



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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*Acting Director*

October 13, 2017

Via Electronic Mail [[Susan@howellrescue.com](mailto:Susan@howellrescue.com)] and USPS Regular Mail

Susan Duvall, Office Manager  
Howell Rescue Systems, Inc.  
2673 Culver Avenue  
Kettering, OH 45249

Re: I/M/O RFP# 17DPP00100  
Protest of Notice of Proposal Rejection  
Bid Solicitation Title: T0790 Firefighter Protective Clothing & Equipment

Dear Ms. Duvall:

This letter is in response to your email of October 12, 2017, on behalf of Howell Rescue Systems, Inc. (hereinafter "Howell") which was received by the Division of Purchase and Property's (hereinafter "Division") Hearing Unit. In that letter, Howell protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #T0790 Firefighter Protective Clothing & Equipment. The record of this procurement reveals that Howell's Quote {Proposal} (hereinafter "Proposal") was rejected because the submitted price sheet was missing required pricing information.

In consideration of Howell's protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP"), Howell'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. I set forth herein the Division's Final Agency Decision.

By way of background, on July 10, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the above referenced RFP on behalf of State Using Agencies and Cooperative Purchasing Partners, to solicit Proposals for firefighter protective clothing and equipment. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award a Master Blanket Purchase Order (Blanket P.O.) {Contract} (hereinafter "Contract") to each responsive Vendor {Bidder} (hereinafter "Bidder") who submits a Proposal that meets the category definition and requirements set forth in the RFP. *Ibid*. Specifically, the RFP sought the following eight (8) categories of goods as follows: Category 1: Turnout Gear; Category 2: Helmets; Category 3: Protective Hoods; Category 4: Boots; Category 5: Gloves; Category 6: Pass Devise; Category 7: SCBA; and, Category 8: Search and Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment. RFP § 3.1 *Firefighter Protective Clothing and Equipment Categories*. Bidders were not required to submit a Proposal for each Category to be considered responsive. RFP § 4.4.5.2.1.

On September 29, 2017, the Division’s Proposal Review Unit opened the Proposals received by the submission deadline of 2:00 p.m. After conducting an initial review of the Proposals submitted, the Proposal Review Unit found that Howell’s Proposal did not include a completed price sheet. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection. On October 12, 2017, Howell submitted a protest to the Division stating:

I received a notification that our Proposal was rejected due to a missing price sheet. I have attached a screen print of the items that has attached from [NJSTART] and the last item on the list is the missing price sheet. I have also attached the price sheet to this email.

Please let me know what else you will need from me to proceed with looking into this rejection.

A review of the record of this procurement reveals that Howell submitted a Proposal for Category 8: Search and Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment in response to the RFP. While Howell did submit a price sheet, as shown in the screenshot below, Howell did not complete the “% Percentage” field as required by RFP § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*.

PRICE SHEET - TD790 (17DPP00100) FIREFIGHTER PROTECTIVE CLOTHING & EQUIPMENT									
VENDOR (BIDDER) NAME: <u>Howell Rescue Systems Inc</u>									
DATE: <u>8/1/2017</u>									
CASH DISCOUNT FOR EXPEDITED PAYMENT (See Section 6.6.3.4)									
Price Line	Category	Brand/Manufacturer	Markup/Discount from Manufacturer 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
1	Turnout Gear								
2	Helmets								
3	Protective Hoods								
4	Boots								
5	Gloves								
6	Personal Alert Safety System (PASS) Device								
7	Self-Contained Breathing Apparatus (SCBA)								
8	Search & Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment	Generals Rescue Systems			Retail	INESIS Price Sheet	3/15/2017	29	60

The question to be answered is whether Howell is able to submit the missing information post Proposal opening within the confines of 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). There, 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.]

With respect to the submitted price sheet, if Howell intended to submit “0.00%” in the “% Percentage” field there would be no change between the price sheet as submitted and

the information later provided. In either instance, the result would be a net price being charged to the State for the items provided under the contract. In this scenario, Howell would only be clarifying that the blank space was intended to be "0.00%." If however, Howell intended to submit a non-zero number in the field, for example "5.00%," there would be a change between the price sheet as submitted, and the information later provided; and as a result a change in what the State would be charged. It is this change that is not permitted under On-Line Games.

Pursuant to N.J.A.C. 17:12-2.2, 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." Here, the subject solicitation was comprised of the RFP, other documents and mandatory forms including the price sheet which was specifically addressed in RFP § 4.4.5 *Price Schedule/Sheet* and RFP § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. Those instructions advised Bidders of the requirement to enter a percentage in the field. Specifically,

#### **4.4.5.2 PRICE SHEET/SCHEDULE ATTACHMENT INSTRUCTIONS**

Each category of firefighter protective clothing and equipment is represented by a price line item on the price sheet. Vendors {Bidders} shall bid a firm, fixed percentage discount or markup off the manufacturer's latest price list.

...

- Step 3 – The Vendor {Bidder} shall enter a percentage in the "% Percentage" column of the price sheet. A Vendor's {Bidder's} entry in the "% Percentage" column shall be considered a percentage (%). For example, an entry of "50" shall be considered "50%" and that of "0.50" shall be considered "0.50%". Percentage Markups/Discounts may be offered on the Price Sheet up to three (3) decimal places to the right of the decimal point. Price sheet formatting will automatically round Percentage Markups/Discounts containing more than three (3) decimal places to the right of the decimal point so as not to exceed this limit. If a Vendor {Bidder} leaves the "% Percentage" column blank on any price line, it shall be considered that the Vendor {Bidder} provided no Quote {Proposal} for that price line item. A series or a range of discounts or fixed prices (firm dollar amount) on any price line shall not be acceptable, and shall result in rejection of the Quote {Proposal} for that price line. If a Vendor {Bidder} is offering its pricing at the same pricing listed on the price list, the Vendor {Bidder} must provide 0% on the sheet.

...

The **NJSTART** system does not prevent a Bidder from submitting a Proposal without all required forms and documentation attached or without the documents being fully completed as mandated by the specifications. The responsibility for the contents of the Proposal, forms, or submittals necessarily and appropriately rests solely with the Bidder.

In response to this solicitation, Howell submitted its Proposal price sheet without the percentage column being completed as required. Accordingly, in connection with its review of this protest, on October 12, 2017, the Division's Hearing Unit wrote to Howell to clarify whether Howell intended to submit

“0.00%” in the field for Category 8. On October 12, 2017, Howell responded “[t]hat is correct, it should be 0.00%.” Howell’s response is consistent with the Appellate Division’s reasoning in On-Line Games. Howell’s statement that it intended to submit a “0.00%” does not result in an impermissible change to the submitted price sheet. As noted above, Howell has simply clarified its Proposal price sheet, indicating an intent to charge the State a net price for the items to be provided under Contract, if awarded.

Accordingly, I overturn the decision of the Proposal Review Unit to reject Howell’s Proposal for the above referenced RFP. Howell’ Proposal will be forwarded to the Procurement Bureau for evaluation along with other Proposals submitted. I caution Howell to in the future be mindful of the RFP requirements and complete all items as mandated.

Thank you for your interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey’s new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: J. Kerchner  
K. Thomas  
C. Murphy  
K. Popso  
A. Nelson  
D. Rodriguez