



## State of New Jersey

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February 11, 2013

### Via Telefacsimile and Mail

Maeve E. Cannon, Esq.  
Hill Wallack, LLP  
202 Carnegie Center,  
CN 5226  
Princeton, NJ 08543-5226

### **RE: Solicitation #12-X-22363** **Geographic Information Systems Services**

Dear Ms. Cannon:

I am in receipt of your letter dated September 7, 2012 on behalf of Cybertech Systems and Software ("Cybertech"), protesting the August 23, 2012 notification received from the Division of Purchase and Property ("Division") regarding the award of contracts for Category 3, *Application Development Services*, of the Request For Proposal ("RFP") that governed the referenced solicitation. The RFP specified three categories of Geographic Information Systems ("GIS") services:

- Category 1 .... Planning Services
- Category 2 .... Data Conversion Services
- Category 3 .... Application Development Services

To be eligible for consideration for contract award, the RFP did not require that bidders offer proposals for all three service categories.

The August 23, 2012 notification issued by the Division's Procurement Bureau stated an intent to award contracts for the application development services to Applied Geographics ("App Geo"), Michael Baker, Jr., Inc. ("Baker"), Fountain Spatial ("Fountain") and Civil Solutions ("Civil"). The awards were based on the conclusion of the Evaluation Committee ("Committee") that these bidders submitted proposals that conformed to the bidding specifications, and were most advantageous to the State, price and other factors considered. N.J.S.A. 52:34-12(g).

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Your September 7, 2012 letter of protest alleges that the recommended contract awards for Category 3 were based on an evaluation methodology that deviated from the terms of the RFP. Specifically, the protest alleges that, while the RFP called for the separate scoring of the technical merits and pricing of each proposal, with final ranking of proposals based solely on price scores, the Committee instead added the technical and price scores assigned to each proposal, and ranked the proposals according to their total scores. Under the methodology the Committee adopted, Cybertech's total proposal score ranked fifth among the eight bidders that responded to Category 3 of the RFP. Because the RFP limited contract awards to the four responsive bidders deemed most advantageous to the State, price and other factors considered, Cybertech's fifth place ranking excluded it from consideration for contract award. You assert that, had the Committee based its recommendation on the methodology set forth in the RFP, Cybertech's proposal would have ranked second, making it eligible to be considered for contract award.

I have considered the merits of Cybertech's position on this issue, taking into account the requirements specified in the RFP and the content of the proposals at issue, as well as relevant statutes, administrative regulations, and case law. My review of the record of this procurement finds that the RFP that governed solicitation #12-X-22363 included, in part, customary language used in the Division's RFPs where the proposal evaluation process includes the scoring of both price and the technical merits of each proposal received:

#### **6.7 EVALUATION CRITERIA**

The following evaluation criteria categories, not necessarily listed in order of significance, shall be used to evaluate proposals received in response to this RFP.

##### **6.7.1 TECHNICAL EVALUATION CRITERIA**

- a. Personnel: The qualifications and experience of the bidder's management, supervisory, and key personnel assigned to the contract, including the candidates recommended for each of the positions/roles required.
- b. Experience of firm: The bidder's documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP.
- c. Ability of firm to complete the Scope of Work based on its Technical Proposal: The overall ability of the bidder to undertake and successfully complete the technical requirements of the contract in a timely manner.

##### **6.7.2 BIDDER'S PRICE SCHEDULE**

For evaluation purposes, proposals that have been deemed technically acceptable shall be ranked according to the total bid price located on the Price Sheet accompanying this RFP.

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For evaluation purposes, bidders shall be ranked according to the formula:

Price Proposal Points = technical points x (lowest price proposal/evaluating price proposal). [Emphasis supplied]

The proposal with the highest number of points shall be ranked the highest.

The price proposal ranked shall be the lowest acceptable price proposal between the original price proposal and the Best and Final Offer proposal submitted by each bidder.

RFP Section 6.7.2 was later amended by means of Addendum # 1, dated January 1, 2012, as follows, to correct an error in the original specification:

The price proposal points calculation currently reads as the following:  
Price Proposal Points = technical points x (lowest price proposal/evaluating price proposal)

The correct formula is: Predetermined Points x (Lowest Price Proposal/ Evaluating Price Proposal) [Emphasis supplied]

As a general principle, the purpose in calculating price proposal points for each proposal, rather than simply ranking proposals as to price in monetary terms, is to arrive at a numerical value that can be added to a bidder's technical score to generate a total proposal score. Absent the intention to determine a total proposal score, there would be no purpose in computing price proposal points. The Division's RFPs thus typically include an additional provision, often designated as RFP Subsection 6.7.3 following the RFP sections noted above, which states:

Each evaluated proposal will receive a Total Proposal Score based on the following formula:

Price Proposal Points + Average Technical Score per Voting Member =  
Total Proposal Score

The bidder receiving the highest Total Proposal Score will be recommended for contract award. In the event of a tie, the proposal with the highest technical score among the tied proposals will be recommended for contract award. [Emphasis added].

