



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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March 10, 2025

Via Electronic Mail rfp@muncibid.com

Greg Berry, CEO
Muncibid.com, LLC
395 Circle of Progress Drive
Suite D
Pottstown, PA 19464

Re: I/M/O Bid Solicitation #23DPP00896 Muncibid.com, LLC
Protest of Notice of Intent to Award
T2581 Auctioneering Services: Internet Auction to Sell Surplus Property

Dear Mr. Berry:

This final agency decision is in response to your protest application ("Protest") dated February 10, 2025, regarding Bid Solicitation #23DPP00896 – T2581 Auctioneering Services: Internet Auction to Sell Surplus Property ("Bid Solicitation"), to the Division of Purchase and Property ("Division") on behalf of Muncibid.com, LLC ("Muncibid"). In that letter Muncibid argues that the proposed award to Auctions International, Inc. ("Auctions") is in error because there was an "error in calculating Line 5 (ITEM DESCRIPTION: ELECTRONIC PAYMENT FEE) [in Auctions' bid] along with an omission in calculating the proposed electronic payment fee as it pertains to the Bid Fee amounts for each of the three years and across all single asset sale levels." Protest, page 2. Additionally, Muncibid argues that this error resulted in Auctions' pricing being the lowest of the three (3) bidders when in fact, if calculated correctly, it would have been the highest bid.

By way of background, the subject Bid Solicitation was issued on June 24, 2024, by the Division's Procurement Bureau ("Bureau") on behalf of the Distribution and Support Services ("DSS") and to solicit quotes for internet based auctioneering services to sell surplus property. Bid Solicitation Section 1.1, *Purpose and Intent*. Pursuant to Bid Solicitation Section 1.1, *Purpose and Intent*, the State intends to make one (1) Contract award "to that responsible Bidder(s) whose Quote, conforming to the Bid Solicitation is most advantageous to the State of New Jersey (State), price and other factors considered." Bidders' electronic questions were due to the Bureau by July 11, 2024. The Bureau posted Bid Amendment #2, with answers to the questions received from potential Bidders, on September 24, 2024. Bid Amendment #2 also revised the Quote Due date to October 30, 2024.

On October 30, 2024, the Division's Proposal Review Unit opened three (3) Quotes which were received by the submission deadline of 2:00 pm Eastern Time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, all three Quotes were

forwarded to the Bureau for evaluation. Thereafter, the remaining responsive Quotes were reviewed and evaluated in accordance with Bid Solicitation Section 8.9, *Evaluation Criteria*.

After completing its review and evaluation of the Quotes, the Bureau submitted its Recommendation Report recommending that the Contract be awarded to Auctions. Accordingly, on January 28, 2025, the Bureau issued the Notice of Intent to Award letter (NOI) advising the Bidders that it was the State's intent to award a Contract to Auctions consistent with the Recommendation Report.

On February 10, 2025, Muncibid wrote to the Division's Hearing Unit protesting the Bureau's determination to award to Auctions arguing that the Bureau made mistakes in calculating Auctions' bid which incorrectly resulted in Auctions' having the lowest pricing. In support of its Protest, Muncibid included an attachment called "T2581 Bid Tab Notes and Calculations.pdf" ("Muncibid Calculations") which is attached to this Final Agency Decision as Attachment A. Muncibid states in pertinent part:

After careful review of the T2581 Bid Tab document, specifically the Price Analysis (pg1) and the State-Supplied Price Sheet of Auctions International, Inc. (pg2), we have discovered an error in Line 5 (ITEM DESCRIPTION: ELECTRONIC PAYMENT FEE) under Auctions International, along with an omission in calculating the proposed electronic payment fee as it pertains to the Bid Fee amounts for each of the three years and across all single asset sale levels.

This error and omission, in turn, changes the amount on Line 5 of the Price Analysis (Pg 1 of the T2581 Bid Tab Document) under "Auction" from \$170,355.00 to \$1,559,066.80 and changes the Totals Rank amount under "Auction" from \$2,904,355.00 to \$4,293,066.80.

Please see a detailed explanation of our findings below. We have also attached a copy of the T2581 Bid Tab document (T2581 Bid Tab Notes and Calculations.pdf) containing our notes outlining our findings, along with an Excel Spreadsheet detailing our calculations.

[Muncibid Calculations, Page 1.]

