. Therefore, I sustain the Bureau’s determination that General’s protest was non-responsive as it did not conform to the RFP requirements.

⁴ N.J. Specification No. EB-TS-1 are incorporated into the RFP 15-X-23605 specifications and are also publically available at <http://www.state.nj.us/transportation/eng/elec/TSS/english/pdf/Ebts1.pdf>

Additionally, I note that based upon a review of the proposal and catalog information submitted by Intelligent, the intended awardee, the product proposed by Intelligent conforms to the RFP requirement for an 8" visor. Accordingly, I sustain the NOI for this line item.

Line Item 00003
Traffic Signal Indication Parts Tunnel Visor – 12"

The specification for this item required that "[t]he louvered top slot shall be eight inches (8") wide by four inches (4") deep by 1.5 inches high." (RFP § 3.5.1 *Section A Traffic Signal Indications/Parts, Specifications for Tunnel Visors, Construction - II: 2-2*, page 23.) In its proposal, General listed: GTE Corp. - Model # TV-12P-Y. Pursuant to the Bureau's request, General provided catalog pages for the proposed product.

After reviewing the proposal and catalog pages submitted, the Bureau deemed General's proposal non-responsive because General "proposed a visor that does not have a louvered top, as per BME-TS-TUNNEL VISOR, dated April 28, 2010, Construction section 2-2 which states the louvered top slot shall be 8 inches wide by 4 inches deep by 1.5 inches high." (Bureau's May 13, 2015 Recommendation Report.)

The product proposed by General does not have a louvered top as required by the RFP. The failure to provide the product with the louvered top slot is a material deviation from the RFP requirements. As previously noted, permitting General to provide a visor which does not conform to the RFP specifications places it in a position of advantage over other bidders who did not submit a proposal for this line item because they could not provide a louvered top slot as required by the specifications, but could have provided a non-louvered top slot visor. This is a material deviation from the RFP requirements. See, Meadowbrook, supra, 138 N.J. at 315 (citing River Vale, supra, 127 N.J. at 216.) Therefore, I sustain the Bureau's determination that General's proposal was non-responsive as it did not conform to the RFP requirements.

Additionally, I note that based upon a review of the proposal and catalog information submitted by Intelligent, the intended awardee, the product proposed by Intelligent conforms to the RFP requirement for an louvered top slot. Accordingly, I sustain the NOI for this line item.

Line Item 00014
Traffic Signal Hangers/Brackets Adapter Pedestal (Slip fitter) with Brass Chase Nipple

The specification for this item required an "Adapter – Pedestal (Slip fitter) with Brass Chase Nipple – 2007 Standard Electrical Details T-0607 and T-0707." (RFP § 3.5.2 *Section B Traffic Signal Hangers/Brackets*, page 27.) The *Price Sheet* further specified that the bidder shall provide PELCO Model # GL-1010 or equivalent. (*Price Sheet* line item 00014.) In its proposal, General listed: GTE Corp. – Model # PTS-110-C-NJ. Pursuant to the Bureau's request, General provided catalog pages for the proposed product.

After reviewing the proposal and catalog pages submitted, the Bureau deemed General's proposal non-responsive because General "proposed the brass chase nipple, not the required slip fitter as per 2007 Standard Electrical Details T-0607 and T-0707 as per RFP Section 3.5.2." (Bureau's May 13, 2015 Recommendation Report.)

The RFP (and the *Price Sheet*) incorporated by reference the DOT's Electrical Engineering Standards which stated in pertinent part:

All price line items reference DOT's specification/drawing numbers. These specification/drawing numbers are issued by the New Jersey Department of Transportation (NJDOT), Bureau of Electrical

Engineering dated July 1, 2001 or as noted otherwise on the price line items listed on the price sheets. Specifications and/or drawing listed in this RFP are available from Mr. Dan Black (609-530-5383) upon request. RFP Attachment #1 provides sketches referenced on the Price Sheets accompanying this RFP.

