



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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March 11, 2015

Via Electronic Mail [[chrisk@ncgcompanies.com](mailto:chrisk@ncgcompanies.com)] and USPS Regular Mail

Christopher Kent, CEO  
Northeast Communications Group, Inc.  
242 Route 156  
Yardville, NJ 08620

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

Dear Mr. Kent:

This is in response to your letter dated October 30, 2014, and amended letter dated November 3, 2014, 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 ("the Division"). In your letters, you protest the slated award of Contract T2989 to five of the seven vendors, contending these scheduled awardees did not propose pricing sufficient to cover prevailing wage rates and would therefore operate at a loss. As such, you request the Division reconsider the intended award to these five vendors and include Northeast Communications Group, Inc. ("NCG") 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 relevant proposal submissions. 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 NCG's protest.

By way of background, the Bureau publicly advertised the subject RFP to solicit proposals from bidders for the communication wiring services on May 1, 2014. 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, are 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 timely proposals on July 22, 2014, and an initial review to determine responsiveness to the requirements of the RFP, 11 of the 15 companies that submitted proposals were asked to provide a best and final offer (“BAFO”). The BAFO pricing was incorporated into the proposals, and the Evaluation Committee (“Committee”)<sup>1</sup> 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. (“Extel”), GM Data Communications, Inc. (“GM Data”), Johnston Communications, Inc., Millennium Communications Group (“Millennium”), NetQ Multimedia Co. (“NetQ”), and New Jersey Business Systems (“NJBS”). NCG’s proposal was ranked tenth overall in consideration of price and technical scoring.

The Committee rated NCG’s technical proposal in the “good” range but reported that NCG proposed hourly wage rates in the evaluated labor categories that were higher than all other bidders except Verizon; i.e., ten bidders had proposed lower hourly rates. Accordingly, the Committee determined that NCG’s proposal did not merit an award of contract.

NCG’s letter of protest contends that NetQ, GM Data, Millennium, NJBS, and Extel all proposed labor rates in the Technician C that do not cover the wage rates of the Prevailing Wage Act, N.J.S.A. 34:11-56.25 to -56.47. To support this contention, NCG included the Mercer County prevailing wage calculation for a Technician C, “performing 16+ cable instruments.” In NCG’s amended letter of protest, it acknowledges the corresponding RFP category was “Technician C/Cable Installer/ Journeyman 15 or Less Drops” and therefore its example was calculated in error. However, NCG continues to assert that the intended awardees’ proposed hourly rates in this category do not satisfy prevailing wage requirements.

The relevant facts of this solicitation indicate that all bidders were required to include certain labor pricing on the Price Schedules included with the RFP. As set forth in the RFP:

#### **4.4.3 TECHNICAL PROPOSAL**

....

There are seven (7) labor categories represented by Schedules A-G. Bidder *shall* complete each appropriate schedule representing the corresponding labor category it proposes. Labor categories not proposed will not be awarded during the term of the contract.

The Bidder *shall* complete **Schedules B and E** representing the hourly labor rate for the corresponding labor category it proposes:

- Hourly Labor Rate Schedule B: Technician C/Cable Installer/Journeyman 15 or less;

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<sup>1</sup> 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.

- Hourly Labor Rate Schedule E: Senior Technician/ Foreman 16 or more drops/Assistant General.

The Bidder *shall* provide a resume for a representative employee for each labor category proposed (with the exception of Apprentice), as required in Section 4.4.4.3 Resumes.

**Proposals that fail to provide the mandatory Schedules B and E shall be deemed nonresponsive and shall not be considered for an award.**

....

[(All emphases in original.)]

Schedules B and E further clarified the bidder was to include the “all-inclusive hourly rate per person,” defined in RFP Section 2.1 as the “hourly rate comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.”

In addition, all bidders were required to comply with the Prevailing Wage Act in setting their hourly wages. As set forth in Section 2.3 of the New Jersey Standard Terms and Conditions<sup>2</sup>:

**PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. 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.**

[(Emphasis added.)]

By signing and including the Signatory Page with a proposal, a bidder attests to its reading, understanding, and agreeing to all conditions, specifications, and addenda of the RFP.

A review of the record reveals that none of the aforementioned intended awardees took exception to any terms contained in the RFP and included a properly executed Signatory Page with their proposals. Because a properly executed Signatory Page certifies compliance with the Standard Terms and Conditions, the State was also assured compliance with the Prevailing Wage Act.

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<sup>2</sup> The Standard Terms and Conditions govern the subject RFP and are incorporated into all contracts or purchase agreements made with the State.

