



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 12, 2018

Via Email [MECA@stevenslee.com] and USPS Regular Mail

Maeve E. Cannon, Esq.
Stevens & Lee
100 Lenox Drive, Suite 200
Lawrenceville, NJ 08648

Re: Bid Solicitation # 16-X-24049: Enhanced Motor Vehicle Inspection/Maintenance System
Protest of Notice of Cancellation

Dear Ms. Cannon:

This letter is in response to your correspondence of June 14, 2018, to the Division of Purchase and Property (Division) on behalf of Parsons Environment and Infrastructure Technology, Inc. (Parsons). In that letter, Parsons protests the Division's Procurement Bureau's (Bureau) decision to cancel Bid Solicitation 16-X-24049: Enhanced Motor Vehicle Inspection/Maintenance System (Bid Solicitation).

BACKGROUND

By way of background, the subject Bid Solicitation was issued on December 21, 2015, by the Division's Procurement Bureau (Bureau) on behalf of the New Jersey Motor Vehicle Commission (MVC) and the New Jersey Department of Environmental Protection (DEP). The purpose of the Bid Solicitation was to solicit proposals to engage a contractor to implement a next generation motor vehicle inspection and maintenance system. Bid Solicitation § 1.1 *Purpose and Intent*. It was the intent of the Division to award one contract to that responsible bidder whose proposal, conforming to the Bid Solicitation, was most advantageous to the State, price and other factors considered. *Ibid*. On February 22, 2016, four proposals received by the submission deadline were opened by the Division's Proposal Review Unit. All four proposals were forwarded to the Bureau and the Evaluation Committee (Committee) for review and evaluation consistent with the criteria set forth in the Bid Solicitation § 6.7 *Evaluation Criteria*. Based upon that evaluation, on May 13, 2016, the Bureau issued the Notice of Intent to Award (NOI) advising all bidders that it was the State's intent to award a contract to SGS Testcom, Inc. (SGS Testcom).

On October 24, 2016, Parsons and Opus Inspection, Inc. (Opus) submitted protests to the Division challenging the intended award of a contract to SGS Testcom. On July 31, 2017, the Division issued its final agency decisions with respect to the two protests filed. In response to the protest filed by Opus, the Division found that the *Ownership Disclosure Form* submitted by SGS Testcom contained a material

deviation, as such SGS Testcom's proposal was non-responsive and SGS Testcom was not eligible for a contract award.^{1,2} The Bureau was directed to rescind the May 13, 2016 NOI.

August 18, 2017, the Bureau issued an Amended Notice of Intent to Award (Amended NOI) indicating that it was the State's intent to award a contract to Opus. On September 11, 2017, Parsons filed a protest to the Amended NOI. Parsons alleged that the proposal submitted by Opus had numerous material deviations from the requirements of the Bid Solicitation. In that protest, Parsons requested that the Division rescind the August 18, 2017 Amended NOI and award it the contract, or in the alternative re-solicit the contract with revised specifications. See, Parsons September 11, 2017 Protest, page 36.

On January 3, 2018, the Division issued its final agency decision on the September 11, 2017 protest submitted by Parsons. The Division concluded that Opus' proposal contained a material deviation from the requirements of the Bid Solicitation making Opus' proposal nonresponsive. Accordingly, Opus was ineligible for a contract award. The January 3, 2018 final agency decision directed the Bureau to rescind the August 18, 2017 Amended NOI, thoroughly review the other proposals submitted, and issue a new NOI if appropriate. On January 5, 2018, Opus requested that the Division stay its January 3, 2018 final agency decision.³ On February 20, 2018, the Division granted the stay request. The stay continued through May 31, 2018. On that date, the Division posted a special notice to its website advising all bidders and the bidding community of the intent to cancel the subject procurement. On June 6, 2018, the Bureau sent letters to all bidders stating:

Please be advised that the Director of the Division of Purchase and Property, in consideration of the public interest, has determined that the procurement conducted under the referenced Bid Solicitation {RFP} is cancelled.

The Motor Vehicle Commission (MVC) requirements have changed since the Bid Solicitation {RFP} has been advertised, making the specification in the Bid Solicitation {RFP} obsolete. In the near future, the Division is looking to rebid these services. This opportunity will be advertised on the Division's eProcurement website www.njstart.gov. Please check the website frequently for this upcoming opportunity.

Thank you for the time and effort expended by your firm in the preparation of your Quote {Proposal}. The Division welcomes your firm's continued interest doing business with the State of New Jersey.

