



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039

CHRIS CHRISTIE
Governor

ANDREW P. SIDAMON-ERISTOFF
State Treasurer

KIM GUADAGNO
Lt. Governor

JIGNASA DESAI-MCCLEARY
Director

Telephone (609) 292-4886 / Facsimile (609) 984-2575

October 17, 2014

Via eMail [Gene Schriver <gene@globolanguage.com>] and US Regular Mail

Jiri Stejskal, PhD, CEO
CETRA Language Solutions
Eugene Schriver IV, Esq., CEO
GLOBO Language Solutions
7804 Montgomery Avenue
Elkins Park, PA 19027

Subject: Request for Reconsideration of Final Agency Decision
Request for Quotation ("RFQ") 7710525 - *Translation Services: Foreign Language*

Dear Dr. Stejskal and Mr. Schriver:

This letter is in response to your letter dated September 29, 2014 by which you request reconsideration of my final agency decision dated August 22, 2014. In that decision, I discussed issues surrounding the subject contract procurement, which was conducted under the Division of Purchase and Property's ("Division") statutory prerogative to seek competitive quotations ("quotes") from qualified holders of Federal General Services Administration ("GSA") contracts, in accord with the intent and requirements of N.J.S.A. 52:34-6.1 and N.J.A.C. 17:12-1A.5. After considerable and lengthy review of the record of the procurement in an effort to assess the facts, I determined that the procurement process utilized in this case did not serve to secure a materially responsive quote that could constitute a sound basis for an award of a viable contract. This letter serves to clarify and supplement the determinations set forth in my August 22, 2014 decision.

Your letter challenges my finding that CETRA's quote included pricing for languages not identified in its GSA contract, and that the quote was therefore materially deficient. This finding was based on the statutory requirement and the subject RFQ's stipulation that quoters offer their contract pricing or lower pricing for each of 20 specified languages. Because I found that CETRA's GSA contract did not include pricing for three of the 20 languages listed in the RFP, specifically Turkish, Haitian Creole, and Burmese, CETRA's price quote for those languages in response to the RFQ could not be compared to pricing listed in the GSA contract to determine whether the quote was the same or lower. Thus, I determined that CETRA's quote did not meet the requirements of the RFQ. This deficiency was material, and could not be corrected following the opening of quotes, and CETRA's quote therefore was rejected and the notice of contract award was rescinded.¹

RFQ Section 3, *Scope of Work*, set forth the contractual requirements and standards to which the contractor(s) would be required to adhere. Subsection 3.2, *Language Services*, sought narrative and pricing responses as

¹ I similarly found that the quote submitted by Language Line Solutions ("LLS") was properly rejected by the Procurement Bureau because LLS's GSA contract did not include pricing for three of the 20 languages as required by the RFQ.

part of a quote for four types of services: (1) in-person interpretation; (2) telephonic interpretation; (3) written translation; and (4) written translation authentication. Responsive quotes were required to offer pricing for each of these four services for all 20 languages identified in RFQ Subsection 1.2, *Background*, as follows:

1. Spanish	6. Portuguese	11. Vietnamese	16. Bengali
2. Haitian Creole	7. Gujarati [sic]*	12. Cantonese	17. Tagalog
3. Mandarin	8. Korean	13. Turkish	18. Italian
4. Russian	9. Polish	14. French	19. Punjabi
5. Arabic	10. Hindi	15. Albanian	20. Burmese

* Misspelling of "Gujarati"

The following segments of CETRA’s GSA contract documents, which in exact content and form, were included in CETRA’s quote as the only express indication of the languages covered by its GSA contract and offered in its quote, identify the translation and interpretation services offered by CETRA:

SIN 382-1: TRANSLATION SERVICES

CETRA, Inc. provides translation services to US government agencies under Special Item Number 382-1. These services include translation of printed and electronic documents by technically qualified and experienced native-speaking language specialists, editing, quality assurance procedures, glossary development, and final output in the required media format. In addition, CETRA provides comprehensive support services to agencies by providing project management and consultation services.

