



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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November 2, 2020

Via Electronic Mail Only Christine.Harashinski@stewart.com

Christine Harashinski, Office Manager
Stewart Title
14 Wall Street
Princeton, NJ 08540

Re: I/M/O Bid Solicitation #20DPP00475 Stewart Title
Protest of Notice of Cancellation
T2967 Green Acres Program – Title Searches

Dear Ms. Harashinski:

This final agency decision is in response to your correspondence of October 16, 2020, on behalf of Stewart Title (Stewart) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that letter, you protest the October 1, 2020, Notice of Cancellation issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #20DPP00475 – T2967 Green Acres Program – Title Searches (Bid Solicitation).

By way of background, on January 28, 2020, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Environmental Protection (DEP). Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes from by licensed title producers to provide title search services, including reports and insurance. *Ibid*. In order to meet the needs of DEP and the State's Cooperative Purchasing Program Participants, the State intended to award up top eight (8) Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered.

On May 19, 2020, the Division's Proposal Review Unit opened one (1) Quote received by the submission deadline. After conducting an initial review of the Quote for the compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded the Quote to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*.

On September 22, 2020, after completing the review and evaluation of the submitted Quote, and reviewing the Solicitation and Quote received with DEP, the Bureau prepared a Recommendation Report which recommended the Bid Solicitation be cancelled and re-bid. The Recommendation Report noted that the reason for the cancellation was "only (1) Quote being received in response to this multiple award Bid Solicitation was deemed by DEP to be insufficient to provide the required services in full." Recommendation Report, p. 1. Prior to recommendation that the Bid Solicitation be cancelled, the Bureau

conducted a survey of the bidding community to determine whether re-procurement would result in a larger pool of potential Vendors {Bidders}. The results of the survey revealed:

- Two (2) of the responding potential Vendors {Bidders} claimed to have not received notification of the advertised Bid Solicitation.
- Three (3) of the responding Vendors {Bidders} stated, “the State’s requirements were too onerous; Bid package is unreasonable with pricing, search requirements, and deliverables; we actually lose money handling this work”.
- Three (3) responding Vendors {Bidders} agreed that the rates established by the NJ Department of Banking and Insurance’s (DOBI) Rate Manual affected their decision to not submit a proposal.
- Three (3) responding Vendors {Bidders} confirmed that they were aware of the Bid Solicitation’s structure to match all current and future rate[s] established by DOBI, which was a structural change from the current Blanket P.O. aimed at providing more competitive pricing to Vendors {Bidders}.
- When asked what changes to the Bid Solicitation would make their firm more likely to submit a Quote, a Vendor {Bidder} stated, “[Changes to] Price and regulatory requirements; Adding an allowable fee for time spend on the file; Email solicitations to title search firms”.

Accordingly, on October 1, 2020 the Bureau sent a letter to Stewart advising that it was the State’s intent to cancel the Bid Solicitation. Specifically, the Bureau advised that:

The reasoning for the cancellation of this Bid Solicitation is that only one (1) Quote was received in response to this multiple award procurement. The Department of Environmental Protection has determined that a sole Vendor {Contractor} cannot successfully provide the full scope of services required by this Bid Solicitation. As such, the Department of Environmental Protection has requested that this Bid Solicitation be cancelled and re-bid.

In addition, the Bureau provided Stewart with a copy of the Recommendation Report to cancel the Bid Solicitation.

On October 16, 2020, Stewart sent a protest letter to the Division challenging the Bureau’s October 1, 2020, Notice of Cancellation. In support of its protest, Stewart states in part:

We are stating that we do have sufficient support to perform the required services in full. As shown in our bid, we are direct operations for Stewart Title Guaranty Company, one of the top five national underwriters in the country, which has been in business for over 125 years. Our STGC underwriting department is located in the same suite in our Parsippany NJ offices. We have numerous title officers with years of experience to complete the title work.

In consideration of Stewart’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, Stewart’s Quote and 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. 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*

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*.

The record of this procurement reveals that to meet DEP’s anticipated need for title search services, including reports and insurance, the Bureau intended to make up to eight (8) statewide Blanket P.O. awards. With respect to soliciting Quotes from potential Vendors {Bidders}, the record reveals that in addition to the statutorily required notification placed in The Star Ledger, 54 potential Vendors {Bidders} had registered in Division’s **NJSTART** eProcurement system for the commodity codes associated with this procurement and received notification of the Bid Solicitation from **NJSTART**. Approximately 15 potential Vendors {Bidders} added themselves to the Bid Holder list enabling automatic notification of amendments to the Bid Solicitation; however, only one (1) Vendor {Bidder}, Stewart, chose to submit a Quote. Based upon its historical use of the awarded Blanket P.O.s, DEP determined that one Vendor {Contractor} would not be sufficient to cover its anticipated need for this contract and requested that the Bid Solicitation be cancelled and re-procured in hopes of obtaining additional Vendors {Bidders} who would be eligible for contract award.

