



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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*Lt. Governor*

March 15, 2016

Via Email [GJAutoRepair@Live.com] and USPS Regular Mail

Gary Simmons, Owner  
G.J. Auto Repair & Service, LLC  
7128 Blackhorse Pike  
Weymouth, NJ 08330

Re: Protest of Notice of Intent to Award  
RFP 15-X-23841: OEM & Non-OEM Maintenance and Repair Services

Dear Mr. Simmons:

This letter is in response to your correspondence on behalf of G.J. Auto Repair & Service, LLC (G.J. Auto) received by the Hearing Unit of the Division of Purchase and Property (Division) on October 7, 2015. G.J. Auto protests the September 23, 2015 Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) regarding Solicitation #15-X-23841. G.J. Auto requests that the Division add it to the list of vendors for Atlantic County.

In consideration of this protest, I have reviewed the record of this procurement, including the Request for Proposals (RFP), the proposals submitted, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest submitted by G.J. Auto.

By way of background, this RFP was issued by the Bureau on behalf of State Agencies<sup>1</sup> to solicit proposals for OEM and Non-OEM Maintenance and Repair Services for Light/Medium Duty Vehicles, 15,000 lb. GVWR or less. It is the intent of the Bureau to award contracts to those responsible bidders whose proposals, conforming to the RFP are most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*.) Contract awards will be made on a regional basis with each of the State's 21 counties being defined as a region.<sup>2</sup> (RFP § 3.2 *Regional Jurisdiction*.) Bidders were

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<sup>1</sup> The Department of the Treasury – Bureau of Transportation Services (Motor Pool) is the primary using agency for this contract. Motor Pool is responsible for the assignment, use, fueling, maintenance and repair of the State's vehicular fleet. While individual State using agencies have the option of performing maintenance and repair services using the contract vendors; the normal practice of the State using agencies is to utilize the services of the Motor Pool. Motor Pool will make a determination whether the maintenance/repair can be performed in house or whether a contract vendor will be utilized.

<sup>2</sup> Under the previous contract Solicitation #10-X-20973 awards were made on regional basis with the regions defined as follows: North (Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union and Warren); Central (Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset); South (Atlantic, Burlington,

permitted to submit a proposal to service one, multiple or all regions. (RFP § 4.4.7.4) Price lines 1 through 57 sought maintenance and repair services to be provided by an Original Equipment Manufacturer (OEM) routinely utilizing OEM parts in the work performed. Price lines 58 through 71 sought maintenance and repair services by non-OEM dealers routinely utilizing non-OEM parts. For price lines 1 through 71, the State intends to award up to ten contracts for each OEM and each Non-OEM price line for each region. (RFP § 3.1.3)

G.J. Auto submitted a proposal for price lines 1 through 41 to provide OEM repairs and preventative maintenance services and price lines 58 through 61 to provide Non-OEM repairs and preventative maintenance services. G.J. Auto proposed an hourly rate of \$80.00 for providing services in Region 15 – Atlantic County. After conducting an initial review of the proposals submitted, the Bureau opted to conduct a round of negotiations with the bidders pursuant to RFP Section 6.7, which states in pertinent part:

After evaluating proposals, the Division may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost.

...

**Negotiations will be conducted only in those circumstances where they are deemed by the Division or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the bidder is advised to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.**

[RFP § 6.7 *Negotiation and Best and Final Offer (BAFO)*.]

Accordingly, on May 11, 2015, the Bureau wrote to G.J. Auto stating:<sup>3</sup>

In accordance with Section 6.7 of the RFP (Negotiation and Best and Final Offer – BAFO), your firm is being notified in an effort to significantly lower the proposal pricing provided in your firm's subject proposal. The State is looking to maximize its ability to get the best value, based on the requirements and evaluation criteria set forth in the RFP.

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Camden, Cape May, Cumberland, Gloucester and Salem). Additionally, due to issues experienced by the Motor Pool in using the prior contract, this RFP was restructured. The prior contract was task driven which required a using agency to use different contractors for repairs depending on the services sought. For example an agency would have to deliver a vehicle to one vendor for an oil change, another for windshield wiper repair, and a different vendor for a transmission repair. This RFP was restructured to cover a range of OEM and Non-OEM maintenance and repair services which would be performed by a single vendor at the hourly rate proposed. The current RFP also increased the number of contract awards.

<sup>3</sup> The Bureau's records reveal that the May 11, 2015, BAFO request was sent to the email address provided by G.J. Auto with its proposal – gjautorepair@live.com.

Note: Any failure to reduce the current pricing may significantly reduce the likelihood that an award will be made.

As such, please provide us with your firm's best and final proposal pricing.

Please respond through e-mail or fax (609) 292-5170 as soon as possible, but no later than close of business, May 14, 2015. If no response is received by the due date, the State will consider your firm's original proposal pricing as your best and final offer.

