



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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June 2, 2017

Via Electronic Mail [manderson@proliteracy.org] and USPS Regular Mail

Mary Kay Anderson
Customer Service & Educational Sales Consultant
ProLiteracy Worldwide / New Readers Press
104 Marcellus St.
Syracuse, NY 13204

Re: Protest of Notice of Proposal Rejection
Solicitation #17DPP00111: T0114 Library and School Supplies

Dear Mr. Anderson:

This letter is in response to your email of May 16, 2017, on behalf of ProLiteracy Worldwide / New Readers Press (hereinafter "ProLiteracy") which was received by the Hearing Unit of the Division of Purchase and Property (hereinafter "Division"). In that letter, ProLiteracy protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Solicitation #17DPP00111: T0114 Library and School Supplies. The record of this procurement reveals that ProLiteracy's Quote {Proposal} (hereinafter "Proposal") was rejected because the submitted price sheet was missing the required pricing information.

In consideration of ProLiteracy's protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP"), ProLiteracy's Proposal, 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.

By way of background, on March 3, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the above referenced RFP on behalf of State Using Agencies and Cooperative Purchasing Partners, to solicit Proposals for library and school supplies. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award a Master Blanket Purchase Order (Blanket P.O.) {Contract} (hereinafter "Contract") to each responsive Vendor {Bidder} (hereinafter "Bidder") who submits a Proposal that meets the category definition and requirements set forth in RFP § 3.1 *Library & School Supplies*. *Ibid*. Specifically, the RFP sought the following five (5) categories of goods - Category 1: Arts and Crafts Equipment/Supplies; Category 2: Manual/Electronic Boards, Bulletin Boards & Chalkboards; Category 3: Teaching Aids, All Grades; Category 4: School Audio & Visual Equipment & Supplies; and, Category 5: Library Supplies. RFP § 3.1 *Library & School Supplies*.

On April 25, 2017, the Proposal Review Unit opened the Proposals received by the submission deadline of 2:00 p.m. After conducting an initial review of the Proposals submitted, the Proposal Review Unit found that ProLiteracy’s Proposal did not include a completed price sheet; specifically, the required discount/mark-up column was blank. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection. On May 16, 2015, ProLiteracy submitted a protest to the Division stating:

I am writing in regards to the Notice of Proposal Rejection that I received for solicitation #17DPP00111.

I am asking you to please reconsider and allow me to send any appropriate forms. Please let me know how to proceed with this, and if there is anything that can be done.

A review of the record of this procurement reveals that ProLiteracy submitted a Proposal for Category 3: Teaching Aids, All Grades in response to the RFP. While ProLiteracy did submit a price sheet, as shown in the screenshot below, ProLiteracy did not include any percentage discount or mark-up in the “% Percentage Discount or Markup for Orders Under \$2,499.99” column (hereinafter “field”) as required by RFP § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*.

CATEGORY 3 - TEACHING AIDS, ALL GRADES							
	Markup/Discount from Catalog	% Percentage Discount or Markup for Orders Under \$2,499.99. See Section 4.4.5.2	% Percentage Discount or Markup for Orders Over \$2,500.00. See Section 4.4.5.2	% Cash Discount for Expedited Payment. See Section 4.4.5.6	Delivery Days ARD. See Section 4.4.5.4	Catalog File Name. See Section 4.4.5.2	Catalog Page Number(s). Applicable to the Category. See Section 4.4.5.2
3	Discount				eight	2017 Adult Education	All

As noted above, ProLiteracy requests the opportunity to submit the missing information. The question to be answered is whether ProLiteracy is able to submit the missing information post Proposal opening within the confines of the Appellate Division’s reasoning in In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566 (App. Div. 1995). There, the court held that:

[t]he RFP specifically approved of bidders’ clarifying or elaborating in their proposals in post-opening proceedings but prohibited supplementation, change or correction. In 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.

[Id. at 597.]

With respect to the submitted price sheet, if ProLiteracy intended to submit “0.00%” in the field there would be no change between the price sheet as submitted and the information later provided. In either instance, the result would be a net price being charged to the State for the items provided under the contract. In this scenario, ProLiteracy would only be clarifying that the blank space was intended to be “0.00%.” If however, ProLiteracy intended to submit a non-zero number in the field, for example “5.00%,” there would a change between the price sheet as submitted, and information later provided. It is this change that is not permitted under On-Line Games.

In connection with its review of this protest, on May 30, 2017, the Division’s Hearing Unit wrote to ProLiteracy to clarify whether ProLiteracy intended to submit “0.00%” in the field for Category 3. On

May 31, 2017 ProLiteracy responded “[i]t was not our intent to submit a 0.00% Discount. ProLiteracy Worldwide DBA New Readers Press would like to submit a 20% discount on items with 5+ pricing.”

Pursuant to N.J.A.C. 17:12-2.2, 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.” Here, the subject solicitation was comprised of the RFP, other documents and mandatory forms including the price sheet which was specifically addressed in RFP § 4.4.5 *Price Schedule/Sheet* and RFP § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. Those instructions advised Bidders of the requirement to enter a percentage in the field. Specifically,

4.4.5.2 PRICE SHEET/SCHEDULE ATTACHMENT INSTRUCTIONS

The Vendor {Bidder} shall bid a firm, fixed percentage discount or markup off of the catalog pricing supplied in Bid Solicitation {RFP} Section 4.4.3.2.

- Step 1 – The Vendor {Bidder} shall select if the percentage offered will be a markup or discount from the catalog by selecting one of the options from “Markup/Discount from catalog” column on the Price Sheet;
- Step 2 – The Vendor {Bidder} shall enter a percentage in the “% Percentage Discount or Markup for Orders Under \$2,499.99” column of the price sheet. A Vendor’s {Bidder’s} entry in the “% Percentage” column shall be considered a percentage (%). For example, an entry of “50” shall be considered “50%” and that of “0.50” shall be considered “0.50%”. If a Vendor {Bidder} leaves the “% Percentage” column blank on any price line, it shall be considered that the Vendor {Bidder} provided no Quote {Proposal} for that price line item. A series or a range of discounts or fixed prices (firm dollar amount) on any price line shall not be acceptable, and shall result in rejection of the Quote {Proposal} for that price line.

The ***NJSTART*** system does not prevent a Bidder from submitting a Proposal without all required forms and documentation attached or without the documents being fully completed as mandated by the specifications. The responsibility for the contents of the Proposal, forms, or submittals necessarily and appropriately rests solely with the Bidder. Unfortunately, ProLiteracy submitted its Proposal price sheet without the percentage column being completed as required. ProLiteracy’s statement that it intended to submit a “20% discount” results in an impermissible change to the submitted price sheet contrary to the Appellate Division’s reasoning in On-Line Games.

Notwithstanding ProLiteracy’s interest in competing for this procurement, it would not be in the State’s best interest 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 Bidder’s playing field, as the State received responsive Proposals in which all necessary information, documents and pricing was provided in the Proposal as required. In light of the findings set forth above, ProLiteracy is not eligible 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 by ProLiteracy in preparing and submitting the Proposal.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink that reads "MAGriff". The signature is stylized and cursive.

Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
J. Karamali
A. Nelson
D. Rodriguez