



State of New Jersey

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August 5, 2016

Via Electronic Mail [tomstrohlein@delvatrucks.com] and USPS Regular Mail

Tom Strohlein, President
Del-Val International Trucks, Inc.
1034 Bethlehem Pike
Montgomeryville, PA 18936

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

Dear Mr. Strohlein:

This is in response to your letter dated and received June 21, 2016, referencing the subject Request for Proposal (RFP) and regarding the intended award of the subject contract by the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). On behalf of Del-Val International Trucks, Inc. (Del-Val), you protest the slated award of price line number 00007, stating that the "pricing discounts may have been misunderstood and that a market basket should have applied" as it did for price line numbers 00028 and 00018.

I have reviewed the record of this procurement, including, but not limited to, the RFP, relevant statutes, regulations, and case law, and the proposal submitted by Del-Val. This review has provided me with the information necessary to evaluate the facts of this matter and to render an informed determination on the merits of Del-Val's protest.

By way of background, the subject RFP was issued by the Bureau on behalf of State agencies to solicit proposals for Automotive Parts for Heavy Duty Vehicles (Class 5 or Higher, over 15,000 lb. GVWR). RFP § 1.1 Purpose and Intent. The intent of the RFP is "to award contracts to those responsible bidders whose proposals, conforming to [the] RFP are most advantageous to the State, price and other factors considered." Ibid. The RFP specified that each price line item shall be awarded separately, with a "maximum of three awards per region, one primary, one secondary and one tertiary . . . for each price line item." RFP § 4.4.7.6. Additionally, bidders were instructed that the regions served for each price line item being bid as either north, central, south, north and central, central and south, north and south, or statewide. RFP § 4.4.7.7. This is a reprourement for similar items to those provided under term contract T-2085.

The Bureau received 89 proposals by the proposal submission deadline of March 31, 2015. Eleven proposals were administratively rejected for failing to provide mandatory forms. The remaining proposals were evaluated in accordance with RFP Section 6.6, *Evaluation Criteria*:

The following criteria will be used to evaluate all proposals that meet the requirements of this RFP. The criteria are not necessarily listed in order of

importance:

- a) % discount off list prices or % mark-up on invoice prices (cost) for the brand bid.
- b) Experience of the bidder.
- c) The bidder's past performance under similar contracts, including if applicable, the Division's vendor performance database.
- d) Delivery schedule bid.
- e) Tie proposals will be resolved in accordance with N.J.A.C. 17:12-2.10.

In a situation where different bidders have quoted based upon different types of manufacturer's price lists for the same brand (for example, retail, wholesale and jobber) the State will evaluate each of the bidders' submissions by conducting a comparison, which will consist of choosing a market basket of ten (10) part numbers from each bidders price list submission and applying the % discount bid. The proposals will be ranked based on the lowest combined pricing for the parts selected. The method for selecting the market basket will be set prior to proposal opening and will not be revealed to bidders until time of award.

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Following evaluation, the Bureau issued a Notice of Intent to Award letter on June 8, 2016 (NOI), recommending an award to 60 bidders. Del-Val was recommended an award for lines 00006 (secondary, statewide), 00007 (secondary, north region), 00007 (tertiary, central and south regions), 00018 (secondary, west region), and 00028 (tertiary, north and south regions).

In its letter of protest, Del-Val asserts that a market basket evaluation should have been utilized for price line 00007, *OEM (Category 1) International Brand*, as was conducted for price lines 00018 and 00028. Del-Val included a "sample of parts illustrating the advantage of [its] pricing at 11.7% off International's published National Fleet pricing . . . vs. the alternative discount off of retail list price."

Del-Val's assertion is premised on an apparent miscommunication between Del-Val and the Bureau following the NOI. Del-Val, in a June 17, 2016 email, requested that the "bid tally" related "items #6, #7, #18 & #28" for all bidders who bid on these price lines be sent to Del-Val. These bid tabulation documents showing that a market basket had been done for price line 00007 were forwarded to Del-Val that same day. Subsequent to being forwarded the bid tabulations, a representative from Del-Val asked the Bureau if a market basket analysis was utilized in the evaluation of price line 00007. However, the bid tabulations and the market basket analysis determinations had been completed by another procurement professional prior to transfer of this solicitation to the Procurement Specialist who received Del-Val's question, which resulted, on June 21, 2016, in an apparent miscommunication between this second Procurement Specialist and Del-Val leaving the impression that a market basket had not been done for this price line.

As noted above, the RFP specified a market basket would be utilized in evaluating proposals when different bidders submitted proposal pricing "based upon different types of manufacturer's price lists for the same brand (for example, retail, wholesale and jobber)[.]" RFP § 6.6, *Evaluation Criteria*. A review of the procurement confirms that a market basket was in fact used in evaluating price line 00007.

Regarding price line 00007, *Category 1: OEM, Group 1, International brand*, bidders were advised to bid a "firm, fixed % discount off manufacturer's latest price list, by entering the percentage discount bid in the 'DISCOUNT %' column (fifth column from the left)[.]" RFP § 4.4.7.1. The Bureau received six responsive proposals for price line 00007; four of those proposals listed the retail price list, one listed Major Fleet, and one (Del-Val) listed National Fleet. The Hearing Unit independently investigated whether a market basket approach was used for price line 0007 and determined that the Bureau used a market basket to determine the price ranking for this price line. (The documentation

showing this market basket is attached to this decision for your reference.) The Bureau randomly selected 10 high-priced parts, prior to proposal opening, to compare pricing and rank proposals. This evaluation ranked Del-Val's proposal for price line 00007 third overall. Because not all bidders bid on all regions, Del-Val was recommended as the secondary awardee for the North region and tertiary awardee for the Central and South regions.

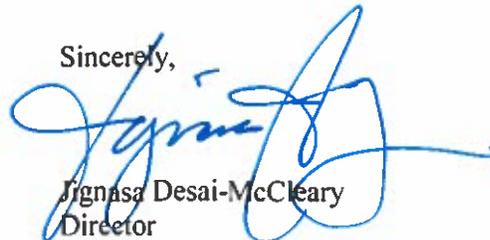
Although Del-Val includes a selection of sample parts "illustrating the advantage of [its] pricing at 11.7% off of International's published National Fleet pricing," the Procurement Bureau relied on its market basket approach, developed prior to proposal opening to ensure impartiality, in completing an evaluation of proposals. The Bureau's selection of these parts prior to proposal opening maintains the integrity of the market basket analysis and provides a level playing field for all bidders.

Del-Val also states in its letter of protest that its "sample parts are popular International parts stocked in the International parts warehouses which means they are most commonly used in fleets across the country." This solicitation was advertised to ensure that using agencies obtained parts necessary for heavy duty vehicles, not necessarily the most popular parts of any particular manufacturer. Hence, the price lines awarded to the intended awardees, including Del-Val's award for price line 00007 in the North, Central, and South regions, ensures that the using agencies have the parts necessary for their heavy duty vehicles fleets.

Based on the foregoing, I uphold the intended award in the subject solicitation. This is my final agency decision.

Thank you for your continued interested in doing business with the State of New Jersey and for registering your business with NJSTART, the State's new eprocurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

c: J. Kerchner
K. Thomas
S. Ghorbani