



State of New Jersey

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August 1, 2018

Via Email [dmacdonald@intelligentimagingystems.com] and USPS Regular Mail

Dave MacDonald
Intelligent Imaging Systems Inc.
6325 Gateway Blvd NW, Suite 170
Edmonton, Alberta T6H 5H6

Re: I/M/O Bid Solicitation #18DPP00214 - Intelligent Imaging Systems Inc.
Bid Solicitation Title: T2834 NJDOT Core CVISN Electronic Screening System
Protest of Notice of Cancellation

Dear Mr. MacDonald:

This letter is in response to your correspondence of July 25, 2018, to the Division of Purchase and Property (Division) on behalf of Intelligent Imaging Systems, Inc. (IIS). In that letter, IIS protests the Division's Procurement Bureau's (Bureau) decision to cancel Bid Solicitation #18DPP00214: T2834 NJDOT Core CVISN Electronic Screening System (Bid Solicitation).¹

By way of background, the subject Bid Solicitation was issued on April 27, 2018, by the Bureau on behalf of the New Jersey Department of Transportation (NJDOT). The purpose of the Bid Solicitation was to solicit Quotes from qualified Vendors {Bidders} who are capable of providing Commercial Motor Vehicle Weigh Station bypass system services utilizing both fixed and mobile screening systems. Bid Solicitation § 1.1 *Purpose and Intent*. In order to promote the safe and efficient transportation of freight in the State and improve weigh station bypass system capabilities, the objective of the Bid Solicitation was to solicit Quotes for the design, construction, installation, operation, and maintenance of a truck pre-clearance and weigh station bypass program to enable trucks meeting certain safety criteria to bypass New Jersey

¹ This final agency decision uses terminology employed by the State of New Jersey's **NJSTART** eprocurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

| NJSTART Term | Statutory, Regulatory and/or Legacy Term |
|-------------------------------|---|
| Bid Solicitation | Request For Proposal |
| Bid Amendment | Addendum |
| Change Order | Contract Amendment |
| Master Blanket Purchase Order | Contract |
| Offer and Acceptance Page | Signatory Page |
| Quote | Proposal |
| Vendor {Bidder} | Bidder |
| Vendor {Contractor} | Contractor |

weigh stations and inspection sites. Bid Solicitation § 1.2 *Background*. This process would allow the New Jersey State Police to concentrate its resources on unsafe commercial vehicle operators while simultaneously minimizing inspection related delays on safe and legal motor carriers. *Ibid*.

The intent of this Bid Solicitation was to award up to two (2) Master Blanket Purchase Orders (Blanket P.O.) to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation were most advantageous to the State, price and other factors considered. Bid Solicitation § 1.1 *Purpose and Intent*. Awards of Blanket P.O.s were intended to be made as follows: one (1) award for Category 1 – Standard Fixed Weigh Station & Inspection Sites (Fixed System), referred to as the Fixed Weigh Stations on the State supplied price sheet/schedule; and one (1) award for Category 2 – Sub-Standard Mobile Weight & Inspection Sites (Mobile System), referred to as the Mobile Sites on the State supplied price sheet/schedule. Vendors {Bidders} were permitted to submit a Quote for one (1) or both categories, and the State would consider one (1) award for both categories. *Ibid*.

In accordance with Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*, potential Vendors {Bidders} were permitted to submit questions regarding the Bid Solicitation through May 16, 2018. No questions were received. On June 22, 2018, the Division’s Proposal Review Unit opened three Quotes received by the submission deadline.² All three Quotes were forwarded to the Bureau for review and evaluation.

After conducting an initial review of the Quotes received, the Bureau concluded that all three Quotes were non-responsive for not providing all of the information requested on the State supplied price sheet as directed in Bid Solicitation Section 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. Accordingly, the Bureau determined that the procurement should be cancelled. On July 11, 2018, the Bureau wrote to all Vendors {Bidders} advising that the procurement was cancelled as all three Quotes were non-responsive for not providing the information requested in Bid Solicitation Section 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. See, Bureau’s July 11, 2018 letter. The July 11, 2018, letter further advised that the Division would work with the using agency, NJDOT, to review and revise the specifications and price sheet and then re-advertise the Bid Solicitation.

On July 25, 2018, IIS submitted a protest to the Division’s Hearing Unit stating in part:

We have reviewed our Quote and can confirm that we did provide the requested price sheet information.

