



State of New Jersey

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March 11, 2015

Via Electronic Mail [jwalsh@tricommcop.com] and USPS Regular Mail

Joseph M. Walsh, President
Tricom Services Corporation
1247 N. Church St., Suite 8
Moorestown, NJ 08057

RE: Protest of Notice of Award of State Contract #T2989
RFP #15-X-23512 Communications Wiring Services

Dear Mr. Walsh:

This letter is in response to your letter dated November 13, 2014, referencing the subject Request for Proposal ("RFP") and regarding the award of the subject contract by the Procurement Bureau ("Bureau") of the Division of Purchase and Property ("Division"). In your letter, you protest the slated award of the contract T2989 and contend that the proposal submitted by Tricom Services Corporation ("Tricom") was erroneously evaluated. As such, you request Tricom's proposal be reevaluated and Tricom be included as a contractor to this term contract.

I have reviewed the record of this procurement, including the RFP, relevant statutes, regulations, and case law, and Tricom's proposal. 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 Tricom's protest.

By way of background, the Bureau publicly advertised the subject RFP to solicit proposals from bidders for communication wiring services. These services include "installation and maintenance of the communications wiring infrastructure within State or local government facilities, including building and campus wiring from the demarcation point to the user outlets." The Bureau intended to award up to seven contracts to responsible bidders, whose proposals, conforming to the RFP, were most advantageous to the State, price and other factors considered. The Bureau also intended to award two contracts to small businesses under the New Jersey Small Business Set-Aside program, if possible.

Following the opening of proposals on July 22, 2014, and an initial review to determine responsiveness to the requirements of the RFP, 11 of the 15 bidders submitting proposals were

asked to provide a best and final offer (“BAFO”). The BAFO pricing was incorporated into the proposals, and the Evaluation Committee (“Committee”)¹ evaluated each proposal using a price comparison ranking methodology and a technical evaluation methodology. Following this review, the Committee unanimously recommended the term contract be awarded to seven bidders (listed alphabetically): AT&T Inc., Extel Communications, Inc., GM Data Communications, Inc., Johnston Communications, Inc., Millennium Communications Group, NetQ Multimedia Co., and New Jersey Business Systems. Tricomm’s proposal was ranked tenth technically and ninth overall.

In its letter of protest, Tricomm first argues it should have been ranked third, not fifth, in terms of its pricing. Tricomm states there was a math error in the Committee’s price schedule bidder ranking and included an attachment with its letter of protest showing what it contends should have been the actual cost rank calculation.

A review of the procurement record reveals that the Committee’s calculations were accurate and in keeping with the RFP. Tricomm erroneously calculated its third place ranking by comparing only the “Business Day” hourly rate line, rather than the total of all hourly rates on Price Schedules B and E. The RFP stated the method for calculating the price comparison as follows:

6.7.2 BIDDER’S PRICE SCHEDULE

For evaluation purposes, Bidders will be ranked according to the total proposal labor rates located on the Price Schedules B and E accompanying this RFP.

The Committee’s report also explained: “Prices for each solution were to be ranked according to the proposed prices in accordance with Section 6.7.2 of the RFP which stated ‘For evaluation purposes, Bidders will be ranked according to the total proposal labor rates located on the Price Schedules B and E accompanying this RFP.’” Therefore, the calculations included in the Evaluation Committee Report were accurate, and Tricomm’s price offer was properly ranked fifth, not third.

In its next argument, Tricomm states that its “proximity in regard to dispatch and rapid response,” its on-site experience, its regional base of Technicians and Project Managers, and its “established rapport” with NJ State clients should have resulted in its selection as a T2989 contractor. Tricomm’s proposal included a list of its State clients and a number of letters from various State agencies providing recommendations.

