



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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May 8, 2023

Via Electronic Mail only saurabh.dwivedi@techbrainscorp.com

Saurabh Dwivedi
Senior Manager - Sales
Tech Brains Solutions Inc.
220 Davidson Avenue
Suite 303
Somerset NJ 08873

Re: I/M/O Bid Solicitation #23DPP00832– Tech Brains Solutions Inc.
Protest of Notice of Intent to Award
T3210 – Web Design, Development, Hosting, and Maintenance: BPU Clean Energy
Program

Dear Mr. Dwivedi:

This final agency decision is in response to your correspondence dated May 1, 2023, submitted on behalf of Tech Brains Solutions Inc. (Tech Brains). In that correspondence Tech Brains protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #23DPP00832 – T3120 Web Design, Development, Hosting, and Maintenance: BPU Clean Energy Program (Bid Solicitation). The record of this procurement reveals that the Quote submitted by Tech Brains was deemed non-responsive for having failed to complete mandatory fields on the State Price Sheet, specifically all cells highlighted in yellow for Price Lines 1 through 5 as required by Bid Solicitation Section 3.26, *State-Supplied Price Sheet Instructions*.

By way of background, on December 12, 2022, the Bureau issued the Bid Solicitation on behalf of the Board of Public Utilities (BPU). Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes to engage a Contractor specializing in web development to serve as a collaborative partner to design, develop, host, maintain and continuously revise the BPU Clean Energy Program website and enhance its consumer and industry sections, databases, and to drive program participation. Additionally, the website needed to provide optimal web-based clean energy information and supporting infrastructure that will be dynamic, scalable, measurable, and upgradable, amongst other characteristics as mentioned in Section 4 – Scope of Work. Id.

It is the intent of the State to award Contracts to those responsible Bidders whose Quotes, conforming to this Bid Solicitation are most advantageous to the State of New Jersey (State), price and other factors considered. The State may award any or all price lines. *Ibid*.

In accordance with Bid Solicitation Section 2.1 *Electronic Questions and Answer Period*, potential Bidders were permitted to submit questions regarding the Bid Solicitation by January 24, 2023. On February 23, 2023, the Bureau posted Bid Amendment #1 with the answers to questions posed. No questions were submitted requesting instructions or clarification on completing the State-Supplied Price Sheet.

On March 24, 2023, the Division's Proposal Review Unit opened eleven (11) Quotes which were received by the submission deadline of 2:00 p.m. Eastern Time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, all eleven Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that Tech Brains' submitted Quote was non-responsive because it "did not fill out Year 1 for Price Line 3 on the State-Supplied Price Sheet as instructed to do so," as required by Bid Solicitation Section 3.26, *State-Supplied Price Sheet Instructions*, which states:

Part A Pricing Instructions

The Bidder shall complete all cells highlighted in yellow for Price Lines 1-5. For Price Lines 1-2, only pricing for year 1 will be needed since this will be a one-time fixed price. All other Price Lines are to be a firm fixed price for Years 1-3. Refer to Bid Solicitation Section 4.0 for scope of work requirements.

Contrary to the instructions in Bid Selection Section 3.26, Tech Brains left blank and failed to respond to Price Line 3 in the column "Unit Price Year 1" on its price sheet.

The remaining Quotes were then reviewed for responsiveness to the Bid Solicitation's requirements. After completing its review, the Bureau prepared a Recommendation Report dated April 26, 2023, that recommended that no contracts be awarded as all eleven (11) Bidders' Quotes were non-responsive, and that the procurement be canceled with "the intention of the Bureau to offer debriefing meetings to the non-responsive Bidders then discuss revisions and/or clarifications to the Bid Solicitation with the agency and rebid."

In consideration of Tech Brains' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, 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.

The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion. Specifically the Bid Solicitation Section 9.0 *Glossary* states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

This mandatory language is repeated multiple times in Bid Solicitation Section 4.6 *Warranty Requirements*:

3.26 STATE –SUPPLIED PRICE SHEET INSTRUCTIONS

The Bidder **must** submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab.

Part A Pricing Instructions

The Bidder **shall** complete all cells highlighted in yellow for Price Lines 1-5. For Price Lines 1-2, only pricing for year 1 will be needed since this will be a one-time fixed price. All other Price Lines are to be a firm fixed price for Years 1-3. Refer to Bid Solicitation Section 4.0 for scope of work requirements.

[Emphasis added.]

If after reviewing the Bid Solicitation a Vendor has any questions or seeks additional information, Bid Solicitation Section 2.1 provides for an *Electronic Question and Answer Period* during which “the Division will electronically accept questions and inquiries from all potential Bidders.” As indicated above, no questions were received related to the State-Supplied Price Sheet.

The combination of the clear bid language in Section 3.26 that the “Bidder shall complete all cells highlighted in yellow for Price Lines 1-5,” the mandatory definitions in the Glossary, and the failure to seek clarification on the submission of pricing, make clear that the price sheet column, “Unit Price Year 1,” was a required component of the Bid Solicitation and the State-Supplied Price Sheet. By failing to submit pricing for all lines under Unit Price Year 1 on the State-Supplied Price Sheet, or providing a clarifying statement with the Quote that the cost for Price Line was included in another price line, Tech Brains’ Quote contained a non-waivable deviation rendering the Quote non-responsive. Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974).

In light of the findings set forth above, I sustain the conclusions in the Bureau’s April 26, 2023, Recommendation Report, that Tech Brains’ Quote was non-responsive and uphold the Bureau’s decision to cancel the procurement and rebid. This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote.

Thank you for your company’s continuing interest in doing business, I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,

Cory K. Kestner

Cory K. Kestner
Chief Hearing Officer

c: V. Kapoor
M. Raj
M. Dunn
B. Cegerenko