



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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October 7, 2022

Via Electronic Mail Only achanese@njrag.com

Albert F. Chanese, MAI
New Jersey Realty Advisory Group, LLC
178 Main Street
Woodbridge, NJ 07095

Re: IMO Bid Solicitation #21DPP00580 New Jersey Realty Advisory Group, LLC
Protest of Notice of Intent to Award
Bid Solicitation T2957 Appraisal Services for NJ Department of Environmental Protection

Dear Mr. Chanese:

This final agency decision is in response to your email of September 6, 2022, on behalf of New Jersey Realty Advisory Group, LLC (Realty Advisory) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, Realty Advisory protests the September 2, 2022, Notice of Intent to Award (NOI) letter issued for Bid Solicitation #21DPP00580 T2957 Appraisal Services for NJ Department of Environmental Protection (Bid Solicitation), asking why it was not included among the list of intended Contractors. The record of this procurement reveals that Realty Advisory's Quote was deemed non-responsive by the Division's Procurement Bureau (Bureau) for failing to submit all required pricing information with its Quote.

By way of background, on July 30, 2021, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Environmental Protection (DEP) for Real Estate Appraisal services. The purpose of the Bid Solicitation was to solicit Quotes from qualified NJ State Certified General Real Estate Appraisers (SCGREA) capable of performing real estate appraisals for DEP in connection with the acquisition of properties as open space preservation or flood plain protection by the State of New Jersey (State). Bid Solicitation Section 1.1 *Purpose and Intent*. It is the State's intent to award multiple Master Blanket Purchase Orders (Blanket P.O.s) in each region to those responsible Bidders whose Quotes, conforming to the Bid Solicitation, are most advantageous to the State, price and other factors considered. Id.

Critically, the bidding community was cautioned that this "new Bid Solicitation addresses current requirements", so Bidders "should not rely upon or use data from the prior Blanket P.O." Bid Solicitation Section 1.2 *Background*.

Potential Bidders were permitted to submit questions to the Bureau using the **NJSTART** eProcurement system, by 2:00 pm eastern time on August 18, 2021. See Bid Solicitation Section 1.3.1, *Electronic Question and Answer Period*. Answers to the questions submitted during the Electronic Q&A

period were posted on the *NJSTART* eProcurement website by way of Bid Amendment #1 on September 1, 2021, which also alerted prospective Bidders that a Revised State-Supplied Price Sheet was posted.¹ On September 23, 2021, the Bureau issued Bid Amendment #3, which reiterated to Bidders the availability of the Revised State-Supplied Price Sheet, and clarified that all Bidders “must submit the Revised State-Supplied Price Sheet with its Quote.” See Bid Amendment #3.

On October 7, 2021, the Division’s Proposal Review Unit opened 24 Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Bureau determined that Realty Advisory’s Quote was non-responsive, because Realty Advisory “failed to provide the required Revised State Supplied Price Sheet as required by Section 4.4.5.2, *State Supplied Price Sheet Instructions*. Realty Advisory submitted the State Supplied Price Sheet from Bid Solicitation #19DPP00335 and not the State Supplied Price Sheet provided with Bid Solicitation #21DPP00580.”² August 31, 2022, Recommendation Report, p. 3-4.

On September 2, 2022, the Bureau issued the NOI advising all Bidders of the Division’s intent to award Blanket P.O.s to the twenty-one (21) Bidders listed in the NOI letter. On September 6, 2022, Realty Advisory emailed the Hearing Unit inquiring as to why it was not included among the Bidders listed for a Blanket P.O. award. Specifically, Realty Advisory’s email to the Division’s Hearing Unit stated:

I received the notice for approved Appraisal Services for NJ DEP and our company was not included. We have been on this list for the past 10 years and I do not understand why we were omitted this year.

I would like to make a formal protest and ask that my firm be reconsidered and added to the list of approved appraisers. Please let me know what I have to do to accomplish this.

[Realty Advisory’s September 6, 2022, Email.]

In consideration of Realty Advisory’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, Realty Advisory’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 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 shall conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

¹ The revision was minor – the formatting was adjusted for Cell E17 on the State-Supplied Price Sheet to allow the Bidders to input a value where the initial version had that cell locked. See Bid Amendment #1.

² As shown in the screenshot, *infra*, Realty Advisory submitted the Best and Final Offer (BAFO) Price Sheet from a prior re-procurement of these services. Bid Solicitation #19DPP00335 was cancelled in November 2020 in accordance with the Final Agency Decision finding “ambiguity between the Bid Solicitation and the State supplied price sheet”. See Final Agency Decision IMO Bid Solicitation #199DPP00335 Molinary, July 8, 2020, at 5. Available online at: <https://www.state.nj.us/treasury/purchase/pdf/decisions/2020/IMOBidSolicitation19DPP00335Molinari.pdf>.

6. Include all RFP-required pricing information;

[N.J.A.C. 17:12-2.2(a)].

