



State of New Jersey

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

Via Electronic Mail Only jmackoff@gmail.com

Michael Jones, MAI, CTA
LeGore & Jones Appraisal Services
664 Washington Street, First Floor
Cape May, NJ 08204

Re: I/M/O Bid Solicitation #19DPP00335 LeGore & Jones Appraisal Services
Protest of Notice of Intent to Award
T2957 - Appraisal Services for NJ Department of Environmental Protection

Dear Mr. Jones:

This letter is in response to your correspondence of April 27, 2020, on behalf of LeGore & Jones Appraisal Services (LeGore) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In its letter, LeGore 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 LeGore, the Bureau's Recommendation Report noted the following:

Legore

The Quote submitted by Legore was determined by the Bureau to be non-responsive for the mandatory material requirements of the Bid Solicitation. Bid Solicitation Section 6.4, *Clarification of Quote/State's Right to Request further Information*, states "After the Quotes are reviewed, one (1), some or all of the Vendors (Bidders) may be asked to clarify certain aspects of its Quote. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions, or revise or modify a Quote."

The Bureau requested clarification from Legore regarding its Price Sheet on February 10, 2020. As part of its Price Sheet, Legore provided a price of \$1.00 on Prices Lines #1, #3, and #5, regarding *Appraisal Services Hourly Rate*. Legore also submitted a price of \$1.00 for Price Lines #2, #4, and #6, regarding *Legal Services Hourly Rate*. The Bureau requested Legore clarify whether or not those price lines were done in error, as the required pricing was an hourly rate. As part of its response, Legore submitted an updated Price Sheet with pricing higher than its original Quote, which the Bureau was unable to accept as it would be a supplement to Legore's Quote.

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

On April 27, 2020, LeGore 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. LeGore alleges that the language in Bid Solicitation Section 4.4.5 and 4.4.5.2 was confusing and asks that the Division deem its error as an administrative deficiency and accept its response to the Bureau's clarification request. Specifically in the protest LeGore states:

The confusion with my price sheet begins and ends in the wording in Section 4.4.5, state supplied price sheet instructions, last paragraph: If the Vendor (Bidder) is submitting a NJSTART Quote, the Vendor (Bidder) must enter a Unit Cost of \$1.00 for each price line item on the "items" Tab in NJStart. The Vendor (Bidder) is instructed to do so only as a mechanism to comply with Bid Solicitation Section 6.8 and prevent all pricing from being publicly displayed in NJStart.

Also, in Section 4.4.5.2, last paragraph, state supplied price sheet instructions, last paragraph, In the event that a Vendor (Bidder) using NJSTART to submit a Quote uploads a State-Supplied Price Sheet and completes the "Items" Tab in NJSTART (instead of entering a Unit Cost of \$1.00 as instructed), the State Supplied Price Sheet will govern.

Throughout the solicitation document you refer to "good faith" language. The confusion with the pricing instructions is clearly an "administrative" deficiency (based on the above Section 4.4.5 and Section 4.4.5.2 instructions) which were misinterpreted in our submission. At your request, clarification regarding pricing was requested and submitted.

In "good faith" I anticipated a clarification request letter which would allow me to enter my historic and current [hourly rate] across the board, price lines 1-6, which I did. I have been an approved appraiser for the Green Acres program and NJDEP for over 35 years. Most recently on the last blanket approved vendor list for T2957. The revised hourly rate is entirely consistent with our current fee schedule with NJDEP.

I would hope that in the solicitation process, with "good faith" intentions by all concerned, that this "administrative" deficiency would be address as simply that. Quality of work performed should count for something. The

"Director" has the right to waive minor irregularities or omissions in the quote solicitation process. (Section: 1.4.10; N.J.A.C. 17:12-2.7 (d) and N.J.A.C. 17:12-2).

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

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall¹ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:
...

6. Include all RFP-required pricing information.

[*N.J.A.C. 17:12-2.2(a)*, emphasis added.]

Among those attachments required to be submitted with the Quote is the State-Supplied Price Sheet discussed in Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet* which stated:

The Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments" Tab.

Vendors {Bidders} may refer to the QRG "Submit a Quote" for instructions detailing how to submit a **NJSTART** electronic Quote. QRGs are located on the [NJSTART Vendor Support Page](#).

Further, Bid Solicitation Section 4.4.5.1 *NJSTART Pricing Submission Instructions* stated:

If the Vendor {Bidder} is submitting a **NJSTART** Quote, the Vendor {Bidder} must enter a Unit Cost of \$1.00 for each price line item on the "Items" Tab in **NJSTART**. The Vendor {Bidder} is instructed to do so only as a mechanism to comply with Bid Solicitation Section 6.8 and prevent all pricing from being publicly displayed in **NJSTART**.

