



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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September 5, 2018

Via Electronic Mail [Jercar003@cs.com] and USPS Regular Mail

Carmela Toto
Jer-Car, Inc.
41 Como Drive
Somerset, NJ 08873

Re: I/M/O Bid Solicitation #18DPP00205 Jer-Car
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Ms. Toto:

This letter is in response to your correspondence of August 31, 2018, on behalf of Jer-Car, Inc. (Jer-Car) to the Division of Purchase and Property’s (Division) Hearing Unit. In that correspondence Jer-Car protests the August 24, 2018, Notice of Intent to Award (NOI) issued by the Division’s Procurement Bureau (Bureau) indicating an intent to award a Master Blanket Purchase Orders (Blanket P.O.s)¹ to several Vendors {Bidders} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation). Specifically, Jer-Car protests (A) the Bureau’s determination that its Quote was nonresponsive for failure to submit an all-inclusive hauling rate and (B) generally asserts that the process was “unfair” because (1) its calls and emails were not returned regarding inquires on why it was not invited to participate in Phase 2 and Phase 3, and (2) because the Bureau deemed other Vendors {Bidders} responsive even though they failed to submit all required pricing. Jer-Car requests its Quote be reconsidered “and allow this process to be a competitive bid.”

¹ For consistency, this final agency decision uses terminology employed by the State of New Jersey’s **NJSTART** eProcurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

NJSTART Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

BACKGROUND

By way of background, on January 30, 2018, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Blanket P.O.s to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

The Bid Solicitation advised all Vendors {Bidders} how the Bureau would review and evaluate Quotes in Bid Solicitation Section 6.7 *Evaluation Criteria*:

The following evaluation criteria categories, not necessarily listed in order of significance, may be used to evaluate Quotes {Proposals} received in response to this Bid Solicitation {RFP}. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

- A. Experience of firm (Attachment #2): The Vendor's {Bidder's} documented experience in successfully completing Blanket P.O. {Contracts} of a similar size and scope in relation to the work required by this Bid Solicitation {RFP};
- B. Vendor Equipment (Attachment #1): The quantity and type of Vendor {Bidder} trucks and ability to provide equipment; and
- C. Price: The Vendor's {Bidder's} hourly rate. See Section 6.7.1 below.

Further, Bid Solicitation section 1.1 *Purpose and Intent* detailed that the procurement would occur in three phases, as follows:

Award of this Bid Solicitation {RFP} will be conducted in three (3) consecutive phases, as described further below. All phases will continue until all Snow Sections² have been awarded. Pricing shall not be released until completion of all phases and the final Notice of Intent to Award has been issued.

This procurement will be bid in three consecutive phases, numbered One, Two and Three. The first Phase will be Phase One (1). In Phase One (1), the State will attempt to award all Snow Sections. To the extent that any Snow Sections remain un-awarded following Phase One (1), the State will request that all Vendors {Bidders} who submitted a Quote {Proposal} to this Bid Solicitation {RFP} for Phase One (1) submit a Phase Two (s) price sheet addressing any Snow Sections that remain un-awarded that the Vendor {Bidder} is interested in. The State will attempt to award all remaining Snow Sections in Phase Two (2) based on the Phase Two price

² The Bid Solicitation defined the term "Snow Section" as "[a] predetermined section of the highway requiring snow plowing and/or spreading services." Bid Solicitation § 2.3 *Blanket P.O. {Contract}-Specific Definitions/Acronyms*.

sheets received. In the event that any Snow Sections remain un-awarded after Phase Two (2) is completed, the State will request that all Vendors {Bidders} submit a Phase Three (3) price sheet, addressing any Snow Sections that remain un-awarded, that the Vendor {Bidder} is interested in.

Under no circumstances shall any Vendor {Bidder}, when submitting a Phase Two (2) or Phase Three (3) price sheet after being requested to do so by the State, submit any supplemental or additional information regarding any other aspects of its previously-submitted bid. During Phase Two and Phase Three, the State will only consider the price sheets, and will not consider any additional or supplemental information or documents.