All material must meet specification requirements and any other specification sketches, drawings and/or manufacturer part numbers referenced in this RFP. Exceptions shall not be permitted.

For price line items that must meet the requirements/specification of a particular manufacturers model number, the State alone shall decide if the item offered is an approved equal.

[RFP § 3.4 *General Requirements.*]

As such, the referenced standards and/or requirements become part of the mandatory requirements of the RFP.

In connection with this protest, the Division's Hearing Unit conducted an independent review of General's proposal. From the catalog pages submitted, General's proposed product includes both the Post Top Slip Fitters and the Chase Nipples as required by the RFP. Therefore, the Bureau must undertake a review of General's proposal to determine whether the product proposed for this line item complies with the RFP requirements and is equivalent to the brand name item specified on the *Price Sheet*.

Regarding the proposal submitted by the intended awardee, Flemington identified its proposed product by listing the manufacturer, model number and EE number on the price sheet indicating that the product was on the DOT's Bureau of Traffic Engineering's database of qualified Electrical Traffic and Signal Safety products (EE list).⁵ (RFP § 4.4.3.2 *Manufacturer's Catalog, Model Numbers and Catalog Cuts.*) The Bureau did not request and Flemington did not provide catalog cuts for this product.

The EE list was created and is maintained by the DOT's Bureau of Traffic Engineering. DOT utilizes the system to pre-qualify products from vendors/manufacturers that meet certain electrical material specifications. These electrical material specifications are federally approved and describe minimum acceptable design and operating requirements for each piece of equipment. Any product that is utilized in an electrical related design that meets the electrical material specifications can be added to this database. Any vendor can submit a product to NJDOT for review, with a letter certifying that the submitted product meets the applicable Electrical Material Specifications.⁶ Products that are approved are given an EE Approval Number and then added to a database listing. This database of qualified products is helpful to designers and contractors in the selection of products that are pre-qualified for use in Department projects. While the materials on the EE list are pre-qualified for generic use on State projects, the products on the EE list may not meet all of the specific requirements of a particular project; a product is not precluded from being used on a State project if the product conforms to the specifications/requirements simply because the product is not on the EE list.

With respect to Flemington's proposal, which includes the manufacturer name, model number and EE number, DOT confirms that with respect to this line item, the RFP specifications conform to the Electrical Material Specifications to obtain an EE Number; therefore, Flemington's proposal is responsive to the RFP requirements.

⁵ The EE list is publically available at <http://www.state.nj.us/transportation/eng/elec/EEEDB.shtm>.

⁶ <http://www.state.nj.us/transportation/eng/elec/cefaq.shtm>.

However, as noted above, the NOI for this line item is rescinded and the Bureau is directed to conduct a further review and evaluation of the proposals submitted, to request clarification from bidders as necessary and award this price line as appropriate.

Line Item 00016

Traffic Signal Hangers/Brackets Band Bracket Assembly – Midarm 8-12” Indication

The specification for this item required a “Band Bracket Assembly – Midarm 8” – 12” Indication – 2007 Standard Electrical Details T-2107.” (RFP Section 3.5.2 - Section B Traffic Signal Hangers/Brackets, page 27.) The *Price Sheet* further specified that the bidder shall provide PELCO Model # AS-116-3-29-SS or equivalent. (*Price Sheet* line item 00016.) In its proposal, General listed: GTE Corp. – Model # RM – 900B-29. Pursuant to the Bureau’s request, General provided catalog pages for the proposed product.

After reviewing the proposal and catalog pages submitted, the Bureau deemed General’s proposal non-responsive because General “proposed a support tube that is not gusseted, not the required gusseted support tube as per PELCO catalog number AS-116-3-29-SS as per RFP Section 3.5.2, page 27.” (Bureau’s May 13, 2015 Recommendation Report.)