To assist Vendors {Bidders} in completing the State-Supplied Price Sheet, the Bid Solicitation advised in part:

The Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments" Tab.

¹ "Shall – Denotes that which is a mandatory requirement." Bid Solicitation § 2.2 *General Definitions*.

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.

In the event that a Vendor {Bidder} using *NJSTART* to submit a Quote uploads a State-Supplied Price Sheet and completes the “Items” Tab in *NJSTART* (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet will govern.

[Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions.*]

First, as to LeGore’s assertion that the Bid Solicitation instructions on how to complete the State Supplied Price Sheet were unclear, I disagree. A review of the relevant Bid Solicitation Sections 4.4.5 reveals that Vendors {Bidders} were instructed to submit a “Firm-Fixed all-inclusive hourly rate for both price lines of a Region in order to be eligible for award of that Region.” Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions.* The Bid Solicitation further defines a Firm-Fixed price as “a price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs.” Bid Solicitation 2.2 *General Definitions.*

In accordance with these instructions, as shown in the screenshot below, the State Supplied Price Sheet required that Vendors {Bidders} submit a “Firm Fixed Unit Price”:

Bid Solicitation #19DPP00335 Price Sheet T2957 - Appraisal Services - DEP				
Vendor {Bidder} Name:				
Business Address:				
Instructions:	Refer to Bid Solicitation Section 4.4.5 for Vendor {Bidder} Instructions.			
Price Line	Description	Quantity	Unit of Measure	Firm Fixed Unit Price
Group 1 - Northern Region				
1	Appraisal Services Hourly Rate	1	Hour	
2	Legal Services Hourly Rate	1	Hour	
Group 2 - Central Region				
3	Appraisal Services Hourly Rate	1	Hour	
4	Legal Services Hourly Rate	1	Hour	
Group 3 - Southern Region				
5	Appraisal Services Hourly Rate	1	Hour	
6	Legal Services Hourly Rate	1	Hour	

As to the submission of \$1.00, the Bid Solicitation instructions stated:

Vendor {Bidder} must enter a Unit Cost of \$1.00 for each price line item on the “Items” Tab in *NJSTART*. The Vendor {Bidder} is instructed to do

so only as a mechanism to comply with Bid Solicitation Section 6.8 and prevent all pricing from being publicly displayed in **NJSTART**.

The “Items” Tab in **NJSTART** is as shown in the screenshot below:

Item #	Print Sequence	Questions Exist	Quantity	UOM	Unit Cost	Discount %	Tax Rate	Freight	Extended Amount	No Bid	No Charge	See Quote Attachments(S)
1	1.0	No	1.0	EA	\$1.00	0.0%		\$0.00	\$1.00	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alternate Description: The Vendor (Bidder) must enter a Unit Cost of \$1.00 for each price line item on the Items Tab. The Vendor (Bidder) must... View Detail												
2	2.0	No	1.0	EA	\$0.00	0.0%		\$0.00	\$0.00	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alternate Description: The Vendor (Bidder) must enter a Unit Cost of \$1.00 for each price line item on the Items Tab. The Vendor (Bidder) must... View Detail												
										Quote Response Total \$1.00		

As shown above, in submitting the Quote, LeGore did enter a Unit Cost of \$1.00 on the “Items” Tab in **NJSTART**.

Second, with respect to the Bureau’s clarification request, in an effort to determine whether LeGore truly intended to submit a Quote price of \$1.00, on February 10, 2020, the Bureau sent LeGore a clarification letter inquiring whether its submitted pricing was in error. If the pricing was submitted in error, the Bureau provided LeGore with the opportunity to withdraw its submitted Quote. The Bureau did not provide LeGore with the opportunity to correct its pricing as it could not do so. Allowing LeGore to amend its submitted price sheet after the Quote submission deadline because it misunderstood the Bid Solicitation instructions would result in an impermissible supplementation of LeGore’s Quote, which the Division cannot allow. Doing so would be contrary to the Court’s holding in *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract*, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In *On-Line Games* the Appellate Division held that “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”; see also, *In re Motor Vehicle Comm’n Surcharge Sys. Accounting and Billing Servs.*, No. A-3136-16, at *32 (App. Div. Feb. 8, 2018).

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. Nonetheless, the Division cannot accept LeGore’s corrected hourly rate, after the Quote opening as requested, as doing so is an impermissible supplementation, change and correction to the submitted Quote.

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: RUD

c: R. Regan
K. Popso
M. Dunn