The Committee found that Tricomm submitted references with its proposal that “supported its contention that it had the capability to provide [communication wiring services] required by the State.” The Committee also mentioned it was particularly “impressed by the references from Deb Bensel of Ancora State Hospital and Kathy Braster of Lourdes Health Systems.” However, under the terms of the RFP, each using agency of the State will solicit a project price quote for

¹ The Committee was comprised of four representatives from the Office of Information Technology and one Procurement Specialist from the Procurement Bureau specializing in technology procurements.

each project.² Therefore, Tricomm's proximity to certain geographical regions would not automatically provide it an advantage over other awardees, as each awardee would provide its most competitive pricing on each project.

In its third argument, Tricomm contends that no intended awardee to this contract utilizes a labor union with an office, dispatch, or warehouse facility in southern New Jersey. Because it maintains labor contracts with the International Brotherhood of Electrical Workers (IBEW) in southern New Jersey, the IBEW Local 351, Tricomm argues it has an advantage in pursuing work in these locations.

However, as previously discussed, each using agency will conduct a "mini-bid" for each project. Therefore, all awardees, in preparing their responses to a mini-bid request, will take into account location when submitting a price for such a project, utilizing the pricing rates offered in response to this RFP, and Tricomm's perceived "advantage" in certain locations is of no consequence. Furthermore, although bidders were required to identify location in Section 4.4.3, *Technical Proposal*, location was not an evaluation criterion used in evaluating proposals in Section 6.7.

In its fourth argument, Tricomm addresses the various proposal inadequacies cited by the Committee and argues that if the subject RFP had "indicated that [a] detailed acknowledging narrative should be included for each defined point within the RFP Scope of Work, that narrative would have been provided."

Tricomm's technical proposal scoring was rated "good" in the Personnel and Experience categories and "fair" in the "Ability of Firm to Complete the Scope of Work based on its Technical Proposal" category. According to its report, the Committee found the following inadequacies in Tricomm's technical proposal that contributed to its rating of "fair" in terms of its ability to complete the Scope of Work:

The Committee determined that the Tricomm could undertake and successfully complete the technical requirements of the contract based on its Technical Proposal. However, Tricomm's proposal did not adequately address many specific RFP sections and or requirements. It provided little detail to its response to RFP Sections: 3.2.1 Paragraph.5 which requires that a contractor respond and be on site in any part of the State within 4 hours; 3.2.1 Paragraphs 8 & 9 which deal with contractor responsibilities and using agency regulations; 3.2.1 Paragraph 11 which requires that all installations shall be in accordance with DPMC Wiring Schedule B, part 2 of 4; 3.2.2 Security Clearance requirements; 3.2.3 testing requirements; 3.3 labor rate requirements; and section 3.5 vendor billing and payment requirements. Based on the listed shortcomings of its response their Technical Proposal was rated in the fair range. The proposal demonstrated that Tricomm did not completely understand the objectives that the contract is intended to meet, including but not limited to the installation and on-going support for CWS, including installation labor and parts associated with the installation and maintenance of low voltage fiber and copper cabling to the State.

Tricomm addresses each inadequacy in its letter of protest and points to various portions of its

² RFP Section 1.1 *Purpose and Intent* states: "Note: This contract will require the State Agencies to solicit a project price quote from all awardees for each project."

proposal where it claims to have provided the necessary information. First, in response to Section 3.2.1, Paragraph 5, Tricomm states that in its proposal submission it provided assurance of its ability “to be able to respond and be on-site in any part of the State within four (4) hours” by stating: “Tricomm has reviewed the 15-X-23512 Scope of Work (SOW). We are confident our organization can effectively execute the defined tasks and sub-tasks detailed within the RFP documentation.” Tricomm provides additional examples of its response time by pointing to, among other things, its service delivery team, various assets it would set aside for service delivery, establishment of communications protocol, how it would “be prepared to quickly expedite orders in response to service dispatch orders,” and the service dispatch operations. However, unlike other intended awardees, Tricomm did not address or explicitly state that it would be on-site in any part of the State within four hours.