Languages Offered

CETRA provides translation services in all world languages. For pricing purposes, the languages are divided into the following four groups:

- GROUP 1: **Latin American:** Portuguese (Brazil), Spanish (Latin America), Spanish (USA)
- GROUP 2: **European:** Bosnian, Bulgarian, Croatian, Czech, Danish, Dutch, Finnish, French (Africa), French (Canada), French (Europe), German, Hungarian, Italian, Norwegian, Polish, Portuguese (Europe), Romanian, Russian, Serbian, Slovak, Slovene, Spanish (Europe), Swedish, Turkish, Ukrainian
- GROUP 3: **Asian, Middle Eastern, and Indian:** Arabic, Bengali, Cantonese, Chinese (Simplified), Chinese (Traditional), Dari, Farsi, Greek, Gujarati, Hebrew, Hindi, Indonesian, Japanese, Korean, Malay, Panjabi, Pashto, Persian, Tamil, Thai, Urdu, Vietnamese
- GROUP 4: **Languages of Limited Diffusion:** Afrikaans, Albanian, Armenian, Azeri, Balinese, Brahui, Creole, Estonian, Georgian, Hmong, Kannada, Kazakh, Khmer (Cambodian), Korean (North), Kurdish, Kyrgyz, Lao, Latvian, Lithuanian, Marathi, Oriya, Samoan, Sindhi, Siraiki, Somali, Swahili, Tagalog, Tajik, Telugu, Uzbek

SIN 382-2: INTERPRETATION SERVICES

CETRA, Inc. provides foreign language interpretation services to US government agencies under Special Item Number 382-2. These services include conference interpretation and equipment rental, consecutive and simultaneous interpretation, whisper interpretation, escort interpretation, over-the-phone interpretation (OPI) and videoconferencing, voice-over, simulcasting, subtitling, and relay interpretation. In addition, CETRA provides comprehensive support services to agencies by providing project management and consultation services.

Languages Offered

CETRA provides translation services in all world languages. For pricing purposes, the languages are divided into the following four groups:

GROUP 1: Spanish

GROUP 2: European: Albanian, Bulgarian, Czech, Dutch, French, German, Haitian Creole, Italian, Norwegian, Polish, Portuguese, Russian, Slovak, Ukrainian

GROUP 3: Asian, Middle Eastern, and Indian: Arabic, Bengali, Chinese (Cantonese and Mandarin), Dari, Greek, Gujarati, Farsi, Indonesian, Japanese, Korean, Malayalam, Thai, Urdu, Vietnamese

GROUP 4: Languages of Limited Diffusion: Khmer (Cambodian), Kru, Laotian, Mongolian, Tagalog, Tigrinya

(emphasis in original)

Another review of CETRA's GSA contract in response to your September 29, 2014 letter affirms that the contract contains a statement that CETRA provides translation and interpretation services "in all world languages".² However, CETRA's quote, like its GSA contract, goes on to organize specific languages offered into "Groups," and to offer pricing for services by Group. In the GSA contract's listings of "Languages Offered" by Group for each service, there is no mention of Burmese under either "SIN 382-1: Translation Services" or "SIN 382-2: Interpretation Services." Also, there is no mention of Hindi or Turkish under SIN 382-2. Finally, while there is mention of Creole in Group 4 (Languages of Limited Diffusion) in SIN 382-1, there is no mention of Haitian Creole specifically in the groupings under SIN 382-1. Of note, in a separate part of its GSA contract, CETRA claims to provide "multilingual translation and interpretation services in over 100 languages," considerably more than those identified below the "Languages Offered" segments quoted above, but considerably fewer than "all world languages." However, there is no information provided in the contract about where languages not specifically included in its "Languages Offered" lists would be placed among the Groups or, importantly, how services for unlisted languages, if requested by the federal government, would be priced.³