Despite the Division's customary practice in this regard, my review of the RFP finds that, as a result of an error, the above language regarding the computation of a total proposal score as the basis for contract award recommendations was not included in Section 6.7 of the RFP that governed solicitation #12-X-22363. As a result of this error, bidders were not made aware that proposals would be ranked according to a total score comprised of a weighted price score and a weighted technical score. While the evaluation procedures set forth in RFP Subsections 6.7.1 and 6.7.2 may imply the intention of the Procurement Bureau to rank proposals on the basis of

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the total proposal score as customarily would have been specified, I must conclude that under the circumstances it was inappropriate to rank the proposals on the basis of total proposal score. I therefore determine that the notice of intent to award Category 3 of the RFP is rescinded for the purpose of reconsidering the contract awards according to the method specified in RFP Section 6.7.

The following is a summary of the price and technical rankings of the eight proposals received for Category 3 of the RFP:

Bidder	Price	Price Score	Price Rank	Technical Score	Technical Rank
Baker	\$85 per Hr.	428	1	790	2
Cybertech	\$93 per Hr.	391	2	640	6
Civil	\$105 per Hr.	346	3	725	5
App Geo	\$106 per Hr.	343	4	815	1
Johnson Mirmiran	\$108 per Hr.	337	5	550	7
Gannett Fleming	\$118 per Hr.	308	6	510	8
Fountain	\$120 per Hr.	303	7	775	4
ESRI	\$150 per Hr.	242	8	780	3

According to the method of ranking the Committee adopted, the proposals of Baker, Civil, and App Geo ranked within the top four proposals as to total proposal score. These proposals are likewise among the top four proposals when ranked by price in accordance with the RFP's stated terms. To the extent that the technical scores assigned to these bidders reflect very good, responsive proposals fully capable of performing the contract as required, the recommendation of the Committee and the Procurement Bureau that Baker, Civil, and App Geo receive contract awards for Category 3 of the RFP is affirmed.

However, while Fountain ranked fourth in total proposal score in the initial evaluation the Committee performed and was recommended for contract award for this reason, it ranked seventh in price. In contrast, Cybertech's responsive proposal ranked second in price. Fountain ranked fourth in technical score and Cybertech ranked sixth in technical score, a difference of 21% in the technical points each received. I note that the Committee determined that Cybertech submitted a good proposal, receiving an average technical score of 640 points of the maximum possible score of 1000, demonstrating that the Committee felt Cybertech has the capability to perform the contract as required. As a result, I find that the substantial superiority of the price proposed by Cybertech, a difference of 29% compared to Fountain's proposed price, outweighs any benefit that otherwise would be derived by bypassing of Cybertech's proposal in favor of Fountain's proposal. This determination is consistent with the long-standing principle set forth by the Supreme Court of New Jersey in Commercial Clean Corp. v. Sullivan, 47 N.J. 539, 548 (1966), that a low bid should not be "ignored or treated as a minor consideration. It is a factor of great importance and not to be lightly discarded."

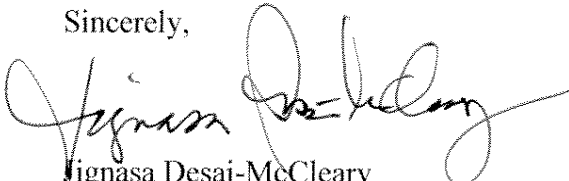
Accordingly, I direct the Procurement Bureau to issue a revised notice of intent with respect to Category 3 of the RFP, stating the intent to award contracts to Baker, Cybertech, Civil and App Geo.

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As a related matter, I note that the contract awards for Categories 1 and 2 of the RFP were also recommended by the Committee on the basis of total proposal score. While the contract awards for these service categories were not challenged, the findings and conclusions set forth herein with respect to Category 3 must be taken into account in making contract awards for all portions of the RFP. My review of the procurement record finds, however, that the identification of the four proposals most advantageous to the State is not altered from the contract awards that the Committee and the Procurement Bureau originally recommended for Categories 1 and 2 of the RFP when the ranking system required by the RFP is employed. Accordingly, the awards for these two service categories are affirmed.

Have received the above determination with respect to the issue you raise with respect to the evaluation of Cybertech's proposal, the remaining issues set forth in the protest are rendered moot. This letter constitutes my Final Agency Determination with respect to the merits of Cybertech's protest. By copy of this letter, the Procurement Bureau is authorized to proceed accordingly.

Sincerely,



Vignasa Desai-McCleary  
Director

kae

c: Kevin Moore  
James Strype  
Jawad Karamali