



State of New Jersey

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August 22, 2014

Via Fax [609-924-5392] and USPS Mail

Cara Marcano, CEO
Reporte Hispano
42 Dorann Avenue
Princeton, NJ 08540

Subject: RFQ 7710525 - Protest of Scheduled Award of Contract
Translation Services: Foreign Language

Dear Ms. Marcano:

This letter is in response to your letter dated August 27, 2013, by which, on behalf of Reporte Hispano ("RH"), you contest the scheduled award of the *Translation Services: Foreign Language* term contract to CETRA Language Solutions ("CETRA"), as announced by the Procurement Bureau, the unit of the Division of Purchase and Property ("Division") which conducts the Division's competitive procurement programs. The subject contract procurement applied the Division's statutory and regulatory prerogative to seek competitive proposals from qualified holders of Federal General Services Administration ("GSA") translation-related services contracts, as set forth in N.J.S.A. 52:34-6.1 and N.J.A.C. 17:12-1A.5.

RH contends that the intended award should not proceed because CETRA offered pricing for Spanish language translation that is lower than the pricing listed in CETRA's federal contract, which RH asserts is not permitted. RH also contends that the Procurement Bureau's Request for Quotation ("RFQ") and addenda thereto failed to provide potential bidders with a clear understanding of the State's intent with regard to pricing requirements.

A review of the written record of the subject procurement records and consideration of commentary of the Procurement Bureau staff member conducting the subject procurement relative to the points of protest presented in RH's letter have provided the information necessary for me to render an informed final agency determination regarding this matter. Therefore, an in-person hearing is not necessary. N.J.A.C. 17:12-3.3(d).

First, it is a matter of record that RH has not challenged the Procurement Bureau's determination that RH's proposal was non-responsive to specified bidding requirements set forth in the RFQ. Specifically, RH's proposal was rejected because (a) it did not include a technical response to,

or pricing for, telephonic translation services; (b) pricing for written translation authentication was not labeled or identified as such; and (c) handwritten notes on RH's pricing page rendered the pricing unclear and thus unacceptable. I find that the Procurement Bureau's determinations concerning RH's proposal are supported by the record. Thus, I have determined that the Procurement Bureau appropriately concluded that RH's proposal was non-responsive and materially defective for the three reasons cited in its Recommendation Report.

RH's challenge is focused on its belief that holders of GSA contracts cannot offer other public entities pricing that is more favorable than the pricing they have offered to GSA. RH asserts that the Procurement Bureau should not have accepted CETRA's proposal in response to the RFQ, because CETRA offered pricing for Spanish translation that is lower than the GSA pricing for that service.

RH contends that its confusion concerning pricing options was, in part, caused by the RFQ's language, first noting that RFQ Paragraph 4.2.5, *Price Schedule/Sheet*, advised bidders:

The bidder shall provide its GSA pricing rates or better as part of its submission.
[Emphasis in original]

RH asserts that this statement was questioned by a potential bidder during subsequent anonymous electronic question and answer periods, and that the answer contained in the RFQ's Modification #2 dated April 22, 2013, created an ambiguity:

Question: Is there a specific pricing sheet or format you would like us to follow?

Answer: No, all pricing will be based on your GSA pricing.

As an additional item in support of this point of protest, RH notes that RFQ Modification #2 also contained the following question and answer concerning RFQ Paragraph 4.2.5:

Question: In order to evaluate pricing equally, we request that standard units be provided. For example, per word for translation (as opposed to per page, etc.), per hour for in-person interpreting, etc.

Answer: Evaluation will be based on a company's GSA pricing schedule where the standard units for pricing have already been established.

The Procurement Bureau advises that the RFQ was issued with the understanding that a GSA contract holder can opt to lower its GSA contract pricing as has occurred with several similar GSA contract-based procurements previously conducted by the Procurement Bureau. A GSA contract holder's decision to lower its pricing to compete for a specific procurement rests solely with the GSA contract holder. Acceptance of a lower price is in keeping with the Division's statutory mandate and regulations, as both N.J.S.A. 52:34-6.1 and N.J.A.C. 17:12-1A.5 state that the Division may utilize federal contract schedules in procuring State contracts where "the price of the goods or services being procured is **no greater than** the price offered to federal agencies" (emphasis added). In this case, CETRA opted to reduce its Spanish translation pricing, presumably to enhance its chances of success for the subject procurement. I find that CETRA's lowering of its offered pricing for Spanish translation was not contrary to any provision of the

subject RFQ and is in fact consistent with the “GSA pricing rates or better” provision of RFQ Paragraph 4.2.5. This language was not expressly changed by the RFQ Modifications issued during the active procurement period. Instead, I find that the cited statements found in Modification #2 addressed questions regarding the formatting and presentation of prices, and were not intended to indicate that bidders were required to submit their GSA pricing. I therefore find that your letter of protest provides no substantive basis upon which to overturn the scheduled award of contract to CETRA.

As an additional matter of note, RH, by challenging only the Spanish segment of the scheduled award to CETRA, may have misunderstood the RFQ’s requirement for pricing of the 20 specified languages set forth at RFQ Subsection 1.2, *Background*. Subsection 1.2, in pertinent part, reads as follows:

The primary language used in the State is English and all assignments for language services from the contracts resulting from this RFQ will be based on conversion between English and another language. Based upon US Census 2010 data, the State has identified the top twenty (20) languages used within New Jersey:

1. Spanish	6. Portuguese	11. Vietnamese	16. Bengali
2. Haitian Creole	7. Gujarati	12. Cantonese	17. Tagalog
3. Mandarin	8. Korean	13. Turkish	18. Italian
4. Russian	9. Polish	14. French	19. Punjabi
5. Arabic	10. Hindi	15. Albanian	20. Burmese

The State recognizes that Spanish is by far the most common non-English language used within the State and will constitute the majority of interpretation and translation needs. Therefore, bidders must price Spanish separately from the remaining 19 “Core” languages.

Item #5 of Part 2, Additions, Deletions, Clarifications and Modifications, within RFQ Modification #2 addressed this section of the RFQ, and informed bidders that:

The following sentences are to be deleted from section 1.2, 6th paragraph:

The State recognizes that Spanish is by far the most common non-English language used within the State and will constitute the majority of interpretation and translation needs. Therefore, bidders must price Spanish separately from the remaining 19 “Core” languages.

Spanish is to be considered a “Core language”.

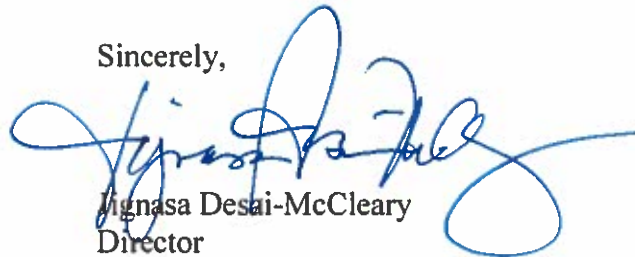
As written, this modification to the RFQ removed Spanish as a separate language to be priced independently and made it equivalent to the other 19 languages for the purpose of pricing.

Based upon the circumstances and facts set forth above, I must deny RH's challenge of the scheduled award of the *Translation Services: Foreign Language* contract to CETRA.

Nevertheless, notwithstanding my findings regarding the assertions presented in RH's protest letter, my review of the record of this procurement has revealed a different issue that requires that this procurement be cancelled. As a result, the Procurement Bureau has been directed to effect the cancellation and then to determine the most appropriate means of achieving effective competition for the award of a contract or contracts that will meet the State's translation and interpretation needs.

Thank you for RH's participation in the subject procurement. I look forward to your participation in the ensuing procurement and your continuing interest in doing business with the State of New Jersey. To prepare for future bidding opportunities, I encourage you to visit our www.njstart.gov website in order to register your business with **NJ START**, the Division's new eProcurement system, which is scheduled to go live this fall and will provide an opportunity for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ignasa Desai-McCleary", with a large, stylized flourish extending to the right.

Ignasa Desai-McCleary
Director

JD-M:RW

c: L. DuBois
E. Mackay
J. Kemery
D. McCall