



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

FORD M. SCUDDER
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

March 11, 2016

Via Facsimile [201-866-5757] and USPS Regular Mail

Ron Gilbert, Parts Manager
Hudson County Motors, Inc.
P.O. Box 2611
614 New County Road
Secaucus, NJ 07096-2611

RE: Protest of Notice of Proposal Rejection
RFP #15-X-23842 Automotive Parts for Heavy Duty Vehicles (Class 5 or Higher, Over 15,000
lb. GVWR) T-2085

Dear Mr. Gilbert:

This correspondence is in response to your letter¹ dated February 17, 2016, and addressed to Vance Bequer of the Procurement Bureau (Bureau), Division of Purchase and Property (Division), referencing the subject Request for Proposal (RFP) and regarding Hudson County Motors, Inc.'s (HCM) prior T-2085 contract with the State of New Jersey. Your letter notes that "[d]ue to an error [HCM] never received notification of the current bid" and requests the Division consider allowing HCM, an incumbent contractor, to submit a proposal in response to the subject solicitation.

I have reviewed the record of this procurement, including the RFP 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 HCM's protest.

The subject RFP was issued by the Bureau on behalf of State agencies to solicit proposals for parts and repairs for lawn and grounds equipment. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award contracts to those responsible bidders whose proposals, conforming to [the] RFP are most advantageous to the State, price and other factors considered." *Ibid.* This is a reprourement of term contract T-2085.

At the onset, I note that the Division's public procurement program reflects New Jersey statutory and regulatory requirements that have been affirmed by New Jersey courts. A basic precept of the Division's governing statutes and regulations requires that sealed proposals be submitted by the specified and advertised deadline as announced by public advertisement and website notice. There is no statutory

¹ The February 17, 2016 letter is accepted by the Division's Hearing Unit as a letter of protest.

or regulatory requirement for email or other direct notice to potential bidders. The Division's regulations set forth procurement notification requirements at N.J.A.C. 17:12-2.1, *Advertising*, as follows:

(c) In addition to statutorily mandated public advertising, the Division shall also publish notices of bidding opportunities on the Division's website.

(d) As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service known as the e-RFP Notification Service. Vendors and other interested parties can register to receive direct e-mail notices pertaining to the Division's procurements for goods or services based upon specific commodity classes or codes. As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for e-RFP Notification Service registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division.

The record shows that the procurement was conducted in full accordance with the Division's governing statutes and by its standard announcement procedures and practices: RFP #15-X-23842 was publicly advertised on the Division's website on February 17, 2015, and published in The Star-Ledger on February 18, 2015. (See Attachment #1.) See N.J.A.C. 17:12-2.1(a) to (c). Furthermore, in keeping with N.J.A.C. 17:12-2.1(d), the subject procurement was advertised by direct email notice to vendors who were registered with the Division's eRFP Notification Service for NIGP Commodity Code-Class 060-66 (parts and accessories, automotive, miscellaneous (not otherwise classified)), the sole class code used for the recent procurement of T-2085. This commodity code was also the sole class code used for the prior procurement of the T-2085 contract in 2008 for which HCM successfully competed to attain the previous term contract (RFP #09-X-39895). As confirmed by Division of Enterprise and Revenue Service's eSupport Unit (eSupport), the eRFP notification system generated and delivered three messages regarding the subject RFP: the first, dated February 14, 2015, notified registered vendors that the subject RFP was advertised and available on the Division's website; the second, dated March 12, 2015, notified registered vendors that an addendum had been issued to the subject RFP; and the third, dated March 24, 2015, advised registered vendors that proposals were due at 2:00 p.m. on March 31, 2015.

eSupport has confirmed that HCM is not registered with the Division's eRFP notification system. The responsibility of registration and the selection of commodity codes rests solely with the bidder and a potential bidder will only receive an eRFP notification system email for those commodity codes for which it is registered. Therefore, the Division urges HCM to register with the eRFP notification system and to select to appropriate commodity codes so that it will be notified of future solicitations.

