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January 27, 2017

Via Electronic Mail [PhyllisViola@turf-equipment.com] and USPS Regular Mail

Phyllis Viola, Commercial Operations Administrator
Turf Equipment and Supply Company
6045 Kellers Church Rd.
Pipersville, PA 18947

RE: Protest of Notice of Award
RFP #16-X-24053 Parts and Repairs for Lawn and Grounds Equipment (T-2187)

Dear Ms. Viola:

This correspondence is in response to your letter of protest submitted on behalf of Turf Equipment and Supply Company (Turf), dated and received November 4, 2016, referencing the subject Request for Proposal (RFP) and regarding the Notice of Intent to Award (NOI) issued by the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). In that letter, Turf protests "the award of Group 41C and 41S (sic)"[1] to Storr Tractor Company (Storr), stating that Turf "is the only Toro distributor that is permitted to sell or service Toro commercial equipment and parts in certain counties of central and all of southern New Jersey." Turf further requests the Division reconsider the automatic rejection of its proposal and that it be reinstated in order to service nine counties with Toro products.

I have reviewed the record of this procurement, including Turf's protest, the RFP, the pertinent proposals, and relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of Turf's protest.

By way of the background, the subject RFP was issued by the Bureau on behalf of State agencies to solicit proposals for parts and repairs for lawn and grounds equipment. RFP § 1.1 *Purpose and Intent.* The intent of the RFP is "to award contracts to those responsible bidders whose proposals, conforming to [the] RFP are most advantageous to the State, price and other factors considered." Ibid. As specified by the RFP, "[f]or each OEM parts and repair group and each non-OEM parts and non-OEM repairs group, a maximum of three awards per region, one primary, one secondary and one tertiary, shall be made." RFP § 4.4.7.5. This is a reprocurement of term contract T-2187.

The Bureau received 26 proposals by the proposal submission due date of February 16, 2016. Three proposals were administratively rejected in accordance with N.J.A.C. 17:12-2.2(a). Following an evaluation of

[1] As noted in the NOI, Storr was awarded 41PC (primary awardee in the central region) and 41SN (secondary awardee in the North region).

the remaining 23 proposals, the Bureau issued the NOI on November 1, 2016.[2] In total, 20 bidders were recommended for an award. Storr was awarded groups 27 (secondary, statewide); 38 (secondary, statewide); 41 (primary, central region); 41 (secondary, North region); and 52 (secondary, statewide).

Turf asserts in its letter of protest that, regarding Storr's award of group 41, Toro OEM parts and repair, that Turf is the only Toro distributor that is "permitted to sell or service Toro commercial equipment and parts" in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem counties and therefore the intended award cannot stand. In support of its position, Turf included a letter from The Toro Company (Toro) confirming that Turf is "the only authorized distributor for *both sales and service* of Toro Commercial Equipment and Parts" in the aforementioned counties. Also included with Turf's letter of protest was a correspondence from Storr, confirming that Storr "is the exclusive authorized distributor for *sales and service* of Toro Commercial Equipment and Commercial Parts" for Hunterdon, Somerset, Middlesex, Monmouth, Warren, Morris, Union, Sussex, Passaic, Essex, and Bergen counties.

Group 41 included price lines 73, Toro Brand OEM Mower Parts, and 74, Toro Brand Mower Repairs. The RFP required bidders submitting proposals for OEM parts and repairs price lines to provide the appropriate OEM manufacturer's/distributor's certification that the bidder is authorized to supply the OEM parts and service, along with the OEM price list and the available OEM catalog. RFP §§ 4.4.3 *Submittals*, 4.4.7.7. Bidders were required to list the regional jurisdictions they would serve, or, if requested, provide a manufacturer's certification listing all areas covered in a region, defined in the RFP as follows:

| **Region** | **Counties** |
|---|---|
| North | Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union and Warren |
| Central | Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset |
| South | Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem |

[RFP § 3.2, *Regional Jurisdiction*.]

A review of the record shows that Storr submitted a proposal for price lines 73 and 74, indicating the following information:

| Line No | Commodity-Service Description | Quantity | Unit | Discount % | Hour Rate |
|---|---|---|---|---|---|
| 00073 | Mowers (Category 5)<br>Toro Brand OEM Parts (Group 41)<br><br>Region Served: North & Central<br>Price List #: Toro Commercial Price List<br>Price List Date: 1/11/15 or Manufacturer's Current Price List<br>Price List Type: Retail, CD Only | 1 | Lot | -5% | |
| 00074 | Mowers (Category 5)<br>Toro Brand Repairs (Group 41)<br><br>Region Served: North & Central | 1 | HRATE | | 110.00 |

Additionally, included with Storr's proposal was a letter dated February 10, 2016, from Toro stating: "Storr Tractor Company is authorized to represent and submit a bid for Toro Commercial Equipment including sales, parts and service." The letter from Toro did not specify specific regions or counties in which Storr was an authorized distributor.

