



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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October 11, 2018

Via Electronic Mail [jnagy@teamwendy.com] and USPS Regular Mail

Joe Nagy, Law Enforcement & SAR Market Manager
Team Wendy
17000 St Clair Ave
Cleveland, OH 44110

Re: I/M/O Bid Solicitation # 17DPP00100 Team Wendy
Protest of Notice of Intent to Award
T0790 Firefighter Protective Clothing & Equipment

Dear Mr. Nagy:

This letter is in response to your email of September 14, 2018, on behalf of Team Wendy which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email Team Wendy protests the September 14, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #T0790 Firefighter Protective Clothing & Equipment (Bid Solicitation).¹

By way of background, on July 10, 2017, the Bureau issued the above referenced Bid Solicitation on behalf of State Using Agencies and Cooperative Purchasing Partners to solicit Quotes for firefighter protective clothing and equipment. Bid Solicitation § 1.1 *Purpose and Intent*. The intent of the Bid Solicitation is to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsive Vendors {Bidders} who submitted Quotes that meet the category definition and requirements set forth in the 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

Solicitation. Ibid. Specifically, Bid Solicitation Section 3.1 *Firefighter Protective Clothing and Equipment Categories* identified the following eight (8) categories of goods sought:

- Category 1: Turnout Gear;
- Category 2: Helmets;
- Category 3: Protective Hoods;
- Category 4: Boots;
- Category 5: Gloves;
- Category 6: Pass Devise;
- Category 7: SCBA; and,
- Category 8: Search and Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment.

Vendors {Bidders} were not required to submit a Quote for each Category to be considered responsive. Bid Solicitation § 4.4.5.2.1.

On September 29, 2017, the Division's Proposal Review Unit opened the Quotes received by the submission deadline of 2:00 p.m. A list of all Quotes received by the submission deadline is attached hereto as Exhibit A.² After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*.

On September 4, 2018, the Bureau completed 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. On September 13, 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 September 14, 2018, Team Wendy submitted an email to the Division stating in part:

We/I submitted all of our paperwork 13 months ago and we never received a single correspondence nor alert on NJ Start that anything had been done improperly. We have an extremely large amount of departments/agencies throughout New Jersey asking for our products and we have been waiting patiently for over a year for this to be published.

We offer helmets that are unsurpassed in the field and used by 95% of the FEMA teams throughout the country along with some of the largest fire and police departments in the country including NYPD, NYFD, Boston FD, Philadelphia FD and Los Angeles FD.

In consideration of Team Wendy's 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. I set forth herein the Division's Final Agency Decision.

² Exhibit A is a list of all Quotes received electronically through the State's **NJSTART** eProcurement system and by hard copy mailed to the Division's Proposal Review Unit by the date and time set forth in the Bid Solicitation.

The Division's public procurement program reflects the New Jersey statutory and regulatory requirements that have been affirmed by New Jersey courts. A basic precept of the Division's governing statutes and regulations requires that Quotes must be submitted by the deadline specified in the public advertisement and website notice. N.J.A.C. 17:12-2.1 Advertising. The record of this procurement shows that the procurement was conducted in full accordance with the Division's governing statutes and regulations and by its standard announcement procedures and practices. Notice of the subject Bid Solicitation was publicly advertised on the Division's *NJSTART* eProcurement site, and was also published in The Star-Ledger on July 10, 2017 as required by the applicable regulation. N.J.A.C. 17:12-2.1(a) & (c).

With respect to the submission to Quotes, the Division's governing regulations provide in relevant part that "[i]n order to be eligible for consideration for award of [Blanket P.O.], the bidder's [Quote] shall ... [b]e submitted on or before the due date and time and at the place specified in the [Bid Solicitation]." N.J.A.C. 17:12-2.2(a), emphasis added. The Bid Solicitation specifically advised all Vendors {Bidders} of the Quote submission requirements stating:

1.3.2 SUBMISSION OF QUOTES {PROPOSALS}

In order to be considered for award, the Quote {Proposal} must be received by the Procurement Bureau of the Division at the appropriate location by the required time. Vendors {Bidders} shall submit a Quote {Proposal} either electronically through NJSTART or via hard copy.

Hard copy Quote {Proposal} must be submitted to the physical location noted below:

PROPOSAL RECEIVING ROOM – 9TH FLOOR
DIVISION OF PURCHASE AND PROPERTY
DEPARTMENT OF THE TREASURY
33 WEST STATE STREET, P.O. BOX 230
TRENTON, NJ 08625-0230

Directions to the Division are available on the web at <http://www.state.nj.us/treasury/purchase/directions.shtml>.

QUOTES {PROPOSALS} NOT RECEIVED PRIOR TO THE QUOTE {PROPOSAL} OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE {PROPOSAL} OPENING ARE INDICATED ON THE BID SOLICITATION {RFP} COVER SHEET AND IN THE "SUMMARY" TAB OF THE BID SOLICITATION WEBPAGE WITHIN NJSTART.

Note: A Vendor {Bidder} using U.S. Postal Service regular or express mail services should allow additional time since the U.S. Postal Service does not deliver directly to the Proposal Receiving Room. A Vendor {Bidder} should make every effort to submit its Quote {Proposal} well ahead of the Quote {Proposal} submission deadline to mitigate unforeseen delays or issues. The Vendor {Bidder} is solely responsible for the timely submission of its Quote {Proposal} in response to this Bid Solicitation {RFP}.

Procedural inquiries concerning this Bid Solicitation {RFP} may be directed to njstart@treas.nj.gov and/or (609) 341-3500.

The State will not respond to substantive questions related to the Bid Solicitation {RFP} or any other Blanket P.O. {Contract} via this e-mail address or phone number. For inquiries related to substantive questions refer to Section 1.3.1 (Electronic Question and Answer Period).

Further, the Bid Solicitation advised the Vendors {Bidders} to review the Division's Quick Reference Guides (QRG) for assistance on how to submit a Quote.

4.3.1 NJSTART SUBMISSION OF QUOTE {PROPOSAL}

Vendors {Bidders} may refer to the Quick Reference Guides (QRGs) "Vendor Registration" and "Submit a Quote" for additional instructions detailing how to enroll in NJSTART and submit a NJSTART electronic Quote {Proposal}. QRGs are located on the NJSTART Vendor Support Page. If the Vendor {Bidder} submits both a NJSTART and a hard copy of the Vendor's {Bidder's} Quote {Proposal}, the NJSTART Quote {Proposal} will prevail in the event of a discrepancy between the electronic and paper versions.

The Submit a Quote QRG provides Vendors {Bidders} with step by step instructions, with screenshots, on how to locate a Bid Solicitation and how to submit a Quote in response to that Bid Solicitation. See, QRG entitled "Submit a Quote," pgs. 10-20; <https://www.state.nj.us/treasury/purchase/njstart/pdf/QRG-Seller-Create-a-Quote-in-NJSTART.pdf>. By way of example, the QRG includes the following instructions and screenshots on how to properly submit a Quote:

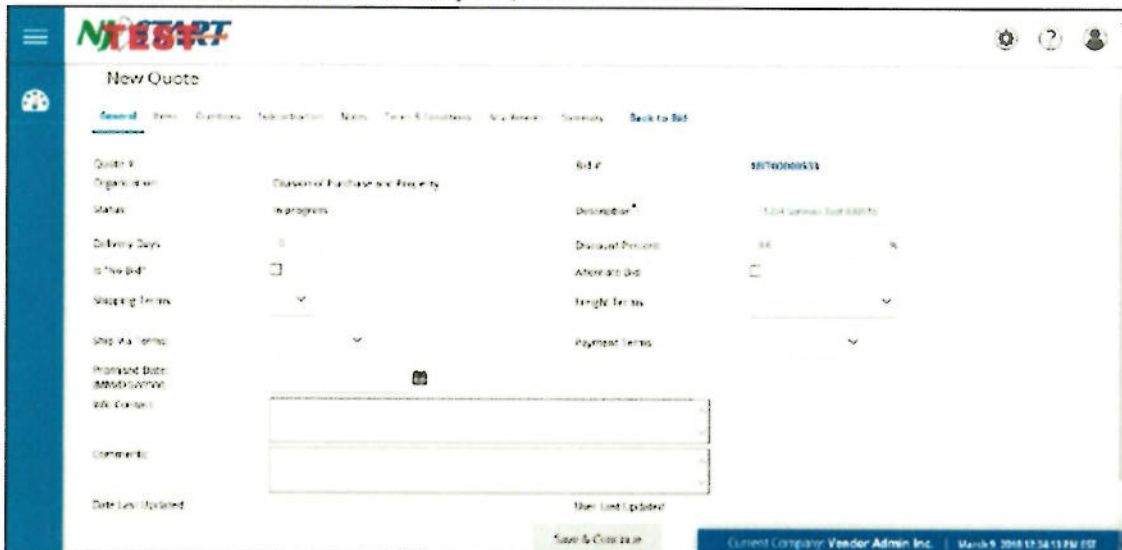
3.5 Submit a Quote

3.5.1. The General Tab

- Click the **Create Quote** link to the far right of the Bid Solicitation Number for which you wish to create a Quote (shown in red below). *NOTE: You can also click on the **Create Quote** button at the bottom of the Bid Solicitation Summary page.*



- The New Quote General Tab opens, as shown below:



and

3.5.5. Attaching a File to Your Quote

- Click on the **Add File** button and the following screen appears.

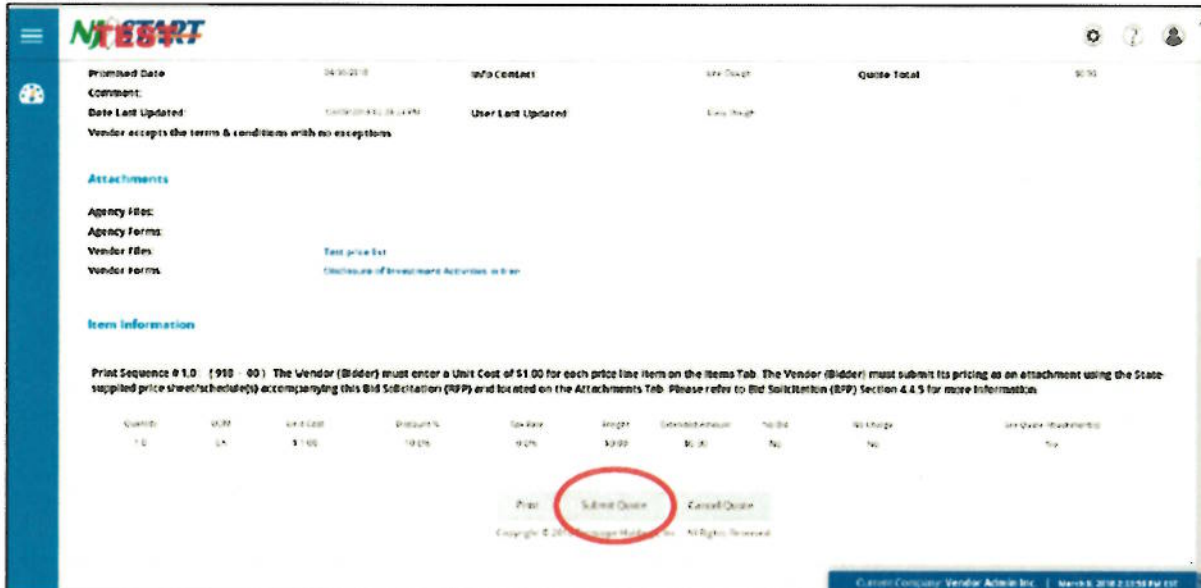
The screenshot shows the 'Add File' screen in the NISTART system. It features a blue sidebar with a menu icon and a 'Documents' dropdown. The main content area has a title 'Add File' and two informational bullet points. The first bullet point states: 'Name is the display name for the file that will appear when attachment repository files are deployed. It can be different from the name on disk and can contain alphanumeric characters, spaces, and special characters up to a maximum length of 200.' The second bullet point states: 'The vendor (bidder) should select the "Confidential" option for attachments on the Attachments Tab to request that the documents not be displayed publicly through NISTART. Note: Marking an attachment as "Confidential" in NISTART shall not constitute the vendor's (bidder's) designation of the attachment as exempt from public disclosure under OPRA and/or the common law.' Below the text are four input fields: 'Name' (empty), 'Description' (empty), 'File' (empty with a 'Browse...' button), and 'Confidential' (checkbox, currently unchecked). At the bottom, there are four buttons: 'Save & Exit', 'Save & Continue', 'Reset', and 'Cancel & Exit'.

- **"Name"** is the display name for the file that will appear when it is attached. It can be different from its file location name and can contain alphanumeric characters and spaces up to a maximum length of 200 characters, but cannot contain special characters (<, >, &, ', ?, #, [,], or %).
- The **"Description"** field can be used to describe the nature of the attachment or content.
- The **"Confidential"** button should be left unchecked to enable purchasers to review the attachments. Marking an attachment as "Confidential" in **NISTART** shall not constitute the Vendor's {Bidder's} designation of the attachment as exempt from public disclosure under the Open Public Records Act (OPRA) and/or the common law as outlined in Bid Solicitation Section 1.4.4.
- In the location entitled **"File*:"** click the **Browse** button to find and select the desired file, then click **Open**.

and

3.5.8. Submit Your Quote

- When all of your reviews and edits are complete, click on the **Submit Quote** button, shown below:

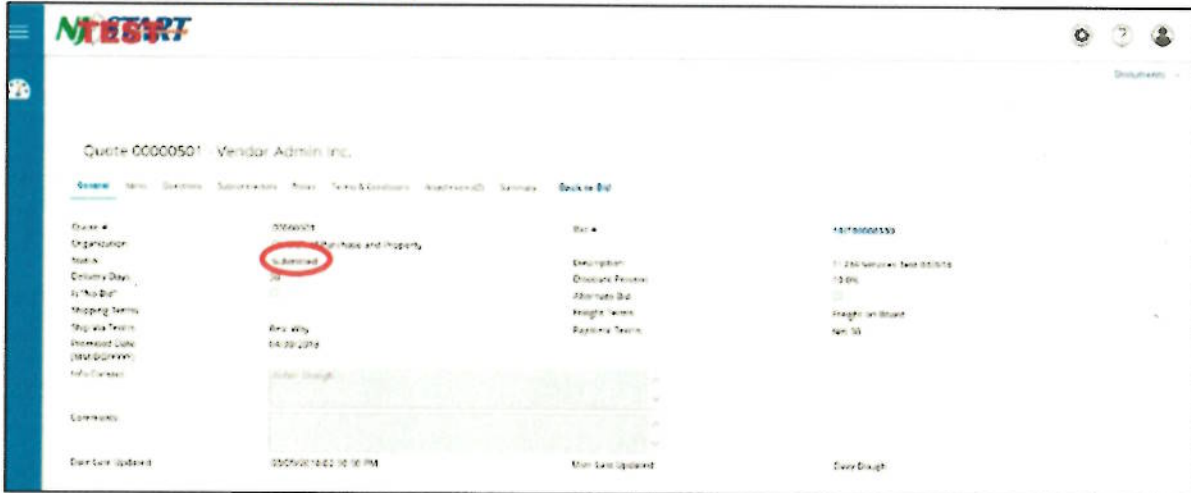


- After you click the **Submit Quote** button once, the following pop-up window will be displayed asking you to confirm whether or not you want to submit the Quote.
- Click **OK** to submit the Quote.

Additionally, the QRG provides instructions on how to confirm that a Quote has been submitted:

3.5.9. Verify that Your Quote Has Been Submitted

- Once you click on a submitted Quote, the Summary tab shows the Status as "Submitted" for the Quote (circled in red below).



- Only when your Quote status indicates **Submitted** can you be confident that you have successfully submitted your Quote for consideration by the State.

In connection with a review of Team Wendy's protest, the Division's Hearing Unit reviewed the **NJSTART** and hard copy Quotes submitted and confirmed that Team Wendy did not submit a Quote through the **NJSTART** eProcurement system, nor did Team Wendy submit a hard copy Quote to the Division. See, Exhibit A.













Additionally, in reviewing the record of this procurement Hearing Unit also reviewed Team Wendy's Vendor Profile. As shown in the screenshot below, it appears that Team Wendy uploaded the documents which it intended to submit as a Quote to its Vendor Profile.

Vendor Profile - TEAM WENDY

Organization Information Users Address Commodity Codes and Services Regions Terms & Categories **Attachments** Vendor Performance

Attachments Information

Profile Attachments

Download	File	Description	Size	Uploaded By	Uploaded Date
	T0790 TW AA_Supplement.pdf		396,581 bytes	Joseph nagy	09/15/2017 10:47:46 AM
	T0790 TW Bidder Data Form.pdf		828,584 bytes	Joseph nagy	09/15/2017 10:48:03 AM
	T0790 TW CERTIFICATION AND POLITICAL CONTRIBUTION FORM.pdf		648,917 bytes	Joseph nagy	09/15/2017 10:48:41 AM
	T0790 TW Cooperative Purchasing Form.pdf		505,509 bytes	Joseph nagy	09/15/2017 10:49:00 AM
	T0790 TW Dealers and Distributors Plan.pdf		365,037 bytes	Joseph nagy	09/15/2017 10:49:15 AM
	T0790 TW Disclosure of Investments in Iran Form.pdf		547,333 bytes	Joseph nagy	09/15/2017 10:49:32 AM
	T0790 TW Electronic Payment.pdf		721,463 bytes	Joseph nagy	09/15/2017 10:49:55 AM
	T0790 TW Subcontractor Utilization Plan.pdf		1,365,998 bytes	Joseph nagy	09/15/2017 10:50:15 AM
	TW Offer and Acceptance Page- 121216--1.pdf		178,066 bytes	Joseph nagy	09/15/2017 10:50:31 AM
	Chapter51.pdf		1,936,025 bytes	Joseph nagy	09/15/2017 10:51:18 AM
	NJ 17DPP00100 T0790 TW Ownership Disclosure Form - edited.pdf		1,054,024 bytes	Joseph nagy	09/15/2017 10:52:36 AM
	NJ 17DPP00100 T0790 CertandDisc2706.pdf		305,334 bytes	Joseph nagy	09/15/2017 10:52:56 AM

Forms

No Form Attachments

Close Window

First, I note that the inclusion of documents on the Vendor Profile page does create or constitute a properly submitted Quote. When a Quote is properly created and submitted through the **NJSTART** eProcurement system, following the instructions set forth in the QRG entitled “Submit a Quote,” the Division automatically receives the Quote after the opening date and time. However, when a Vendor makes a change to, or attaches documents to its Vendor Profile, the Division does not receive any notice of this action as Vendors {Bidders} are free to make changes and additions to the Vendor Profile for any reason at any time. There are over 31,000 Vendors registered in the **NJSTART** eProcurement system. The Division does not review the over 31,000 Vendor Profile pages each time a Quote submission dates has passed.

Second, despite the fact that it was not properly submitted and need not be accepted as a Quote; in connection with the review of Team Wendy’s protest, an examination of the documents uploaded to Team Wendy’s Vendor Profile was made. Team Wendy uploaded the following documents to its profile:

- AA 302 Form
- Bidder Data Form
- Vendor/Bidder Certification and Political Contribution Disclosure Form (Chapter 271)
This document was attached to Team Wendy’s Vendor Profile twice.
- Cooperative Purchasing Form

- Dealers and Distributors Plan
- Disclosure of Investments in Iran Form
- Electronic Payment Form
- Subcontractor Utilization Plan
- Offer and Acceptance Page
- Two-Year Vendor Certification and Disclosure of Political Contributions Form (Chapter 51)
- Ownership Disclosure Form

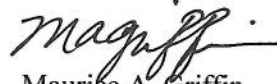
In creating and submitting a Quote in response to this Bid Solicitation, Vendors {Bidders} were required to identify the category of goods for which it was submitting a Quote, the brand/manufacturer of the goods, and the percentage mark-up or discount to be applied to the applicable catalog or price list. Bid Solicitation § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. None of the documents attached to Team Wendy's Vendor Profile identifies the brand, manufacturer, category or pricing of products which Team Wendy sought to sell to the State. Therefore, even if the documents attached to Team Wendy's Vendor Profile could be accepted as a Quote, Team Wendy failed to include any information regarding the brand, manufacturer, category or pricing necessary for the Bureau's evaluation of Quotes received and necessary to make a Blanket P.O. award.

The responsibility for ensuring that all necessary forms and other submittals are properly uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. The Division's governing regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. The Bureau could not allow Team Wendy to later submit this information as doing so would result in an impermissible clarification, contrary to the Court's holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) ("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"). Permitting Team Wendy or any other Vendor {Bidder}, to submit the required information after the Quote opening deadline has passed, would place that Vendor {Bidder} in a position of advantage over other Vendors {Bidders} who timely submitted the required information with the Quote.

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. However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject Bid Solicitation. This is my final agency decision with respect to the protest submitted by Team Wendy.

Thank you for your company's 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. I also invite you to visit the **NJSTART** Vendor Support Page and review the Division's Quick Reference Guides which will provide you with information on how to submit a Quote and how to review a submitted Quote.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
K. Popso

Exhibit A

**DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROPOSAL REVIEW UNIT
PROPOSAL TRANSFER COUNTER-SIGNATURE MEMO**

PROCUREMENT / RFP #: 17DPP00100 T0790 Firefighter Protective Clothing & Equipment.

PROPOSAL OPENING Date: September 29, 2017

**DELIVERY TO PROCUREMENT
SPECIALIST DATE: October 10, 2017**

PROPOSALS:

1. Municipal Emergency Services Inc. {NJ START}
2. Emergency Equipment Sales LLC. {NJ START}
3. Stansfields Ltd. {NJ START} Warning Letter
4. Grace Industries Inc. {NJ START}
5. Scott Health & Safety. {NJ START}
6. E.D. Bullard Co. {NJ START}
7. Firefighter One LLC. {NJ START}
8. Ricochet Manufacturing Company Inc. {NJ START}
9. ParaTech Inc. {NJ START}
10. Mine Safety Appliances Company LLC. {NJ START/ HARD COPY}
11. Morning Pride Manufacturing LLC dba. Honeywell First Responder Products. {NJ START / HARD COPY}
12. Howell Rescue Systems Inc. {NJ START} Rejected
13. Avon Protection Systems. {NJ START} Warning Letter
14. Innotex Corp. {NJ START}
15. Fire-Dex LLC. {NJ START}
16. ESI Equipment Inc. {NJ START}
17. Veridian Fire Products Gear. {NJ START} Warning Letter
18. Elkhart Brass. {NJ START} Warning Letter

10/11/17
Date

10/10/17
Date