*[Emphasis in the original.]*

G.J. Auto did not respond to the Bureau's request; therefore its proposal was evaluated based upon its original proposal pricing.

On September 23, 2015, the Bureau issued the NOI. G.J. Auto was not listed as an intended awardee for any price line. With respect to price lines 1 through 41, G.J. Auto's proposal was considered non-responsive by the Bureau because G.J. Auto did not submit the manufacturer's certification required by RFP Section 4.4.3.2.1 *OEM Repairs*. For price lines 58 through 61, G.J. Auto was not in contention for a contract award because of its proposed pricing.

On October 7, 2015, the Division received G.J. Auto's protest letter alleging:

This letter is to protest the non-awarding of the contract 15-X-23841 (T-0126) to my firm G.J. Auto Repair & Service, LLC. I submitted only Atlantic County as my business is close to Hammonton Motor Pool, Atlantic City where Gaming Enforcement is located and N.J. Fish and Wildlife and N.J. Shellfisheries. I was always at service to these State Agencies and always did a good job at caring for their concerns. My bills were always fair. I acknowledge my bid seemed high but when the parts were not allowed to have a small percentage added to them I had to put my bid higher than usual. My business is an approved Small Business Enterprise. My certificate number is 66051-25, expiration 9/10/17. I would appreciate anything you could do to put my firm on the award. My Business is closer to all in Atlantic County than some others who got the award.<sup>4</sup>

In connection with G.J. Auto's protest, the Hearing Unit conducted an independent review of the record of this procurement and determined the following. First, as to price line 1 through 41, the RFP required that bidders submit a manufacturer's certification with its proposal demonstrating that at the time of the proposal submission it was authorized to perform maintenance/repairs services on the brand name vehicles identified on the individual price lines. Specifically, the RFP states:

**4.4.3.2.1 OEM REPAIRS (CATEGORIES 1 THROUGH 6, PRICE LINES 1 THROUGH 57):**

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<sup>4</sup> In response to the protest, the Bureau acknowledges that G.J. Auto had a contract under the Solicitation #10-X-20973 to provide OEM and Non-OEM maintenance and repair.

As required by 4.4.7, the bidder must<sup>5</sup> submit, **with its proposal**, the manufacturer's certification authorizing it to service vehicles for the OEM Brand bid. A manufacturer's certification that the bidder is authorized to distribute the manufacturer's parts is not sufficient.

The manufacturer's certification should include the manufacturer's contact name, phone number, e-mail address and RFP number, for verification purposes.

[*Emphasis in original.*]

#### **4.4.7 METHOD OF BIDDING**

4.4.7.5 Bidders providing a proposal for OEM maintenance /repairs (categories 1 and 2) must submit, **with their proposal**, a certification from the manufacturer (OEM) of each brand bid that the bidder is authorized to **maintain/repair** its brand. For example, bidders bidding on price line 3 must provide a certification from Chrysler that the bidder is authorized to **service** Chrysler brand vehicles. A manufacturer's letter stating that a bidder is authorized only to distribute its parts is not acceptable.

[*Emphasis in original.*]

As to price lines 1 through 41, G.J. Auto did not submit the manufacturer's certification required by RFP Section 4.4.3.2.1 *OEM Repairs*. With respect to the manufacturer's certification, it is the manufacturer's authorization that the bidder is permitted to service the OEM brand vehicle bid that is material, not the submission of the certification. The failure to submit a copy of the manufacturer's certification with proposal is a minor discrepancy that can be waived.

It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity." On-Line Games, supra, 279 N.J. Super. at 594 (citing River Vale, supra, 127 N.J. at 216.) The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, supra, 127 N.J. at 216.]

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<sup>5</sup> "Shall" or "must" denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of the proposal as non-responsive. (RFP § 2.1 *General Definitions*.)

Accordingly, in connection with its review of G.J. Auto's protest, the Hearing Unit requested that the Bureau contact G.J. Auto to obtain the manufacturer's certification demonstrating that at the time of its proposal submission, G.J. Auto was authorized to perform the service on the OEM brand vehicles bid. On December 21, 2015 the Bureau wrote to G.J. Auto stating:<sup>6</sup>

As permitted by Section 6.6 of the subject RFP, your firm is being contacted for additional information necessary to evaluate your firm's proposal. Section 4.4.3.2.1 of the RFP requires that a bidder submit the vehicle manufacturer's certification authorizing it to service vehicles for the OEM brand bid. The OEM certification must indicate that your firm was authorized to conduct the OEM repairs prior to the T-0126 (15-X-23841) proposal opening date of April 17, 2015. The OEM certification must originate from the vehicle manufacturer directly; third party certifications from a vehicle manufacturer's dealer, for example, will not be acceptable.

