



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

August 10, 2015

Via Electronic Mail [luvanderhollaway@yahoo.com] and USPS Regular Mail

Luvander Hollaway, Owner/Operator
Alternate Source Auto Parts
47 Central Ave.
East Orange, NJ 07018

RE: Protest of Notice of Proposal Rejection
RFP #15-X-23842 Automotive Parts for Heavy Duty Vehicles (Class 5 or Higher, Over 15,000
lb. GVWR) T-2085

Dear Mr. Hollaway:

This letter is in response to your fax dated April 17, 2015, and received April 20, 2015, referencing the subject Request for Proposal ("RFP") and regarding the proposal submitted by Alternate Source Auto Parts ("Alternate Source") to the Division of Purchase and Property ("the Division"). The record of this procurement notes that Alternate Source's proposal was rejected for missing pricing information. In your letter, you contend that Alternate Source enclosed a CD with its original proposal submission that contained the required pricing information. Accordingly, you request the Division reevaluate Alternate Source's proposal with the pricing information included on the CD.

I have reviewed the record of this procurement, including the RFP, Alternate Source's proposal, and relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of Alternate Source's protest.

The above-referenced solicitation was comprised of the RFP and other documents, which provided guidance on the information required to be included with all submitted proposals. RFP Section 4.4.1.6 *Pricing* specified: "The bidder must submit its pricing on the State supplied Price Sheet/Schedule and supply any additional pricing information as directed in RFP Section 4.4.5." RFP Section 4.4.5 *Price Schedule/Sheet* further provided:

4.4.5 PRICE SCHEDULE/SHEET

In order for the State to make sound business judgments regarding products and prices offered in response to this RFP, the bidder must supply, with its proposal, the information requested on the RFP's pricing lines in sufficient detail as to allow the State to determine the firm, fixed proposal pricing and the precise product or service being offered, i.e., with no possible misinterpretation of the price or product/service being offered by the bidder. **A bidder's failure to provide, within its proposal, the information deemed by the State to be essential for product identification or**

price determination will result in rejection of that bidder's proposal. Notwithstanding the aforementioned material obligation, in order to support the State's decision-making process, the State may require a bidder to provide additional information or documentation that has been deemed not to be material to product identification or price determination, in which case, the bidder shall, within the time limit set forth in the written request, comply with said request. Each bidder is required to hold its prices firm through issuance of contract.

[(Emphasis added.)]

As explained in RFP Section 4.4.7 *Method of Bidding*, bidders were required to indicate the percentage discount on the supplied Price Sheet:

4.4.7.1 Each OEM and non-OEM brand in each category is represented by a price line item. **Bidders shall bid firm, fixed % discount off manufacturer's latest price list, by entering the percentage discount bid in the "DISCOUNT %" column (fifth column from the left) on each price line on price sheets.** A bidder's entry in the "DISCOUNT %" column shall be considered a percentage (%). For example, entry of "50" shall be considered "50%" and that of "0.50" shall be considered "0.50%". **If a bidder provides region and price list information but leaves the "DISCOUNT %" column blank on any parts price line, it shall be considered that the bidder provided no proposal for that price line item.** Multiple or series or range of discounts (including plus and minus discounts), volume discounts, or fixed price (firm dollar amount) on any price line will not be acceptable, and will result in rejection of the proposal for that price line only.

4.4.7.2 The State will accept the manufacturer's invoice price list (cost sheet), with a certification from the manufacturer that no retail price list is available. In such instance, the bidder will bid % mark-up (by entering +5% or 5% mark-up, for example) on invoice prices (costs) in the fifth column from left ("DISCOUNT %") on each price line, and indicate in the "PRICE LIST TYPE" field on each price line that it is providing an invoice price (cost) list.

Important note: If the State receives conflicting information from a brand manufacturer regarding discount/mark-up pricing (through manufacturer's certification letter), the State may elect to not make an award for that particular brand. The State reserves the right to clarify the validity of such information with a brand manufacturer directly.

....

[(Emphasis added.)]

A review of Alternate Source's proposal submission shows that Alternate Source included a CD entitled "Alternate Source Aut[o] Parts Price List" accompanied by a letter from its sales representative that stated, "Please accept as our current prices the CD provided. Their effective date is 3/1/2015. Should you require any other price files, please don't hesitate to contact me." The CD included price lists in Excel sheet format. However, Alternate Source's proposal did not include the required State-supplied Price Sheet, nor did the proposal indicate the firm, fixed percentage discount off price list pricing. As noted above in RFP Section 4.4.7.2, the State would accept a manufacturer's invoice price list provided it included a certification from the manufacturer "that no retail price list is available." In such an instance, the bidder was to include a percentage mark-up on the invoice prices.

Pursuant to N.J.A.C. 17:12-2.2,¹ a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set

¹ The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

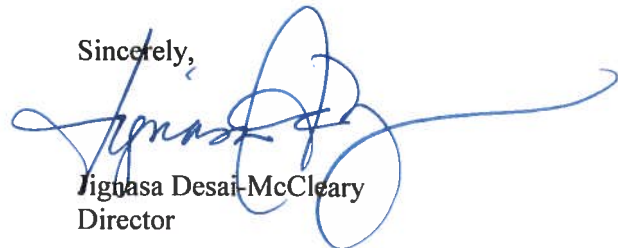
forth in RFP Sections 4.4.1.6 and 4.4.5, pricing information supplied on the provided Price Sheet was required at the time of proposal submission and a bidder's failure to include the information essential for price determination "will result in rejection of that bidder's proposal."

In this case, the omission of a properly completed Price Sheet, whether on the State-supplied sheet or on the CD you supplied, indicating a percentage discount or mark-up, from Alternate Source's proposal renders its proposal non-responsive. Without the required information specified in the RFP, the Procurement Bureau is unable to evaluate Alternate Source's proposal to determine the best pricing for the State.

Notwithstanding Alternate Source's interest in competing for this procurement, it would not be in the State's best interests to allow a bidder who did not provide the required information to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary documents and information were provided as required. In addition, the pricing submitted with Alternate Source's proposal was unclear. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of Alternate Source's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Alternate Source with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision on this matter.

This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting Alternate Source's proposal. I invite you to take this opportunity to register your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system. Thank you for your continued interest in doing business with the State of New Jersey.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jignasa Desai-McCleary", with a long horizontal flourish extending to the right.

Jignasa Desai-McCleary
Director

JD-M:DF

c: M. Griffin
K. Thomas
V. Bequer
D. Rodriguez
A. Nelson