1. **Phase One (1)** – will apply to all Vendors {Bidders} that have submitted a responsive Quote {Proposal};
2. **Phase Two (2)** – will apply to all Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase One (1) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Two (2); and
3. **Phase Three (3)** – will apply to Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase Two (2) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Three (3).

In other words, only those Vendors {Bidders} whose original submitted Quotes were responsive to the requirements of the Bid Solicitation would be able to participate in and submit pricing for Phase 2 and Phase 3.

On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On March 16, 2018, the Division's Proposal Review Unit Quotes from 164 Vendors {Bidders} received through the State's **NJSTART** eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Thirty-two Vendors' {Bidders}' Quotes were automatically rejected by the Proposal Review Unit for failure to conform to the mandatory administrative requirements for Quote submission, including the Quote submitted by Jer-Car.

Jer-Car uploaded its Quote via **NJSTART**, under Quote number 00002035 which included the following documents:

- An *AA302 Employee Information Report Form* dated March 15, 2018,
- Bid Solicitation Attachment 1 Vendor {Bidder} Equipment Form & Attachment 2 Vendor {Bidder} Experience Form,
- Proof of Business Registration,
- A Certification of Liability Insurance,

- A *Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions Form* dated March 15, 2018,
- A *Disclosure of Investigations and Other Actions Involving Vendor/Bidder Form* dated March 15, 2018,
- A *Disclosure of Investment Activities in Iran Form* dated March 15, 2018,
- An *Offer and Acceptance Page*,
- The State-supplied Price Sheet/Schedule.

The Proposal Review Unit issued Jer-Car a Notice of Proposal Rejection, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, Jer-Car's Quote was missing a completed *Ownership Disclosure Form*. Jer-Car protested its automatic rejection and by Final Agency Decision date April 25, 2018, the automatic rejection was upheld. After further *sua sponte* review, the Division reconsidered Jer-Car's rejection after determining that ownership information required by N.J.S.A. 52:25-24.2 was included within the Quote and disclosed within the *Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions Form* that Jer-Car included with its Quote. Accordingly, by Final Agency Decision dated May 2, 2018, the Notice of Proposal Rejection was withdrawn, and Jer-Car's Quote was forwarded to the Bureau for further review and evaluation.

After initial review by the Bureau for substantive requirements in the Bid Solicitation, Jer-Car's Quote was again deemed nonresponsive because of its failure to include all-inclusive hourly rate for hauling services within its State-supplied price sheet/schedule as required by Bid Solicitation section 4.4.4.2 *Price Sheet/Schedule Attachment Instructions*. Recommendation Report, p. 7. Jer-Car submitted a Quote for snow plowing services on two price lines, 160 and 200, as shown in the below excerpts from Jer-Car's State-supplied price sheet/schedule:

LINE NO	DESCRIPTION	QTY	UNIT	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING-TRUCK ONLY	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING TRUCK & EQUIPMENT	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING SUPERINTENDENT	ALL-INCLUSIVE HOURLY RATE HAULING ONLY
160	SNOW PLOWING SERVICES - D.O.T. REGION: CENTRAL CREW 326 BRIDGEWATER SUBREGION: C1 SNOW SECTION: 5326261 INTERSTATE 287, FROM STELTON ROAD, PISCATAWAY TO EASTON AVENUE, FRANKLIN TOWNSHIP (MP 5.88 TO MP 10.48) NUMBER OF TRUCKS REQUIRED: 7	1	HOUR	\$285.00		\$55.00	
200	SNOW PLOWING SERVICES - D.O.T. REGION: CENTRAL CREW 335 KEASBEY SUBREGION: C2 SNOW SECTION: 5335261 INTERSTATE 287, FROM NEW DURHAM ROAD, EDISON TO SOUTH RANDOLPHVILLE ROAD, PISCATAWAY (MP 3.07 TO MP 7.27) NUMBER OF TRUCKS REQUIRED: 7	1	HOUR	\$ 285.00		\$ 55.00	

