



# State of New Jersey

DEPARTMENT OF THE TREASURY  
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December 18, 2015

Via Electronic Mail [jim@chap.net] and USPS Regular Mail

James H. Nash, President  
Chapman, Inc.  
P.O. Box 608  
25 W. Highland Ave.  
Atlantic Highlands, NJ 07716-0608

RE: Protest of Notice of Intent to Award  
RFP #16-X-23925 Wastewater Treatment Plant Operator—Greystone Park Psychiatric Hospital  
(T-2709)

Dear Mr. Nash:

This correspondence is in response to your letter of protest dated October 1, 2015, referencing the subject Request for Proposal (RFP) and regarding the Notice of Intent to Award issued by the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). On behalf of Chapman, Inc. (Chapman), you protest the slated award of price line items 00001, 00004, and 00007 to Jersey Environmental Solutions (JES), questioning whether JES will be able to uphold its “commitment to being responsible and responsive” to the Division. You contend that the prices offered by JES are below the median rate and, while it is JES’s “prerogative” to “fall short of making any profit on the engagement,” you believe that “any contract engagement should be a win/win for all parties and agree that the level of pay for a worker is commensurate with the level of services, i.e. skills, experience, training, employment retention, quality of life.”

I have reviewed the record of this procurement, including the RFP, JES’ and Chapman’s proposals, 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 on the merits of Chapman’s protest.

By way of background, the subject RFP was issued by the Bureau on behalf of the Department of Human Services (DHS), to solicit proposals from qualified licensed wastewater treatment plant operators for the operation, maintenance, inspection and monitoring of the wastewater (sewer) Treatment Plant located at Greystone Park Psychiatric Hospital. RFP §1.1 *Purpose and Intent*. This is a reprocurement of the Operations & Maintenance of Wastewater (Sewer) Treatment Plant— Greystone Park Psychiatric Hospital term contract T-2709. RFP §1.2 *Background*. The intent of the RFP is to award a contract to that responsible bidder whose proposal, conforming to the RFP, is most advantageous to the State, price and other factors considered. RFP §1.1 *Purpose and Intent*.

The Bureau received four proposals by the proposal submission deadline of June 26, 2015. One

proposal was deemed non-responsive; the remaining three were evaluated in accordance with RFP Section 6.7, *Evaluation Criteria*. Following the evaluation, a Notice of Intent to Award letter (NOI) was issued on September 22, 2015, advising all bidders of the intent to award the contract to JES. This protest followed.

Chapman submitted the following in its October 1, 2015 protest letter:

Our interpretation of the level of effort required in RFP Section 3.10 *Work Schedule* and Section 3.3 *Contractor Responsibilities* is staffing the [wastewater treatment plant] 2,920 hours per year (8 hours per day Monday through Sunday times 365 days per year.) Staffing includes a full-time licensed operator. Full-time is defined by the Bureau of Labor Statistics as 35+ hours per week.

For illustration, the annual price bid by JES for items 00001 & 00004 is \$90,000 (12 months times \$7,500.) The annual price divided by the number of required hours ( $\$90,000/2,920$ ) equates to an effective hour billing rate of \$30.82. If you subtract our minimal assumed burdens of overhead including payroll taxes (Social Security/Medicare, State and Federal Unemployment) from \$30.82, the calculated effective raw pay rate, according to the Bureau of Labor Statistics in the Newark-Union, NJ-PA Metropolitan Division of NJ, falls into the 25<sup>th</sup> percentile (estimated for 2016) of workforce for the Standard Occupation Code 518031 – Water and Wastewater Treatment Plant and system Operators. It is essentially below the median rate. Please note, other burdens of overhead including general liability, auto and health insurances, paid time off, administrative costs, training, fees, travel, etc. are not presenting in this illustration.

Chapman also included a detailed Cost Calculation Comparison matrix to further demonstrate its argument.

A review of the record reveals the following. All bidders were instructed to “submit an all-inclusive monthly rate for the full operation, maintenance, monitoring and inspection of the wastewater treatment plant, to include, but not limited to, all direct and indirect costs, as well as document preparation for permit renewals, reports, clerical support, forms etc. No other fees or costs shall be paid by the State unless there is a change in the scope of work.” RFP § 4.4.7.2. Price Line 00001 represented the all-inclusive monthly rate for the first year; Price Line 00004 represented the all-inclusive monthly rate for the second year; and Price Line 00007 represented the all-inclusive monthly rate for the third year.

RFP Section 3.10 *Work Schedule* set forth the required work schedule: “3.10.1.1 All daily operations and maintenance of the wastewater treatment plant shall be completed during the standard work day which shall be an established eight (8) hour period, exclusive of a thirty (30) minute unpaid lunch, Monday through Sunday.” “All-inclusive hourly rate” is defined by the RFP in Section 2.1 as “[a]n hourly rate comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.”

In addition, all bidders were required to comply with the Prevailing Wage Act and all other applicable local, State, and federal laws in establishing an hourly wage. As set forth in Sections 2.3 and 2.10 of the New Jersey Standard Terms and Conditions<sup>1</sup>:

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<sup>1</sup> The Standard Terms and Conditions govern the subject RFP and are incorporated into all contracts or purchase agreements made with the State.

**PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; *the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.*

**COMPLIANCE - LAWS** - The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

[(Emphasis added.)]

By signing and including the Signatory Page with a proposal, a bidder attests to its reading, understanding, and agreeing to all conditions, specifications, and addenda of the RFP, as well as the Standard Terms and Conditions.

A review of the JES's proposal indicates that JES did not take exception to any terms contained in the RFP or the Standard Terms and Conditions and it included a properly executed Signatory Page with its proposal. Because a properly executed Signatory Page certifies that the bidder will comply with the Standard Terms and Conditions, the State was also assured compliance with the Prevailing Wage Act and all other applicable laws. Furthermore, in reply to a clarification request by the Division's Hearing Unit, JES confirms that it will be bound by the New Jersey Standard Terms and Conditions, including Section 2.3 relating to Prevailing Wage Act requirements.

Although Chapman calculates that JES cannot offer such pricing and continue to make a profit while taking into account all overhead costs, because JES certified compliance with all applicable State and federal laws, the State accepted the pricing, operating under the assumption that this company may opt to operate at a loss. Such a business decision is the prerogative of the bidding entity. In light of the findings set forth above, I must deny Chapman's protest and direct the Bureau to continue with the intended award to JES. This is my final agency decision on the matter.

Thank you for your interest in doing business with the State of New Jersey and for registering your business with NJSTART at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Ignasa Desai-McCleary  
Director

JD-M:DF

c: G. Olivera  
K. Adams  
M. Groninger