State of New Jersey

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July 28, 2016

Via Electronic Mail [pete.hojnowski@habhegger.com] and USPS Regular Mail

Peter Hojnowski, Branch Manager
E.O. Habhegger Co., Inc.
334 N. Washington Street, Unit #20B
Hammonton, NJ 08037

RE: Request for Reconsideration of Final Agency Decision
RFP #15-X-22978 Aboveground Storage Tanks: Installation, Removal, Repair and Related Equipment

Dear Mr. Hojnowski:

This correspondence is in response to your email dated July 22, 2016, submitted on behalf of E.O. Habhegger Co., Inc. (EOH), referencing the subject Request for Proposal (RFP) and regarding the proposal submitted by EOH to the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). Your letter requests that I reconsider the July 22, 2016 final agency decision issued on the merits of EOH's protest of the Notice of Intent to Award the subject solicitation. In your letter, you assert that EOH's proposal submission for the "Brugg pipe" was "misread" and that the corresponding intended award on Price Line 00014 should not have been rescinded.

In consideration of this request for reconsideration, I have reviewed the record of this procurement and the underlying protest, including the RFP, EOH's proposal submission, and relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination.

The subject RFP was issued by the Bureau to solicit proposals for Aboveground Storage Tanks: Installation, Repair, Removal, and Accessory Equipment on behalf of the New Jersey Department of Transportation (NJDOT) and Statewide Using Agencies. The RFP included three categories of work, as set forth in RFP Section 3.0 *Commodity Description/Scope of Work*; bidders were not required to bid on all three categories. Category II, which forms the basis of EOH's protest, is "for Fuel Storage Tank related equipment (i.e. fuel dispensers, pumps, filtration and monitoring systems, etc.)."[1] The RFP specified an award would be made to one responsible, responsive bidder for each approved brand or equal in Category II.

[1] Category I is "for the supply of various brands and sizes of aboveground diesel and gasoline storage tanks complete with outer shell tanks and all-inclusive related accessories" and Category III is "for the installation, removal and repairs of aboveground storage tanks described in this RFP." In Category I, the RFP specified an award would be made to one bidder for each approved brand or equal; in Category III, an award would be made to all responsible, responsive bidders conforming to the RFP. (See RFP Section 7.2 *Final Contract Award.*)

The Bureau received 18 proposals by the deadline of February 10, 2015. A number of proposals were rejected for failure to provide mandatory documents, signatures, or pricing information. Upon completing a review of the remaining proposals, the Bureau made the following award recommendation for Category II:

Category II – Lines 00005 – 00014 & 00034

E.O. Habhegger Company (00005, 00009, 00010, 00011, 00014)
Fairfield Maintenance (00006)
John W. Kennedy Company (00008)
Petroleum Equipment of New Hampshire (00012, 00013)

NOTE: NO Award – Line 00007. There was 1 proposal received and it was for a Dresser Wayne Dispenser. This is not an Alternate "Brand" as Dresser Wayne Dispensers is covered under Line Item 00006.

The Bureau issued a formal Notice of Intent to Award Letter to all bidders on April 10, 2015. EOH protested the intended award of Price Lines 00012 and 00013 to Petroleum Equipment of New Hampshire (PE) via letter on April 23, 2015, alleging that PE's proposal included products that did not meet RFP specifications.

As found in my July 22, 2016 final agency decision:

> The record reveals that PE proposed the MegaFlex DEF-Trac system for Price Lines 00012 and 00013. Following this protest, NJDOT reviewed the material data sheets for this brand and determined that the proposed system did not conform to the RFP requirements [of Section 3.2.5 *Diesel and Gasoline Pipe System*]. Specifically, NJDOT found that although the primary pipes are stainless steel, the secondary pipes are not. Further, NJDOT found that the data sheet did not provide proof of meeting the UL listing or fire rating requirements. PE's product therefore materially deviated from the RFP requirements. Based on this determination, I find PE's proposal for these price lines to be non-responsive and the intended award to PE cannot stand.

Although not raised in EOH's April 23, 2015 protest, the July 22, 2016 final agency decision also found the intended award of Price Line 00014 to EOH could not stand without further clarification. The final agency decision indicated, in pertinent part:

> In addition, NJDOT reviewed Price Line 00014, and determined that although EOH's proposal offered three different types of Brugg brand systems for this price line, all three systems did not conform to RFP requirements. Corresponding RFP Section 3.2.5 *Diesel and Gasoline Pipe System* specified: "the contractor is to supply a double wall stainless steel inside stainless steel factory manufactured piping system. The pipe system will be UL 971A listed and have a Third Party Fire Rating to 2700 degrees Fahrenheit." NJDOT indicates that in two of the systems offered by EOH, Secon-X and Flexwell LPG/MP, the primary pipe was stainless steel but the secondary pipe was not. The third system, Flexwell-HL, had both primary and secondary stainless steel pipes, but the material data sheet did not provide proof of the UL listing and fire rating requirements. While the Secon-X and Flexwell LPG/MP systems do not conform to RFP specifications and the intended award of these systems must be rescinded, it is unclear whether the third proposed system, the Flexwell-HL, conformed to the UL listing and fire rating requirements based on the material data sheet provided. I therefore direct the Bureau seek clarification as to whether or not the Flexwell-HL system conformed to all specifications of Price Line 00014.

Thus, this was not a case where the proposal was misread during review by the Hearing Unit, but rather, more information was requested to make a determination on how to proceed.

In its request for reconsideration,[2] EOH states:

> In my bid packet, my pricing for line items 12, 13, and 14 is for the specified UL971A 3rd Party Fire Rating 2700 Degree Stainless Steel inside Stainless Steel piping as specified in Section 3.2.5 of the RFP. I am pricing the Brugg Flexwell-HL piping for these line items. I submitted the entire Brugg Pipe Systems price list in my bid packet, but my pricing is for only the Flexwell-HL that meets the specifications of Section 3.2.5 of the RFP. I only included the whole price list from Brugg, because that is what I did for the rest of the manufacturers and price lists in my bid packet. If it would make things less confusing, and to show that I am being truthful regarding the pricing I provided for line items 12, 13, and 14, I will offer to remove the pages from the Brugg Pipe Systems Price List that do not pertain to the Flexwell-HL piping that meets the specification.
>
> I understand where the confusion came from, and I apologize for that. It was not my intention.

EOH's statement above confirms that two of the Brugg brand systems included in its proposal submission did not conform to RFP specifications. However, as noted in the July 22, 2016 final agency decision, the material data sheet provided for the Flexwell-HL system did not provide proof of the UL listing and fire rating requirements. Therefore, the matter was remanded back to the Bureau to seek clarification as to whether or not the Flexwell-HL system conformed to all specifications of Price Line 00014. Please await communication from the Bureau to assist them in concluding their evaluation. The results of this clarification will determine whether the award can be upheld or must be rescinded.

Based on the foregoing, I must uphold my July 22, 2016 final agency decision. The Bureau is directed to seek clarification consistent with the July 22, 2016 final agency decision and this final agency decision related to the request for reconsideration.

Sincerely,

Jigjasa Desai-McCleary
Director

JD-M:DF

c: G. Olivera
K. Woolford
R. Regan

[2] EOH was asked to provide an explanation of its request for reconsideration, which the Hearing Unit received on July 26, 2016.