



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

ROBERT A. ROMANO
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

July 7, 2015

Via Electronic Mail [dnajar@gmail.com] and USPS Regular Mail

Dennis Najar, President
North Eastern Transmission Corp.
190 Union Ave.
Paterson, NJ 07502

RE: Protest of Notice of Intent to Award
RFP #15-X-23841 OEM and Non-OEM Maintenance and Repair Services for Light/Medium
Duty Vehicles, 15,000 lb. GVWR or Less (T-0126)

Dear Mr. Najar:

This correspondence is in response to your letter of protest, received April 23, 2015, referencing the subject Request for Proposal ("RFP") and regarding the Notice of Intent to Award issued by the Procurement Bureau ("Bureau") of the Division of Purchase and Property ("Division"). In your letter, you protest the rejection of the proposal submitted by North Eastern Transmission Corp. ("North Eastern") as not timely submitted and request that the Division reinstate North Eastern's proposal submission.

I have reviewed the record of this procurement, including the RFP, North Eastern's proposal, and 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 North Eastern's protest.

The subject RFP was released by the Bureau on March 9, 2015, with a proposal deadline of 2:00 p.m. on April 17, 2015, to solicit proposals for OEM and Non-OEM Maintenance and Repair Services for Light/Medium Duty Vehicles (15,000 lb. GVWR or less). RFP Section 3.3, *Brands and Categories – Preventative Maintenance and Repair Services for Light/Medium Duty Vehicles*, specified 20 categories of various types of repair services and different brands. A bidder was required to be able to provide service for an entire category, and the Bureau intended to award each price line separately. For the purposes of the RFP, the State was divided into 21 regions and required all bidders to specify the regions it would serve.

The record shows that North Eastern mailed a hard copy proposal to the Bureau via U.S. Mail on March 29, 2015. This proposal was received by the Bureau on April 2, 2015. On April 1, 2015, the Bureau issued Addendum #1, which provided answers to bidder submitted questions. The answer to

question #1, "If we are only bidding on a few price lines, do we have to return all 72 price pages?" provided: "Yes, a bidder is required to return all price pages." Thereafter, North Eastern mailed a second package via UPS Mail to the Division, which was received on April 17, 2015, at 2:09 p.m. The Proposal Review Unit deemed this submission untimely and rejected North Eastern's proposal. A review of North Eastern's submissions shows that its first proposal submission contained pricing on Price Lines 58, 59, 60, and 61, all for regions one through seven. It did not include the remainder of the blank price pages. Its second proposal submission received after the proposal deadline, which did contain all price pages, confirmed North Eastern's intent to bid on Price Lines 58, 59, 60, and 61, and indicated the same proposed pricing and regions served. No additional prices were included with the second proposal submission.

"It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived." Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 314 (1994) (quoting Terminal Constr. Corp. v. Atlantic Cnty. Sewage Auth. 67 N.J. 403, 411 (1975)). "This rule, however, does not apply to minor or inconsequential conditions. Public contracting units may resolve problems arising from such conditions in a sensible or practical way." Terminal Constr. Corp., *supra*, 67 N.J. at 411. "Essentially this distinction between conditions that may or may not be waived stems from a recognition that there are certain requirements often incorporated in bidding specifications which by their nature may be relinquished without there being any possible frustration of the policies underlying competitive bidding." *Id.* at 412. As reiterated by our Supreme Court, "[t]he public interest underlies the public-bidding process in this State." Barrick v. State, Dep't of Treasury, 218 N.J. 247, 258 (2014).

New Jersey courts have developed a two-prong test to consider "whether a specific noncompliance constitutes a substantial and hence non-waivable irregularity." Twp. of River Vale v. R. J. Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974). The two-prong test requires a determination of

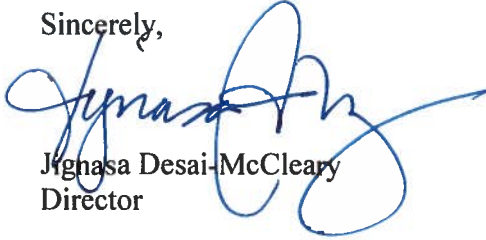
first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by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

[Meadowbrook, *supra*, 138 N.J. at 315 (internal quotations omitted) (affirming the two-prong test established in River Vale, *supra*, 127 N.J. Super. at 216).]

Using this test, I find North Eastern's omission of blank price lines to be an immaterial deviation: although bidders were advised to include all price pages with a proposal submission, North Eastern's original proposal submission clearly indicated its intent to propose pricing on only four price lines. The inclusion of blank price lines did not alter North Eastern's proposal, only confirmed its intent to propose pricing on these four lines. Under the first prong, it is of no consequence that North Eastern's second proposal submission was received after the proposal due date, as its first submission contained all required pricing and could provide the State the assurance that North Eastern could enter into the contract for the price lines indicated. I need not reach the second prong. Therefore, I hereby overturn the Proposal Review Unit's rejection of North Eastern's proposal and direct the Bureau to evaluate North Eastern's original proposal for responsiveness and for the indicated price lines only. This is my final agency decision.

Thank you for your continued interest in doing business with the State of New Jersey and for registering your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jignasa Desai-McCleary", with a large, stylized flourish extending to the right.

Jignasa Desai-McCleary
Director

JD-M:DF

- c: G. Olivera
P. Michaels
K. Thomas
V. Bequer
D. Rodriguez
A. Nelson