



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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December 16, 2020

Via Electronic Mail Only agraziano@irr.com

Anthony S. Graziano, MAI, CRE
Executive Director
Integra Realty Resources-Coastal, NJ
1415 Hooper Avenue, Suite 306
Toms River, NJ 08753

Re: I/M/O Bid Solicitation #19DPP00335 Integra Realty Resources-Coastal, NJ
Protest of Notice of Cancellation
T2957 - Appraisal Services for NJ Department of Environmental Protection

Dear Mr. Graziano:

This final agency decision is in response to your email of December 10, 2020, on behalf of Integra Realty Resources-Coastal, NJ (Integra) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence Integra protests the December 1, 2020, Notice of Cancellation issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #19DPP00335 – T2957 Appraisal Services for New Jersey Department of Environmental Protection (Bid Solicitation). Specifically, Integra notes that its submitted Quote was responsive to the requirements of the Bid Solicitation, and therefore, "[t]his cancelation and rebid...is not a prudent idea."

In consideration of Integra's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes and this protest, 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.

By way of background, on July 12, 2019, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Environmental Protection. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for Real Estate Appraisal services from qualified New Jersey Certified General Real Estate Appraisers for the purpose of acquiring properties as open space preservation or flood plain protection by the State of New Jersey. *Ibid*.

On September 13, 2019, the Division's Proposal Review Unit opened thirty-eight (38) Quotes, which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for the compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded thirty-seven (37) Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*.

On March 25, 2020, after completing the review and evaluation of the submitted Quotes, the Bureau prepared a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. In that Recommendation Report, the Bureau noted that several Quotes were found to be non-responsive to the requirements of the Bid Solicitation because the Vendors {Bidders} failed to provide pricing for all price lines within a region. On April 20, 2020, the Bureau issued the Notice of Intent to Award (NOI) advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the Bureau's Recommendation Report. Thereafter, the Division received nine (9) protests challenging the Bureau's determination that their submitted Quotes were non-responsive to the requirements of the Bid Solicitation, noting that the failure to bid as required was caused by an ambiguity of the Bid Solicitation.

In reviewing the Bid Solicitation in connection with those protests, the Division's Hearing Unit found that the Bid Solicitation included a description for "Testimony and Litigation Support" as follows:

The Vendor {Contractor} shall ensure that its personnel are available to answer questions from the Using Agency and to testify at depositions and/or administrative hearings regarding other Appraisal services work. The Using Agency shall notify the Vendor {Contractor} via email of all requests to schedule consultation, preparation, testimony and litigation support and the Vendor {Contractor} must confirm via e-mail, within 48 hours, that its personnel are available to appear. In such instance, the Vendor {Contractor} awarded the all-inclusive hourly rate shall be paid with no more than three (3) hours billed by the Vendor {Contractor} for preparation relating to scheduled testimony before a deposition or administrative hearing unless otherwise approved by the Using Agency.

The Vendor's {Contractor's} personnel shall be required to cooperate with the Attorney General's office in responding to discovery requests and preparing for testimony. In preparation for the depositions, the Vendor {Contractor} may charge up to three (3) hours. If preparation is beyond three (3) hours, this time must be justified by Vendor {Contractor}, and approved in advance by the respective Using Agency.

If the Vendor {Contractor} is not advised prior to the day of the deposition or administrative hearing at which Vendor {Contractor} personnel has been scheduled to appear that the event has been cancelled, and the Vendor {Contractor} personnel travels to such event, or the Vendor {Contractor} personnel travels to a deposition or administrative hearing at which the Vendor {Contractor} personnel has been scheduled to appear but where testimony is not required, the Vendor {Contractor} may bill the Using Agency the awarded all-inclusive hourly rate for only the first hour of the Vendor {Contractor} personnel's testimony. There are no pre-payments for testimony or depositions.