General did not propose the brand name item specified on the *Price Sheet*. The RFP stated, “[w]henver a brand name is used, it is meant to denote the minimum acceptable level of quality and performance. Any item supplied as ‘equal’ must be approved by the Purchase Bureau and the Department of Transportation.” (RFP § 3.7 *Product Quality*.) The RFP further stated:

If the bidder is supplying alternate brands of material or equipment to that specified in the RFP, the bidder should provide complete specification literature with its bid proposal. If the specification literature is not supplied with the bid proposal, upon written request the bidder shall provide this information to the State within seven (7) working days. Failure to provide this information will make the bid proposal non responsive and not eligible for award consideration.

[RFP § 4.4.3.3 *Alternate Brands Literature*.]

“For price line items that must meet the requirements/specification of a particular manufacturer’s model number, the State alone shall decide if the item offered is an approved equal.” (RFP § 3.4 *General Requirements*.) While General provided the Bureau with the catalog pages for its proposed product, the Bureau determined that the information did not support a finding that the product proposed has a gusseted tube as required, and is therefore it was not equivalent to the PELCO Brand specified. Not providing the gusseted tube is a material deviation from the RFP requirements. See, Meadowbrook, *supra*, 138 N.J. at 315 (citing River Vale, *supra*, 127 N.J. at 216.) However, I note that the catalog page submitted by General states that the proposed product has a “ribbed support tube.” Based upon the catalog page submitted, the Bureau should have sought a clarification from General to determine whether the “ribbed support tube” conforms to the RFP requirement for a gusseted tube.

Accordingly, the NOI for this line item is rescinded and the Bureau is directed to undertake a review of General’s proposal to determine whether the product proposed for this line item complies with the RFP requirements and is equivalent to the brand name item specified on the *Price Sheet*, and award this price line as appropriate. Additionally, I note that a review of the proposal submitted by Flemington, the intended awardee, reveals that Flemington proposed the brand name product identified on the *Price Sheet*; therefore, its proposal conforms to the requirements of the RFP.

Line Item 00017

Traffic Signal Hangers/Bracket Cable Bracket Assembly – Midarm 8-12” Indication

The specification for this item required a “Cable Bracket Assembly – Midarm 8” Indication – 2007 Standard Electrical Details T-2107.” (RFP § 3.5.2 *Section B Traffic Signal Hangers/Brackets*, page 27.) The *Price Sheet* further specified that the bidder shall provide PELCO Model # AS-125-3-29-SS or equivalent. (*Price Sheet* line item 00017.) In its proposal, General listed: GTE Corp. – Model # RM – 1000C-62. Pursuant to the Bureau’s request, General provided catalog pages for the proposed product.

After reviewing the proposal and catalog pages submitted, the Bureau deemed General’s proposal non-responsive because General “proposed a support tube that is not gusseted, not the required gusseted support tube as per PELCO catalog number AS-125-3-29-SS as per RFP Section 3.5.2, page 27.” (Bureau’s May 13, 2015 Recommendation Report.)

General did not propose the brand name item specified on the *Price Sheet*. As previously noted, the RFP stated, “[w]henever a brand name is used, it is meant to denote the minimum acceptable level of quality and performance. Any item supplied as “equal” must be approved by the Purchase Bureau and the Department of Transportation.” (RFP § 3.7 *Product Quality*; see also, RFP § 4.4.3.3 *Alternate Brands Literature*.) While General provided the Bureau with the catalog pages for its proposed product, the Bureau determined that the information did not support a finding that the product proposed has a gusseted tube as required, and is therefore it was not equivalent to the PELCO Brand specified. Not providing the gusseted tube is a material deviation from the RFP requirements. See, Meadowbrook, *supra*, 138 N.J. at 315 (citing River Vale, *supra*, 127 N.J. at 216.) However, I note that the catalog page submitted by General states that the proposed product has a “ribbed support tube.” Based upon the catalog page submitted, the Bureau should have sought a clarification from General to determine whether the “ribbed support tube” conforms to the RFP requirement for a gusseted tube.