On June 5, 2018, Parsons requested that the Division provide all documents which supported the Division's decision to cancel the subject procurement. Specifically, Parsons requested:

...any memoranda, letters or other documentation prepared or generated by the Division, the Motor Vehicle Commission ("MVC") or the Department of Environmental Protection ("DEP") in connection with the Division's decision to rebid this procurement and all such records generated by the Division, MVC or DEP in connection with the finding in the May 31, 2018 notice of cancellation which indicated that "Motor Vehicle Commission ("MVC") requirements have changed since the bid

¹ Based upon that finding, Parsons' protest of the intended contract award to SGS Testcom was rendered moot.

² SGS Testcom filed an appeal of the Division's July 31, 2017 Final Agency Decision which is currently pending before the Appellate Division.

³ On January 10, 2018 Opus filed an appeal of the Division's January 3, 2018 Final Agency Decision which is currently pending before the Appellate Division.

solicitation ("RFP") has been advertised, making the specification in the bid solicitation obsolete.

On June 14, 2018, Parsons submitted a letter to the Division's Hearing Unit protesting the cancellation of the subject procurement. In its letter of protest, Parsons alleged that there was no record supporting the Division's decision to cancel the Bid Solicitation and to rebid; and therefore, the Division's decision was arbitrary and capricious. In the protest letter, Parsons 'demanded' that the contract be awarded to it as the most advantageous bidder. See, Parsons June 14 protest, p. 2.

On June 15, 2015, the Division responded to Parsons' June 5, 2018 document request providing Parsons with the following documents Bates numbered DPP000001 – DPP000010:

- May 17, 2018 Recommendation Report
- January 31, 2018 email from the Motor Vehicle Commission to the Division with Attachment entitled "Inspection Trends"
- Special Notice
- June 6, 2018 Cancellation letter to all bidders

On June 25, 2018, the Division sent Parsons a supplemental document response (Bates numbered DPP000011 – DPP000025) consisting of emails between the Division, MVC and the Office of the Attorney General – Division of Law. With the supplemental document response, the Division provided Parsons with a privilege log describing the redactions made.

In consideration of Parsons' June 14, 2018 protest, I have reviewed the record of this procurement, including the Bid Solicitation, the proposals and protests, 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.

DISCUSSION

The New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997), emphasis added. The objective of New Jersey's statutory procurement scheme is "to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing, Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)). Consistent with this purpose, the New Jersey procurement law provides that "any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do." N.J.S.A. 52:34-12(a).

The Appellate Division has held that "where the contracting authority has rejected all bids after opening and publicizing them...and each bidder's competitive position has been exposed, rejection of all bids should only occur for cogent or compelling reasons." In re Failure to Award to the Lowest Responsible Bidder RFP 09-X-20513 Contract T0002 for Provision of Bottled Water Servs., 2010 N.J. Super. Unpub. LEXIS 1641, *7 (App. Div. July 2, 2010) (quoting Bodies by Lembo, Inc. v. County of Middlesex, 286 N.J. Super. 298, 309 (App. Div. 1996)(relying on the local public contracts law N.J.S.A. 40A-11-1 et seq., which does not explicitly contain the authority to cancel an RFP); See also, PENPAC, Inc. v. Morris Cty. Mun. Utilities Auth., 299 N.J. Super. 288, 296 (App. Div. 1997), certif. denied, 150 N.J. 28(1997) (stating that "[t]he decision to reject all bids must not be 'arbitrary or capricious and it must be free from fraud, collusion and bad faith.'"). Here, the Bureau recommended, and I concurred, that it was in the public

interest to cancel the Bid Solicitation. As discussed below and in the cancellation documents, this decision was based on both cogent and compelling reasons.

In its protest, Parsons alleges that “there is apparently no record whatsoever to support the Division’s decision to rebid.” Parsons’s June 14, 2018 Protest, p. 3. To the contrary, the decision to cancel the subject Bid Solicitation is supported by the record. Specifically, on January 31, 2018, MVC wrote to the Bureau detailing the reasons why the Bid Solicitation should be cancelled. *See*, DPP000004 - DPP000005. Those reasons were incorporated into the Bureau’s May 17, 2018 Recommendation Report to cancel the Bid Solicitation which stated in part:

- Subsequent[ly] MVC did a review of its operation and how it would handle certain aspects of motor vehicle inspections moving forward. This cancellation is requested by MVC for the reasons outlined below:
- A. Since the advertisement of the Enhanced Motor Vehicle Inspections/Maintenance System RFP in December 2015, the landscape of the Inspection program has changed and many of the specifications in the RFP have become obsolete;
 - B. In the past two (2) years, during the procurement process, the auto Industry and the driving community have changed, thus affecting Inspections programs throughout the United States;
 - C. The number of passenger vehicle reinspections performed has decreased by 13% in the past year and the number of initial commercial vehicle inspections performed has decreased by 26%. As a result of changes to inspection requirements implemented in 2016, the last two (2) years have seen a decrease of approximately 60,000 vehicles with model years 1995 and older not requiring inspections. This population of vehicles continues to decline monthly by approximately 2,000 vehicles;
 - D. The manufacturing of cars has also changed. Global EV Outlook 2017, a report issued by the Internal Energy Agency, has indicated an 18% increase in the number of electric vehicles registered in the United States between 2015 and 2016, as this trend is expected to continue, this will impact the State Inspections program, which conducts emissions-check-only for passenger vehicles;
 - E. The current RFP will commit MVC to a ten (10) year contract. As a result of rapid changes in the auto industry and driving community along with the above factors, it would be prudent to have an RFP with a shorter term. This will also allow the State time to evaluate policy changes, including the possibility of bringing the inspection program back in-house, as well as offering cost savings to the consumer;
 - F. Several states have passed legislation related to autonomous vehicles. The end result may be a shift from individual ownership to fleet ownership. This equates to more self-inspections and fewer vehicles requiring centralized or private facility inspections and fewer vehicles on the road. MVC has seen a decrease in the number of new car purchases for the first time in five (5) years; and
 - G. After seeing the per-inspection costs offered in the Proposals, MVC acknowledges the savings to the State will be less than estimated and that also supports the request to rebid the contract.

[May 17, 2018 Recommendation Report, p. 2.]

The development and advertisement of the Bid Solicitation occurred in 2015; due to numerous protests, appeals and evaluations of proposals, a contract has not yet been awarded. As detailed by MVC, in the intervening time, there have been industry changes and changes to needs and requirements of the using agency with respect to vehicle inspections. Those changed needs and requirements have a significant impact on the scope of work set forth in the Bid Solicitation. At the time that scope of work was developed, the Bid Solicitation advertised and the proposals received, MVC could not have anticipated the changes to the inspection landscape and the effect that those changes would have on the scope of work set forth in the Bid Solicitation, particularly in light of the lengthy evaluation process and the numerous protests received. Parsons' acknowledged the need to revise the scope of work in its September 11, 2017, protest where it proposed that the State cancel the Bid Solicitation stating:

As a final note, Parsons believes the State should consider revising the specifications and rebidding this contract to allow bidders to propose alternative solutions to meet the State's goals and objectives of this program, including solutions involving reduced CIFs as well as alternative equipment, technology and processes. Parsons believes such alternative solutions could provide for significant monetary savings to the State while maintaining the effectiveness and efficiencies of the current program.

[Parsons September 11, 2017 Protest, page 36.]

Almost two and a half years have passed since the Bid Solicitation was advertised. As detailed above, during that time, the needs of the using agency and the landscape of the industry have changed substantially. One of the primary objectives of New Jersey's public procurement law is to "secure for the public the benefits of unfettered competition" and "to guard against favoritism, improvidence, extravagance and corruption." See, Meadowbrook, supra, 138 N.J. at 313; Barrick, supra, 218 N.J. at 258. To award a contract knowing that it would immediately need to be amended to reduce and change the scope of work ignores this objective.⁴ As such, I find that the substantially changed needs of the using agency and the industry since the Bid Solicitation was advertised constitute cogent and compelling reasons to cancel this Bid Solicitation.

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation that the subject Bid Solicitation be cancelled. Accordingly, I sustain the May 31, 2018 Special Notice and the June 6, 2018 letter which cancelled the subject Bid Solicitation and which advised all potential bidders of the Division's intent to issue a new Bid Solicitation with revised specifications. This is my final agency decision with respect to the protest submitted by Parsons.

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

Sincerely,


Maurice A. Griffin
Acting Director

⁴ Some details regarding the Using Agency's changed needs and how those changed needs affect the scope of work set forth in the Bid Solicitation have not been included in this final agency decision. Including those details could give Parsons an advantage over other potential bidders in the upcoming re-procurement, contrary to the Court's reasoning in Barrick, supra, 218 at 258.

MAG: RUD

c: L. Leonardi
M. Tagliaferri
K. Scott-Leonard