Notwithstanding the advertisement of the subject solicitation on the Division's website, in the newspaper, and through the eRFP notification system, HCM also received a courtesy email from the Commodities and Fleet Unit of the Bureau, which provided notice that the subject RFP had been finalized and published. The email, dated February 17, 2015, was sent to potential bidders, including incumbent contractors, and provided a direct link to access the RFP documents and informed all potential bidders that the proposal opening date was scheduled for March 10, 2015, and to "carefully review the RFP, as a lot of changes have been made." The record shows that neilryp@yahoo.com and ssavietta@hudsoncountymotors.com, both associated with HCM, were included on the list of bidders who

were sent these courtesy notices. I note this email was sent from the Division email account of the Procurement Specialist, and not the eRFP notification system. (See Attachment #2.)

Additionally, HCM was issued an updated contract on March 3, 2015 (two weeks after the courtesy email), reflecting the updated contract expiration date of July 15, 2015. Therefore, HCM was on notice that T-2085 would expire on July 15, 2015, following the final 120-day extension period.

Although HCM requests that it be allowed to submit a proposal in response to the subject RFP, the administrative regulations that govern the Division's advertised procurement process establish certain requirements that must be met in order for a proposal to be accepted. If the requirements of N.J.A.C. 17:12-2.2 are not met, the proposal must be rejected. These regulations are stringently enforced to maintain the equal footing of all bidders and to ensure the integrity of the State's bidding process. N.J.A.C. 17:12-2.2(a) provides in relevant part: "In order to be eligible for consideration for award of contract, the bidder's proposal shall . . . [b]e submitted on or before the due date and time and at the place specified in the RFP [.]"

The subject RFP further provided:

1.3.2 SUBMISSION OF PROPOSAL

In order to be considered for award, the proposal must be received by the Procurement Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME ARE INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

PROPOSAL RECEIVING ROOM – 9TH FLOOR
PROCUREMENT BUREAU
DIVISION OF PURCHASE AND PROPERTY
DEPARTMENT OF THE TREASURY
33 WEST STATE STREET, P.O. BOX 230
TRENTON, NJ 08625-0230

....

4.2 PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a proposal shall arrive at the Division in accordance with the instructions on the RFP signatory page accompanying this RFP. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of proposals. **State regulation mandates that late proposals are ineligible for consideration. THE EXTERIOR OF ALL PROPOSAL PACKAGES ARE TO BE LABELED WITH THE PROPOSAL IDENTIFICATION NUMBER AND THE FINAL PROPOSAL SUBMISSION DATE OR RISK NOT BEING RECEIVED IN TIME.**

[(Emphasis in original.)]

In addition, within the segment of the subject RFP's signatory page that lists base requirements applicable to all advertised competitive procurements, the requirement for timely submission of proposals is set forth as follows:

**PURSUANT TO N.J. STATUTES, REGULATIONS AND EXECUTIVE ORDERS,
PROPOSALS WHICH FAIL TO CONFORM WITH THE FOLLOWING
REQUIREMENTS WILL BE SUBJECT TO REJECTIONS:**

- 1) PROPOSALS MUST BE RECEIVED AT OR BEFORE THE PUBLIC
OPENING TIME OF 2:00 PM EASTERN TIME ON March 31, 2015**

....

[(Emphasis in original.)]

Thus, the requirement for timely submission of a signed and sealed proposal as mandated by the administrative rules that govern the Division's procurements were clearly and repeatedly established by the provisions of the RFP. Here, although a Notice of Intent to Award has not yet been issued, the proposal submission deadline was 2:00 p.m. on March 31, 2015.² As a result, despite HCM's request to submit a proposal for the subject contract, under the provisions set forth above, the Division cannot accept HCM's proposal as a timely submitted, proposal approximately one year after the proposal submission deadline.

Based upon the foregoing information, I have determined the subject RFP was properly advertised and HCM was provided notice that the T-2085 contract was being resolicited. Therefore, I must deny HCM's request for special consideration for an award of the T-2085 contract. This is the Division's final agency decision.

While this is unfortunate for both HCM and the State, the Division appreciates your continued interest in doing business with the State of New Jersey. The Division recommends that HCM review the commodity codes to ensure that it is registered for all applicable codes within the eRFP notification system. We thank you for registering your business with NJSTART at www.njstart.gov, the Divisions' new eProcurement system scheduled to go live soon.

Sincerely,



Maurice A. Griffin
Chief Hearing Officer

c: P. Michaels
K. Thomas
V. Bequer
D. Rodriguez

² I also note the Division received 89 proposals by the proposal submission deadline, further demonstrating the effectiveness of the Division's advertising methods.