



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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JIGNASA DESAI-MCCLEARY
Director

September 2, 2015

Via Electronic Mail [info@bellmawrtruck.com] and USPS Regular Mail

Mr. Edmond Niemann, Jr.
Bellmawr Truck Repair Co., Inc.
781 Creek Rd.
Bellmawr, NJ 08031

Re: Non-Notification of Bidding Opportunity – Contract T2108
RFP #15-X-23440 Maintenance & Repair for Heavy Duty Vehicles (T2108)

Dear Mr. Niemann,

This correspondence is in response to your letter¹ dated July 30, 2015, received August 7, 2015, submitted on behalf of Bellmawr Truck Repair Co., Inc. (“Bellmawr”), referencing the subject Request for Proposal (“RFP”) and regarding the award of the subject term contract by the Procurement Bureau (“Bureau”) of the Division of Purchase and Property (“Division”). Your letter contends that Bellmawr, a previous T2108 contractor, did not receive an eRFP notice of the re-procurement of the subject contract and thus did not submit a proposal prior to the publicly advertised proposal submission deadline of 2:00 p.m., October 3, 2014. Your letter also notes Bellmawr’s registration with the eRFP notification system and contends that “inconsistencies, mistakes, inadvertent postings, along with ‘unfortunate’ software system errors” contributed to Bellmawr’s lack of participation in the subject solicitation. Bellmawr also requests an opportunity to make an in-person presentation.

As noted in the Notice of Intent to Award Letter issued by the Bureau, the protest period ended with the close of business on June 22, 2015. The resulting contract was awarded on July 21, 2015. In accordance with the Division’s Administrative Code, the “Director may disregard any protest of award filed after the 10 day protest period and proceed with the award of contract(s).” N.J.A.C. 17:12-3.3(b)(3). Nonetheless, I address Bellmawr’s points of protest below.

I have reviewed the record of this procurement, including the RFP, 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 Bellmawr’s protest without an in-person presentation. N.J.A.C. 17:12-3.2(d)(1).

¹ This letter was addressed to the Assistant Director of the Commodities Unit rather than to the Protest Unit. Nevertheless, it is accepted as a formal letter of protest.

At the onset, I note that the Division's public procurement program reflects New Jersey statutory and regulatory requirements that have been affirmed by New Jersey courts. A basic precept of the Division's governing statutes and regulations requires that sealed proposals be submitted by the specified and advertised deadline as announced by public advertisement and website notice. There is no statutory or regulatory requirement for email or other direct notice to potential bidders. The Division's regulations set forth procurement notification requirements at N.J.A.C. 17:12-2.1, Advertising, as follows:

(c) In addition to statutorily mandated public advertising, the Division shall also publish notices of bidding opportunities on the Division's website.

(d) As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service known as the e-RFP Notification Service. Vendors and other interested parties can register to receive direct e-mail notices pertaining to the Division's procurements for goods or services based upon specific commodity classes or codes. As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for e-RFP Notification Service registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division.

By way of background, following the Notice of Intent to Award Letter, based on the evaluation of proposals received by the October 3, 2014 deadline, and subsequent protest period, Bellmawr contacted the Office of the Lieutenant Governor via letter dated July 9, 2015. In this letter, Bellmawr expressed concern that it had not been notified via email that the subject RFP had been issued and confusion as to the June 28, 2015 expiration date of the prior contract. Bellmawr also questioned the lack of information pertaining to the current contract on the Division's website.

This letter was forwarded to the Bureau for consideration. Via letter dated July 20, 2015, Mr. David Reinert, Assistant Director of the Commodities Unit of the Bureau, responded to the issues raised in Bellmawr's letter. Mr. Reinert explained that concerning the prior T2108 contract, commencing on March 1, 2009, the Bureau had exercised every extension available, bringing the contract expiration date to June 28, 2015.

The letter from the Bureau stated that Bellmawr was not registered to receive any eRFP notifications, but pointed out that a Procurement Specialist from the Bureau sent a courtesy email to all potential bidders to the T2108 contract, advising that a new RFP had been published to the Division's website. Specifically, the Bureau sent an email on August 29, 2014, to info@bellmawrtruck.com with the information regarding the reprocurement of T2108.