The following Price Sheet was included as an attachment to the Bid Solicitation:

REVISED Bid Solicitation #21DPP00580 Price Sheet				
T2957 - Appraisal Services for NJ Department of Environmental Protection				
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	Other Appraisal Services (comparative economic analysis to evaluate the difference between the present value of the property and the profitability of a projected investment of the property, accounting for the risk factors associated with developing the property) As required by Section 3.6 of the Bid	1	Hour	
3	Testimony and Litigation Support Hourly Rate As required by Section 3.7 of the Bid Solicitation	1	Hour	
Group 2 - Central Region				
4	Appraisal Services Hourly Rate	1	Hour	
5	Other Appraisal Services (comparative economic analysis to evaluate the difference between the present value of the property and the profitability of a projected investment of the property, accounting for the risk factors associated with developing the property) As required by Section 3.6 of the Bid	1	Hour	
6	Testimony and Litigation Support Hourly Rate As required by Section 3.7 of the Bid Solicitation	1	Hour	
Group 3 - Southern Region				
7	Appraisal Services Hourly Rate	1	Hour	
8	Other Appraisal Services (comparative economic analysis to evaluate the difference between the present value of the property and the profitability of a projected investment of the property, accounting for the risk factors associated with developing the property) As required by Section 3.6 of the Bid	1	Hour	
9	Testimony and Litigation Support Hourly Rate As required by Section 3.7 of the Bid Solicitation	1	Hour	

Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions* provided the following guidance to potential Bidders on completing the State-Supplied Price Sheet:

The Vendor {Bidder} must³ submit its pricing using the Revised State-Supplied Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab.

The Vendor {Bidder} must provide a Firm-Fixed all-inclusive hourly rate for all three (3) 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.

The Other Appraisal Services price line for each Region is in reference to the work that must be completed in accordance with Bid Solicitation Section 3.6, *Other Appraisal Services*.

The Testimony and Litigation Support price line for each region is in reference to the work that must be completed in accordance with Bid Solicitation Section 3.7, *Testimony and Litigation Support*.

[Emphasis added.]

A review of Quote submitted by Realty Advisory reveals that Realty Advisory utilized the Best and Final Offer (BAFO) price sheet from the re-procurement canceled in November 2020 to submit its Quote pricing. The price sheet submitted by Realty Advisory is shown below:

Bid Solicitation #19DPP00335 BAFO Price Sheet T2957 - Appraisal Services - DEP				
Vendor {Bidder} Name:	New Jersey Realty Advisory Group, LLC			
Business Address:	178 Main Street, Woodbridge, NJ 07095			
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	\$ 125.00
2	Legal Services Hourly Rate	1	Hour	n/a
Group 2 - Central Region				
3	Appraisal Services Hourly Rate	1	Hour	\$ 125.00
4	Legal Services Hourly Rate	1	Hour	n/a
Group 3 - Southern Region				
5	Appraisal Services Hourly Rate	1	Hour	\$ 150.00
6	Legal Services Hourly Rate	1	Hour	n/a

Contrary to the instructions set forth in Bid Solicitation Section 4.4.5.2, Realty Advisory did not complete and submit the Revised State-Supplied Price Sheet associated with this Bid Solicitation. Accordingly,

³ “Must – Denotes that which is a mandatory requirement.” See Bid Solicitation Section 2.2 *General Definitions*.

Realty Advisory did not submit all mandatory pricing as required. Specifically, while Realty Advisory submitted pricing for “Appraisal Services” in three (3) Regions, it did not submit pricing for “Other Appraisal Services”, as required by Bid Solicitation Section 3.6, nor for “Testimony and Litigation Support”, as required by Bid Solicitation Section 3.7, in any Region. Accordingly, the Quote deviates from the mandatory requirements of the Bid Solicitation.

In order for Realty Advisory’s Quote to be considered responsive, Realty Advisory would have had to have submitted all of the information required by the Bid Solicitation with its Quote. While minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 1.4.10 *Quote Acceptances and Rejections*, it is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Stemin, 25 N.J. 317,324 (1957). In Meadowbrook Carting Co. v. Bor. of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity.” In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No.95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, *supra*, 127 N.J. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” Id. at 222.

Here, unfortunately, Realty Advisory submitted a Quote without all of the necessary pricing information included. Because Realty Advisory did not include any pricing for “Other Appraisal Services” or “Testimony and Litigation Support”, the State has no assurance that the Blanket P.O. would be performed in accordance with the specified requirements. River Vale, *supra*, 127 N.J. at 216. Realty Advisory’s failure to include all of mandatory pricing information with its Quote submission is a material deviation from the requirements of the Bid Solicitation. See N.J.A.C. 17:12-2.2(a)(6).

The Division encourages competition and appreciates the time and effort put forth by Realty Advisory 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 Realty Advisory’s Quote was non-responsive.

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 your company may be interested in submitting a Quote for so that it may receive notification of future bidding opportunities.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Amy F. Davis
Acting Director

AFD: RUD: EL

- c. M. Dunn
- D. Albin
- S. Isom