Accordingly, the NOI for this line item is rescinded and the Bureau is directed to undertake a review of General’s proposal to determine whether the product proposed for this line item complies with the RFP requirements and is equivalent to the brand name item specified on the *Price Sheet*, and award this price line as appropriate. Additionally, I note that a review of the proposal submitted by Flemington, the intended awardee, reveals that Flemington proposed the brand name product identified on the *Price Sheet*; therefore, its proposal conforms to the requirements of the RFP.

Line Item 00022

Traffic Signal Hangers/Brackets Universal Joint & Wire Outlet with SS Hardware

The specification for this item required that a “Universal Joint and Wire Outlet with S/S Hardware - 2007 Standard Electrical Details T-0407 (Universal Joint and Wire Outlet) One (1) serrated positioning ring shall be provided with each universal joint and wire outlet in addition to all other material and requirements as detailed on Drawing T-0407.” (RFP § 3.5.2 *Section B Traffic Signal Hangers/Brackets*, page 28.) In its proposal, General listed: GTE Corp. – Model # W0740B/VJ700C. Pursuant to the Bureau’s request, General provided a catalog page for the proposed product.

After reviewing the proposal and the catalog page submitted, the Bureau deemed General’s proposal non-responsive because General “proposed an item that does not include stainless steel bolts, washers and nuts, as required on Detail T0407, note #2 states ‘All stainless steel bolts on the sheet.’” (Bureau’s May 13, 2015 Recommendation Report.)

Both the RFP and detail T0407 of the 2007 Electrical Engineering Standards requires the use of stainless steel bolts. The catalog page provided by General for this line item does not specify whether or not stainless steel bolts are included in the proposed product. Since it is unclear from the information

provided what type of bolts are included, the Bureau must seek further clarification from General regarding the proposed item.⁷

Further, I note that the intended awardee Flemington identified its proposed product by listing the manufacturer, model number and EE number. DOT confirms that with respect to this line item, the RFP specifications conform to the Electrical Material Specifications to obtain an EE Number; therefore, Flemington's proposal is responsive to the RFP requirements.

However, as noted above, the NOI for this line item is rescinded and the Bureau is directed to conduct a further review and evaluation of the proposals submitted, to request clarification from bidders as necessary and award this price line as appropriate.

Line Item 00023
Traffic Signal Hangers/Brackets Pedestrian Clam Assembly for
Approx. 7½" Dia. Pole with 12" Standard Nipple

The specification for this item required a "Pedestrian Clamp Type Assembly for Approx. 7-1/2" Dia. Pole – 12" STD Nipple – 2007 Standard Electrical Details T-0607." (RFP § 3.5.2 *Section B Traffic Signal Hangers/Brackets*, page 28.) In its proposal, General listed: GTE Corp – Model # PCBA-6080-12. The Bureau did not request catalog cuts with respect to this line item and none were provided. However, the using agency, DOT, states that in evaluating this proposal, in an effort to clarify the product proposed by General, DOT reviewed the information publically available on General's website. Based upon this information, the Bureau deemed General's proposal non-responsive because General "proposed item PCBA-6080-12 which is designed for 4-1/2 diameter poles, not the required pedestrian clamp Assembly for Approx. 7-1/2 Dia. Pole as per RFP section 3.5.2., page 28." (Bureau's May 13, 2015 Recommendation Report.)

With respect to this line item, if DOT and Bureau had questions regarding the product proposed by General, they should have sought a clarification from General. In its proposal, General did not refer to or incorporate the contents of its website or its catalog; and therefore, it would not be bound by that information. Accordingly, the contents of General's website cannot be relied upon as the basis for awarding or not awarding a particular line item.⁸ Consistent with the other requests made to General regarding the products proposed, the Bureau should seek a clarification from General regarding the proposed item.

Further, I note that the intended awardee Flemington identified its proposed product by listing the manufacturer, model number and EE number. DOT confirms that with respect to this line item, the RFP specifications conform to the Electrical Material Specifications to obtain an EE Number; therefore, Flemington's proposal is responsive to the RFP requirements.