In response to your July 30, 2015 letter, the Division's Hearing Unit conducted a review of the record of the procurement process for the T2108 contract. The record shows that the procurement was conducted in full accordance with the Division's governing statutes and by its standard announcement procedures and practices, including public notice by newspaper advertisement and by direct email notice to vendors who were registered with the Division's eRFP Notification Service for Commodity Code-Class 060-66 (parts and accessories, automotive, miscellaneous (not otherwise classified)), the sole class code used for the recent procurement of T2108. This commodity code was also the sole class code used for the prior procurement of the T2108 contract in 2008 for which Bellmawr successfully competed to attain the previous term contract.

The Department of Treasury's Division of Revenue and Enterprise Service (DORES) has confirmed that info@bellmawrtruck.com is indeed enrolled in the eRFP notification system. Bellmawr's registration is associated with approximately 38 different commodity codes, as established by the nationally accepted Commodity Code System developed by the National Institute of Governmental Purchasing (NIGP). DORES also confirmed that the eRFP notification system generated and sent out two notification emails for the subject RFP. However, based on DORES's records, Bellmawr is not registered to receive eRFP notifications associated with commodity code 060-66. The responsibility of registration and the selection of commodity codes rests solely with the bidder and a potential bidder will only receive an eRFP notification system email for those commodity codes for which it is registered.

I note that at registration or re-registration and with each issued notice, all eRFP Notification subscribers receive a notification as follows:

eBid e-mail Notification Disclaimer

This eBid email notification system is provided as a courtesy service to the public. Therefore, the State of New Jersey disclaims any express or implied warranties related to the use of the email notification system and for any materials, information, and/or processes contained within the email notification system. Furthermore, the State does not assume any responsibility for the use of or reliance on any information, delivery of information and/or any transmission or non-transmission of such information, provided by the eBid email notification system. Users of the eBid email notification system assume the risk of using or relying on the information. Users are directed to the Division of Purchase and Property Website for any and all up to date information. Neither the State, its employees, nor its agents shall be liable for any damages, including indirect, special, incidental, or consequential damages a user incurs as a result of viewing, distributing, or copying materials, from use of the email notification service even if advised of the possibility of such damages. Any dispute arising from using or attempting to use information or materials contained herein shall be determined in accordance with New Jersey law without regard to conflict of law principles, in the courts of New Jersey.

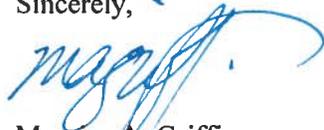
Nonetheless, the record confirms that in addition to the eRFP notification, the Commodities and Fleet Unit of the Bureau sent an email notice to potential bidders, including incumbent contractors, on August 29, 2014, providing notice that the subject RFP had been finalized and published. This email also provided a direct link to access the RFP documents and informed all potential bidders that the proposal opening date was scheduled for October 3, 2014, and to "carefully review the RFP, as a lot of changes have been made." The record shows that info@bellmawrtruck.com was included on the list of bidders who were sent these courtesy notices. This email was sent from the Division email account of the Procurement Specialist, and not the eRFP notification system.

Finally, in response to Bellmawr's assertion that it was perhaps not "pure coincidence" that the new T2108 award was posted to the Division's website on July 21, 2015, following the issuance of the Bureau's July 20, 2015 letter, I note that in accordance with the Division's Administrative Code, if the Division receives a protest following a Notice of Intent to Award during the 10-day protest period, "the Division shall not award the contract in question until a final decision is rendered by the Director on the merits of the protest." N.J.A.C. 17:12-3.3(c). In this case, the Division did receive a protest and a final decision on that protest was issued on July 20, 2015. The award of contract was properly held until the issuance of that final decision.

Based upon the foregoing information, I have determined the subject RFP was properly advertised and Bellmawr was provided notice that the T2108 contract was being resolicited. Therefore, I must deny Bellmawr's request for special consideration for an award of the T2108 contract. This is the Division's final agency decision.

While this is unfortunate for both Bellmawr and the State, the Division appreciates your continued interest in doing business with the State of New Jersey. The Division recommends that Bellmawr review the commodity codes to ensure that it is registered for all applicable codes. We thank you for registering your business with NJSTART at www.njstart.gov, the Divisions' new eProcurement system scheduled to go live soon.

Sincerely,



Maurice A. Griffin
Acting Chief Hearing Officer

c: D. Reinert
K. Thomas
V. Bequer
D. Rodriguez