



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROCUREMENT BUREAU
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Lt. Governor

December 11, 2020

Via Electronic Mail Only bryan.natale@highlanderequipment.com

Bryan Natale
Highlander Equipment Company, Inc.
110 Clyde Road
Somerset, NJ 08873

Re: IMO Bid Solicitation 20DPP00559 Highlander Equipment Company, Inc.
Protest of Notice of Cancellation
T3125 Mobile Warehouse Equipment, Batteries, Chargers and Accessories Statewide

Dear Mr. Natale:

This final agency decision is in response to your email of December 9, 2020, submitted on behalf of Highlander Equipment Company, Inc. (Highlander), to the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Zeigler protests the Division's Procurement Bureau's (Bureau) decision to cancel Bid Solicitation 20DPP00559 T3125 Mobile Warehouse Equipment, Batteries, Chargers and Accessories Statewide (Bid Solicitation).

By way of background, on September 30, 2020, the Bureau issued the Bid Solicitation on behalf of The Department of the Treasury – Distribution Support Services and Cooperative Purchasing Program participates. The purpose of the Bid Solicitation was to solicit Quotes for Mobile Warehouse Equipment. Bid Solicitation § 1.1 *Purpose and Intent*. It was the State's intent to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation, was most advantageous to the State, price and other factors considered. Ibid.

On November 5, 2020, the Division's Proposal Review Unit opened four (4) Quotes received by the submission deadline of 2:00 p.m. eastern time.¹ After conducting an initial review of the Quotes for the compliance with mandatory submission requirements, the Division's Proposal Review Unit issued a notice of proposal rejection to Landoll and Toyota as their submitted Quotes did not include mandatory certifications, forms or attachments.² The Quotes submitted by Highlander and Material Handling were forwarded to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.6 *Evaluation Criteria*.

¹ Highlander Equipment Company (Highlander); Landoll Corporation (Landoll); Material Handling Supply Inc. (Material Handling); and, Toyota Lift Northeast (Toyota).

² Neither Landoll nor Toyota submitted a protest in response to the Notice of Proposal Rejection.

After completing its review and evaluation, the Bureau prepared a Recommendation Report noting that the Quotes submitted by Highlander and Material Handling were not responsive to the mandatory requirements of the Bid Solicitation. On December 2, 2020, the Bureau wrote to all Vendors {Bidders} that the procurement would be cancelled as no responsive Quotes had been received. With the letter, the Bureau provided the Vendors {Bidders} with a copy of the December 1, 2020, Recommendation Report.

On December 9, 2020, Highlander submitted a protest to the Division's Hearing Unit stating:

Dear Department of Treasury,

Thank you for taking the time to read this email regarding the following:

Bid Solicitation # 20DPP00559

Bid Solicitation: Mobile Warehouse Equipment, Batteries, Chargers and Accessories-
Statewide

Quote # 00004947-R1

The attachment below is the requested price line breakdown for Fork Truck, Battery, and
Charger.

With the protest, Highlander included the State-Supplied Price Sheet.

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

Bid Solicitation Section 4.4.5 State-Supplied Price Sheet required that Vendors {Bidders}

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

In order for the State to make sound business judgments regarding products and prices offered in response to this Bid Solicitation, the Vendor {Bidder} must supply, with its Quote, the information requested on the Bid Solicitation's pricing lines in sufficient detail as to allow the State to determine the firm, fixed Quote pricing and the precise product or service being offered, i.e., with no possible misinterpretation of the price or product/service being offered by the Vendor {Bidder}. A Vendor's {Bidder's} failure to provide, within its Quote, the information deemed by the State to be essential for product identification or price determination shall result in rejection of that Vendor's {Bidder's} Quote.

In reviewing Highlander's Quote, the Bureau found that Highlander did not submit the State-supplied price sheet as required by Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet*. Further, the Bureau found that Highlander's Quote did not include the detailed information required by the State-supplied price sheet. In concluding that Highlander's Quote was not responsive to the requirements of the Bid Solicitation, the Bureau noted that

Without the Vendors {Bidders} submission of a completed State-Supplied Price Sheet or submission of the information required on the State-Supplied Price Sheet, it was impossible for the Bureau to determine which Group/price lines a Vendor {Bidder} was bidding on and the fixed pricing and percentage discount or markup associated with the Group bid.

*While the battery and charger were listed on the price list provided by Highlander with the Quote, the battery and charger pricing was not itemized individually; rather, they were included as part of the overall Quote price bid. The purpose of requesting this pricing individually is so that the Agency can purchase replacement chargers and/or batteries separately for a given unit, on an as needed basis.

[December 1, 2020, Recommendation Report, p. 2-3.]

Although the Division has broad discretion to select among qualified and responsive Vendors {Bidders} in public contracting matters, the discretion afforded to the Director, “is not limitless.” See, *In re Request for Proposals #17DPP00144*, 454 N.J. Super. 527, 559 (App Div. 2018). “In line with the policy goal of thwarting favoritism, improvidence, extravagance, and corruption, the Division may not award a contract to a bidder whose proposal deviates materially from the RFP’s requirements.” *Ibid.*, quoting, *Barrick v. State*, 218 N.J. 247, 258-59 (2014)). For that reason, the Division’s governing regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State’s bidding process. Notably, “a proposal that is not...responsive to the material requirements of the RFP shall not be eligible for further consideration for award of contract, and the bidder offering said proposal shall receive notice of the rejection of its proposal.” N.J.A.C. 17:12-2.7(c).

Unfortunately, as noted above, Highlander’s Quote did not include the information required by the Bid Solicitation and the State-Supplied price sheet. Highlander cannot now amend its Quote submission to include the State-Supplied price sheet or the information required by the State-supplied price sheet as 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”.

The Division encourages competition and appreciates the time and effort put forth by Highlander in preparing and submitting a Quote; however, in light of the findings set forth above, I have no choice but to uphold the Bureau’s determination that Highlander’s Quote was not responsive to the requirements of the Bid Solicitation. Accordingly, I sustain the December 2, 2020, Notice of Cancellation. This is my final agency decision on this matter.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov. 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. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
S. Ghorbani
S. Sanchez