



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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May 1, 2018

Via Electronic Mail [Redmondlandscape@peoplepc.com] and USPS Regular Mail

John Redmond
Redmonds Landscaping
PO Box 249
Pemberton, NJ 08068

Re: I/M/O Bid Solicitation #18DPP00205 Redmond's Landscaping
Protest of Notice of Proposal Rejection
T0777 Snow Plowing and Spreading Services

Dear Mr. Redmond:

This letter is in response to your correspondence dated April 19, 2018, on behalf of Redmonds Landscaping ("Redmonds") which was received by the Division of Purchase and Property's ("Division") Hearing Unit on April 24, 2018. In that correspondence, Redmonds protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services ("Bid Solicitation"). The record of this procurement reveals that Redmonds' Quote was rejected for failing to submit the *Disclosure of Investment Activities in Iran Form* or pricing information with its Quote.

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 Master Blanket Purchase Orders ("Blanket P.O.s")¹ to those responsible Vendors

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

{Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

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 opened 136 Quotes submitted through the State's *NJSTART* eProcurement system and 41 Quotes received in hardcopy format by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Redmonds for failure to submit the *Disclosure of Investment Activities in Iran Form* or any pricing information with its Quote.

In response to the Notice of Proposal Rejection, Redmonds wrote to the Division's Hearing Unit stating:

REDMOND LANDSCAPING
P.O. Box 249
Pemberton, NJ 08068
4/19/18
To whom it may concern:
For bid solicitation# 18DPP00205 for T0777 Snow plowing Spreading Services. We got a rejection letter said these forms were missing and pricing was blank. We had called the helpline prior to submitting our bid on 4 different occasions with questions that went unanswered. We believed we had attached all items requested (some we could not open on our computer so we went to website and downloaded) We found bidding to be very confusing and totally different from the first bid we were awarded in 2013. Apparently the only pricing that went through was the one where we were told to bid \$1 to keep private. We would have mailed in a bid but forms specifically pricing would not print out properly as you can see from attached papers. Bidding process could use to be simplified and help desk could be more helpful. Hope the missing paperwork can keep our bid from being rejected. Thank you for your time and consideration.

In consideration of Redmonds' protest, I have reviewed the record of this procurement, including the Bid Solicitation, Redmonds' proposal and 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.

I. Disclosure of Investment Activities in Iran Form

With respect to the submission of the *Disclosure of Investment Activities in Iran Form*, the New Jersey Legislature has mandated that "[a] State agency shall require a person or entity that submits a bid or Quote or otherwise proposes to enter into or renew a [Blanket P.O.] to certify, at the time the bid is submitted or the [Blanket P.O.] is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 [C.52:32-57] of this act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 [C.52:32-56] of this act." N.J.S.A. 52:32-58(a).

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 shall² 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 in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

Among those forms required to be submitted with the Quote is the *Disclosure of Investment Activities in Iran Form* discussed in Bid Solicitation Section 4.4.1.2.2 which states:

Pursuant to N.J.S.A. 52:32-58, the Vendor {Bidder} must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Vendor {Bidder}, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Vendor {Bidder}, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Vendor {Bidder} is unable to so certify, the Vendor {Bidder} shall provide a detailed and precise description of such activities as directed on the form. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder}.

² "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

Vendors {Bidders} using **NJSTART** to submit a Quote {Proposal} shall make the appropriate certification on the “Maintain Terms and Categories” Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Disclosure of Investment Activities in Iran form. Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal} must complete the full Disclosure of Investment Activities in Iran form located on the [Division’s website](#). The full version of the form is also available in [NJSTART \(www.njstart.gov\)](#).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community a *Disclosure of Investment Activities in Iran Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Disclosure of Investment Activities in Iran Form*, as noted in Bid Solicitation Section 4.4.1.2.2 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding investment activities in Iran on the “Maintain Terms and Categories” Tab within its profile. As shown in the screenshot below, Redmonds did not complete the Disclosure of Investment Activities in Iran category.

Vendor Profile - Redmonds Landscaping

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

Terms and Categories Information

Terms

Payment Terms:
Freight Terms:
Shipping Method:
Shipping Terms:

Categories & Certifications

Category: 1. Primary Business Function - (MANDATORY FIELD)

Provides Any Other Type of Services

Category: 3. Business Formation (MANDATORY FIELD)

Partnership including Limited Partnership, General Partnership, Limited Liability Partnership

Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)

Description: I certify that I am an appointed agent of the vendor referenced and that I hereby authorize the State of NJ to initiate payments to the bank acct and bank named in the electronic funds transfer (if and when the information is provided). This authority is to remain in full force and effect until the State of NJ receives notification of any changes, and in such a manner as to afford the State of NJ a reasonable opportunity to Act.

