



State of New Jersey

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

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July 8, 2020

Via Electronic Mail Only jmackoff@gmail.com

Joshua D. Mackoff, LLC
44 Maple Avenue
Morristown, NJ 07960

Re: I/M/O Bid Solicitation #19DPP00335 Joshua D. Mackoff, LLC
Protest of Notice of Intent to Award
T2957 - Appraisal Services for NJ Department of Environmental Protection

Dear Mr. Mackoff:

This letter is in response to your correspondence of April 29, 2020, on behalf of Joshua D. Mackoff, LLC (Mackoff) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In its letter, Mackoff protests the April 20, 2020, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #19DPP00335 – T2957 Appraisal Services for New Jersey Department of Environmental Protection (Bid Solicitation).

By way of background, on July 12, 2019, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Environmental Protection. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for Real Estate Appraisal services from qualified New Jersey Certified General Real Estate Appraisers for the purpose of acquiring properties as open space preservation or flood plain protection by the State of New Jersey. *Ibid*.

On September 13, 2019, the Division's Proposal Review Unit opened thirty-eight (38) Quotes, which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for the compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded thirty-seven (37) Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*.

On March 25, 2020, after completing the review and evaluation of the submitted Quotes, the Bureau issued 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 April 20, 2020, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the Bureau's Recommendation Report.

With respect to the Quote submitted by Mackoff, the Bureau's Recommendation Report noted the following:

Mackoff

The Quote submitted by Mackoff was determined by the Bureau to be non-responsive to the mandatory material requirements of the Bid Solicitation, as it failed to provide the required pricing for Price Line 2 in the Northern Region and Price Line 4 in the Central Region as required by Section 4.4.5.2, *State Supplied Price Sheet Instructions*. Section 4.4.5.2 states, "The Vendor {Bidder} must provide a Firm-Fixed all-inclusive hourly rate for both price lines of a Region in order to be eligible for award of that Region. The Vendor {Bidder} must be willing and able to service the entire Region that is bid. Quotes submitted for less than an entire Region will be rejected and deemed as non-responsive for the respective Region. The Vendor {Bidder} is able to submit a Quote for a single Region, or any combination of Regions." The Bureau notes that the Vendor {Bidder} did not submit a Quote for any other Region.

Subsequently, the Bureau found Mackoff to be non-responsive to the mandatory material requirements of the Bid Solicitation and its Quote was not further evaluated.

On April 23, 2020, Mackoff sent a protest letter to the Division challenging the Bureau's April 20, 2020 NOI and the determination that its submitted Quote was non-responsive. Specifically Mackoff stated in part:

My reasons for not completing these lines are as follows:

- The instructions were very unclear as to how to complete the form and what information was required.
- I chose not to perform work out of my region as I do not have the knowledge or data available to produce effective and compliance work in areas where I have no experience.

In consideration of Mackoff's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Mackoff's Quote and 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 Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall¹ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

6. Include all RFP-required pricing information.

[*N.J.A.C. 17:12-2.2(a)*, emphasis added.]

Among those attachments required to be submitted with the Quote is the State-Supplied Price Sheet discussed in Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet*.

¹ "Shall – Denotes that which is a mandatory requirement." Bid Solicitation § 2.2 *General Definitions*.

To assist Vendors {Bidders} in completing the State-Supplied Price Sheet, the Bid Solicitation advised in part:

The Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab.

The Vendor {Bidder} must provide a Firm-Fixed all-inclusive hourly rate for both price lines of a Region in order to be eligible for award of that Region. The Vendor {Bidder} must be willing and able to service the entire Region that is bid. Quotes submitted for less than an entire Region will be rejected and deemed as non-responsive for the respective Region. The Vendor {Bidder} is able to submit a Quote for a single Region, or any combination of Regions.

In the event that a Vendor {Bidder} using *NJSTART* to submit a Quote uploads a State-Supplied Price Sheet and completes the “Items” Tab in *NJSTART* (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet will govern.


[Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions*, emphasis added.]

The review of Mackoff’s submitted Quote reveals that the submitted Price Sheet did not include pricing for Price Line 2 and Price Line 4 which were required for a Quotes submitted for the Northern and Central Regions. As indicated above, Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions* required that the Vendor {Bidder} submit “a Firm-Fixed all-inclusive hourly rate for both price lines of a Region in order to be eligible for award of that Region.” Emphasis added. On this point, the Bid Solicitation was clear, Vendors {Bidders} were required to submit pricing in response to both price lines in a Region in order to be eligible for an award. Because Mackoff did not provide a Firm-Fixed all-inclusive hourly rate for both price lines of a Region as required, the Bureau properly deemed Mackoff’s Quote as non-responsive. Recommendation Report, pg. 5. 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.

However, as the result of another protest received in response to the Bureau’s April 20, 2020 NOI, because of the ambiguity between the Bid Solicitation and the State supplied price sheet I have determined that it is in the public’s interest to reject all Quotes submitted and cancel the subject Bid Solicitation. I have remanded this matter back to the Bureau with direction to rescind the Notice of Intent to Award, to cancel this Bid Solicitation and to re-procure the services sought if desired by the using agency. This is my final agency decision on this matter.

Thank you for your company’s interest in doing business with the State of New Jersey. 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. Please monitor the Division’s *NJSTART* website for future bidding opportunities for these services.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD

c: R. Regan
K. Popso
M. Dunn