



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

March 24, 2016

Via Electronic Mail [baranowski@hylandlevin.com] and USPS Regular Mail

Robert S. Baranowski, Jr., Esq.
Hyland Levin LLP
6000 Sagemore Drive, Suite 6301
Marlton, NJ 08053-3900

RE: Protest of Notice of Intent to Award
RFP #16-X-23960 Laundry Rental Services- Human Service (DHS) & DMAVA

Dear Mr. Baranowski:

This correspondence is in response to your letter of protest dated January 22, 2016, and received January 25, 2016, referencing the subject Request for Proposal (RFP) and regarding the Notice of Intent to Award (NOI) issued by the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division).¹ On behalf of JVK Operations Limited of New Jersey (JVK), you protest the intended award to ACCSES-New Jersey/CNA Services (A-NJ)², alleging JVK's proposal was improperly deemed non-responsive and that A-NJ is unqualified to provide the services sought by the RFP. As the lowest bidder submitting a proposal, you contend the NOI should be rescinded and JVK awarded the subject contract.

I have reviewed the record of this procurement, including the RFP, the submitted proposals, 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 JVK's protest without an in-person presentation. N.J.A.C. 17:12-3.2(d)(1).

I. Background

By way of background, the subject RFP was issued by the Bureau on behalf of the Department of Military and Veterans Affairs (DMAVA) and the Department of Human Services (DHS) to solicit "proposals from vendors of large scale commercial laundries, experienced in the health care laundry business," to provide a "linen rental service." RFP §1.1, *Purpose and Intent*. In addition to providing a three-day reserve supply of all linen, processing, and transportation, the successful bidder will provide "an all-inclusive laundry service for personal items" and "laundry rental/cleaning service for flats/rough

¹ JVK submitted two supplements to its letter of protest: the first included a copy of JVK's "Policies and Procedures Manual;" the second included a certification from Ms. Vanessa Battiato, a former Sales Service Representative of JVK, signed and dated February 17, 2016.

² A-NJ is designated as the State's Central Nonprofit Agency under the Rehabilitation Facilities Set-Aside Act. N.J.S.A. 30:6-17 to -33. Pursuant to N.J.A.C. 10:99-2.4(c) and -3.5, A-NJ shall be awarded a contract if its proposal pricing is within 15% of the fair market price.

items” at both DHS and DMAVA facilities. Ibid. The subject RFP also solicited pricing for the “production of flat/rough (linen).” Ibid. This is a reprocurement of services provided under the Laundry Rental Services, NJDHA & DMAVA (T-2304) term contract. RFP §1.2, *Background*. The intent of the RFP is to award a contract to that responsible bidder whose proposal, conforming to the RFP, is most advantageous to the State, price and other factors considered. RFP §1.1, *Purpose and Intent*.

The RFP advised all bidders that the deadline to submit electronic question was September 11, 2015. On September 18, 2015, the Bureau issued Addendum #01, including Part 1: Answers to questions, and Part 2: Additions, deletions, clarifications and modifications to the RFP. The Bureau issued Addendum #02 on October 1, 2015, which extended the proposal submission date and provided a clarification of the estimated value of the contract. Finally, on October 13, 2015, the Bureau issued Addendum #03, extending the proposal submission date to October 28, 2015, and removing Greystone Psychiatric Hospital “and all of its requirements” from the contract, thus reducing the overall value of the contract.

The Bureau received six proposals, including one from protester JVK, by the revised proposal submission deadline of October 28, 2015, and requested Best and Final Offer pricing (BAFOs) from the responsive bidders. Proposals were then evaluated based on the criteria specified in RFP Section 6.6, *Evaluation Criteria*, including a price consumption model. Although JVK submitted the lowest cost proposal based on the consumption model, the Bureau deemed its proposal non-responsive for failing to include required submittals as mandated by RFP Sections 4.4.3(B) and (C). The next lowest priced proposal was submitted by FDR Services Corp. (FDR); however, A-NJ requested the subject contract be set-aside under the Rehabilitation Facilities Set-Aside Act, N.J.S.A. 30:6-33 et seq., and its proposed pricing was within 15% of FDR’s proposal. Based on the foregoing, the Bureau issued the NOI on January 11, 2016, advising all bidders the procurement would be awarded as a set aside. This protest followed.

II. JVK’s Protest

The record reveals that JVK’s proposal was rejected for failing to include certain mandatory documents and information as required by RFP Section 4.4.3, *Submittals*. The Bureau’s Recommendation Report specifically noted:

JVK submitted the overall low bid based on the consumption model evaluation pricing, but upon review of the submittals by the Procurement Specialist, it was determined that JVK did not provide, as per Section 4.4.3 “Submittals,” the required submittals for a 4.4.3(B) Mandatory Laundry Policy and Procedure per N.J.A.C. 8:39-21.2. The requirement states that failure to submit a detailed explanation of the bidder’s Laundry Policy and Procedures with the proposal will result in the rejection of the submitted proposal. Also, JVK did not provide the details [of] 4.4.3(C) of the back-up plan as described in Section 3.18 with the proposal; the failure to submit a detailed explanation of the bidder’s back-up plan with the proposal will result in the rejection of the submitted proposal. Therefore, JVK is considered non-responsive to the proposal.

RFP Section 4.4.3, *Submittals*, specified in pertinent part:

B) Mandatory Laundry Policy and Procedure per N.J.A.C. 8:39-21.1

Below is a listing of mandatory requirements relative to laundry operations.