⁷ I note that if General's proposed product does not include stainless steel bolts, this would be a material deviation from the RFP requirements rendering General's proposal for this line item non-responsive. See, Meadowbrook, supra, 138 N.J. at 315 (citing River Vale, supra, 127 N.J. at 216.)

⁸ I do note that if the information provided by General in response to a request for clarification is consistent with the website information previously reviewed by DOT, then the product proposed by General does not conform to the RFP requirements. As determined by the Bureau, the product proposed by General, GTE Corp – Model # PCBA-6080-12 is designed for 4½ inch diameter poles, not 7½ inch poles. This is a material deviation from the RFP requirements. See, Meadowbrook, supra, 138 N.J. at 315 (citing River Vale, supra, 127 N.J. at 216.)

However, as noted above, the NOI for this line item is rescinded and the Bureau is directed to conduct a further review and evaluation of the proposals submitted, to request clarification from bidders as necessary and award this price line as appropriate.

Line Item 00025
Traffic Signal Hangers/Brackets Two-Way Bracket Assembly with T-Bar

The specification for this item required a “Two-way bracket Assembly with T-Bar – 2007 Standard Electrical Details T-0507 (Hollow Spider for 2-way Assembly and T-Bar).” (RFP § 3.5.2 *Section B Traffic Signal Hangers/Brackets*, page 28.) In its proposal, General listed: GTE Corp. – Model # SAS 235. Pursuant to the Bureau’s request, General provided a catalog page for the proposed product.

After reviewing the proposal and catalog page submitted, the Bureau deemed General’s proposal non-responsive because General “proposed a bracket that did not have a T-Bar included, not the two-way bracket assembly with T-Bar in accordance with 2007 Standard Electrical Details T-0507 as per RFP section 3.5.2., page 28.” (Bureau’s May 13, 2015 Recommendation Report.)

General’s proposed product does not include a T-Bar as required by the specifications. Failure to provide the T-Bar is a material deviation from the RFP requirements. See, Meadowbrook, supra, 138 N.J. at 315 (citing, River Vale, supra, 127 N.J. at 216.) Therefore, I sustain the Bureau’s determination that General’s proposal was non-responsive as it did not conform to the RFP requirements.

Further, I note that the intended awardee Flemington identified its proposed product by listing the manufacturer, model number and EE number. DOT confirms that with respect to this line item, the RFP specifications conform to the Electrical Material Specifications to obtain an EE Number; therefore, Flemington’s proposal is responsive to the RFP requirements and the NOI for this line item is sustained.

Line Item 00026
Traffic Signal Hangers/Brackets Three-Way Bracket Assembly

The specification for this item required a “Three-way bracket Assembly – 2007 Standard Electrical Details T-0507 (Hollow Spider for 3-way Assembly).” (RFP § 3.5.2 *Section B Traffic Signal Hangers/Brackets*, page 28.) In its proposal, General listed: GTE Corp. – Model # SAS-240. Pursuant to the Bureau’s request, General provided catalog pages for the proposed product.

After reviewing the proposal and catalog pages submitted, the Bureau deemed General’s proposal non-responsive because General “proposed (1) 3-way Spider bracket Assembly, [which] does not meet the 2007 Standard Electrical Details T-0507. Per Note 2, each hollow Spider for 3-ways assemblies shall include (2) 3-way spiders as per RFP section 3.5.2, page 28.” (Bureau’s May 13, 2015 Recommendation Report.)

The product description on the cut sheet provided by General does not state that the product proposed in response to this line item includes (2) 3-way spiders as required by the 2007 Standard Electrical Details T-0507. Additionally, the catalog pages submitted indicate “Chase Nipples Available to Fit 1½” Threaded Opening in Bronze or Aluminum;” however, the 2007 Standard Electrical Details T-0507 require a Standard 1 Inch Chase Nipple. These are material deviations from the RFP requirements. See, Meadowbrook, supra, 138 N.J. at 315 (citing River Vale, supra, 127 N.J. at 216.) Therefore, I sustain the Bureau’s determination that General’s proposal was non-responsive as it did not conform to the RFP requirements.