All of these deficiencies engender uncertainty with regard to which languages are included in CETRA's GSA contract and, of course, its quote, and how CETRA's federal pricing compares to the pricing in its quote for certain languages. In an attempt to obtain further information about CETRA's GSA contract and quote regarding this matter, the Division's assigned hearing officer contacted Jaylene Barry, CPM, CPPB, the GSA Contract Specialist who was identified as the point of contact for the federal government's language services contract. In her email response to the hearing officer's email inquiry, Ms. Barry stated:

Sorry it has taken so long to get back to you but I had to do some research into these contracts.

CETRA'S contract does include Hindi and Punjabi but I did not find Haitian Creole, Burmese and Turkish on their list awarded [sic] languages for Translation Services and/or Interpretation Services.

As noted above, the RFQ required submission of pricing and narrative quotes for the four types of translation and interpretation services for all of the 20 listed languages. RFQ Section 1.1, *Purpose and Intent*, stated that the goal of this procurement effort was to award a "federally-based contract" to the offeror whose quote was

² An internet search of "number of languages in the world" located various sources indicating answers to that inquiry ranging from 100 to 7000, contingent upon the definition applied to "language".

³ A review of the nearly 100 contracts listed on the GSA's Federal Acquisition Service website under "738 II – Language Services" finds no standard grouping or other listing of languages. Some contracts list their languages in alphabetical order with no grouping, while others group the offered languages in various ways, but there is no standard format or content among different vendors' lists of languages.

considered most advantageous to the State. Section 4.2.5, *Price Schedule/Sheet*, further stated that offerors were required to provide their “GSA pricing rates or better” in their price quotes. As discussed in my August 22, 2014 final agency decision, the Procurement Bureau repeatedly indicated in response to vendor questions that respondents to the RFQ must hold GSA contracts covering the services detailed in the RFQ. In particular, the Procurement Bureau stated that “open market items are not allowed in response to this RFQ,” and that “the services which the respondents are responding to must be on the above GSA schedules.”

CETRA thus was required by the RFQ to hold a GSA contract covering in-person interpretation, telephonic interpretation, written translation and written translation authentication for each of the 20 languages identified in the RFQ. However, as discussed above, CETRA’s GSA contract does not specifically identify each of the 20 languages named in the RFQ in its lists of languages provided for both translation and interpretation services. Absent a listing of specific pricing for each of the required services for each of the 20 languages in CETRA’s GSA contract, the Procurement Bureau was not able to determine whether CETRA’s pricing in its quote was equal to or less than its GSA contract pricing.

Unfortunately, CETRA’s response to the RFQ essentially mirrored its GSA wording, presenting its pricing in the same categorized GSA listing that did not specify all 20 languages required. The pricing pages of its quote did not identify the 20 languages, but offered pricing relative only to the four language groupings CETRA created. As a result, the Procurement Bureau found it necessary to contact CETRA for clarification regarding its pricing. Clarification was explicitly sought for the portion of the RFQ covering translation services, unaccountably with no mention of the deficient interpretation services component of CETRA’s proposal.

RFQ Subsection 6.6, *Oral Presentation and/or Clarification of Quotation*, set forth the parameters and limitations of the clarification process for this procurement. In particular, the second paragraph of this subsection drew a distinction between that which is, and that which is not, an appropriate clarification of information presented in a quote:

After the proposals are reviewed, one, some or all of the bidders may be asked to clarify certain aspects of their proposals. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions or revise or modify a proposal, except to the extent that correction of apparent clerical mistakes results in a modification.