Select if you prefer a paper check instead and do not want to receive payment via EFT. (Any banking information entered as part of your remittance address will be disregarded and remain inactive.)

Category: 5. Tax ID Certification (Substitute W9) (MANDATORY FIELD)

Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for federal tax purposes.

Select if you agree with the statement above.

Category: Certification: Business Registration

Description: This Certification status is updated daily. If your business is not registered, or if your registration is not active, please see the following link:

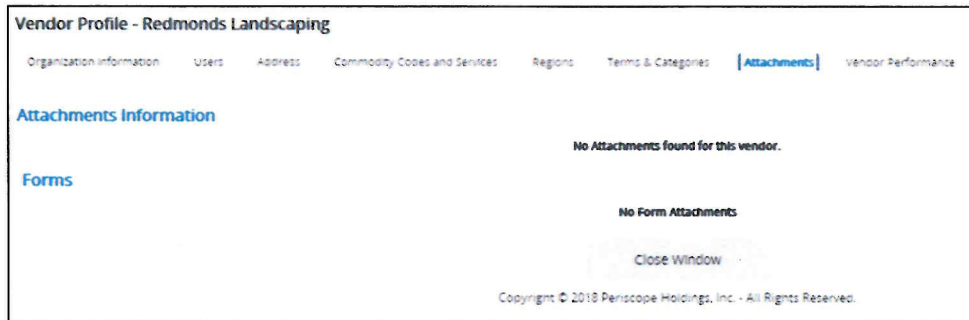
Active

Category: Certification: A/E/E/O/C Compliance

Description: This Certification status is updated daily. If your business does not have a certification, or if your certification has expired, please see the following link:

Yes

Because Redmonds did not complete the Disclosure of Investment Activities in Iran category within **NJSTART**, it was required to submit the *Disclosure of Investment Activities in Iran Form* with its Quote, or attach the form to its Vendor Profile within **NJSTART**. The record indicates that Redmonds did not include a completed and signed *Disclosure of Investment Activities in Iran Form* with its Quote nor was the form contained within Redmonds **NJSTART** Vendor Profile as shown in the screenshot below.³



The Division does not have the power to waive the legislative requirement that a Vendor {Bidder} certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. Accordingly, Redmonds Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Disclosure of Investment Activities in Iran Form* with its Quote.

If the requirements of N.J.S.A. 52:32-58 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These statutes and 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 **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.

Here, unfortunately, Redmonds submitted a Quote without the *Disclosure of Investment Activities in Iran Form* attached. Notwithstanding Redmonds' interest in competing for this procurement, to allow Redmonds to submit the completed and signed *Disclosure of Investment Activities in Iran Form* after bid opening would violate the Legislative requirement outlined in N.J.S.A. 52:32-58, a requirement that the Division is not authorized to waive.

II. Missing Pricing Information

With respect the missing Quote pricing, the Bid Solicitation cautioned Vendors {Bidders} regarding the need to ensure that all required forms, including the State-Supplied Price Sheet, are properly submitted. Specifically Bid Solicitation Section 4.4 *Quote {Proposal} Content* states in pertinent part:

Note: Vendors {Bidders} submitting Quotes {Proposals} through NJSTART must complete the State-supplied price sheet/schedule(s) (Volume 3) accompanying this Bid Solicitation {RFP} and upload it as an

³ Redmonds submitted Quote was six pages long and contained the following items: (1) Vendor/Bidder Certification and Political Contribution Disclosure Form, Public Law 2005, Chapter 271; (2) Ownership Disclosure Form; (3) Employee Information Report; (4) Public Works Certification.

attachment on the “Attachments” Tab (See Section 4.4.5 of this Bid Solicitation {RFP}).

To assist Vendors {Bidders} in completing the State-supplied price sheet/schedule, the Bid Solicitation further advised:

The Vendor {Bidder} must submit its pricing using the format set forth in the State-supplied price sheet/schedule 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.

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.