[Bid Solicitation Section 3.6 *Testimony and Litigation Support.*]

The State-supplied price sheet however did not request that Vendors {Bidders} provide pricing for "Testimony and Litigation Support". Rather, the State-supplied price sheet required pricing for "Legal Services". In protesting the Bureau's determination that their submitted Quotes were non-responsive, the protestors noted that they were not attorneys and were not licensed to provide legal services. As appraisers

they would be hired to provide “litigation support services” which is different from “legal services” and therefore, they did not submit pricing for the “legal services” price line.

While the Bureau may have intended that the terms “Testimony and Litigation Support” and “Legal Services” be used interchangeably, the terms were not defined as such. The Bureau’s failure to define “Legal Services” in the Bid Solicitation and/or State-Supplied Price Sheet, and in an absence of any explanation in the Bid Solicitation documents that “Legal Services” and “Testimony and Litigation Support” are the same for the purposes of this Bid Solicitation, created an ambiguity in the procurement. This ambiguity led to confusion among the Vendors {Bidders} and resulted in eleven (11) out of thirty eight (38) Vendors {Bidders} being found non-responsive to the mandatory material requirements of the Bid Solicitation, because they failed to provide required pricing for “Legal Services Hourly Rate”. See March 25, 2020, Recommendation Report, pgs. 3-6.

In the protest Integra requests that the Division identify the published text, guideline or article that allows it to cancel the Bid Solicitation. 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 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.” *Ibid*, N.J.S.A. 52:34-12.

In *A&A Indus. Piping v. County of Passaic*, 2012 N.J. Super. Unpub. LEXIS 919 (App. Div. 2012), the county determined that it was prudent to reject all bids received, cancel the procurement and re-bid the contract because of an error in the county’s request for quotes. A&A argued that a re-bid was not permitted and that it should be awarded the contract as the lowest responsible bidder. *Id.* at *1. After review, the Appellate Division concluded that county’s decision to cancel the procurement to correct the error guaranteed that all bidders would be on equal footing, by ensuring that the work identified by the request for quotes would be performed as required and created a level “playing field by ensuring that bidders are guided by a uniform understanding of the County’s bid requirements and are not misled by mistakes or omissions in the specifications.” *Id.* at *10, *citing*, *CFG Health Sys., LLC v. Cnty. of Essex*, 411 N.J. Super. 378, 389 (App. Div. 2010). Thus, the Appellate Division determined that the County’s decision to reject all bids received, cancel the procurement and re-bid the contract was not arbitrary, capricious or unreasonable. *A&A Indus. Piping*, *supra*, 2012 N.J. Super. Unpub. LEXIS *11, *citing*, *PENPAC, Inc. v. Morris Cnty. Mun. Utils. Auth.*, 299 N.J. Super. 288, 297 (App. Div. 1997).

Similar to the situation in *A&A Indus. Piping*, here the decision to cancel the Bid Solicitation was due to a discrepancy between the Bid Solicitation and the State-supplied price sheet, not due to a mistake of the Vendors {Bidders}. The decision to cancel ensures that the contract will be performed as required and ensure a level playing field for all Vendors {Bidders}.

This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth by the Vendors {Bidders} in preparing and submitting the Quote. However, after reviewing the record of this procurement, because of the ambiguity between the Bid Solicitation and the State supplied price sheet I determined that it was in the public interest to reject all Quotes submitted and cancel the subject Bid Solicitation.

The Bureau, through its November 23, 2020 Recommendation Report and the December 1, 2020 Notice of Cancellation letter, took the procedural steps necessary to cancel the subject Bid Solicitation as required by the previous final agency decisions. Accordingly, I find no reason to overturn the Bureau's actions. This is my final agency decision with respect to the protest submitted by Integra.

Thank you for your company's interest in doing business with the State of New Jersey. I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. Please monitor the Division's [NJSTART](#) website for future bidding opportunities for these services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: M. Dunn
R. Regan
K. Popso
N. Ghorbani