Furthermore, a comparison of the prevailing wages in Mercer County for a Technician C 15 Instruments or Less shows that the intended awardees were compliant with the established prevailing wages in all but one category of one bidder’s proposal (see highlighted cell below). According to the New Jersey Department of Labor and Workforce Development Prevailing Wage Determination (NJDLWD), a Journeyman Technician for 15 Instruments or fewer must receive a total hourly wage of \$58 during a normal business day, between 8:00 a.m. and 4:30 p.m. This corresponds to the wages provided in Price Schedule B:

	Normal Business Day, Mon-Fri, 8:00am-5:00pm	Overtime, Mon-Thur, 5:01 pm – 7:59 am	Friday, 5:01pm– 11:59 pm	Saturday, all day	Sunday, all day	Holiday, all day
Prevailing Wage, Mercer County	\$58	\$87	\$67.67* \$87**	\$87	\$116	\$116
Extel	\$84	\$125	\$125	\$125	\$167	\$167
GM Data	\$69	\$76.50	\$73.50	\$93	\$118	\$118
Millennium	\$78.54	\$117.81	\$78.54	\$117.81	\$117.81	\$117.81
NetQ	\$62	\$93	\$68.20	\$93	\$124	\$124
NJBS	\$80	\$120	\$94	\$120	\$160	\$160

\* Calculated as a shift differential  
\*\* Calculated as overtime

As is evident by the above comparison, four of the five protested intended awardees are compliant with the prevailing wage for Mercer County. Only GM Data proposed a rate for overtime hours, Monday through Thursday, 5:01 p.m. to 7:59 a.m., not in compliance with the posted prevailing wages. However, because the company certified compliance with the Prevailing Wage Act, the State accepted the pricing, accepting that this company opted to operate at a loss in this category. Such a business decision is the prerogative of the bidding entity.

The remainder of NCG’s arguments offered in the amended letter of protest are also without merit. NCG first contends that the RFP requested an Apprentice Rate and that 1) “Non-Union employers do not have access to a state regulated apprentice training program” and “therefore cannot offer a proposal to provide apprentices for work on State projects;” and 2) that the RFP did not specify an apprentice level so there was no way to compare the submitted proposals.

As noted in RFP Section 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.” Although Bidders were requested to provide all-inclusive hourly rates for an apprentice in Schedule A, proposals were not evaluated on this pricing. Therefore, even if a bidder was confused as to which level it was to supply apprentice pricing, this was not a factor in the evaluation and did not unlevel the playing field. Furthermore, during the Question and Answer period, all potential bidders had the opportunity to submit questions for clarifications concerning the RFP. Responding to a bidder-submitted question, the Bureau clarified in

Addendum #4: "There is only 1 apprentice and title has no relationship to number of instruments type of construction, or type of installation (copper or fiber)."

Finally, NCG argues that the language of the RFP was unclear as to Schedules C, D, and F by failing to specify whether pricing was based on a category of 15 or fewer instruments, or 16 or more instruments. This issue was addressed in Question #3 of Addendum #4, by which the Bureau provided the following information to all bidders:

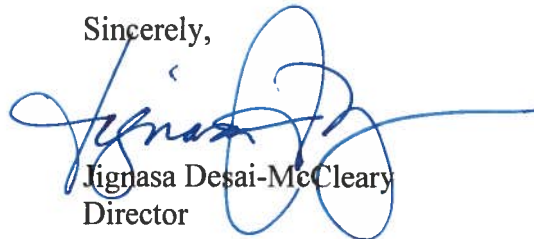
- All titles in the RFP include Fiber optic work and new construction;
- Title 1. There is only 1 apprentice and title has no relationship to number of instruments, type of construction, or type of installation (copper or fiber);
- Title 2. Technician C is relative to journeyman technician (15 instruments or less);
- Title 3. Technician B relative to Working Foreman (15 instruments or less);
- Title 4. Technician A relative to Journeyman Technician (16 instruments or more);
- Title 5. Senior Technician relative to Working foreman (16 or more instruments); and
- Title 6. Master Technician relative to Assistant General Foreman (16 or more instruments).

As explained in RFP Section 1.4.1 *Addenda: Revisions to this RFP*, all bidders are responsible for remaining up-to-date on clarifications or revisions to the RFP and to be knowledgeable of any addenda related to the RFP. Section 1.4.1 also provides that "[a]ny addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP." Therefore, all bidders were on notice of this clarification, which remedied any ambiguity in the language of the RFP.

In light of the findings set forth above, I must deny NCG's request for its proposal to be reevaluated and that NCG be awarded 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](http://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