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

Each of the 375 price lines included on the price sheet/schedule represents a specific jurisdiction for which snow plowing and or spreading services are sought. See Bid Solicitation Section 3.11 *Highway Operations Crew Jurisdiction & Snow Sections* which states:

A Highway Operations Jurisdiction (Jurisdiction) consists of specific State highways, including ramps and turnarounds, or portions thereof, or any other areas identified by the NJDOT. Each Jurisdiction is broken down into Snow Sections and assigned to a Highway Operations Crew (Crew). If new lane miles are added, or if a section of the roadway adjacent to a contracted Snow Section is not covered by a Vendor {Contractor}, Snow

Sections may be expanded during the Winter Season at the request of the
 NJDOT Site Supervisor.

For example,

VENDOR (BIDDER) NAME:							
SNOW PLOWING SERVICES (PAGES 1 TO 100)							
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
1	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 210 PATERSON SUBREGION: N3 SNOW SECTION: 5210261 RT 208, FROM GOFFLE ROAD, HAWTHORNE BORO, PASSAIC CO, TO RT 202 OAKLAND BORO, BERGEN CO (MP 4.4 TO 10.7) NUMBER OF TRUCKS REQUIRED: 7	1	HOUR				
SNOW PLOWING SERVICES/ OTHER EQUIPMENT							
LINE NO	DESCRIPTION	QTY	UNIT	QUANTITY AVAILABLE	INCLUDE SNOW SECTION FOR EQUIPMENT (E.G. SNOW SECTION)	DO NOT USE	ALL-INCLUSIVE HOURLY RATE
299	CLASS "C" GRADER - 20,000 TO 27,999 LBS	1	HOUR				
300	CLASS "D" GRADER - 28,000 LBS AND UP	1	HOUR				
301	CLASS "E" FRONT END LOADER - 1 1/4 TO 2 CY	1	HOUR				
302	CLASS "F" FRONT END LOADER - 2 1/4 - 2 1/2 CY	1	HOUR				
303	CLASS "G" FRONT END LOADER - 3 TO 3 1/2 CY	1	HOUR				
304	CLASS "H" FRONT END LOADER - 4 TO 6 CY	1	HOUR				
305	CLASS "I" FRONT END LOADER - 6 1/2 CY TO 8 CY	1	HOUR				
306	CLASS "J" FRONT END LOADER - 8 1/2 CY TO 10 CY	1	HOUR				
309	CLASS "K" FRONT END LOADER - 10 1/2 CY AND UP	1	HOUR				
SPREADING SERVICES							
LINE NO	DESCRIPTION	QTY	UNIT	DO NOT USE	ALL-INCLUSIVE HOURLY RATE CLASS R TRUCK	ALL-INCLUSIVE HOURLY RATE CLASS G TRUCK	ALL-INCLUSIVE HOURLY RATE CLASS P TRUCK
310	SPREADING SERVICES - D.O.T. REGION: NORTH CREW 8: 210 PATERSON YARD ROUTE 20 SOUTH AND 4TH AVENUE, PATERSON, NJ NUMBER OF TRUCKS REQUIRED: 8 CLASS R, 1 CLASS G CLASS R - 8 CLASS G - 1	1	HOUR				

Redmonds did not submit the State-Supplied Price Sheet with its Quote. Rather, Redmonds included an hourly rate on the "Items" Tab within [NJSTART](#).

Item Information									
Print Sequence # 1.0: (968 - 72) The Vendor (Bidder) must enter a Unit Cost of \$1.00 for each price line item on the Items Tab. The Vendor (Bidder) must submit its pricing as an attachment using the State supplied price/sheet schedule(s) accompanying this Bid Solicitation (RFP) and located on the Attachments Tab. Please refer to Bid Solicitation (RFP) Section 4.4.5									
Quantity	UOM	Unit Cost	Discount %	Tax Rate	Freight	Extended Amount	No Bid	No Charge	See Quote Attachment(s)
0.1	HOUR	\$1.00	0.0%	0.0%	\$0.00	\$0.10	No	No	No

The question then is whether Redmonds' failure to submit the pricing information with its Quote results in a material deviation. In order for Redmonds' Quote to be considered responsive, Redmonds' failure to submit all of the information required by the State-Supplied Price Sheet with its Quote would have to be deemed a minor irregularity. Minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 1.4.10, *Quote {Proposal} Acceptances and Rejections*. 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 set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 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-waivable irregularity.” In re Protest of the Award of the On-Line Games Prod. and 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-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” *Id.* at 222.

