



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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February 19, 2015

Via Electronic Mail [ALewin@sci-water.com] and USPS Regular Mail

Andrew Lewin, President
Scientific Water Conditioning Co., Inc.
515 Pennsylvania Avenue
Linden, NJ 07036

RE: Protest of Notice of Award of State Contract # T1423
RFP #15-X-23675 Water Treatment – Heating & AC Systems for Treasury (DPMC)

Dear Mr. Lewin:

This is in response to your letter dated January 29, 2015, 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 letter, you protest the slated award of Contract T1423 to The Metro Group, Inc. (“Metro”), contending it did not possess certain licenses and certifications required by the RFP. As such, you request the Division rescind the intended award to Metro and instead include Scientific Water Conditioning Co., Inc. (“SWC”), the next lowest responsible bidder, as the 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 SWC’s protest.

By way of background, the Bureau publicly advertised the subject RFP on September 30, 2014, to solicit proposals from bidders for a complete water treatment program of the heating and cooling systems for various locations on behalf of the Division of Property Management and Construction (“DPMC”). The Bureau intended to award one contract to a responsible bidder whose proposal, conforming to the RFP, is most advantageous to the State, price and other factors considered.

Following the opening of timely submitted proposals on November 25, 2014, and an initial review to determine responsiveness to the requirements of the RFP, all three of the companies that submitted proposals were asked to provide additional information pursuant to RFP Section

4.4.3 and, subsequently, a best and final offer (“BAFO”). Only Metro altered its pricing in response to the BAFO request, reducing its monthly maintenance rate by 4.7% for each location. This BAFO pricing was incorporated into the proposals, and each proposal was evaluated based on total monthly cost for all locations listed in the RFP, additional labor rates, a review of each technician’s resume, a review of the anticipated hours of monthly service, satisfactory reference checks, and a review of submitted safety data sheets. Bidders were then price ranked according to the total three-year maintenance cost. Metro, as the bidder proposing the overall lowest price, was recommended for award of contract. The Bureau issued a Notice of Intent to Award Letter on January 21, 2015.

SWC’s letter of protest contends that Metro is unable to comply with certain requirements of the RFP. SWC first references RFP Section 3.4.3, stating: “The contractor shall use all compounds in compliance with all applicable State and Federal regulations, including but not limited to FDA, USD, OSHA, EPA, and State of New Jersey Right to Know Laws and Regulations.” SWC next points to RFP Section 5.12, *Licenses and Permits*, which states:

The contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award. All costs associated with any such licenses, permits and authorizations must be considered by the bidder in its proposal.

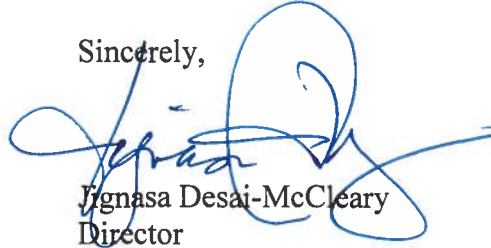
Although SWC contends Metro does not hold a New Jersey Pesticides Business License and has no employee with a New Jersey Class 8D Pesticides Applicator License, Section 5.12 clearly states that all necessary licenses must be submitted to the State Contract Manager **subsequent to the contract award**. Therefore, Metro was not required to have these licenses at the time of proposal submission. The record reveals that Metro was contacted regarding its intent to obtain a New Jersey Class 8D Pesticide Applicator License, and it submitted proof of this license on or about February 3, 2015. In addition, the New Jersey Department of Environmental Protection’s searchable database reveals that Metro possesses a cooling tower Pesticides Applicator Business License, valid through October 31, 2015. Therefore, Metro has obtained all necessary licenses in a timely manner.

Furthermore, on December 3, 2014, the Procurement Specialist from the Bureau requested that all three bidders submit information relating to RFP Section 4.4.3 *Submittals*, including “a list of the types of chemicals to be utilized for this contract.” In response to this request, Metro submitted a Chemical List and Usage dated December 4, 2014, listing vaporene 9200, vaporene 6200, and duboth H-6. DPMC reviewed all information submitted, including a scientific evaluation of the compounds, against the requirements of the RFP and determined Metro to be responsive and responsible.

In light of the findings set forth above, I must deny SWC’s request for the rescission of the intended award to Metro and that SWC be awarded the subject contract. The Bureau is directed to proceed accordingly. 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,

A handwritten signature in blue ink, appearing to read 'Jignasa Desai-McCleary', is written over the typed name and title.

Jignasa Desai-McCleary
Director

JD-M:DF

c: M. Griffin
L. Spildener