



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 15, 2016

Via Email [ninoanto@aol.com] and USPS Regular Mail

Antonio P. Bona, President
Circle Brake Service of Passaic County, Inc.
65-69 Route 46 West
Clifton, NJ 07011

Re: Protest of Notice of Intent to Award
RFP 15-X-23841: OEM & Non-OEM Maintenance and Repair Services

Dear Mr. Bona:

This correspondence is in response to your letter dated October 7, 2015 on behalf of Circle Brake Service of Passaic County, Inc. (Circle), to the Hearing Unit of the Division of Purchase and Property (Division). In that letter, Circle protests the September 23, 2015 Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) regarding Solicitation #15-X-23841. In the protest, Circle contends that there are no vendors who are physically located in either Sussex or Bergen Counties who are listed as intended awardees and only one vendor physically located in Passaic and Morris Counties who are listed as intended awardees. Circle further states that contracts for the Northern Region are to be awarded to vendors who offered statewide proposals which effectively disqualified it from having an opportunity to be awarded a contract. Circle requests that the Division review the same and consider adding it to the list of vendors.

In consideration of this protest, I have reviewed the record of this procurement, including the Request for Proposals (RFP), the proposals submitted, 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 submitted by Circle.

By way of background, this RFP was issued by the Bureau on behalf of State Agencies¹ to solicit proposals for OEM and Non-OEM Maintenance and Repair Services for Light/Medium Duty Vehicles, 15,000 lb. GVWR or less. It is the intent of the Bureau to award contracts to those responsible bidders whose proposals, conforming to the RFP are most advantageous to the State, price and other factors

¹ The Department of the Treasury – Bureau of Transportation Services (Motor Pool) is the primary state using agency for this contract. Motor Pool is responsible for the assignment, use, fueling, maintenance and repair of the State's vehicular fleet. While individual State using agencies have the option of performing maintenance and repair services using the contract vendors; the normal practice of the State using agencies is to utilize the services of the Motor Pool. Motor Pool will make a determination whether the maintenance/repair can be performed in house or whether a contract vendor will be utilized.

considered. (RFP § 1.1 *Purpose and Intent*.) Contract awards will be made on a regional basis with each of the State's 21 counties being defined as a region.² (RFP § 3.2 *Regional Jurisdiction*.) Bidders were permitted to submit a proposal to service one, multiple or all regions. (RFP § 4.4.7.4) Price lines 1 through 57 sought maintenance and repair services to be provided by an Original Equipment Manufacturer (OEM) routinely utilizing OEM parts in the work performed. Price lines 58 through 71 sought maintenance and repair services by non-OEM dealers routinely utilizing non-OEM parts. For price lines 1 through 71, the State intends to award up to ten contracts for each OEM and each Non-OEM price line for each region. (RFP § 3.1.3)

In response to the RFP, Circle submitted a proposal for price lines 58, 59, 60, 61, 62, 65 and 66 to provide Non-OEM services. Circle proposed to provide services for Regions 1, 2, 3, 4, 5 and 7 representing Bergen, Essex, Hudson, Morris, Passaic and Union counties respectively. After conducting an initial review of the proposals submitted, the Bureau opted to conduct a round of negotiations with the bidders pursuant to RFP Section 6.7, which states in pertinent part:

After evaluating proposals, the Division may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost.

...

Negotiations will be conducted only in those circumstances where they are deemed by the Division or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the bidder is advised to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.

[RFP § 6.7 *Negotiation and Best and Final Offer (BAFO)*.]

Accordingly, on May 11, 2015, the Bureau wrote to Circle stating:

In accordance with Section 6.7 of the RFP (Negotiation and Best and Final Offer – BAFO), your firm is being notified in an effort to significantly lower the proposal pricing provided in your firm's subject proposal. The State is looking to maximize its ability to get the best value, based on the requirements and evaluation criteria set forth in the RFP.

² Under the previous contract Solicitation #10-X-20973 awards were made on regional basis with the regions defined as follows: North (Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union and Warren); Central (Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset); South (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem). Additionally, due to issues experienced by the Motor Pool in using the prior contract, this RFP was restructured. The prior contract was task driven which required a using agency to use different contractors for repairs depending on the services sought. For example an agency would have to deliver a vehicle to one vendor for an oil change, another for windshield wiper repair, and a different vendor for a transmission repair. This RFP was restructured to cover a range of OEM and Non-OEM maintenance and repair services which would be performed by a single vendor at the hourly rate proposed. The current RFP also increased the number of contract awards.

Note: Any failure to reduce the current pricing may significantly reduce the likelihood that an award will be made.

As such, please provide us with your firm's best and final proposal pricing.

Please respond through e-mail or fax (609) 292-5170 as soon as possible, but no later than close of business, May 14, 2015. If no response is received by the due date, the State will consider your firm's original proposal pricing as your best and final offer.

On May 13, 2015, Circle responded to the Bureau's request stating "[u]fortunately, we cannot lower the proposal pricing that we provide in our proposal. However, we would like to offer the State a cash discount of 3% instead of the 2% that we had originally offered on the *Signatory Page* of the RFP."³ Therefore, the Bureau evaluated Circle's proposal based upon its original proposal pricing.

On June 9, 2015, the Bureau wrote to Circle requesting that it submit a Bidder's Certification for Non-OEM Maintenance repairs:

In accordance with Section 4.4.3.2.2 of the Request for Proposal (RFP), your firm is being contacted in an effort to confirm capability of servicing each of the non-OEM categories bid under the subject RFP. RFP Section 3.1.7 requires that bidders must be licensed to operate and perform the maintenance and repair services specified in the RFP and must possess all tools, equipment and personnel to satisfactorily provide such services.

Circle's certification, dated June 30, 2015, revealed that Circle was not capable of performing Non-OEM repairs on any brand of truck body (price line 62).

On September 23, 2015, the Bureau issued the NOI. Circle was listed as an intended awardee for price lines 65 and 66 for Regions 1, 2, 3, 4, 5 and 7. However, based upon its proposal pricing, Circle was not in contention for an award for price lines 58, 59, 60 or 61. As to price line 62, Circle was not eligible for a contract award because its Bidder's Certification revealed that it was unable to provide the service requested.

On October 7, 2015, Circle submitted a protest letter asserting: (1) that the vendors listed as intended awardees are primarily vendors whose businesses are located in Central and South Jersey who submitted proposals to provide services Statewide. This effectively disqualified Circle from receiving any contracts for northern counties; (2) Circle acknowledges that it did not lower its proposal price in response to the Bureau's BAFO request; however, it did increase its percentage discount – Circle inquires whether this was taken into consideration during the Bureau's review of the proposals submitted; and, (3) Circle notes that some of the intended awardees are auto part & truck stores, auto body repair shops and transmission shops; however, Circle states that it is a full service auto repair shop and inquires whether this was taken into consideration.

³ RFP § 4.4.5.3 *Cash Discounts* states in part "Bidders are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest proposal."

In conducting an independent review of the record of this procurement the Hearing Unit determined that in evaluating the proposals submitted, the Bureau considered the following criteria: (a) pricing; (b) experience of the bidder; and, (c) the bidder's past performance under similar contracts. (RFP § 6.6 *Evaluation Criteria*.) While Circle increased its cash discount for prompt payment pursuant to RFP § 4.4.5.3 *Cash Discounts* from 2% to 3%, as clearly stated in the RFP, the cash discount was not a factor in evaluating the proposal. Circle's maintenance and repair capability, as a full service auto repair shop, as evidenced through the Bidder's Certification, was taken into consideration in evaluating its proposal.

Regarding Circle's allegation that contracts are primarily being awarded to vendors located in Central and South Jersey, the RFP did not require that a vendor be physically located in the county where the service will be provided. Rather, the RFP requires that "bidders must be able to service all State agency locations and counties, if extending to cooperative purchasing members, within the region." (RFP § 3.2.1)⁴ In addition, I note that this RFP did not require bidders to submit proposals for statewide services. Rather, bidders could submit a proposal to service a single or multiple regions or to service all regions – statewide. In evaluating the proposals each region was evaluated independently with the Bureau reviewing the bidder prices submitted with the responsive proposals.

Further, in connection with its independent review of this protest and although not an RFP requirement, the Hearing Unit oversaw a review of the locations of the intended awardees. With respect to the price lines for which Circle submitted a proposal, there is at least one intended awardee that has a location in Sussex County and another with a location in Bergen County.

The Hearing Unit further found that after conducting the initial proposal evaluation, the Bureau provided all bidders an opportunity to submit a BAFO price. Circle choose not to lower its proposal pricing during the BAFO process; accordingly, its proposal was evaluated based upon its original proposal pricing which did not place it within the competitive range and in contention for a contract award for price lines 58, 59, 60 and 61. With respect to price line 62, Circle's proposal was properly found to be non-responsive because a review of its Bidder's Certification reveals that it could not service the price line category proposed. Thus, NOIs were sent to those responsible bidders, whose proposals, conforming to the RFP were most advantageous to the State, price and other factors considered taking into account their ability to service State and cooperative purchasing entities, including Circle for line 65 and 66.⁵ (RFP § 1.1 *Purpose and Intent*.)

In light of the findings set forth above, I sustain the Bureau's NOI. This is my final agency decision with respect to the protest submitted by Circle.

⁴ The current RFP differs from the requirements of the prior solicitation 10-X-20973. In the prior solicitation, bidders were required to be proximately located in the region to be served. (RFP 10-X-20973 § 3.1.5)

⁵ Additionally, prior to the issuance of the NOI, the Bureau contacted the Department of the Treasury – Bureau of Transportation (Agency), the primary using agency under this contract; the Agency did not express any concerns regarding the proximity of the intended awardees to the using agency.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system. The State looks forward to working with you on price lines 65 and 66 for Regions 1, 2, 3, 4, 5 and 7.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: P. Michaels
K. Thomas
S. Ghorbani