



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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April 7, 2020

Via Electronic Mail Only jimd@warshauer.com

James Dunn
Executive Vice President
Warshauer Generator, LLC.
800 Shrewsbury Ave
Tinton Falls, New Jersey 07724

Re: I/M/O Bid Solicitation #19DPP00381 Warshauer Generator, LLC
Protest of Notice of Intent to Award
Bid Solicitation Title: T2848 Preventive Maintenance and Testing of Generators

Dear Mr. Dunn,

This letter is in response to your correspondence of March 23, 2020, on behalf of Warshauer Generator, LLC (Warshauer) to the Division of Purchase and Property's (Division) Hearing Unit. By way of that letter, Warshauer protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for the Bid Solicitation #19DPP00381 / T2848 Preventive Maintenance and Testing of Generators (Bid Solicitation).

By way of background, on October 3 2019, the Bureau issued the Bid Solicitation on behalf of Department of Corrections (DOC) and State Using Agencies to solicit Quotes for preventive maintenance and testing of emergency standby generators throughout the State and at Southern State Correctional Facility and South Woods State Prison. Bid Solicitation Section 1.1 *Purpose and Intent*. The intent of this Bid Solicitation was to award multiple Blanket P.O.s to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation were most advantageous to the State, price and other factors considered. Ibid.

On November 7, 2019, the Division's Proposal Review Unit opened five (5) Quotes submitted through the State's **NJSTART** eProcurement system and received by the submission deadline of 2:00 p.m. eastern time. After conducting the initial review of the Quotes, the Proposal Review Unit forwarded the Quotes to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*.

In conducting the Quote evaluation, the Bureau found that Warshauer's Quote was "in the range of "Minimally Responsive", receiving a score of 1 on a scale of 1-3, for the evaluation criteria of *The overall ability of the Vendor {Bidder} to undertake and successfully complete the scope of work set forth in the Bid Solicitation as demonstrated by the submitted Quote.*" See Recommendation Report, pg. 4. The Bureau further noted that:

Although the Bureau was able to confirm that the Warshauer has experience working on current State Blanket P.O.'s including T2732-Maintenance/Repair and Replacement Portable Commercial Mobile Generator, G4014-Mobile Light Towers, and T2871-Trailer Mounted Generators, the Vendor {Bidder} did not provide any additional examples of successful completion of contracts of similar size and scope per the Vendor {Bidder} Data Sheet. Additionally, Warshauer did not provide an approach to completing the scope of work, nor any plans for Blanket P.O. management as requested by the Vendor {Bidder} Quote Overview Form.

[Id.]

Accordingly, based upon the submitted Quote, the Bureau was not confident that Warshauer could successfully complete the Scope of Work.

On March 13, 2020, the Bureau issued a NOI, advising all Vendors {Bidders} of its intent to award Blanket P.O.s as follows:

Vendor {Contractor}	Northern Region	Central Region	Southern Region	DOC Facilities
EMR Power Systems, LLC.	X	X	X	X
FM Generator, Inc.		X	X	
Modern Group, Ltd.	X			

On March 23, 2020, Warshauer submitted a letter to the Division's Hearing Unit protesting the Bureau's NOI and requesting "a re-evaluation of the overall ability of Warshauer to undertake and successfully complete the scope of work set forth based off the supporting information below." See Protest Letter, pg. 1. With its Protest Letter, Warshauer provided the following attachments:

- Attachment #1 - list of State agencies that Warshauer provides generator service to;
- Attachment # 2- the review of Warshauer Electric Supply generator division overview;
- Attachment # 3 - example of a Warshauer generator tech Work Order;
- Attachment # 4 - example of a Warshauer generator tech Load Bank test report;
- Attachment # 5 - Warshauer generator Business Continuity Plan;
- Attachment #6- the certificate of acknowledgment that Warshauer Generator LLC is a Category 5 approved Small Business Enterprise that has met the criteria established by N.J.A.C. 17:13 and/or 17:14.
- Attachment # 7 - a copy of Warshauer's financials.

Warshauer asserts that the documents provided demonstrate its ability to undertake and complete the Scope of Work. Id.

In consideration of Warshauer's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Vendors' {Bidders'} Quotes and protest, the relevant statutes, regulations, and case law. The issues raised in Warshauer's protest are sufficiently clear such that a review of the written 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.

As it relates to a Vendor's {Bidder's} ability to complete the Scope of Work, Bid Solicitation Section 4.4.3 *Vendor {Bidder} Demonstration Of Its Ability To Complete The Scope Of Work* outlined what

a Bidder should submit as part of its Quote in order for the Bureau to evaluate whether a Vendor {Bidder} is capable of providing the services sought to the State. Specifically, Bid Solicitation Section 4.4.3.1 *Vendor {Bidder} Quote Overview Form* states:

The Vendor {Bidder} should submit the Vendor {Bidder} Quote Overview Form with its Quote. The Vendor {Bidder} should complete all of the information requested on the form, so that the State is able to evaluate the Vendor's {Bidder's} ability to complete the Scope of Work.

The Vendor's {Bidder's} responses to the questions on the form should be designed to demonstrate to the State that the Vendor's {Bidder's} plans and approach proposed to complete the Scope of Work are realistic, attainable, appropriate, and that the Vendor's {Bidder's} Quote will lead to the successful completion of the tasks required by this Blanket P.O.

