



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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November 17, 2014

Via Electronic Mail [revans@eessllc.com] and USPS Regular Mail

Robert J. Evans, President  
Emergency Equipment Sales, LLC  
4 Youngs Road  
Trenton, NJ 08619

RE: Protest of Notice of Proposal Rejection  
RFP #15-X-23708 – Customized Inspection Truck . . . , Contract T2961

Dear Mr. Evans:

This letter is in response to your emailed letter of protest dated November 13, 2014, referencing the subject Request for Proposal (“RFP”) and regarding the proposal electronically submitted by Emergency Equipment Sales, LLC (“EES”) to the Division of Purchase and Property (“Division”) via the Division’s eBid procurement system prior to the 2:00 p.m., November 7, 2014 proposal submission deadline. On behalf of EES, you contend that the rejection of EES’s proposal by the Division’s Proposal Review Unit for absence of an RFP-required Signatory Page and pricing information, copies of which you include with your letter of protest. You assert that EES submitted the Signatory Page and pricing information as part of the proposal packet, as supported by your records. Enclosing a copy of a completed and signed Signatory Page and a completed Price Sheet for price lines 00001, 00002 and 00003 with your letter, you request that I reconsider the Proposal Review Unit’s rejection of EES’s proposal submitted in response to RFP 15-X-23708.

I have reviewed the Division’s record of this procurement including EES’s proposal as it relates to the RFP requirements, relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of EES’s protest.

The above-referenced solicitation was comprised of the RFP and other documents. As a part of Section 4.0, *Proposal Preparation and Submission*, and Subsection 4.4, *Proposal Content*, and Paragraph 4.4.1, *Forms, Registrations and Certifications Required with Proposal*, the RFP, in pertinent part, stipulates the following requirement:

#### **4.4.1.1 SIGNATORY PAGE**

The bidder shall complete, including signature of an authorized representative of the bidder, and submit the Signatory Page accompanying this RFP. If the bidder is a limited partnership, the Signatory Page must be signed by a general partner. If the bidder is a joint venture, the

Signatory Page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the proposal.

Within the same segment of the RFP that sets forth essential proposal submission items, the RFP mandates the following submission requirement for bidders:

#### 4.4.1.6 PRICING

The bidder must submit its pricing on the State supplied Price Sheet/Schedule and supply any additional pricing information as directed in RFP Section 4.4.5.

As referenced in the above cite, RFP Paragraph 4.4.5, *Price Schedule/Sheet*, iterated and elucidated the requirement for submission of pricing as follows:

In order for the State to make sound business judgments regarding products and prices offered in response to this RFP, the bidder must supply, with its proposal, the information requested on the RFP's pricing lines in sufficient detail as to allow the State to determine the firm, fixed proposal 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 bidder. A bidder's failure to provide, within its proposal, the information deemed by the State to be essential for product identification or price determination will result in rejection of that bidder's proposal. Notwithstanding the aforementioned material obligation, in order to support the State's decision-making process, the State may require a bidder to provide additional information or documentation that has been deemed not to be material to product identification or price determination, in which case, the bidder shall, within the time limit set forth in the written request, comply with said request. Each bidder is required to hold its prices firm through issuance of contract.

Pursuant to the Division's administrative code, specifically N.J.A.C. 17:12-2.2,<sup>1</sup> a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection."

Thus, it is clearly established that a bidder's proposal that does not include a completed Signatory Page and/or Price Sheet/Schedule is materially deficient and cannot be considered for an award of contract.

In this case, a review of the electronic records reveals that EES's electronically submitted proposal did not include the required Signatory Page or Price Sheet or three other RFP-required forms. As indicated on the attached spreadsheet listing the 19 items uploaded by EES as its e-proposal, the five items listed below were not uploaded and thus were not a part of EES's proposal as submitted:

- Signatory Page
- Price Sheet
- Bidder Data Packet
- NJ Standard Terms and Conditions
- Cooperative Purchasing Form

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<sup>1</sup> The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

Unfortunately for the State and for EES, while EES's apparent intent was to submit the five documents named above, the items EES uploaded in lieu of the five listed documents were five copies of the second attachment to this letter, i.e., a photograph.

Notwithstanding EES's interest in competing for this procurement, it would not be in the State's best interests to allow a bidder who did not provide the required documents to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary documentation was provided as required. The deficiencies at issue cannot be remedied after the proposal submission deadline, as acceptance of EES's deficient proposal under these circumstances would be contrary to the provisions of the governing statute and would provide EES with disclamation options not available to those bidders whose proposals were fully responsive.

In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision on this matter.

This is an unfortunate situation for the State, as we encourage competition and appreciate the time and effort put forth in assembling EES's proposal. Thank you for your continuing interest in doing business with the State of New Jersey. With that in mind, I invite you to take this opportunity to register your business with *NJ START* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system, which will soon replace the Division's current procurement system and provide a "one-stop shop" for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,



Ronald G. Wengerd  
Chief Hearing Officer

Attachments (2)

c: R. Sharbaugh  
K. Thomas  
S. Ghorbani  
D. Rodriguez