The bidder must provide a brief, but detailed explanation to demonstrate how its firm intends to achieve and maintain compliance with the Department of Health Mandatory Laundry Service Polices[.]

....

Failure to submit a detailed explanation of the bidder's Laundry Policy and Procedures with the proposal will result in the rejection of the submitted proposal.

C) The bidder must provide the details of the back-up plan. As per RFP Section 3.19 with its bid proposal, the bidder must also identify the laundry (in its bid proposal), that will render the back-up services. The Director reserves the right to request pertinent information e.g., user list, site visit, etc.,) on the back-up facility identified in the bid proposal. Failure to submit a detailed explanation of the bidder's Back up Plan with the proposal will result in the rejection of the submitted proposal.

JVK submits several points in support of its argument that the Bureau erred in deeming its proposal non-responsive. Among other things, JVK states that the required information “was previously submitted electronically in its entirety in response to the initial RFP.” JVK states that after the Bureau issued an amendment to the RFP, a procurement specialist advised JVK to “‘withdraw’ the initial submission and to re-submit a bid package inclusive of information responsive to the addendum.” The above-noted certification submitted by Ms. Battiatto’s also states that “[b]y e-mail dated October 23, 2015, [JVK] was asked to withdraw and re-submit [its] bid due to changes in the RFP specifications.”

The Hearing Unit’s independent review of this procurement and the Bureau’s records reveal that Part 2 of Addendum #03, posted October 13, 2015, advised: “Bidders may retract their previously submitted proposals and supply a new proposal based on the adjusted quantities as shown.” The record also shows that on October 23, 2015, Ms. Battiatto emailed the Bureau Procurement Specialist directly, asking, “As far as the E-bid goes, do we have to withdraw and resubmit the entire bid? Or can we edit only the price sheet and resubmit?” The Procurement Specialist responded the same day via email to Ms. Battiatto: “It would be best if you ‘withdraw’ your bid and re-upload the edited documents. The documents should be available to re-upload from the withdrawn ebid. Please make sure you submit all requirements of the RFP with the new ebid submission.” The record reveals that this answer was not made available to other bidders as a later addendum clarifying the earlier addenda’s instructions.

Our Supreme Court has reiterated “[t]he public interest underlies the public-bidding process in this State.” Barrick v. State, 218 N.J. 247, 258 (2014). The “public bidding statutes exist ‘for the benefit of the taxpayers and are construed as nearly as possible with sole reference to the public good.’” Ibid. (quoting Keyes Martin & Co. v. Dir., Div. of Purchase & Prop., 99 N.J. 244, 256 (1985)). The object of the public bidding statutes is “to guard against favoritism, improvidence, extravagance and corruption; [the] aim is to secure for the public the benefits of unfettered competition.” Ibid. (internal quotations omitted). To fully achieve the purpose of public bidding laws, “‘all bidding practices which are capable of being used to further corrupt ends or which are likely to affect adversely the bidding process are prohibited, and all awards made or contracts entered into where any such practice may have played a part, will be set aside.’” George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 36 (1994) (quoting Terminal Constr. Corp. v. Atlantic County Sewerage Auth., 67 N.J. 403, 410 (1975)). It is a longstanding tenet of public procurement law that “any bidding practice which tends to favor one bidder over another, or impairs the equal basis upon which bids are computed . . . cannot be tolerated, whether or not the practice in fact exerts a harmful effect in the given situation.” In re the Award of the Contract for the Constr. Of Bayonne Park, 168 N.J. Super. 33, 39 (App. Div. 1979) (see also Terminal Constr. Corp.,

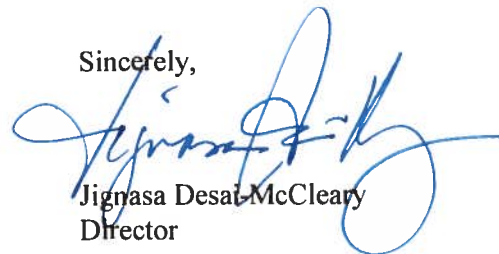
supra, 67 N.J. at 410).

In this case, I find this closed communication between the Procurement Specialist and one bidder, after the closed electronic question and answer period and before proposal submission deadline, which influenced that bidder's proposal submission, to be contrary to our courts' reasoning in New Jersey case law as outline above. Such communication unlevelled the playing field by providing a single bidder with advice and information not made available to all potential bidders. While Addendum #03 stated that "[b]idders may retract their previously submitted proposals and supply a new proposal," the Procurement Specialist advised JVK, and only JVK, "It would be best if you 'withdraw' your bid and re-upload the edited documents." By emphasizing one option which a bidder may not have otherwise taken, and not emphasizing this option to other bidders, the Bureau's action created the potential for harmful effects on the bidding process and disrupted the level playing field.

In the interests of maintaining a level playing field and guarding against favoritism, the subject RFP must be cancelled and reprocured. I need not reach the remainder of JVK's arguments. This is my final agency decision.

The Division appreciates JVK's interest in doing business with the State of New Jersey and for registering with NJSTART, the State's new eProcurement system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jignasa Desai-McCleary", is written over the typed name and title.

Jignasa Desai-McCleary
Director

JD-M:DF

c: G. Olivera
J. Signoretta
P. Slack