



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 5, 2018

Via Electronic Mail [bvwservicesllc@gmail.com]] and USPS Regular Mail

Britany Vespe
BVW Services, LLC
486 East Evesham Rd Suite 110
Cherry Hill, NJ 08003

Re: I/M/O Bid Solicitation #18DPP00205 BVW Services, LLC
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Ms. Vespe:

This letter is in response to your correspondence of August 28, 2018, on behalf of BVW Services, LLC (BVW) to the Division of Purchase and Property's Hearing (Division) Unit. In that correspondence BVW 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).

BACKGROUND

By way of background, on January 30, 2018, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified 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} 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.

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 164 Quotes received through the State's *NJSTART* eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Thirty-two Quotes were automatically rejected by the Proposal Review Unit for failure to conform to the mandatory administrative requirements for Quote submission. On or about April 2, 2018, the Division's Proposal Review Unit advised BVW that its Quote was automatically rejected for failure to submit an *Ownership Disclosure Form* as required by New Jersey statute, regulation and the subject Bid Solicitation. See, N.J.S.A. 52:25-24.2, N.J.A.C. 17:12-2.2(a), and, Bid Solicitation Section 4.4.1.2.1. BVW did not submit a protest of the automatic rejection within 10 days of receiving notice of that its Quote had been rejected as required by N.J.A.C. 17:12-3.3(b) which states in pertinent part "the protest shall be filed within 10 business days following the bidder's receipt of written notification that its proposal is non-responsive or of notice of the intent to award."

The remaining Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria* which states:

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.

With respect to the evaluation of the Vendors' {Bidders'} Quote pricing, Bid Solicitation Section 6.7.1 *Vendor's {Bidder's} Price Schedule* states:

The Bureau will utilize a weighted price model. The price model will be date-stamped and entered into the record before Quote {Proposal} opening.

One (1) or multiple awards will be made to the Vendor {Bidder} submitting the lowest hourly rate for each Snow Section and meeting, at a minimum, the criteria for experience and equipment set forth in this Bid Solicitation {RFP}, in the following order:

Snow Plowing and Hauling Services:

- 1st – Vendors {Bidders} supplying all required Class A trucks with equipment;
- 2nd – Vendors {Bidders} supplying all required Class A trucks without equipment;
- 3rd – Vendors {Bidders} supplying all required Class B trucks with equipment;
- 4th – Vendors {Bidders} supplying all required Class B trucks without equipment;
- 5th – Vendors {Bidders} supplying fewer than the required number of Class A trucks with equipment; and
- 6th – Vendors {Bidders} supplying fewer than the required number of Class B trucks without equipment.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class A trucks with Vendor {Bidder} owned equipment, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class A trucks without equipment.

Spreading Services:

- 1st – Vendors {Bidders} supplying all required Class R trucks with an on board wetting system;
- 2nd – Vendors {Bidders} supplying all required Class R trucks;
- 3rd – Vendors {Bidders} supplying all required Class Q trucks with an on board wetting system;
- 4th – Vendors {Bidders} supplying all required Class Q trucks;
- 5th – Vendors {Bidders} supplying all required Class P trucks with an on board wetting system;
- 6th – Vendors {Bidders} supplying all required Class P trucks;
- 7th – Vendors {Bidders} supplying V Box trucks with an on board wetting system;
- 8th – Vendors {Bidders} supplying V Box trucks;
- 9th – Vendors {Bidders} supplying mid-body style trucks with an on board wetting system; and
- 10th – Vendors {Bidders} supplying mid-body style trucks.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class R trucks, with an on board wetting system, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class R trucks without an on board wetting system.

The evaluation of Quotes received and submission of Quote pricing was conducted in three phases as set forth in Bid Solicitation Section 1.1 *Purpose and Intent* which states:

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 Sections 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 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.

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. The

preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. Four Vendors {Bidders} withdraw a submitted Quotes for some or all of the snow plowing section originally submitted during Phase 1. 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.

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. The second preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. 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.

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. The third preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted a Quote or a preliminarily awarded price line.

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.² On August 24, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O.s consistent with the Bureau's Recommendation Report.

On August 28, 2018, the Division received BVW's protest challenging the intended Blanket P.O. awards. BVW states:

This email will serve as our official protest to any awards for the snow contracts. If the state of New Jersey intends to award these projects please advise us by close of business Thursday, August 30[,] 2018. If that is the case to award these contracts (sic) we will seek to file injunctive relief through the courts. Thank you[,] your prompt attention to this matter is appreciated.

In consideration of BVW's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, 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 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.

First, in response to BVW's question contained within its protest, subsequent to the close of the protest period on August 31, 2018, it is the Division's intent to award contracts consistent with the Bureau's August 24, 2018, Notice of Intent to Award.

Second, pursuant to the Division's governing regulations,

1. A protest regarding the Director's decision to award a contract shall contain the following items:
 - i. Identification of the Division's solicitation number for the particular procurement;
 - ii. The specific grounds for challenging the intended contract award, including all arguments, materials and/or other documentation that may support the protester's position that the contract award should be overturned; and
 - iii. A statement as to whether the protester requests an opportunity for an in-person presentation and the reason(s) for the request.

[N.J.A.C. 17:12-3.3(b)(1), emphasis added.]

Here, BVW has not provided the specific ground(s) for challenging the award of Blanket P.O.s as shown in the direct Quote from BVW's "protest" document. Therefore, BVW's protest is administratively dismissed for not providing any specific grounds for challenging the intended contract award.

Finding no reason to disturb the Bureau's recommendation, I sustain the August 24, 2018, Notice of Intent to Award. This is my final agency decision with respect to the protest submitted by BVW.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey's eProcurement system. I encourage you to log into [NJSTART](http://www.njstart.gov) 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](http://www.njstart.gov) websites for future bidding opportunities for these services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger