



State of New Jersey

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

September 8, 2015

Via Electronic Mail bryan@bridgeton-plumbing.com and USPS Regular Mail

Bryan Wallace, Manager
Bridgeton Plumbing & Heating Supply Co.
756 N. Pearl Street
Post Office Box 397
Bridgeton, New Jersey 08302-0397

RE: Protest of Notice of Intent to Award
RFP #: 15-X-23874 Plumbing & Heating Supplies/Equipment – Statewide (T3027)

Dear Mr. Wallace:

This correspondence is in response to your letter dated August 19, 2015, on behalf of Bridgeton Plumbing & Heating Supply Co. (Bridgeton) which was emailed to the Hearing Unit of the Division of Purchase Property (Division). In that letter, Bridgeton protests the intended award of State contract T3027 for Plumbing & Heating Supplies/Equipment – Statewide. Specifically, Bridgeton contends that even though it is an incumbent to the current Plumbing & Heating Supplies/Equipment contract, and had agreed to several extensions on that contract it did not receive notice of the reprocurement and therefore was not afforded an opportunity to submit a proposal in response to the subject Request for Proposals (RFP). In its letter of protest, Bridgeton asks that the Division permit it to submit a proposal in response to the RFP.

In consideration of this protest, I have reviewed the record of this procurement, along with the 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 final agency decision on the merits of the protest submitted by Wallace. I set forth herein my Final Agency Decision.

At the outset, I note that Bridgeton's protest was filed out of time. The Division's Administrative regulations provide:

[a] bidder, having submitted a proposal in response to an advertised RFP and finding cause to protest the award decision. . . shall make written request to the Director, setting forth, in detail, the specific grounds for challenging the rejection of its proposal or for challenging the scheduled contract award, as applicable. The protest shall be filed within 10 business days following the bidder's receipt of written notification that its proposal is non-responsive or of notice of the intent to award, as applicable, or, pursuant to (e) below, prior to the deadline specified in the Division's notice of intent to award communication to the bidder, whichever date is earlier.

[N.J.A.C. 17:12-3.3(b) (emphasis added).]

The Procurement Bureau (Bureau) issued the Notice of Intent to Award (NOI) related to this RFP on June 25, 2015, and specifically advised that the protest period ended on July 9, 2015. Bridgeton's protest was dated and received on August 19, 2015. As such, the Division is not compelled to accept or consider Bridgeton's untimely protest as "[t]he Director may disregard any protest of award filed after the 10 day protest period and proceed with the award of contract(s)." N.J.A.C. 17:12-3.3(b)(3). I do note that Bridgeton did not receive a copy of the Bureau's NOI as it did not submit a proposal in response to the RFP. Therefore, notwithstanding the untimeliness of Bridgeton's protest, I will address the merits of the protest here.

The review of the record of the formal procurement for T3027 reveals that the procurement was conducted in full accordance with the Division's governing statutes and by its standard announcement procedures and practices, including public notice by newspaper advertisement and by direct email notice to vendors who were registered with the Division's eRFP Notification service. Specifically, the RFP was advertised and posted to the Division's website on February 17, 2015. Bidder's electronic questions were due on February 24, 2015, and responses to the questions were posted on that date by way of addendum. A second addendum was posted on March 12, 2015. The Proposal Review Unit opened proposals following the submission deadline of March 27, 2015, at 2:00 p.m.

The Division's public procurement program reflects New Jersey statutory and regulatory requirements that have been affirmed by New Jersey courts. A basic precept of the statutes and regulations governing the Division's public procurement program requires that sealed proposals be submitted by the specified and advertised deadline for submission of proposals as announced by public advertisement and website notice. There is no statutory or regulatory requirement for email or other direct notice to potential bidders. The Division's regulations set forth procurement notification requirements in N.J.A.C. 17:12-2.1, which in pertinent part states:

(c) In addition to statutorily mandated public advertising, the Division shall also publish notices of bidding opportunities on the Division's website.

(d) As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service known as the e-RFP Notification Service. Vendors and other interested parties can register to receive direct e-mail notices pertaining to the Division's procurements for goods or services based upon specific commodity classes or codes. As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for e-mail Notification Service registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division.

[(Emphasis added.)]

The Department of Treasury's Division of Revenue and Enterprise Service (DORES) has confirmed that the eRFP notification system generated and sent out four notification emails for the subject

RFP. While none of email addresses provided by Bridgeton to the Division in connection with its protest, (bryan@bridgeton-plumbing.com; dburton@bridgeton-plumbing.com; don@bridgeton-plumbing.com) are enrolled in the eRFP notification system, the email address harvey@bridgeton-plumbing.com has been registered with eRFP since September 1, 2007, and is registered for the following commodity codes: 031, 225, 659, 670, and 720. DORES has confirmed commodity codes 031, 225, 659, 670, and 720 were associated with the subject RFP.

Although bidders are advised to add the eRFP notification email, eRFPNotification.Service@treas.state.nj.us, to their safe email list, the Division cannot confirm whether or not Bridgeton followed this advice and subsequently received the email notifications sent to harvey@bridgeton-plumbing.com. The Division can confirm, however, that Bridgeton was registered with eRFP and that a proper notice was sent out through the eRFP notification system advising potential bidders of the T3027 solicitation. In addition, I note that at registration or re-registration and with each issued notice, all eRFP Notification subscribers receive the following disclaimer:

eBid e-mail Notification Disclaimer

This eBid email notification system is provided as a courtesy service to the public. Therefore, the State of New Jersey disclaims any express or implied warranties related to the use of the email notification system and for any materials, information, and/or processes contained within the email notification system. Furthermore, the State does not assume any responsibility for the use of or reliance on any information, delivery of information and/or any transmission or non-transmission of such information, provided by the eBid email notification system. Users of the eBid email notification system assume the risk of using or relying on the information. Users are directed to the Division of Purchase and Property Website for any and all up to date information. Neither the State, its employees, nor its agents shall be liable for any damages, including indirect, special, incidental, or consequential damages a user incurs as a result of viewing, distributing, or copying materials, from use of the email notification service even if advised of the possibility of such damages. Any dispute arising from using or attempting to use information or materials contained herein shall be determined in accordance with New Jersey law without regard to conflict of law principles, in the courts of New Jersey.

Bridgeton alleges that it did not receive notice of the subject RFP prior to the commencement of the solicitation process despite the fact that it is an incumbent on the current plumbing and heating supplies contract (T0207). Bridgeton states that it received several requests from the State to extend the prior contract and therefore it is suspect that the State did not provide incumbent vendors notification of the new procurement.¹ However, the record of this procurement reveals that prior to the RFP being issued, in connection with the contract extension requests the Bureau advised Wallace that it should continue to check the Division's website regarding the reprourement of this contract. Specifically,

REMINDER: Be mindful that, if this term contract is extended, reprourement bidding may occur during this extension period. Because hardcopy notices of bidding opportunities are no longer routinely mailed to vendors, including incumbent contractors, you are encouraged to visit the Divisions of Purchase and Property's website at

¹ No special notice of the reprourement was made by the Bureau to any incumbent vendor on the Plumbing & Heating Supplies/Equipment – Statewide; however, three of the five incumbents submitted proposals in response to the subject RFP.

www.state.nj.us/treasury/purchase and to register with the Division's RFP Notification Service for complimentary e-mail notice when a relevant bidding opportunity is announced.

Therefore, Bridgeton should have been aware that the reprourement would be forthcoming. As noted above, it is the responsibility of potential bidders/contractors to review the notices on the Division's website to ensure that they are aware of potential bidding opportunities. N.J.A.C. 17:12-2.1.

Based upon the foregoing information, I have determined the subject RFP was properly advertised and Bridgeton had more than adequate notice that the subject contract was being resolicited. Therefore, I must deny Bridgeton's request for special consideration. This is the Division's final agency decision.

While this is an unfortunate situation for both Bridgeton and the State, the Division appreciates your continued interest in doing business with the State of New Jersey. The Division recommends that Bridgeton ensure that all appropriate email addresses are registered with the Division's eRFP notification service for all applicable commodity codes and that the eRFPNotification.Service@treas.state.nj.us is added to the safe email list. Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Chief Hearing Officer

MAG: RUD

c: P. Michaels
L. Spildener
J. Signoretta
W. Higgins