Additionally, Bid Solicitation Section 4.4.3.2 *Vendor {Bidder} Data Sheet* states in pertinent part:

The Vendor {Bidder} should submit the Vendor {Bidder} Data Sheet with its Quote. The Vendor {Bidder} Data Sheet will be used to evaluate the Vendor's {Bidder's} ability to complete the Scope of Work.

The Vendor {Bidder} should provide in its response to Part I of the Vendor {Bidder} Data Sheet all relevant information regarding its experience in successfully completing contracts of a similar size and scope to the work required by this Bid Solicitation.

The Vendor {Bidder} must provide in Part II of the Vendor {Bidder} Data Sheet details of any negative actions taken by other contracting entities against it in the course of performing these projects including, but not limited to, receipt of letters of potential default, default, cure notices, termination of services for cause, or other similar notifications/processes. Additionally, the Vendor {Bidder} should provide details, including any negative audits, reports, or findings by any governmental agency for which the Vendor {Bidder} is/was the contractor on any contracts of similar scope. In the event a Vendor {Bidder} neglects to include this information in its Quote, the Vendor's {Bidder's} omission of necessary disclosure information may be cause for rejection of the Vendor's {Bidder's} Quote by the State.

The review of Warshauer's Quote indicates that the following documents were submitted as part of its Quote:

Quote 00003716 - Warshauer Generator LLC	
General	Items
Questions	Subcontractors
Terms & Conditions	Attachments(13)
Evaluations	Preference
Reminders	Summary
Files	
Name	Description
INSURANCE CERT (view details)	CERTIFICATE OF INSURANCE
19DPP003781 PRICE SHEET (view details)	PRICE SHEETS FOR CENTRAL, NORTHERN, SOUTHERN REGIONS AND DOC LOCATIONS
REGISTRATION FORMS (view details)	SMALL BUSINESS, REGISTRATION CERT, PUBLIC WORKS CONTRACTOR
AFFIRMATIVE ACTION (view details)	FORM
OFFER & ACCEPTANCE (view details)	OFFER AND ACCEPTANCE
OWNERSHIP (view details)	OWNERSHIP DISCLOSURE
DISCLOSURE OF IRAN INVESTMENTS (view details)	DISCLOSURE OF IRAN INVESTMENTS
SUBCONTRACTOR (view details)	SUBCONTRACTOR
POLITICAL CONTRIBUTION (view details)	POLITICAL CONTRIBUTION
INVESTIGATIONS (view details)	DISCLOSURE OF INVESTIGATIONS
SOURCE DISCLOSURE (view details)	SOURCE DISCLOSURE
COOPERATIVE PURCHASING (view details)	COOPERATIVE PURCHASING
CHAPTER 51 (view details)	TWO-YEAR CHAPTER 51

No additional documents or attachment were submitted by Warshauer. Neither the Vendor {Bidder} Quote Overview Form nor the Vendor {Bidder} Data Sheet was included with Warshauer's Quote. Additionally, the Hearing Unit's independent review of each of the documents comprising Warshauer's Quote reveals that none of information sought in the Quote Overview Form or the Data Sheet was provided by Warshauer in any of the attached documents.

Because Warshauer did not include the requested information with its Quote, the Bureau was not able to evaluate whether Warshauer had the ability to successfully complete the Scope of Work. While the Bureau was able to confirm that Warshauer is a current vendor on some State Blanket P.O.s, including T2732-Maintenance/Repair and Replacement Portable Commercial Mobile Generator, G4014-Mobile Light Towers, and T2871-Trailer Mounted Generators, the services provided in both T2732 and T2871 are different from those required under the subject procurement. Without any additional information the Bureau was not able to conclude that Warshauer would be able to undertake and complete the Scope of Work of the current procurement.

Finally, permitting Warshauer to revise its Quote and submit missing information after the Quote submission deadline would result in an impermissible supplementation of Warshauer's bid submission, which the Division cannot allow as doing so would be contrary to the Court's holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In On-Line Games, the Appellate Division held that [i]n clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP". With its Protest Letter, Warshauer submitted a number of documents which it states demonstrate its ability to complete the Scope of Work. While Warshauer is not permitted to supplement its Quote after submission deadline, the review of provided attachments reveals that none of information requested in Bid Solicitation Section 4.4.3.1 *Vendor {Bidder} Quote Overview Form* or Bid Solicitation

Section 4.4.3.2 *Vendor {Bidder} Data Sheet* was included among the addition documents submitted with the protest.

“The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote in response to this Bid Solicitation. No special consideration will be given after Quotes are opened because of a Vendor’s {Bidder’s} failure to be knowledgeable as to all of the requirements of this Bid Solicitation.” Bid Solicitation Section 1.4.2 *Vendor {Bidder} Responsibility*. It was Warshauer’s responsibility to review its Quote and provide all the requested information, it failed to do so.

Accordingly, in light of the findings set forth above, I uphold the Bureau’s determination to award Master Blanket P.O.s in accordance with the March 23, 2020 NOI. This is my final agency decision on this matter.

Thank you for your company’s continuing interest in doing business with the State of New Jersey and for registering your business with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,

Maurice A. Griffin

Maurice A. Griffin
Acting Director

MAG: RD

c: R. Regan
K. Popso
M. Dunn