There is no dispute that Stewart’s Quote is responsive to the requirements of the Bid Solicitation making it eligible for a Blanket P.O. award. Therefore, the question before me is whether the cancellation of the procurement is based upon “cogent or compelling reasons.” See, *I/M/O The Failure To Award To The Lowest Responsible Bidder RFP 09-X-20513 Contract T0002 For Provision Of Bottled Water Services*, 2010 N.J. Super. Unpub. LEXIS 1641, 2010 WL 2795369, *citing*, *Bodies by Lembo v. Middlesex County*, 286 N.J. Super. 298, 309 (App. Div. 1996).

In *Bottled Water*, the New Jersey Appellate Division reviewed the Division’s decision to cancel a Bid Solicitation despite the fact that a responsive Quote had been received. There, in response to a notice of award

Nestle filed a protest which asserted, in part, that DS Waters' bid was deficient for "fail[ing] to indicate the manufacturer, brand, model name and model number on all specified equipment for all counties[.]" and that pursuant to the RFP, the "[f]ailure to submit all information required will result in the bid being considered non[-]responsive."

The Director agreed with this assertion and, in a letter decision issued on December 24, 2008, rescinded the notice of intent to award the contract to DS Waters. The Director "instruct[ed] the [Division] to consider re-bidding [sic] the entire . . . contract with textual and format changes to the RFP to facilitate the bidders' understanding and accomplishment of the requirements for effective bidding."

[*Id.* at 2010 N.J. Super. Unpub. LEXIS 1641 *2-3.]

Nestle disputed the decision to cancel and re-bid the contract. The then Director stated that it was in the State’s and public’s best interest to cancel and re-bid the contract noting:

I determined that, in light of the...results of the...bidding effort and the scrutinized review of the RFP provisions and configuration, it was apparent that various aspects of the...RFP were in need of modification to achieve the level of clarity and consistency that is essential for effective head-to-head competition among bidders, which would, in turn, enhance the likelihood that more favorable pricing could be achieved...[T]o allow the award of a contract for water and water dispensers in 15 counties to [Nestlé] while I am firmly convinced that competition under a more sound RFP and contract will produce a better contract and more favorable pricing for the State would, of course, serve [Nestlé's] best interests, but would not, in my judgment, serve the best interests of the State and its citizens. Also, [the] determination to re-bid the entire contract was in recognition of and buttressed by the State's ongoing efforts to identify and implement stringent austerity measures in light of the budgetary concerns that the State is addressing on a daily basis as it seeks every opportunity to eliminate or curtail expenditures. Thus, I remain convinced that the rebidding [of] all 21 segments of the contract, with improvements to the RFP that include the elimination of provisions and price lines for deposits [sic] charges for demijohns, will produce results that will serve the State's best interests.

[*Id.* at 2010 N.J. Super. Unpub. LEXIS 1641 *3-4.]

Nestle argued that the “Director “disserved” the “public interest” by “failing to award [the] contract . . . to [it] after making all bids public.” *Id.* at 2010 N.J. Super. Unpub. LEXIS 1641 *6. Further, Nestle stated that the Director must demonstrate “a compelling justification” for its decision to rebid the contract.” *Ibid.* The Appellate Division agreed holding that “once the bids have . . . been opened and each bidder's competitive position has been exposed, rejection of all bids should only occur for cogent or compelling reasons.” *Id.* at 2010 N.J. Super. Unpub. LEXIS 1641 *7. The Appellate Division recognized that the Director’s earlier response to the Nestle noted that there would be improvements to the procurement to produce results that would serve the State’s best interest; however, the proposed improvements were not related to the original finding that another vendor was non-responsive to the requirements of the procurement. *Id.* at 2010 N.J. Super. Unpub. LEXIS 1641 *9-10. Accordingly, the Appellate Division reversed the Director’s decision to cancel the procurement and directed that the contract be awarded to the Nestle who had submitted a responsive Quote.

Here, as noted above, based upon its historical use of the awarded Blanket P.O.s, DEP determined that one Vendor {Contractor} would not be sufficient to cover its anticipated need for this contract and requested that the Bid Solicitation be cancelled and re-procured in hopes of obtaining additional Vendors {Bidders} who would be eligible for contract award. Importantly, DEP did not express, nor did the Bureau conclude, that there were errors in the Bid Solicitation that led to the low number of Vendors {Bidders}. Rather, based upon the survey responses, it appears that the main reason for low number of Vendors desiring to submit a Quote in response to the Bid Solicitation, was the fee structure established by Manual of Rates and Charges issued by the New Jersey Land Title Insurance Rating Bureau.

While one Vendor {Contractor} may not be sufficient to complete all of the work required, that alone is not a compelling reason to cancel the Bid Solicitation where there is a responsive Vendor {Bidder}. As noted in *Bodies by Lembo*, “rebidding a contract is fraught with certain dangers.” 286 N.J. Super. at 307. While cancelling the current Bid Solicitation and re-bidding may result in additional Vendors {Bidders}, it

may also result in no Vendors {Bidders} submitting Quotes. It cannot be assumed that rebidding will bring about a better result. See, *Bodies by Lembo*, 286 N.J. Super. at 307.

In the light of the findings set forth above, I reverse the Bureau's October 1, 2020, Notice of Cancellation and direct that a Blanket P.O. award be made to Stewart Title. If necessary to meet DEP's anticipated use of the services sought, the Bureau may issue a supplemental Bid Solicitation to obtain additional Vendors {Contractors}. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: R. Regan
K. Popso
M. Dunn