In response to RFP Section 3.2.1, Paragraph 8, requiring a contractor to assume all responsibility for its actions, and Paragraph 9, requiring a contractor to observe all regulations in effect at the using agency, Tricomm contends, again, that it acknowledged acceptance of these requirements through its statement: “Tricomm has reviewed the 15-X-23512 Scope of Work (SOW). We are confident our organization can effectively execute the defined tasks and sub-tasks detailed within the RFP documentation.”

This general compliance statement does not address the specific RFP requirements nor effectively demonstrate Tricomm’s understanding and ability to complete the necessary requirements. As outlined in RFP Section 4.4.3 *Technical Proposal*, it was the bidder’s responsibility to “describe its approach and plans for accomplishing the work outlined in the Scope of Work section” and to “set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract.” Indeed, the RFP cautioned all bidders in Section 4.4.3.1: “Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the bidder’s ability to complete the contract.” Thus, while being responsive, the general compliance statement does not provide the level of detail sought by the RFP and merited a lower technical score.

Similarly, in response to Section 3.2.1, Paragraph 11, Section 3.2.2 *Security Clearance*, Section 3.2.3 *Testing*, and Section 3.5 *Vendor Billing and Payment*, Tricomm now cites to its statement “Tricomm has reviewed the 15-X-23512 Scope of Work (SOW). We are confident our organization can effectively execute the defined tasks and sub-tasks detailed within the RFP documentation.” Tricomm provides additional examples of how it responded to these various sections, namely that “appropriate processes will be developed” referencing Section 4.4.3.1 *Management Overview*, yet the level of detail remained lower than that of other bidders.

In response to Section 3.3 *Labor Rates*, Tricomm did submit the required Price Schedules as outlined in Section 4.4.5, including additional job descriptions in Volume 1 of its Proposal, and Best and Final Offer (BAFO) schedules. However, the previously mentioned deficiencies taken together continue to merit a lower technical score. Therefore, the Evaluation Committee properly evaluated Tricomm’s technical proposal, taking into account the amount of information and specificity provided for the RFP requirements.

Finally, Tricomm argues that “it appears as though one or more of the recommended contractors has submitted pricing that . . . is well below the published prevailing wage for listed technician

categories for any county in New Jersey.” However, Tricomm also points out that under the New Jersey Standard Terms and Conditions, Paragraph 2.3 provides:

The bidder's signature on [this proposal] is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

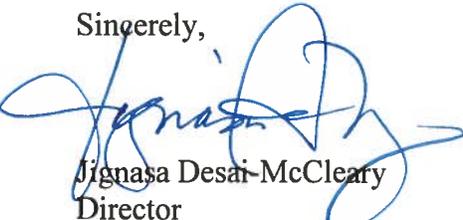
Therefore, through a bidder's signature on the RFP's *Signatory Page*, the State is assured of a bidder's compliance with prevailing wage requirements. All intended awardees complied with this requirement. Any indication to the contrary during the term of the contract would expose a T2989 contractor to remedial action, including contract termination.

Pursuant to N.J.S.A. 52:34-12(a), the Division is statutorily mandated to award a contract “to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, **price and other factors considered.**” (Emphasis added.) Courts have routinely held “the Director is to consider not only price, but also the conformity of respective bids to the invitation, in deciding which bid will be most advantageous to the State. In awarding a contract, the Director necessarily exercises business-like judgment.” Motorola Commc'ns & Elecs., Inc. v. O'Connor, 115 N.J. Super. 317, 321 (App. Div. 1971); see also In re Protest of the Award of the On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 591 (App. Div. 1995), and Burroughs Corp. v. Division of Purchase and Property, 184 N.J. Super. 416, 421 (App. Div. 1981). I find the Bureau properly evaluated the proposals under these guidelines.

In light of the findings set forth above, I must deny Tricomm's protest and request to be included in the subject contract. This is my final agency decision on the matter.

Thank you for your interest in doing business with the State of New Jersey and for registering your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system. The State welcomes your proposals in future solicitations.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

c: G. Olivera
P. MacMeekin
J. Strype