...

The attached copy of the State-supplied Price Sheet/Schedule was downloaded directly from the NJSTART repository of information submitted by IIS. Per Section 4.4.5.2 it is correctly filled out with all fields completed for each line of the five (5) year terms as instructed in 4.4.5.2 of the Bid Solicitation.

In consideration of IIS’ protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes 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. I set forth herein the Division’s Final Agency Decision.

The New Jersey Courts have long recognized that the purpose of the public bidding process is to “secure for the public the benefits of unfettered competition.” Meadowbrook Carting Co. v. Borough of

² Quotes were submitted by IIS, Heavy Vehicle Electronic License Plate, Inc. and International Road Dynamics Corp.

Island Heights, 138 N.J. 307, 313 (1994). To that end, the “public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good.” Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey’s statutory procurement scheme is “to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing, Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)). Consistent with this purpose, the New Jersey procurement law provides that “any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do.” N.J.S.A. 52:34-12(a).

The Appellate Division has held that “where the contracting authority has rejected all bids after opening and publicizing them...and each bidder’s competitive position has been exposed, rejection of all bids should only occur for cogent or compelling reasons.” In re Failure to Award to the Lowest Responsible Bidder RFP 09-X-20513 Contract T0002 for Provision of Bottled Water Servs., 2010 N.J. Super. Unpub. LEXIS 1641, *7 (App. Div. July 2, 2010) (quoting Bodies by Lembo, Inc. v. County of Middlesex, 286 N.J. Super. 298, 309 (App. Div. 1996)(relying on the local public contracts law N.J.S.A. 40A-11-1 et seq., which does not explicitly contain the authority to cancel an RFP); See also, PENPAC, Inc. v. Morris Cty. Mun. Utilities Auth., 299 N.J. Super. 288, 296 (App. Div. 1997), certif. denied, 150 N.J. 28(1997) (stating that “[t]he decision to reject all bids must not be ‘arbitrary or capricious and it must be free from fraud, collusion and bad faith.’”). Here, the Bureau recommended, and I concurred, that it was in the public interest to cancel the Bid Solicitation. As discussed below and in the cancellation documents, this decision was based on both cogent and compelling reasons and I find no evidence of fraud, collusion, bath faith or favoritism.

With respect to Quote pricing, for each of the thirteen price lines included on the State supplied price sheet, the Bid Solicitation instructed the Vendors {Bidders} as follows:

The Vendor {Bidder} may bid on one or both technologies, if qualified, on the attached price schedule. Pricing shall be proposed on an annual basis for each line of the five (5) year term, and shall be based on the cost of memberships sold to trucking companies. Failure to submit all requested pricing may result in Quote being deemed non-responsive.³

[Bid Solicitation § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*, (emphasis added).]

A review of the Quotes submitted by each Vendor {Bidder} reveals that each understood that the Commercial Motor Vehicle Weigh Station bypass system was to be at no cost to the State. All the Vendors {Bidders} noted the same in the narrative portion of their respective technical Quotes and completed the State supplied price sheet by indicating “No Bid” or “No Charge” for either the Fixed System or the Mobile System as applicable, presumably confirming that the system would be no cost to the State.⁴ However, the price sheet instructions required that the Vendors {Bidders} include the membership fee that the Vendor {Bidder} intended to charge the trucking companies on each of the thirteen price lines on the State supplied price sheet, not indicate or confirm that the system proposed would be at no cost to the State. Bid Solicitation § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. None of the Vendors {Bidders} included this mandatory membership fee pricing information on the State supplied price sheet/schedule. As such all Quotes submitted were non-responsive.

³ Bid Solicitation Section 2.2.1 *Standard Definitions* defines “Shall” as “Denotes that which is a mandatory requirement.”

⁴ Bid Solicitation Section 2.2.1 *Standard Definitions* defines “No Bid” as “The Vendor {Bidder} is not submitting a price Quote for an item on a price line” and “No Charge” a “The Vendor {Bidder} will supply an item on a price line free of charge.”

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation that the subject Bid Solicitation be cancelled. Accordingly, I sustain the July 11, 2018, letter which cancelled the subject Bid Solicitation and which advised the Vendors {Bidders} of the Division's intent to issue a new Bid Solicitation with revised specifications. This is my final agency decision with respect to the protest submitted by IIS.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: L. Leonardi
M. Tagliaferri
J. McGowan