This approach is based on the Appellate Division’s holding that, “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. . . . A post-opening commitment to supply an essential missing from a bid is not a clarification.” In re Protest of the Award of the On-Line Games Production & Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 598 (App. Div. 1995). The New Jersey courts have held that a bidder must not be permitted to supplement, change, or correct its bid after the bid opening date. Ibid. Indeed, “no material element of a bid may be provided after bids are opened.” George Harms Constr. Co., Inc. v. New Jersey Tpk. Auth., 127 N.J. 8, 37 (1994). The requirement that bids be evaluated for material defects at the time bids are opened and that bidders not be permitted to supplement or change their bids to remedy a material defect after that time ensures a level playing field and provides the public with assurance of a fair and impartial award process. Barrick v. State, 218 N.J. 247, 260-1 (2014).

In response to the Procurement Bureau’s inquiry, CETRA, for the first time, indicated where each of the 20 languages fell among the four language groups, adding Burmese and Haitian Creole to its quote’s list of languages for translation services, which augmented its quote, thereby exceeding acceptable clarification standards. A post-opening commitment to supply an essential product or service missing from a proposal or quote is not a clarification permitted by this RFQ. It is an impermissible supplementation, change or

correction. Furthermore CETRA's quote, like its GSA contract, did not identify pricing for interpretation services for Hindi⁴, Turkish⁵, or Burmese.

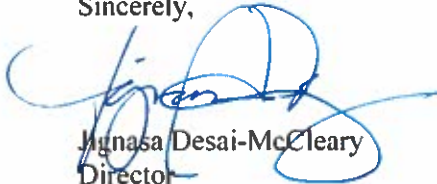
These were material defects in CETRA's quote, as it deprived the State of its assurance that the contract would be performed by CETRA according to the requirements of the RFQ. The Procurement Bureau could not compare CETRA's quoted prices with GSA prices for the languages not listed in the GSA contract. Further, no language can be substituted for another, as all languages and dialects are distinct. The absence of certain languages from CETRA's quote and GSA contract thus made it impossible to know whether CETRA could provide translation and interpretation in all of the languages needed by the State to serve the public. Acceptance of CETRA's quote also would place CETRA in a position of advantage over other offerors by permitting it to change information in its quote after the opening of quotes. Barrick, supra, 218 N.J. at 261; Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974).

As discussed in my August 22, 2014 final agency determination, I find that CETRA's quote did not conform to the requirement of the RFQ and N.J.S.A. 52:34-6.1 that it offer pricing equal to or lower than its GSA pricing for all 20 listed languages for both translation and interpretation services. CETRA should not benefit from the deficiencies of its quote and from the Procurement Bureau's missteps in concluding that CETRA's quote merited the award of contract under these circumstances.

Thus, having considered the arguments presented in your September 29, 2014 letter, for the above reasons in addition to those set forth in my August 22, 2014 decision, I now affirm my determination that CETRA's quote was materially defective and must be rejected. I further affirm my determination that it would be in the best interests of the State under these circumstances to conduct a procurement in a manner that will provide the State using agencies with a viable, comprehensive contract that fully attends to their needs. This is my final agency decision on CETRA's request for reconsideration.

In closing, I want to assure you that neither the final agency decision rendered on August 22, 2014, or this decision, is intended to in any way disparage or call into question CETRA's or GLOBO's qualifications and experience as a successful provider of language-related services to its many clients. The matter at issue was and is the result of an effort to utilize GSA contract-based procurement procedures as a means to establish a viable language translation and interpretation contract. As discussed in my prior decision, no fully responsive quotes were received for this procurement, a condition that suggests a flawed process. Thank you for your interest in doing business with the State of New Jersey and for registering CETRA with **NJ START**, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:RW

c: L. DuBois
E. Mackay
J. Kemery
D. McCall

⁴ Hindi was named as a Group 3 (Asian, Middle Eastern, and Indian) language in the Translation Services listing of both its GSA contract and quote, but was not named as a language in any of the four groups of Interpretation Services languages in either its GSA contract or its quote.

⁵ Turkish was named as a Group 2 (European) language in the Translation Services listing of both its GSA contract and quote, but was not named as a language in any of the four groups of Interpretation Services languages in either its GSA contract or its quote.