As a reminder, Section 4.4.3.2.1 of the RFP states:

**4.4.3.2.1 OEM REPAIRS (CATEGORIES 1 THROUGH 6, PRICE LINES 1 THROUGH 57):**

As required in 4.4.7, the bidder must submit, with its proposal, the manufacturer's certification authorizing it to service vehicles for the OEM brand bid. A manufacturer's certification that the bidder is authorized to distribute the manufacturer's parts is not sufficient.

The manufacturer's certification should include the manufacturer's contact name, phone number, e-mail address and RFP number, for verification purposes.

As required in Section 6.6 of the RFP, please provide the requested information within forty-eight (48) hours. Failure to provide the requested information in the 48-hour timeframe may necessitate the rejection of your firm's proposal as non-responsive.

No response was received from G.J. Auto. Because G.J. Auto did not respond to the Bureau's request and has not submitted the manufacturer's certification, neglecting to demonstrate that at the time of the proposal submission it was authorized to perform maintenance/repairs services on the OEM brand vehicles identified on the individual price lines, G.J. Auto's proposal did not provide a mandatory requirement for price lines 1 through 41 and is therefore non-responsive. See River Vale, supra, 127 N.J. at 216.

Second, as to price lines 58 through 61, G.J. Auto's proposal was responsive to the specifications. However, G.J. Auto was not in contention for a contract award because of its proposed price. Because G.J. Auto did not respond to the Bureau's BAFO request; its proposal was evaluated based upon its original proposal pricing which was not within the competitive range and did not put it in contention for a contract award for price lines 58 through 61.

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<sup>6</sup> The Bureau's records reveal that the December 21, 2015, request was sent to the email address provided by G.J. Auto with its proposal – gjautorepair@live.com.

Third, in the protest letter, G.J. Auto states that its business is closer to the using agencies in Atlantic County than some vendors who are listed on the NOI as intended awardees.<sup>7</sup> The RFP however did not require that a vendor be physically located in the county where the service was to be provided. Rather, the RFP required that “bidders must be able to service all State agency locations and counties, if extending to cooperative purchasing members, with the region.” (RFP § 3.2.1)<sup>8</sup>

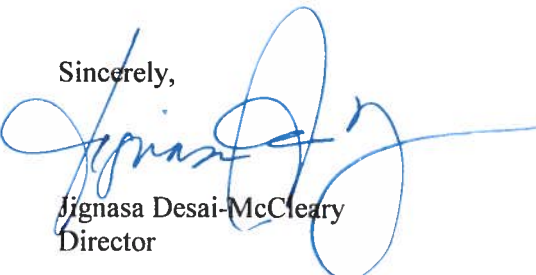
Fourth, G.J. Auto acknowledges that its proposed hourly rate was high, but states that it did so because it was not permitted to include a mark-up for parts. This RFP was to solicit proposals for maintenance and repair services. The RFP states “[t]he last price line (price line number 72) is for agency use only, and shall only be utilized for net pricing of pre-authorized parts and/or lubricants installed/utilized in a repair for any of the 20 categories of equipment. This term contract shall not be used for any parts only purchase. Rebuilt or re-manufactured parts may be used with a prior approval from the ordering agency.” (RFP § 3.1.4) In other words, only the purchase of parts needed in connection with a repair or maintenance being performed under this contract will be permitted.

Finally, with respect to G.J. Auto’s statement that it is an approved small business enterprise, I note that this solicitation (15-X-23841) did not have a requirement for small business certification. Therefore, small business certification was not part of the proposal evaluation criteria. However, I do note that at least 25 of the intended awardees on this contract are approved small business enterprises.

In light of the findings set forth above, I sustain the Bureau’s NOI. This is my final agency decision with respect to the protest submitted by G.J. Auto.

Thank you for your company’s continuing interest in doing business with the State of New Jersey. I invite you to take this opportunity to register your business with *NJ START* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey’s new eProcurement system. In the future, I recommend that G.J. Auto take care to respond to the State’s requests as taxpayer savings are an important factor in the public procurement process.

Sincerely,



Jignasa Desai-McCleary  
Director

JD-M: RUD

c: P. Michaels  
K. Thomas  
S. Ghorbani

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<sup>7</sup> In connection with this protest, despite the lack of such a requirement in the RFP, the Division reviewed the locations of each of the intended awardees. With respect to the price lines for which G.J. Auto submitted a proposal, there are at least four intended awardees that have a location in Atlantic County.

<sup>8</sup> The current RFP differs from the requirements of the prior solicitation 10-X-20973. In the prior solicitation, bidders were required to be proximately located in the region to be served. (RFP 10-X-20973 § 3.1.5) Further, prior to the issuance of the NOI, the Bureau contacted the Department of the Treasury – Bureau of Transportation, the primary using agency under this contract; the Bureau of Transportation did not express any concerns regarding the proximity of the intended awardees to the locations of the various using agencies.