



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 8, 2020

Via Electronic Mail Only frank@nexusanalytix.com

Francis C. Heil, MAI, CTA
Heil Real Estate Services Inc.
750 Route 73 South, Suite 505
Marlton, New Jersey 08053

Re: I/M/O Bid Solicitation #19DPP00335 Heil Real Estate Services Inc.
Protest of Notice of Intent to Award
T2957 - Appraisal Services for NJ Department of Environmental Protection

Dear Mr. Heil:

This letter is in response to your correspondence of May 4, 2020, on behalf of Heil Real Estate Services Inc. (Heil) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In its letter, Heil protests the April 20, 2020, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #19DPP00335 – T2957 Appraisal Services for New Jersey Department of Environmental Protection (Bid Solicitation).

By way of background, on July 12, 2019, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Environmental Protection. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for Real Estate Appraisal services from qualified New Jersey Certified General Real Estate Appraisers for the purpose of acquiring properties as open space preservation or flood plain protection by the State of New Jersey. *Ibid*.

On September 13, 2019, the Division's Proposal Review Unit opened thirty-eight (38) Quotes, which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for the compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded thirty-seven (37) Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*.

On March 25, 2020, after completing the review and evaluation of the submitted Quotes, the Bureau issued a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. On April 20, 2020, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the Bureau's Recommendation Report.

With respect to the Quote submitted by Heil, the Bureau's Recommendation Report noted the following:

Heil

The Quote submitted by Heil was determined by the Bureau to be non-responsive to the mandatory material requirements of the Bid Solicitation, as it failed to provide the required pricing for Price Line 2 in the Northern Region, Price Line 4 in the Central Region, and Price Line 6 in the Southern Region as required by Section 4.4.5.2, *State Supplied Price Sheet Instructions*. Section 4.4.5.2 states, "The Vendor (Bidder) must provide a Firm-Fixed all-inclusive hourly rate for both price lines of a Region in order to be eligible for award of that Region. The Vendor (Bidder) must be willing and able to service the entire Region that is bid. Quotes submitted for less than an entire Region will be rejected and deemed as non-responsive for the respective Region. The Vendor (Bidder) is able to submit a Quote for a single Region, or any combination of Regions."

Subsequently, the Bureau found Heil to be non-responsive to the mandatory material requirements of the Bid Solicitation and its Quote was not further evaluated.

On May 3, 2020, Heil sent a protest letter to the Division challenging the Bureau's April 20, 2020 NOI and the determination that its submitted Quote was non-responsive. Heil alleges as follows:

The objection to this award is based on the following reasons:

1. The state has failed to provide complete and plain language proposal, instructions and submission forms.
2. The proposal response requirements were overly burdensome requiring significant resources and time to completed.
3. The state's requirement to carry business liability insurances as a condition to submit a bid was a demand to spend money in order to have an opportunity to bid.
4. The state has exceeded any reasonable time allocation between the due date (09/2019) and the intended date to award of this contract (05/2020).
5. The state adherence to the current contract has been in bad faith. Refusing to compensate for work demands above and beyond the included scope of work.

In consideration of Heil's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Heil's Quote and protest, 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.

To summarize Heil's first two protest points, Heil argues that the State has failed to provide complete and plain language instructions and submission forms for the Bid Solicitation, and the response requirements for this Bid Solicitation were overly burdensome, requiring significant resource and time to complete. The first section of the Bid Solicitation, Section 1.0 *Information for Vendors {Bidders}*, cautions Vendors {Bidders}:

NOTICE: This Bid Solicitation is part of the **NJSTART** Procurement Program. *The Vendor {Bidder} is advised to thoroughly read all sections, as many have been revised, and follow all instructions contained in this Bid Solicitation, including the instructions on the Bid Solicitation's Offer and Acceptance Page* and read through all Quick Reference Guides (QRGs) located on the [NJSTART Vendor Support Page](#)

(<http://www.state.nj.us/treasury/purchase/njstart/vendor.shtml>), before preparing and submitting its Quote.

The QRGs are designed to assist Vendors {Bidders} in using **NJSTART** and to assist Vendors {Bidders} in preparing Quotes in response to publicly advertised Bid Solicitations.