With respect to the proposal submitted by Signal, the intended awardee, I note that Signal’s proposal includes two 3-way spiders as required by the 2007 Standard Electrical Details T-0507 in the RFP. Accordingly, I sustain the NOI for this line item.

Line Item 00093
Signal Control Devices Pedestrian Push Button

RFP Section 3.5.8 – *Section H Signal Control Devices* (page 37), sets forth the requirements for the Pedestrian Pushbutton Navigator. This section references NJDOT Specification EB-PPB-1, entitled “Specifications for Pedestrian Push Button and Pedestrian Instruction Sign.”

After reviewing the proposal and catalog page submitted, the Bureau deemed General’s proposal non-responsive because General “proposed a push button with a plug on top that can easily be removed with ordinary tools, [and] does not meet Specification EB-PPB-1 dated July 1, 2001, Section 1-3 which stated the plugs shall not be removable with ordinary tools as per RFP Section 3.5.8.” (Bureau’s May 13, 2015 Recommendation Report.)

In connection with this protest, the Division’s Hearing Unit conducted an independent review of General’s proposal and consulted with the using agency. It is unclear why General’s proposed product does not conform to the requirements of RFP Section 3.5.8. The Bureau should have sought a clarification from General regarding the proposed item and whether or not the push button could be easily removed with ordinary tools contrary to the RFP requirements.

In addition, the using agency advised the Hearing Unit that General’s proposed product did not conform to the RFP requirements because the specifications were designed to solicit a push button which would be installed on a metal pole; however, DOT states that the product proposed by General, is designed to be installed on a wooden pole. Neither the RFP nor specification EB-PPB-1 dated July 1, 2001 require that the push button be designed for installation on a metal pole. The Bureau is directed to conduct a further review and evaluation of General’s proposal to determine whether or not the product proposed by General, or any other bidder conforms to the RFP and specification EB-PPB-1 dated July 1, 2001.

Accordingly, the NOI for this line item is rescinded and the Bureau is directed to conduct a further review and evaluation of the proposals submitted, to request clarification from bidders as necessary and award this price line as appropriate. However, if DOT requires a product that is designed to be installed on a metal pole, this line item should be canceled and can be re-procured.

Line Item 00121
Miscellaneous Signal Products/Devices Plastic Door Pedestrian Signal Standard

With respect to line item 000121, the RFP requires that price line items 00120 through 00125 be awarded as a group to a single vendor. “Bidders **must bid all line items within each group** in order to be considered for award for that group. Failure to do so will result in rejection of your bid proposal for the price lines for that section/group only.” (RFP § 4.4.7 *Method of Bidding or Price Sheet Instruction, etc., (emphasis in the original.)*) General only bid on line item 121; therefore, its proposal was properly deemed non-responsive by the Bureau for this line item and I sustain the Bureau’s determination.

With respect to the intended awardee, Flemington was the only bidder to submit a proposal for all line items in this group (00120 through 00125) as required. I note that the intended awardee Flemington identified its proposed products by listing the manufacturer and model number. The Bureau did not request and Flemington did not provide catalog cuts for this product. While information regarding the products proposed by Flemington may be available on Flemington’s website (<http://www.fabonline.net>), the DOT and the Bureau cannot rely upon that information as the basis for awarding this line item. In its proposal, Flemington did not refer to or incorporate the contents of its website. The Division has no ability to bind Flemington to information that was not included as part of the proposal or provided to the Division pursuant to a request for clarification.

Accordingly, the NOI for this line item is rescinded and the Bureau is directed to conduct a further review and evaluation of the proposal submitted, to request clarification from the bidder as necessary and award this price line if appropriate.