In accordance with the procedure set forth in Bid Solicitation Section 1.1 *Purpose and Intent*, after the review and evaluation of all Quotes received in response to Bid Solicitation Phase 1 was completed, on June 5, 2018, the Bureau issued a preliminary notice. That preliminary notice advised the Vendors {Bidders} which snow plowing sections would be awarded based upon the Phase 1 submitted Quotes. Thereafter, the Bureau commenced Phase 2 to solicit Quote pricing for those snow plowing sections for which no responsive Quotes had been received. On June 11, 2018, requests for Phase 2 pricing were sent to all Vendors {Bidders} determined to be responsive prior to Phase 1. Phase 2 Quote pricing submission were due to the Bureau on June 18, 2018 at 2:00 p.m. As Jer-Car was deemed nonresponsive in Phase 1, it was not invited to participate in Phase 2 per the notice provided in Bid Solicitation section 1.1 *Purpose and Intent*. See, discussion in Section B of this Final Agency Decision below.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase 2 was completed, on June 25, 2018, the Bureau issued a second preliminary notice. That second preliminary notice advised the Vendors {Bidders} which snow plowing sections would be awarded based upon the Phase 1 and Phase 2 submitted Quotes. Thereafter, the Bureau commenced Phase 3 to solicit Quote pricing for those snow plowing sections for which no responsive Quotes had been received in either Phase 1 or Phase 2. Requests for Phase 3 pricing were sent to all responsive Vendors {Bidders} on June 26, 2018 with a Phase 3 Quote pricing submission due date of June 28, 2018 at 2:00 p.m. As Jer-Car was deemed nonresponsive in Phase 1, it was not invited to participate in Phase 3.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase 3 was completed, on July 2, 2018, the Bureau issued a third preliminary notice. That third preliminary notice advised the Vendors {Bidders} which snow plowing sections would be awarded based upon the Phase 1, Phase 2, and Phase 3 submitted Quotes. As Jer-Car was deemed nonresponsive in Phase 1, it was not invited to participate in Phase 2 and Phase 3. While Jer-Car submitted Phase 2 and Phase 3 pricing, its responses were not considered because Jer-Car was nonresponsive in Phase 1. Recommendation Report, pp. 50, 59.

Thereafter, on August 22, 2018, the Bureau issued a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered.³ On August 24, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the Bureau's Recommendation Report.

On August 31, 2018, the Division received Jer-Car's protest challenging the intended Blanket P.O. awards, stating:

This letter is in response to the above referenced bid. I am protesting due to the fact that this was an unfair and open process. I had made phone calls and emails as to why I was not receiving emails regarding Phases Two and Three bidding process and did not receive any answers. In reviewing the recommendation report there were numerous Vendor's (Bidder's) that did not submit pricing for all line items and were deemed responsive by the Bureau. Jer-Car, Inc. was put on the non-responsive list for failure to submit the hauling rate. There was also numerous inconsistencies with Vendor's (Bidder's) that were asked to make clarifications and were deemed responsive by the Bureau. Why was Jer-Car, Inc. along with other Vendor's (Bidder's) not granted the same opportunity?

We have been doing business with the NJDOT for over 25 years and would like to continue our relationship. Jer-Car, Inc. would like to see its Phase 1 Bid for all sections reconsidered and allow this process to be a competitive bid. It is in our best interest to seek legal counsel if these questions are not properly addressed.

Attached to the protest, Jer-Car included three pages from the Recommendation Report. First, Jer-Car cited page 7 of the Recommendation Report, enumerating the list of fifteen Vendors {Bidders} which were deemed nonresponsive for failure to submit an all-inclusive hourly hauling rate as required by Bid Solicitation section 4.4.4.2. Second, Jer-Car submitted pages sixteen and seventeen of the

³ The list of Vendors {Contractors} who are recommended to receive Blanket P.O. awards are listed in the attachment to the Bureau's August 22, 2018 Recommendation Report.

Recommendation Report, which represented a discussion of the Vendors {Bidders} that were deemed partially nonresponsive because of a failure to include all-inclusive hourly rates for either snow plowing superintendent services or hauling services.

In consideration of Jer-Car's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, Jer-Car's protest, 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. I set forth herein the Division's Final Agency Decision.

DISCUSSION

A. Jer-Car's Quote Contained a Material Deviation from the Bid Solicitation's Requirements

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall⁴ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

- 4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added*.]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed within Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

The Vendor {Bidder} must submit its pricing using the format set forth in the State-supplied price sheet/schedule(s) accompanying this Bid Solicitation {RFP}.

The State's Price Sheet/Schedule solicits pricing for the following:

- A. Snow Plowing and Hauling Services;
- B. Snow Plowing Services/Other Equipment; and
- C. Spreading Services.

⁴ The terms "shall" and "must" are defined to mean "that which is a mandatory requirement." Bid Solicitation § 2.2 *General Definitions*. The terms "should" and "may" are defined to mean "that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

The Vendor {Bidder} is not required to submit pricing for all line items in order to be considered for award. The Vendor {Bidder} may submit pricing for one (1) or multiple line items.

A. Snow Plowing Services - Price Lines one (1) to 298:

1. The Vendor {Bidder} must submit an all-inclusive hourly rate to provide snow plowing services with one of the following options:
 - i. Snow plowing truck only; or
 - ii. Snow plowing truck and equipment, as defined in Sections 3.12.2 and 3.12.3 of this Bid Solicitation {RFP}.
2. The Vendor {Bidder} must submit an all-inclusive hourly rate for the following:
 - i. Snow Plowing Superintendent; and
 - ii. Hauling Services.

B. Snow Plowing Services/Other Equipment – Price Lines 299 to 309:

1. The Vendor {Bidder} must submit an all-inclusive hourly rate for any other additional equipment offered.

C. Spreading Services – Price Lines 310 – to 375:

1. The Vendor {Bidder} must submit an all-inclusive hourly rate to provide spreading services.

In the event that a Vendor {Bidder} using *NJSTART* to submit a Quote {Proposal} uploads a price sheet/schedule attachment and completes the “Items” Tab in *NJSTART* (instead of entering a Unit Cost of \$1.00 as instructed), the price sheet/schedule attachment will govern.

[Bid Solicitation § 4.4.4.2 *Price Sheet/Schedule Attachment Instructions.*]

While Jer-Car submitted a State-supplied price sheet/schedule as required by Bid Solicitation sections 4.4.4 *Price Schedule/Sheet* and 4.4.4.2 *Price Sheet/Schedule Attachment Instructions*, it did not include all of the information that was required. Bid Solicitation section 4.4.4.2 *Price Sheet/Schedule Attachment Instructions* required Vendors {Bidders} submitting Quotes for snow plowing services to include (1) an all-inclusive hourly rate to provide the plowing services (either providing the truck alone or with plowing equipment) plus all-inclusive hourly rates for (2) snow plowing superintendent and (3) hauling services. Bid Solicitation § 4.4.4.2 *Price Sheet/Schedule Attachment Instructions*. Because Jer-Car did not include an all-inclusive hourly rate for hauling services on either of the price lines it quoted, Jer-Car’s Quote contained a deviation from the Bid Solicitation’s requirements. Accordingly, the issue is whether Jer-Car’s failure to include an all-inclusive hourly rate for hauling services on the State-supplied price sheet is a material deviation from the Bid Solicitation’s requirements.

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 for determining materiality as set forth by the court in *Township of River Vale v. Longo Construction Co.*, 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-waiveable irregularity.’” In *re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175*, 279 N.J. Super. 566, 594 (App. Div. 1995) (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.]

“If the non-compliance is substantial and thus non-waiveable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” *Id.* at 222.

Based upon a review of the record and applicable law, I find that Jer-Car’s Quote contains a material deviation from the requirements of the solicitation making its Quote nonresponsive. With respect to the previously mentioned River Vale factors, I find that Jer-Car’s failure to include the all-inclusive hourly rate for hauling services deprives the State of its assurance that the Blanket P.O. will be entered into, performed, and guaranteed according to the Bid Solicitation’s specified requirements. The Bid Solicitation advised all Vendors {Bidders} that they may be called upon to provide hauling services at any time during the term of the Blanket P.O. Bid Solicitation § 3.10.3 *Hauling and Other Equipment*. But, because Jer-Car did not include an all-inclusive hourly rate for these services, it would not be able to perform the required work, which all other Vendors {Contractors} would be required to provide. Further, failure to include the all-inclusive hourly rate for hauling services as required by the Bid Solicitation places Jer-Car in a position of advantage over other Vendors {Bidders} who might have bid on the project had they known they could avoid performing hauling services work by not providing a rate for these services. Finally, courts have held “a bidder’s deviation from a price term in the solicitation is almost invariable material under a River Vale analysis . . . [because] manipulation of a price term poses one of the clearest threats to the major objective of our bidding laws to promote the honesty and integrity of those bidding and of the system itself.” In re Request for Proposals #17DPP00144, Employee Benefits: Pharmacy Benefit Management Contract, 454 N.J. Super. 527, 564 (App. Div. 2018) (internal quotes and citations omitted). For these reasons, the Bureau’s determination the Jer-Car’s Quote contained a material deviation from the Bid Solicitation’s requirements rendering the Quote nonresponsive is upheld.

B. The Bureau Correctly Determined Jer-Car was Ineligible to Participate in Phase Two and Phase Three

Jer-Car asserts the procurement process was unfair because its inquiries regarding why it was not invited to participate in Phase 2 and Phase 3 were not returned. Jer-Car also argues that the process was unfair because other Vendors {Bidders} that were deemed nonresponsive were nonetheless permitted to participate in Phases 2 and 3, while Jer-Car was not permitted to participate.

First, as noted above, the Bid Solicitation section 1.1 *Purpose and Intent* described the Bureau’s intent to use a three-phased approach to award all Snow Sections. Only Vendors {Bidders} that were responsive to Phase 1 would be invited to participate in Phase 2 and Phase 3. Because Jer-Car was correctly deemed nonresponsive in Phase 1, without any responsive price lines remaining in Phase 1, the Bureau correctly determined that Jer-Car was not eligible to participate in Phase 2 and Phase 3.

While Jer-Car argues that it was unfair for the Bureau not to return its calls and emails regarding Jer-Car’s requests to participate in Phase 2 and Phase 3, Bid Solicitation section 1.3.1 *Electronic Question and Answer Period* advised all Vendors {Bidders} that “[a] Vendor {Bidder} shall not contact the Using

Agency and/or the Procurement Specialist directly, in person, by telephone or by e-mail, concerning this Bid Solicitation {RFP} prior to the final award of the Blanket P.O. {Contract}.” Nevertheless, given, the public procurement law requirements, the Division responded to Jer-Car’s several inquiries, including replying to Jer-Car’s emails on June 6, 2018, June 7, 2018, June 12, 2018, and July 31, 2018. For example, on June 12, 2018, Jer-Car submitted an email inquiry as follows:

From: jercar003@cs.com [<mailto:jercar003@cs.com>]
Sent: Tuesday, June 12, 2018 2:42 PM
To: NJSTART <njstart@treas.nj.gov>
Cc: Groninger, Michelina <Michelina.Groninger@treas.nj.gov>; Campbell, Douglas <Douglas.Campbell@dot.nj.gov>
Subject: Re: Inquiry to NJ Start re: 18DPP00205

Good afternoon,

In response to your email I understand a second email has been sent to Vendors (Bidders) regarding phase 2. I have again not received any email. Please see the attached letter from Maurice A. Griffin, Acting Director State Of New Jersey Department of the Treasury Division of Purchase and Property. It is to my understanding from the attached letter Jer-Car’s Quote has been submitted as a responsive Quote. Please contact me regarding this matter.

