



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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February 19, 2019

Via Electronic Mail [oscar@hintmounts.com] and USPS Regular Mail

Oscar Gimenez, President
Hint Peripherals Corporation d/b/a Hint Mounts
46 Gracey Avenue
Meriden, CT 06451

Re: I/M/O Bid Solicitation # 17DPP00046 Hint Peripherals Corporation d/b/a Hint Mounts
Protest of Notice of Intent to Award
T0106 Law Enforcement Firearms, Equipment and Supplies

Dear Mr. Gimenez:

This letter is in response to your email of February 14, 2019, on behalf of Hint Peripherals Corporation d/b/a Hint Mounts (Hint) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Hint protests the October 19, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #17DPP00046: Law Enforcement Firearms, Equipment and Supplies (Bid Solicitation).¹

By way of background, on February 7, 2017, the Bureau issued the Bid Solicitation on behalf of State Using Agencies and Cooperative Purchasing Partners to solicit Quotes for sixteen categories for law enforcement equipment and supplies. Bid Solicitation § 1.1 *Purpose and Intent* and Bid Solicitation § 3.1 *Law Enforcement Equipment and Supplies Categories*.

¹ This final agency decision uses terminology employed by the State of New Jersey's **NJSTART** eProcurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

NJSTART Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

On April 20, 2017, the Division's Proposal Review Unit opened 102 Quotes received by the submission deadline of 2:00 p.m. After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation § 6.6 *Evaluation Criteria*.

On September 13, 2018, the Bureau completed a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. On October 19, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s. On February 14, 2019, Hint to the Bureau questioning why it had not been awarded a Blanket P.O. Specifically Hint States:

It has come to our attention that there are conditions that have qualified Hint Peripherals Corporation d/b/a HiNT Mounts (hereafter "HiNT") bid as "non-responsive" on the State of New Jersey's intent to award under contract T0106 17DPP00046. I am writing regarding a Manufacturer's direct bid with named distributors that prevents the bidder from providing an "Hourly Rate Price Line."

The NJ State Police has had HiNT Mounts in their vehicles for the past 6 years; however, it is confusing that HiNT was still required to submit this bid as an "Equivalent Brand." It is not clear if the bid package was considered as a manufacturer direct bid. HiNT is the manufacturer of the contracted equipment and sought to provide named distributors on New Jersey State Contract.

With regard to HiNT's omission of the Hourly Rate Price Line, it is not customary that the manufacture dictates the labor rate of the distributor of HiNT products. HiNT has listed named distributors within our submitted bid package, whom all hold a contracted labor rate under 12 & 12A Vehicle Siren Systems and Vehicle Light Systems and Associated Accessories and Installation and Repair Rate independently of all Manufacturer's. It is the position of HiNT to defer Hourly Rate Price Line to the chosen named distributors.

This intent was to prevent manufacturer control or influence of independent contracted companies and corporations. Additionally, it would alleviate the need for any contractor to handle a varying number of differing hourly rates dependent upon the vastly differing equipment chosen by the purchasing agency.

HiNT cordially requests that the terms of Manufacturer submitted bid terms and conditions be reconsidered based on the conditions stated above. We hope that upon consideration that HiNT's bid could be reclassified as "responsive."

That correspondence was forwarded to the Division's Hearing Unit.

As noted above, the NOI was sent to all Vendors {Bidders} October 19, 2018. That letter indicated that the protest end date was October 26, 2018. Hint's protest was not received until February 14, 2019, over three months after the protest end date. The Division's governing regulations require that a protest of

a NOI shall be filed within ten (10) business days following the Vendor’s {Bidder’s} receipt of the NOI. N.J.A.C. 17:12-3.3(b). Further, the Division’s governing regulations permit the Director to disregard any protest filed after the ten-day protest period has expired. N.J.A.C. 17:12-3.3(b)(3). Accordingly, the Division could disregard Hint’s protest as permitted by the governing regulations as it was filed out of time. However, for the sake of completeness, I will address Hint’s protest below.

In consideration of Hint’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, Hint’s protest, 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. I set forth herein the Division’s Final Agency Decision.

The record of this procurement reveals that Hint submitted a Quote for Category 12 – Vehicle Siren Systems & Vehicle Light Systems and Associated Accessories. Specifically, Hint submitted a Quote for an “Equivalent Brand.”² See, price line 143 on the screenshot below.

CATEGORY 12 - VEHICLE SIREN SYSTEMS & VEHICLE LIGHT SYSTEMS AND ASSOCIATED ACCESSORIES									
	Brand/Equivalent	Markup/Discount from Manufacturers Price List	% Percentage	Price List Type	Price List File Name	Price List Publication Date	Price List Page # Relating to the Brand Bid	Delivery Days ARO	Cash Discount for Expedited Payment, See Section 4.4.5.5
133	Able 2								
134	Code 3								
135	Federal Signal								
136	Gambor Johnson								
137	Hovis								
138	Jotto Public Safety								
139	Pro-Gard Products LLC								
140	Sotina Manufacturing								
141	Troy Products								
142	Whelan Police								
143	Equivalent Brand Line	Discount	20.50%	Retail	17DPP00046 - NJ Gov	4/18/2017	Page 1-16	48	
	Equivalent Brand Line								
	Equivalent Brand Line								
	Equivalent Brand Line								
	Equivalent Brand Line								
CATEGORY 12A - VEHICLE SIREN SYSTEMS & VEHICLE LIGHT SYSTEMS INSTALLATION AND REPAIR RATE									
	Brand/Equivalent	Vehicle Installation & Repair Hourly Rate							
144	Able 2								
145	Code 3								
146	Federal Signal								
147	Gambor Johnson								
148	Hovis								
149	Jotto Public Safety								
150	Pro-Gard Products LLC								
151	Sotina Manufacturing								
152	Troy Products								
153	Whelan Police								
154	Equivalent Brand Line								
	Equivalent Brand Line								
	Equivalent Brand Line								
	Equivalent Brand Line								

To assist Vendors {Bidders} in completing the price sheet, the Bid Solicitation advised that when a Vendor Bidder submits Quote pricing for Category 12, the Vendor {Bidder} is required to submit hourly rates for consulting services, installation, hardware/software configuration, training and repair services. First, Bid Solicitation § 1.1 Purpose and Intent stated in part that “for equivalent brand products in Category(ies) 12-16 which require associated services, the associated services must also be offered for the

² “Equivalent Brand – A manufacturer’s brand that meets the requirements of the category listed in Bid Solicitation {RFP} Section 3.” Bid Solicitation § 2.1.2 Blanket P.O. {Contract}-Specific Definitions/Acronyms.

brand to be considered for an award.³” Emphasis added. Second, Bid Solicitation § 4.4.5.2 *Price Sheet Attachment Instructions* stated in part:

Vendors {Bidders} submitting pricing for Category(ies) 12, 13, 14, 15 and/or 16 must bid a not to exceed hourly rate for consulting services, installation, hardware/software configuration, training and repair services in the corresponding Category(ies) 12A, 13A, 14A, 15A and/or 16A. Vendors {Bidders} shall enter the not to exceed hourly rate for the specific brand (including any equivalent brand) bid in Category 12, 13, 14, 15 and/or 16 on the Price Sheet. A Vendor’s {Bidder’s} entry in the “Hourly Rate” column shall be considered an (sic) not to exceed hourly rate. For example, entry of “50” shall be considered “\$50 per hour”. If a Vendor {Bidder} leaves blank the “Hourly Rate”, it will be considered that the Vendor {Bidder} provided no Quote {Proposal} for that price line item.

[Bid Solicitation § 4.4.5.2.1, emphasis added.]

Third, Bid Solicitation § 4.4.5.2.3 stated in part “if an equivalent to the listed brands is offered in Category(ies) 12, 13, 14, 15, and/or 16 pricing to install, repair and service the corresponding equivalent brand offered must be entered onto the corresponding equivalent brand price line in Category(ies) 12A, 13A, 14A, 15A, and/or 16A.”

The Division’s administrative regulations that govern the advertised procurement process require that in submitting a Quote, the Vendor {Bidder} must include all required certifications, forms and attachments completed and signed as required by the Bid Solicitation. N.J.A.C. 17:12-2.2, emphasis added. Moreover, the *NJSTART* system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents completed and attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are properly completed and uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}; as such the Bid Solicitation advised:

The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote {Proposal} in response to this Bid Solicitation {RFP}. No special consideration will be given after Quotes {Proposals} are opened because of a Vendor’s {Bidder’s} failure to be knowledgeable as to all of the requirements of this Bid Solicitation {RFP}.

[Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.]

Accordingly, Hint, having submitted a Quote for Category 12 – Vehicle Siren Systems & Vehicle Light Systems and Associated Accessories, was also required to submit an hourly rate for consulting services, installation, hardware/software configuration, training and repair services in Category 12A. Unfortunately, Hint did not submit the hourly rates as required. Therefore, the Bureau deemed Hint’s Quote non-responsive. Recommendation Report p. 42, 52-53.

³ “Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive.” Bid Solicitation § 2.1.1 *General Definitions*.

Hint Peripherals (Hint)	Category 12 and 12A, Price Lines 143 and 154, Hint Peripherals	<p>Hint did not offer a Quote for the Hourly Rate Price Line (Left Blank on the Price Sheet); Instead, Hint only offered a Quote for the Brand Price Line (Percentage Markup or Discount).</p> <p>Bid Solicitation Section 1.1 states, in pertinent part: <i>"For equivalent brand products in Category(ies) 12-16 which require associated services, the associated services must also be offered for the brand to be considered for an award."</i></p> <p>Bid Solicitation Section 4.4.5.2.1 states, in pertinent part: <i>"Vendors (Bidders) submitting pricing for Category(ies) 12, 13, 14, 15 and/or 16 must bid a not to exceed hourly rate for consulting services, installation, hardware/software</i></p>
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		<p><u>configuration, training and repair services in the corresponding Category(ies) 12A, 13A, 14A, 15A and/or 16A. Vendors (Bidders) shall enter the not to exceed hourly rate for the specific brand (including any equivalent brand) bid in Category 12, 13, 14, 15 and/or 16 on the Price Sheet. A Vendor's (Bidder's) entry in the "Hourly Rate" column shall be considered a not to exceed hourly rate. For example, entry of "50" shall be considered "\$50 per hour". If a Vendor (Bidder) leaves blank the "Hourly Rate", it will be considered that the Vendor (Bidder) provided no Quote (Proposal) for that price line item."</u></p> <p>Further, Bid Solicitation Section 4.4.5.2.3 states, in pertinent part: <i>"If an equivalent to the listed brands is offered in Category(ies) 12, 13, 14, 15, and/or 16 pricing to install, repair and service the corresponding equivalent brand offered must be entered onto the corresponding equivalent brand price line in Category(ies) 12A, 13A, 14A, 15A, and/or 16A."</i></p> <p>Bid Solicitation Section 7.2 states, in pertinent part: <i>"Vendors (Bidders) awarded brands under Category(ies) 12, 13, 14, 15 and/or 16 will also be awarded the associated brand price line for consulting services, installation, hardware/software configuration, training and repair services. Using Agencies may, but are not required to utilize Category(ies) 12A, 13A, 14A, 15A and/or 16A."</i></p>
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In order for Hint's Quote to be considered responsive, Hint's failure to submit the required hourly rate for consulting services, installation, hardware/software configuration, training and repair services in Category 12A, would have to be deemed as a minor irregularity. Minor irregularities can be waived pursuant to the authority vested in N.J.A.C. 17:12-2.7(d) and Bid Solicitation RFP § 1.4.10, *Quote {Proposal} Acceptances and Rejections*. 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, 594 (App. Div. 1995), 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.]

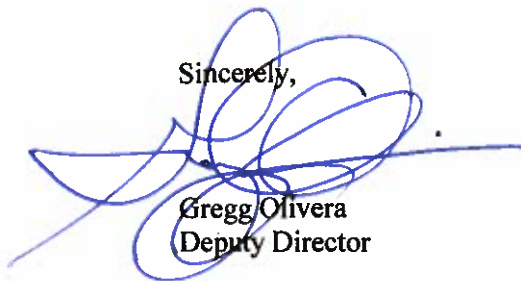
“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” Id. at 222.

Here, Hint’s failure to submit the required hourly rate for consulting services, installation, hardware/software configuration, training and repair services in Category 12A is a material deviation from the requirements of the Bid Solicitation. Without the required pricing having been submitted, the State would have no assurance that the Blanket P.O. would be performed and guaranteed according to the specified requirements. Moreover, if the State were to accept Hint’s Quote without the required hourly rate, Hint would be placed in a position of advantage over those Vendors {Bidders} who did submit a Quote with the required information and those Vendors {Bidders} who did not submit a Quote for this Category knowing that they were unable to provide the required consulting services, installation, hardware/software configuration, training and repair services.

In light of the findings set forth above, I find no reason to overturn the Bureau’s determination that Hint’s submitted Quote was non-responsive to the requirements of the Bid Solicitation. 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 with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey’s eProcurement system. 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.

Sincerely,



Gregg Olivera
Deputy Director

GO: RUD

c: J. Kerchner
K. Thomas