Line Item 00144
Pedestrian Push Button ADA Compliant

Among the requirements for an ADA compliant Pedestrian Pushbutton, the specifications require that “[t]he button must be able to hold a call for a minimum of 5 seconds. The button shall require no more than a maximum of 2 lbs of pressure for actuation. The button must be designed so that ice cannot form such that it would impede the function of button. Total depth, from the face of button cap to back of button terminal, shall be 1.75 inches. The body material of the button shall be cast aluminum.” (RFP § 3.21 *General N.J. Specification No. BME0-PPB-ADA, 3.32.1 Compliances sub-section B*, page 61.) In its proposal, General listed: GTE Corp. – PB-3-ADA. Pursuant to the Bureau’s request, General provided a catalog page for the proposed product.

After reviewing the proposal and catalog page submitted, the Bureau deemed General’s proposal non-responsive because General “proposed a button that requires 4 lbs of pressure for actuation, and does not meet NJ Specification No, BME0-PPB-ADA, dated 2/11/14 and RFP Section 3.32.1 B, page 61, which states that the button shall require no more than 2 lbs of pressure for actuation.” (Bureau’s May 13, 2015 Recommendation Report.)

However, the Hearing Unit’s independent review of the catalog page submitted by General in response to the Bureau’s request for clarification reveals that there is no reference to the amount of force needed to actuate the push button on the catalog page. Accordingly the Bureau should seek further clarification from General regarding the proposed item.

With respect to the product proposed by the intended awardee, Signal, Polara Model # BDSP-0110Y, this product does not conform to the RFP requirements. The catalog pages provided by Signal for this line item state that an “Operating Force: 3.0 lbs Maximum” is required for activation. This does not comply with the RFP requirement of “no more than a maximum of 2 lbs of pressure for actuation.” Therefore, Signal’s proposal is not responsive to the specifications for this line item.

Accordingly, the NOI for this line item is rescinded and the Bureau is directed to conduct a further review and evaluation of the proposals submitted, to request any additional clarification necessary to complete the evaluation of the proposals and award this price line as appropriate.

CONCLUSION

As discussed above, General’s proposal as to line items 00001, 00003, 00025, 00026 and 00121 were properly deemed non-responsive by the Bureau as each of these proposals contained a material deviation from the mandatory RFP requirements. In each instance, General’s deviation removes the possibility that the contract will be entered into and performed in conformance with the RFP requirements. Permitting the deviation potentially places General in a position of advantage over other bidders who have bid in conformance with the specifications.

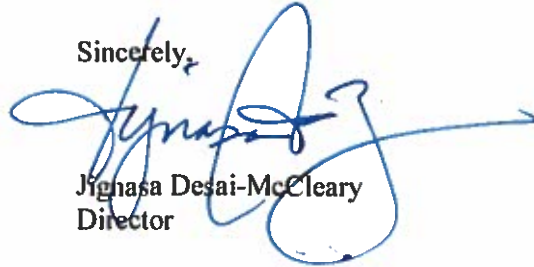
As to line items 00001, 00003, 00025 and 00026 the Bureau’s NOI is sustained for the reasons set forth above.

With respect to line items 00014, 00016, 00017, 00022, 00023, 00093, 00120 through 00125, and 00144, the NOI is rescinded for the reasons set forth above and the Bureau is directed to conduct a further review and evaluation of the proposals submitted to determine if any proposal conforms to the RFP requirements for these line items.

In the protest letter, General states “it is expected that the Div. of Purchase and Property would encourage a second source for these items instead of the sole source situation that may currently exist on at least two of these items.” (Excerpt from General’s May 27, 2015, protest letter.) While “the Director of the Division of Purchase and Property may make awards to multiple bidders, to furnish the same or similar materials, supplies, services or equipment,” such an action was not intended nor requested by the DOT with respect to this RFP. N.J.S.A. 52:34-12.1(a). The Division intends to award only one contract per line item.

Based upon the foregoing, the Procurement Bureau’s NOI is modified as set forth above. This is my final agency decision with respect to the protest submitted by General Traffic Equipment Corp. Thank you for your company’s continuing interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jignasa Desai-McCleary", is written over the typed name and title.

Jignasa Desai-McCleary
Director

JD-M: RUD

c: D. Reinert
J. Kemery
D. Holt