Although Muncibid has not requested an in-person presentation as permitted by N.J.A.C. 17:12-3.3(e), it should be noted that "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). In consideration of Muncibid's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, Muncibid's 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)).

The instructions in Bid Solicitation Section 3.35 *State-Supplied Price Sheet Instructions*, provide bidders with step by step instructions for completing the State Supplied Price Sheet (“SSPS”). Step 3 states in pertinent part that “Price Line 5 [Electronic Payment Fee], the Bidder shall insert a firm, fixed percentage for Year 1, Year 2 and Year 3 in the corresponding columns . . .”. *Id.* Auctions bid 2.77% for Year 1, Year 2, and Year 3. Muncibid bid 0% for Price Line 5. In the Protest, Muncibid asserts that

We believe that the correct amount should be the Estimated Line Item Avg Cost times the Estimated Annual Quantity.

312 x \$50,000.00 = \$15,600,000.00

2 x \$250,000.00 = \$500,000.00

1 x \$750,000.00 = \$750,000.00

1 x \$1,000,000.00 = \$1,000,000.00

[Muncibid Calculations, Page 1.]

Muncibid contends that all of the Estimated Annual Quantity results from each of Price Lines 1-4 must be multiplied by the 2.77% Electronic Payment Fee from Price Line 5 of Auctions’ Quote. Muncibid Calculations, Page 5. Muncibid’s calculations show that the total for Price Line 5 in Auctions’ Quote should be \$1,483,335.00 instead of the \$170,355 figure calculated by the Bureau and shown on page 8 in the Recommendation Report dated January 8, 2025 (“Recommendation Report”). The \$1,483,335.00 figure calculated by Muncibid assumes that the Estimated Annual Quantity for each Price Line is exactly the number of auctions that take place every year within that dollar category, an unlikely result as by the very title, each is an estimate. Additionally, Muncibid assumes that each transaction that takes place is paid electronically. The methodology used was the same for each bidder, therefore regardless of the number used, it was equally applied and fair.

Even if we were to indulge Muncibid and their assumptions, Price Line 5, “Electronic Payment Fee” is a fee that the Contractor shall be permitted to collect from the winning Auction Bidder. This is not a fee that is charged to the State. Pursuant to Bid Solicitation Section 9.3, *Contract – Specific Definitions*, “Electronic Payment Fee – The firm, fixed percentage of the winning Auction Bid that will be charged to the winning Auction Bidder for all transactions processed electronically. This Fee shall include any credit card or other processing charges.” Further, Bid Solicitation Section 4.3, *Payment by Winning Auction Bidder*, states in pertinent part, “The Contractor shall be permitted to collect the Electronic Payment Fee for all electronic payments received and processed by the Contractor from the winning Auction Bidder.” As the Electronic Payment Fee is charged to and paid for by the winning Auction Bidder, and **NOT** the State, it is erroneous to include Price Line 5 when calculating the Quote price offered by Auctions in light of cost to the State. Pursuant to Bid Solicitation Section 1.1, *Purpose and Intent*, the State intends to make one (1) Contract award “to that responsible Bidder(s) whose Quote, conforming to the Bid Solicitation is most advantageous to the State of New Jersey (State), price and other factors considered.”

The Division’s Director has broad discretion to select among qualified bidders in public contracting matters. See N.J.S.A. 52:34-12(d); In re Jasper Seating Co., Inc.’s Request for Reconsideration Regarding Request for Proposal No. 07-X-37695, 406 N.J. Super. 213, 222-24 (App. Div. 2009). N.J.S.A. 52:34-12(d) makes clear that the Division’s Director has the exclusive discretion to determine “which bid will be most advantageous to the State, ‘price and other factors considered.’” Commercial Cleaning v. Sullivan, 47 N.J. 539 (1966). The New Jersey Courts have long recognized that the purpose of the public bidding

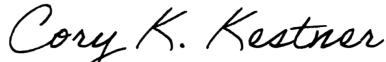
process is to “secure for the public the benefits of unfettered competition.” Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the “public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good.” Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997).

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the Contract be awarded as outlined in the Recommendation Report. Accordingly, I sustain the January 28, 2025, Notice of Intent to Award. This is my final agency decision.

Thank you for your company’s continuing 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

This is the Division’s final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Cory K. Kestner
Chief Hearing Officer

CKK/CMD

c: C. Clarke
D. Warren
O. Olubanjo