[2] The Bureau did not issue an intent to award for nine of the 66 groups prescribed in the RFP, as the State received no responsive bids for these groups.

Based on the letters from Toro and Storr included with Turf's protest, Storr's award of the North region did comply with the terms of the RFP, as Storr is the authorized distributor of Toro products in all counties in the North region. Storr did not receive an award for the South region as the Bureau made no awards for the South region of Group 41.[3] However, based upon these same letters, it appears that Storr's award of the central region, which included Mercer and Ocean counties—where Turf is the only authorized Toro distributor—does not comply with the terms of the RFP.

The RFP contemplated situations in which a manufacturer's list of areas covered did not correspond with the regional jurisdiction as stated in RFP Section 3.2 (noted above). In such a situation, the RFP provided:

> If requested, the bidder shall provide manufacturer's certification listing all areas covered under each region. If deemed in the best interest of the State, the manufacturer's list of areas covered under each region may be adopted, for the brand bid, superseding the list of areas specified in Section 3.2 of the RFP.
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> [RFP § 4.4.7.6.1.]

Because Storr's proposal did not list the specific counties in which it was an authorized Toro distributor, and the Bureau did not seek a manufacturer's certification, the Bureau was unaware that Storr's geographic locations list in its proposal did not correspond to the RFP-defined regions. Based on the foregoing, Storr's award as the primary awardee for the central region in Group 41 is remanded to the Bureau for further evaluation consistent with these findings.

In response to Turf's request that its proposal be reinstated and it be eligible for an award of group 41, serving nine counties in the State, the record shows that Turf's proposal was administratively rejected for failing to include a properly signed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* Form. Turf protested this rejection via letter on February 23, 2016. The Division issued a final agency decision in response to this protest on March 9, 2016, upholding the rejection. That final agency decision explained:

> Pursuant to N.J.A.C. 17:12-2.2,[4] a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set forth in RFP Sections 4.4.1.2, 4.4.1.2.1, and 4.4.1.2.2, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal and a completed and signed *Disclosure of Investment Activities in Iran* form as part of a bidder's proposal was required.
>
> In this case, the record reveals that Turf Equipment submitted an electronic proposal by the submission deadline of February 16, 2016. Regrettably, Turf Equipment's proposal failed to include a properly signed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* Form. As noted above, the two permissible ways to sign these forms were either: 1) downloading the document, physically signing the form, scanning the completed document, and then uploading it; or 2) typing the name of the signatory in the space designated for certification signature and uploading the document. Here, unfortunately, the signature lines on the submitted forms were left blank.

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[3] I note that Keehn Power Products, the primary awardee in the North region for Group 41, is an authorized Toro Dealer, and included with its proposal a letter from Storr confirming that Keehn is a "long time dealer in good standing and has the ability to purchase parts and to service . . . Toro . . . equipment." I also note that the Bureau does not intend to reprocure the price lines for the southern region at this time.

[4] The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at http://www.state.nj.us/treasury/purchase/AdminCode.shtml.

Following issuance of the March 9, 2016 decision, on April 8, 2016, Turf submitted a request for reconsideration, stating that it did submit the properly completed forms through the Division's eBid system. In response, the Hearing Unit reviewed Turf's request and found the following in its April 8, 2016 decision:

> Although Turf Equipment asserts the forms in question contained a signature when uploaded to the Division's eBid system, a review of the documents contained in eBid confirms these forms contained a blank signature line.[1] Although the eBid system requires that all forms be uploaded before the proposal can be submitted, the eBid system cannot differentiate between documents that are uploaded or what information is contained within a document. Rather, it accepts any document the bidder uploads in a required document field and will notify a bidder that its submission is complete regardless of the information contained within the forms. Furthermore, once a proposal is submitted, the only way a document can be altered is if a bidder goes back into its submission prior to the proposal submission deadline, withdraws the entire proposal using a PIN, uploads a new document, and resubmits the entire proposal using a PIN. The Division is unable to alter, upload, erase, or replace any forms submitted by the bidder through the eBid system; rather, the Division can only download the forms submitted as part of a complete proposal after the proposal submission deadline. The responsibility for the contents of the proposal, forms, or submittals necessarily and appropriately rests solely with the bidder.

I am unable to alter the previous findings on Turf's status in this matter. Turf has presented no additional evidence that its proposal was wrongfully rejected for failing to submit the fully executed required forms. While price lines for the primary awardee in the Central region of Group 41 are being remanded as discussed earlier in this opinion, unfortunately Turf is still ineligible for award on those lines on remand of this procurement. This is my final agency decision.

Thank you for your continued interest in doing business with the State of New Jersey and for registering your business with NJSTART at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

Jignasa Desai-McCleary
Director

JD-M:DF

c: J. Kerchner
K. Thomas
V. Bequer
Thomas Dougherty, Storr Tractor