Thank you,
Carmela Toto
Jer-Car, Inc.

In response to this email inquiry, the Division’s Vendor Administration Team replied as follows:

From: NJSTART
Sent: Tuesday, June 12, 2018 3:37 PM
To: jer-car003@cs.com
Subject: FW: Inquiry to NJ Start re: 18DPP00205

Dear Ms. Toto:

As you know, this Solicitation is being conducted in Phases. There is no specific timing for the commencement or completion of any individual phase. Specifically, Bid Solicitation Section 1.1 Purpose and Intent:

This procurement will be bid in three consecutive phases, numbered One, Two and Three. The first Phase will be Phase One (1). In Phase One (1), the State will attempt to award all Snow Sections. To the extent that any Snow Sections remain un-awarded following Phase One (1), the State will request that all Vendors {Bidders} who submitted a Quote {Proposal} to this Bid Solicitation {RFP} for Phase One (1) submit a Phase Two (s) price sheet addressing any Snow Sections that remain un-awarded that the Vendor {Bidder} is interested in. The State will attempt to award all remaining Snow Sections in Phase Two (2) based on the Phase Two price sheets received. In the event that any Snow Sections remain un-awarded after Phase Two (2) is completed, the State will request that all Vendors {Bidders} submit a Phase Three (3) price sheet, addressing any Snow Sections that remain un-awarded, that the Vendor {Bidder} is interested in.

Under no circumstances shall any Vendor {Bidder}, when submitting a Phase Two (2) or Phase Three (3) price sheet after being requested to do so by the State, submit any supplemental or additional information regarding any other aspects of its previously-submitted bid. During Phase Two and Phase Three, the State will only consider the price sheets, and will not consider any additional or supplemental information or documents.

1. Phase One (1) – will apply to all Vendors {Bidders} that have submitted a responsive Quote {Proposal};
2. Phase Two (2) – will apply to all Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase One (1) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Two (2); and
3. Phase Three (3) – will apply to Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase Two (2) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Three (3).

Thank you,

Division of Purchase and Property
State of New Jersey



The Opportunity to do Business STARTs Here!

Jer-Car may have been frustrated by the Bureau's inability to discuss specifics of its Quote with the Procurement Specialist, but the Bureau correctly concluded that it was unable to discuss the evaluation of Jer-Car's Quote or the Bid Solicitation prior to the issuance of the final NOI, and properly forwarded those inquiries to and asked Jer-Car to send any email inquiries to the NJSTART Vendor Administration Team in order to ensure the integrity of the public bidding process.

Next, citing pages sixteen and seventeen of the Recommendation Report, Jer-Car asserts it was unfair that some Vendors {Bidders} were deemed responsive even though they did not submit all-inclusive hourly rates for snow plowing superintendent or hauling services. Jer-Car asks why it was deemed nonresponsive when these Vendors {Bidders} were not.

Review of the cited section of the Recommendation Report reflects fifteen Vendors {Bidders} were deemed partially nonresponsive for failure to submit all-inclusive hourly superintendent rates or hauling services rates. See Recommendation Report pp. 16-17. But, unlike Jer-Car, these Vendors {Bidders} included all Bid Solicitation-required information on at least one other price line, making those Quotes partially responsive. In other words, the Vendors {Bidders} on pages sixteen and seventeen of the Recommendation Report had some price lines deemed nonresponsive, but not all. These Vendors {Bidders} had at least one remaining responsive price line in Phase 1, so they could participate in Phase 2

and 3 pursuant to Bid Solicitation section 1.1 *Purpose and Intent*. However, as discussed below, the Vendors {Bidders} that submitted nonresponsive price lines in Phase 1 should not have been permitted to effectively “cure” the nonresponsive price lines by resubmitting pricing in Phases 2 and 3.

C. The Bureau Incorrectly Allowed Some Vendors {Bidders} to Supplement Their Phase One Quotes During Phase Two

From review of the partially responsive Vendors {Bidders}, it appears that the Bureau permitted some Vendors {Bidders} that were deemed partially nonresponsive during Phase 1 to resubmit pricing for the affected price lines during Phase 2 and Phase 3. For example, the Recommendation Report reflects that Terco Enterprises LLC (Terco) was deemed nonresponsive on a number of price lines for failure to submit an all-inclusive hourly hauling rate on the State-supplied price sheet/schedule. Recommendation Report p. 17. For the same reasons outlined above, this represents a material deviation from the requirements of the Bid Solicitation, and the Bureau correctly concluded that Terco was nonresponsive on all price lines lacking an all-inclusive hourly hauling rate. However, because Terco Quote still had a responsive price line within its Quote, it was invited to participate in Phase 2 and Phase 3. Recommendation Report, p. 50. In Phase 2, Terco resubmitted pricing for the price lines for which it was already deemed nonresponsive, ultimately being recommended for award for price lines 18, 20, 30, 31, 32, 48, 50, 53, 54, 55, 93, and 97, which were all price lines that Terco was deemed nonresponsive in Phase 1. Recommendation Report pp. 17, 51-53.

Bid Solicitation section 1.1 *Purpose and Intent* advised all Vendors {Bidders} that:

This procurement will be bid in three consecutive phases, numbered One, Two and Three. The first Phase will be Phase One (1). In Phase One (1), the State will attempt to award all Snow Sections. To the extent that any Snow Sections remain un-awarded following Phase One (1), the State will request that all Vendors {Bidders} who submitted a Quote {Proposal} to this Bid Solicitation {RFP} for Phase One (1) submit a Phase Two (s) price sheet addressing any Snow Sections that remain un-awarded that the Vendor {Bidder} is interested in. The State will attempt to award all remaining Snow Sections in Phase Two (2) based on the Phase Two price sheets received. In the event that any Snow Sections remain un-awarded after Phase Two (2) is completed, the State will request that all Vendors {Bidders} submit a Phase Three (3) price sheet, addressing any Snow Sections that remain un-awarded, that the Vendor {Bidder} is interested in.

Under no circumstances shall any Vendor {Bidder}, when submitting a Phase Two (2) or Phase Three (3) price sheet after being requested to do so by the State, submit any supplemental or additional information regarding any other aspects of its previously-submitted bid.

[Emphasis added.]

In conducting Phases 2 and 3, the Bureau should not have considered pricing from vendors on the same price lines on which they were deemed nonresponsive in Phase 1.⁵ Doing so materially unlevelled the

⁵ In other words, a Vendor {Bidder} was not permitted to submit “supplemental” information in Phase 2 or 3 regarding the Quotes submitted in Phase 1. It is noted that Vendors {Bidders} would not have known that some or all of their Phase 1 price lines were deemed nonresponsive at the time the Bureau requested

playing field in favor of the partially responsive Vendors {Bidders} because the Vendors {Bidders} were permitted to “cure” the earlier nonresponsive price lines, an opportunity not provided to other Vendors {Bidders} and a practice generally prohibited under applicable law. See, e.g., On-Line Games, supra, 279 N.J. Super. at 597 (“In clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP”); In re Motor Vehicle Comm’n Surcharge Sys. Accounting and Billing Servs., No. A-3136-16, at *32 (App. Div. Feb. 8, 2018) (explaining the Vendor’s “original bid was non-conforming, but the Division impermissibly allowed the bid thereafter to be materially altered”).

