



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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October 7, 2015

Via Email [cbetti@betson.com] and USPS Regular Mail

Christopher Betti
H. Betti Industries, Inc.
303 Paterson Plank Road
Carlstadt, NJ 07072

Re: Reconsideration of Proposal Rejection
RFP# 16-X-24006: Vending Machine Equipment for the Commission for the Blind and
Visually Impaired (CBVI)

Dear Mr. Betti:

This correspondence is in response to your email dated September 30, 2015, to the Hearing Unit of the Division of Purchase and Property (Division) on behalf of H. Betti Industries, Inc. (HBI). In that letter, HBI protests the Proposal Review Unit's Notice of Proposal Rejection for Solicitation# 16-X-24006. The record of this procurement reveals that HBI's proposal was rejected because the proposal was missing pricing information. With the protest, HBI submitted a copy of all documents uploaded to eBid comprising its proposal submission which included the price sheet. HBI requests an explanation of why its proposal was rejected and an opportunity to re-submit information to correct its proposal submission.

I have reviewed the record of this procurement, including the Request for Proposal (RFP), HBI's proposal, 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 submitted by HBI. I set forth herein the Division's final agency decision.

By way of background, this RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of the Commission for the Blind and Visually Impaired (CBVI) to solicit proposals to engage a vending machine company to provide vending machines for CBVI. (RFP § 1.1 *Purpose and Intent*.) In accordance with the RFP, a contract is to be awarded to the responsible bidder whose proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. (*Ibid.*)

On September 30, 2015, the one proposal received by the submission deadline was opened by the Proposal Review Unit. After conducting the intake review, the Proposal Review Unit issued a Notice of Proposal Rejection to HBI pursuant to N.J.A.C. 17:2-2.2 for failing to include all necessary pricing information with its proposal submission.

In response to the Notice of Proposal Rejection, HBI states:

Attached is the notice of proposal rejection, due to the missing price information. Also attached is what was uploaded containing pricing information.

Please review and let me know if there is anything else I can provide to get this corrected. Please explain why this was rejected and can we resubmit.

[HBI's September 30, 2015 email.]

The above referenced solicitation was comprised of the RFP and other documents, one of which was the proposal price sheet. RFP Section 4.4.7 *Method of Bidding* requires that:

Bidders must¹ submit a cost proposal for ALL Price Lines one (0001) through twelve (00012) as follows or the entire proposal shall be rejected:

- **Price Lines one (0001) through ten (00010)**
Bidders must provide cost per vending machine as indicated on the Price Sheets. The Manufacturer and Model Numbers must be provided on the lines provided on the Price Sheets.
- **Price Line eleven (00011)**
Bidders must provide a percentage (%) discount off the manufacturer's parts retail price list or an official New Jersey Retail price list.
- **Price Line twelve (00012)**
Bidders must provide an Hourly Rate for Service on all vending equipment after the manufacturer's one (1) year warranty expires on Price Line eleven (00012).

[Emphasis in the original.]

Moreover, pursuant to N.J.A.C. 17:12-2.2, a bidder's proposal must "contain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As a courtesy to all bidders, the Division provided a *Proposal Checklist* as an accompaniment to the RFP. The relevant portion of the checklist includes the following:

¹ "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a proposal as non-responsive." (RFP § 2.1 *General Definitions*.)

N.J. Department of the Treasury
Division of Purchase and Property
PROPOSAL CHECKLIST

Solicitation Number: 16-x-24006 Solicitation Title: Vending Machine Equipment for the Commission for

This checklist was created as a guide to assist bidders in preparing a complete and responsive proposal. It is only advisory in nature. It is the bidder's responsibility to ensure that all requirements of the RFP have been met.

FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:

<input type="checkbox"/>	RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
<input type="checkbox"/>	Completed Price Sheets as instructed in Section 4.4.5 of the RFP
<input type="checkbox"/>	Completed and signed Ownership Disclosure Form*
<input type="checkbox"/>	Completed and signed Disclosure of Investments in Iran Form*

* The Ownership Disclosure, Disclosure of Investigations and Other Actions Involving Bidder, and the Disclosure of Investments in Iran forms MUST each contain either a physical or typed signature (typed signatures are only acceptable for eBid submissions). The forms are found in the Standard RFP Forms Packet, which can be downloaded at: <http://www.state.nj.us/treasury/purchase/forms/StandardRFPForms.pdf>

As such, the submission of a price sheet, with ALL price lines completed, was required.

The record of this procurement reveals that HBI submitted a proposal through eBid by the proposal submission deadline. While HBI uploaded the required forms, including the price sheet, ALL lines of the price sheet were not completed. Specifically, HBI did not submit a proposal for price line 00012 which requires that the bidder provide an hourly rate for service on all vending machine equipment after the expiration of the manufacturer's one (1) year warranty.

Based upon HBI's failure to provide all mandatory pricing information in its proposal, the proposal must be deemed non-responsive. 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." 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), citing, River Vale, *supra*, 127 N.J. at 216.

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. Here, the failure to provide all required pricing information is a material deviation from the RFP requirements.

Permitting HBI to provide this pricing information after the proposal opening is contrary to the Appellate Division's reasoning in On-Line Games where the court held that "[i]n 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.” On-Line Games, supra, 279 N.J. Super. at 597. The Division cannot permit HBI to correct its proposal by providing the pricing information after the proposal submission deadline.

Notwithstanding HBI’s interest in competing for this procurement, it would not be in the State’s best interest to allow a bidder who did not appropriately complete and submit all of the required forms with its proposal, as required by the RFP, to be eligible to participate in the procurement process. The deficiency at issue cannot be remedied after the proposal submission deadline as acceptance of HBI’s proposal under these circumstances would be contrary to the provisions of the governing statute. In light of the finding set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. Additionally, I note that there were no other responsive proposals received in response to the subject solicitation. Accordingly, the Bureau is directed to consult with CBVI to determine if this solicitation should be advertised for re-procurement. This is the Division’s final agency decision on this matter.

Thank you for your interest in doing business with the State of New Jersey. I further invite you to take this opportunity to register your business with [NJ START](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Chief Hearing Officer

MAG: RUD

c: A. Miller
J. Kemery
D. Reinert
A. Nelson
D. Rodriguez