Additionally, Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*, provided Vendors {Bidders} with a forum to ask questions about any potentially unclear or ambiguous instructions contained in the Bid Solicitation. Bid Amendment #1 to Bid Solicitation 19DPP00335 was posted on **NJSTART** on August, 12, 2019, and contained the State’s response to six (6) questions that were raised during the period. Heil did not ask any questions during this period. Furthermore, Bid Solicitation Section 1.4.2 *Vendor {Bidder} Responsibility* clearly indicates that:

The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote in response to this Bid Solicitation. No special consideration will be given after Quotes are opened because of a Vendor’s {Bidder’s} failure to be knowledgeable as to all of the requirements of this Bid Solicitation.

With respect to Heil’s first two protest points, the requirements for this Bid Solicitation were the same for all potential Vendors {Bidders}. Of the thirty-eight (38) Vendors {Bidders} who submitted Quotes by the September 13, 2019 Quote Opening Date, twenty-four (24) met all of the Bid Solicitation requirements including filling out the State-supplied Price Sheet properly. Thus, no undue burden was placed on Heil.

Heil’s third protest point is that “the State’s obligation to carry business liability insurances as a condition to submit a bid was a demand to spend money in order to have an opportunity to bid.” The Bid Solicitation did not place such a requirement on those Vendors {Bidders} wishing to submit Quotes. Rather, the insurance obligations outlined in this Bid Solicitation only apply to those Vendors {Bidders} who are ultimately selected for the award of a Blanket P.O.. Bid Solicitation Section 5.17.1 *Insurance—Professional Liability Insurance* and Section 4.2 *Insurance* of the State of New Jersey Standard Terms and Conditions outline the insurance policies and amounts that the State requires of an awarded Vendor {Contractor} for this Bid Solicitation. Bid Solicitation Section 7.0 *Blanket P.O. Award* further indicates that those insurance policies are required from an awarded Vendor {Contractor} before a Blanket P.O. Award commences, not from a Vendor {Bidder} at time of Quote submission. Specifically, Section 7.3 *Insurance Certificates* states:

The Vendor {Contractor} shall provide the State with current certificates of insurance for all coverages required by the terms of this Blanket P.O., naming the State as an Additional Insured.

Further, as shown in the screenshot below, this Bid Solicitation did not require Bid Security in order for Vendors {Bidders} to submit a Quote.

<p><u>4.4.1.7</u> <u>BID SECURITY</u></p> <p>Not applicable to this procurement.</p>
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Thus, no Vendor {Bidder} was required to carry any particular amount of insurance as a prerequisite for submitting a Quote.


Fourth, Heil contends that the State has exceeded any reasonable time allocation between the Quote opening date and the intended date to award this contract. Bid Solicitation Section 7.2 *Final Award* states in part “Blanket P.O. awards will be made with reasonable promptness by written notice to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation, are most advantageous to the State, price, and other factors considered.” The State does not specify an award date in the Bid Solicitation document because there are a number of factors that can delay the time it takes for the Bureau to conduct Quote evaluations and make a final Blanket P.O. award, including the total number of Quotes received, and the number of Vendors {Bidders} who file protests. Here, the Bureau has taken all reasonable steps in order to conduct a thorough Quote evaluation and to make an award.

With respect to Heil’s final protest point alleging that the State has refused to compensate for work requested above and beyond the scope of work of the current contract, I note that the matter is not properly before me as it does not relate to the reprourement at issue here; and therefore, I cannot opine on Heil’s stated allegation.

However, as the result of another protest received in response to the Bureau’s April 20, 2020 NOI, because of the ambiguity between the Bid Solicitation and the State supplied price sheet I have determined that it is in the public’s interest to reject all Quotes submitted and cancel the subject Bid Solicitation. I have remanded this matter back to the Bureau with direction to rescind the Notice of Intent to Award, to cancel this Bid Solicitation and to re-procure the services sought if desired by the using agency. This is my final agency decision on this matter.

Thank you for your company’s interest in doing business with the State of New Jersey. I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. Please monitor the Division’s [NJSTART](#) website for future bidding opportunities for these services.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: TCR

c: R. Regan
K. Popso
M. Dunn