After reviewing the Recommendation Report, and as set forth in Attachment A to this Final Agency Decision, it appears that three Vendors {Bidders} were allowed to cure twenty nonresponsive price lines by resubmitting pricing in a later Phase. The intended award of these price lines is hereby rescinded. Seven rescinded price lines received additional pricing during Phase 2. Accordingly, in these instances, the NOI is hereby amended to reflect an award to the Vendor {Bidder} who would be next in line following the disqualification of the initial intended awardee. Where no responsive Quotes were received on a price line and rescission of the intended awards results in no intended awardee, the price line will be included within a supplemental future bidding opportunity for these services.

CONCLUSION

Based upon the foregoing, the August 24, 2018 NOI is amended in part as outlined in Attachment A to this Final Agency Decision and sustained in part. This is my final agency decision with respect to the protest submitted by Jer-Car.

Thank you for your company’s continuing interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey’s eProcurement system. 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. Please monitor the New Jersey Department of Transportation’s, the Division’s and the **NJSTART** websites for future bidding opportunities for these services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: REG

c: P. Michaels
L. Spildener
M. Groninger
Terco Enterprises LLC (via email (bhendricks@tercollc.com) and regular mail (833 Limecrest Road, Lafayette, NJ 07848))

Phase 2 and Phase 3 pricing. This information would not have been announced until the Bureau issued its NOI and accompanying Recommendation Report.

Atlantic Recycling Group (via email (thomasippolitoarg@gmail.com) and regular mail (P.O. Box 725, 2103 River Road, Point Pleasant, NJ 08742))
Tony Sanchez LTD (via email (asanchez@tsanchezltd.com) and regular mail (1685 Rt. 46, Ledgewood, NJ 07852))
Gomez Brothers Trucking Inc. (via email (jgermangc@hotmail.com) and regular mail (30 Ashwood Place, Parsippany, NJ 07054))
D&R Paving LLC (via email (info@dandrpaving.net) and regular mail (5 Bowling Green Parkway, A115, Lake Hopatcong, NJ 07849))
Washington Collision Center LLP (via email (washingtoncollision@yahoo.com) and regular mail (65 Route 31 North, Washington, NJ 07882))
R & G Paving Inc. (via email (rgpaving72@aol.com) and regular mail (1787 Kathleen Ct., Toms River, NJ 08755))

Attachment A

Vendor {Bidder}	Awarded Price Line	New Awardee
Terco Enterprises LLC	18	Atlantic Recycling Group
	20	Atlantic Recycling Group
	30	NOT AWARDED
	31	NOT AWARDED
	32	NOT AWARDED
	48	NOT AWARDED
	50	NOT AWARDED
	53	Tony Sanchez LTD
	54	Tony Sanchez LTD ⁶
	55	Gomez Brothers Trucking Inc.
	93	D&R Paving LLC ⁷
	97	D&R Paving LLC
Washington Collision Center LLP	70	NOT AWARDED
	71	NOT AWARDED
	215	NOT AWARDED
R&G Paving Inc.	128	NOT AWARDED
	130	NOT AWARDED
	143	NOT AWARDED
	155	NOT AWARDED
	156	NOT AWARDED

⁶ Price line 54 is awarded to Tony Sanchez, LTD who bid \$180 all-inclusive hourly plowing rate on price line 54, with a \$50 superintendent rate. Gomez Brothers Trucking Inc. also submitted Phase 2 pricing on price line 54, but Gomez Brothers Trucking Inc. bid \$205 all-inclusive hourly plowing rate with a \$50 superintendent rate.

⁷ Price line 93 is awarded to D & R Paving LLC who bid \$180 all-inclusive hourly plowing rate on price line 93, with a \$45 superintendent rate. Tony Sanchez, LTD also submitted Phase 2 pricing on price line 93, but Tony Sanchez bid \$180 all-inclusive hourly plowing rate with a \$180 superintendent rate.