By not including the State-Supplied Price Sheet or any other document setting forth its Quote pricing, the Division has no information regarding the jurisdiction or type of service – whether snow plowing, equipment, or spreading services - for which Redmonds was submitting a Quote. Redmonds’ failure to include necessary pricing information with its Quote submission is a material deviation from the requirements of the Bid Solicitation. Permitting Redmonds’, 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 pricing information with the Quote. Accordingly, Redmonds’ Quote was properly rejected by the Division’s Proposal Review Unit for failure to submit pricing information with its Quote.

III. Reviewing a Submitted Quote

Finally, Redmonds states that it “found bidding to be very confusing and totally different from the first bid we were awarded in 2013...Bidding process could use to (sic) be simplified and help desk could be more helpful.”

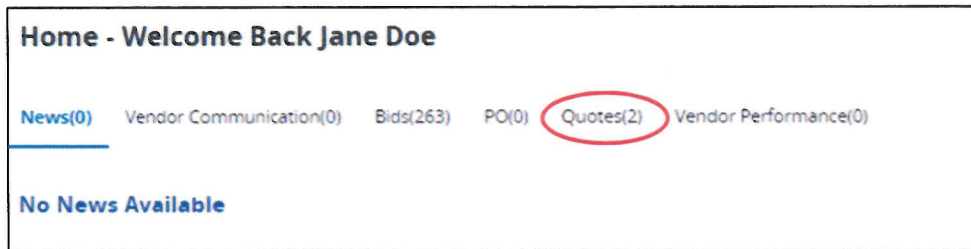
To assist Vendors {Bidders} in preparing and submitting Quotes, the Division provides the bidding community with Quick Reference Guides that provide information and step-by-step instructions on how to submit a Quote. Bid Solicitation Section 1.3.3 *Vendor Bidder Support* specifically advises Vendors {Bidders} of the availability of these guides:

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of **NJSTART** terms, and helpdesk contact information.

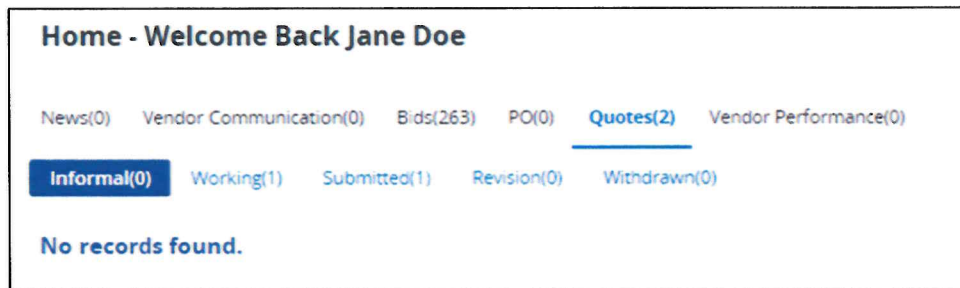
The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote {Proposal} using the **NJSTART** process. It is the Vendor’s

{Bidder's} responsibility to ensure that the **NJSTART** Quote {Proposal} and attachments have been properly submitted.

The Division's Quick Reference Guide entitled "Submit a Quote" provide Vendors {Bidders} with specific information on how to locate a bid solicitation, how to complete the information required by the **NJSTART** portal, and how to attach documents to the Quote. That guide also provides Vendors {Bidders} with instructions on how to review a submitted Quote. I note that to review a submitted Quote, once logged into **NJSTART**, a Vendor {Bidder} should click on the "Quotes(#)" Tab as shown in the screenshot below:



The following screen appears, where a Vendor {Bidder} can see a record of those Quotes which are listed as: informal, working, submitted, revision or withdrawn.



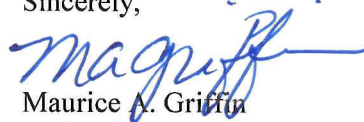
From this location Redmond can review all submitted Quotes along with any documents that were attached to the Quote.

With regard to Redmonds' indication that it was unable to reach anyone in the Division's Vendor Support Help Desk for assistance, a review of the call log maintained that Vendor Support Help Desk did not reveal any phone calls having been received from Redmonds. However, in the event that there was a call placed to the Vendor Support Help Desk that was not responded to, I apologize for the Division. With respect to future bidding opportunities, Redmonds is reminded that the Vendor Support Help Desk is staffed Monday to Friday from 8:30 am to 4:30 pm. Redmonds should ensure that it has allowed adequate time to ask questions regarding any procedural requirements to uploading its Quote to ensure that the Quote is properly submitted.

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. 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 contract.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov. This is my final agency decision on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "MAGRIFF", with a long horizontal flourish extending to the right.

Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger