



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR

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January 24, 2019

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

Melissa Alderton  
Firefighter One, LLC  
34 Wilson Drive  
Sparta, NJ 07871

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

Dear Ms. Alderton:

This letter is in response to your email of September 20, 2018, on behalf of Firefighter One, LLC (Firefighter) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email Firefighter 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).<sup>1</sup> Specifically, Firefighter protests the award of Category 8, in part, to All Hands Fire Equipment (All Hands).

In consideration of Firefighter'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

<sup>1</sup> 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.

<b>NJSTART Term</b>	<b>Statutory, Regulatory and/or Legacy Term</b>
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

an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

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 Solicitation. *Ibid*. Specifically, Bid Solicitation Section 3.1 *Firefighter Protective Clothing and Equipment Categories* identified the following eight (8) categories of goods sought:<sup>2</sup>

- 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.

Category 8 was more specifically described in Bid Solicitation Section 3.1.8 *Category 8 - Search and Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment (Price Line 8)* which stated:

The category consists of search and rescue/vehicle extrication equipment including: firefighter thermal imaging cameras\*, nozzles, valves, water cannons, bags, hose straps, slings, cots, stair chairs, transporters, stretchers, escape kits, rescue cutters, spreaders, rams, life-safety rope, harnesses and hardware. All brands/items must be NFPA certified as applicable to the category.

On September 29, 2017, the Division's Proposal Review Unit opened the Quotes received by the submission deadline of 2:00 p.m. 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 6.6 *Evaluation Criteria*.

On September 11, 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 were most advantageous to the State, price and other factors considered. On September 14, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s. Among those Vendors {Bidders} listed for a Blanket P. O. award in Category 8 was All Hands for its proposed Rescue Kit and Water Rescue PPE Package. September 11, 2018 Recommendation Report, p. 1.

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<sup>2</sup> 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 20, 2018, Firefighter submitted a protest to the Division’s Hearing Unit stating in part:

Firefighter One LLC requests to protest Proposed Awardees (sic) All Hands Fire Equipment LLC for Line 8: All Hands Water Rescue PPE Packages. All Hands Fire Equipment is not a manufacturer of water rescue products, but a wholesale distributor of products. The proposed “PPE Packages” would be a compiled number of products from various manufacturers listed together as a package.

In connection with the Hearing Unit’s review of the Firefighter’s protest, All Hands was given the opportunity to respond to the protest. On October 1, 2018 and October 31, 2018, All Hands wrote to the Division’s Hearing Unit responding the protest issued raised by Firefighter. In part, All Hands stated:

...If this package is not awarded it calls into question this ENTIRE Contract. I can list several Vendors on this contract that have similar packages and/or are NOT the manufacturer of the items or packages they submitted. Like AHF, they are Private Labeling, Contract/Subcontracting other manufacturers to make these items, and/or distributing/wholesaling them.

A review of All Hands’ Quote reveals that in response to category 8 All Hands proposed the following:

<b>PRICE SHEET - T0790 (17DPP00100) FIREFIGHTER PROTECTIVE CLOTHING &amp; EQUIPMENT</b>									
<b>VENDOR (BIDDER) NAME:</b>		All Hands Fire Equipment LLC							
<b>DATE:</b>		9/11/2017							
<b>CASH DISCOUNT FOR EXPEDITED PAYMENT</b> <small>(see Section 4.4.5.6)</small>		N/A							
Price Line	Category	Brand/Manufacturer	Markup/Discount from Manufacturers Price List	% Percentage	Price List Type	Price List File Name	Price List Publication Date	Price List Page # Relating to the Brand Bid	Delivery Days ARO
1	Turnout Gear	Lion	AHF under Vendor						
2	Helmets	Lion	AHF under Vendor						
		MSA/Cairns	AHF under Vendor						
		Pacific (AHF authorized to submit for Vendor)	Discount from List	0.10%	Excel	PACIFIC HELMETS	6/1/2017	where Submitted Li	1 to 90
		Team Wendy	AHF under Vendor						
3	Protective Hoods	Majestic Hoods	AHF under Vendor						
		Lifeline	AHF under Vendor						
4	Boots	Habx	AHF under Vendor						
		Lion	AHF under Vendor						
5	Gloves	Lion	AHF under Vendor						
6	Personal Alert Safety System (PASS) Device	Grace	AHF under Vendor						
7	Self-Contained Breathing Apparatus (SCBA)	Draeger	AHF under Vendor						
8	Search & Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment	Sterling, Akron, Erhart, Tempest, Junk Yard Dog, PML, Cutters Edge, New England Rope, etc. (AHF under Vendor); Vendors AHF bidding against other Dealers and Vendors AHF authorized to submit for the Vendor... *SEE information on following Tab, "Price Sheet 2".	SEE Tab "Price Sheet 2"						

On the tab identified as "Price Sheet 2," All Hands listed the following three kits/packages:

Category	Brand/Manufacturer	Markup/Discount from Manufacturers Price List
Search & Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment	All Hands Kits and Packages Water Rescue Motor Pa	Discount OFF List
Search & Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment	All Hands Fire Equipment Kits and Packages Rescue	Discount OFF List
Search & Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment	All Hands Kits and Packages Water Rescue PPE Pack	Discount OFF List

Each of All Hands proposed kits/packages was more specifically described in the Quote as follows:

- "Water Rescue Motor Packages" was comprised of various boat motors and accessories as shown on the screenshot below:

A			B		
Motor			Accessories		
Code		List \$	Code		List \$
0	None	0.00	0	None	0.00
1	Graphite Portable 15HP Tiller, Pull	2425.00	1	Rotor w/Casing 25-30HP	1967.99
	Etec White 15HP Tiller, Pull	3405.00			
2	White 25HP Tiller, Pull	3440.00			
3	White 30HP, Tiller, Pull	3895.00			
*Sizes, Color, Spec, etc. confirmed separately					
A			B		

- All Hand's proposed "Rescue Kits" contained various kits set forth on the following screen shot:

All Hands Fire Equipment Kits and Packages Rescue Kits			8/1/2017
AHF-LSRKIT	Life Saving Rope Kit	\$589.99	List
AHF-FDNY-SK	FDNY Search & Guide System - FDNY Pack w/Searchlite Rope	\$289.99	List
AHF-TOOL-KIT	All Hands Fire Basic Tool Kit	\$349.99	List
MVM	Man vs. Machsine Kit	\$599.99	List

- All Hand's "Water Rescue PPE Package" includes the following items: dry suits, helmets, boots, gloves, personal flotation devices; and, accessories.

All Hands Fire Equipment LLC Water Rescue PPE Package										8/1/2017		
A Dry Suits		B Helmets		C Boots		D Gloves		E PFD		F Accessories		
Code	List \$	Code	List \$	Code	List \$	Code	List \$	Code	List \$	Code	List \$	
0	None	0.00	0	None	0.00	0	None	0.00	0	None	0.00	
1	Dry Suit	1599.99	1	Livery Helmet	59.95	1	Black Eagle	169.00	1	Sweeper Glove	26.99	
			2	SAR	215.99	2	Workboot	79.95	2	Cestus Glove	59.95	
			3	Tactical	304.99							
										1	Fox 40 Whistle	4.99
										2	Pair of NFPA-82 Biners	25.50
										3	Co-Pilot Knife	44.95
										4	Purest Mesh Bag	49.95
										5	NFPA Throw Bag	80.95
										6	Meridian Light	29.99
										7	Tow Tether	29.95

New Jersey's governing laws require that "all purchases, contracts or agreements, the cost or contract price whereof is to be paid with or out of State funds shall, except as otherwise provided in this act, be made or awarded only after public advertisement for bids therefore, in the manner provided in this act." N.J.S.A.52:34-6. Moreover, New Jersey's statutes require that "whenever advertising is required: (a) specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency..." N.J.S.A. 52:34-12, emphasis added. The New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey's statutory procurement scheme is "to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." Barrick v. State of New Jersey, 218 N.J. 247, 258. (2014); citing, Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985). The Division's overriding mission in conducting sealed, advertised bidding is to "encourage free and open competition." N.J.A.C. 17:12-2.1. It is only through maintaining a level playing field for all potential Vendors {Bidders} that the public policy of "thwarting favoritism, improvidence, extravagance, and corruption" underlying the public bidding process can be realized. Barrick, supra, 218 N.J. at 258-59 (2014).

In connection with its review of this protest, the Hearing Unit reviewed the requirements of the Bid Solicitation with respect to the 'escape kits' and the kits proposed by Vendors {Bidders} in response to this Bid Solicitation. As noted above, category 8 of the Bid Solicitation sought search and rescue/vehicle extrication/equipment/thermal imaging devices/firefighting equipment. Bid Solicitation 3.1.8 *Category 8 - Search and Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment (Price Line 8)*. Specifically,

The category consists of search and rescue/vehicle extrication equipment including: firefighter thermal imaging cameras\*, nozzles, valves, water cannons, bags, hose straps, slings, cots, stair chairs, transporters, stretchers, escape kits, rescue cutters, spreaders, rams, life-safety rope, harnesses and hardware. All brands/items must be NFPA certified as applicable to the category.

[Emphasis added.]

The above description of Category 8 is the only reference to a kit of any kind within the subject Bid Solicitation. Therefore, to be responsive to the requirements of the Bid Solicitation a proposed kit must fall within the description of an 'escape kit'. Unfortunately, there was no definition or description of 'escape kit' contained within the Bid Solicitation. This ambiguity leaves open the possibility for inconsistency, favoritism, improvidence, extravagance and corruption and is contrary to the State's mandate to provide full and free competition by maintaining a level playing field. N.J.S.A. 52:34-12. Barrick, supra, 218 N.J. at 258.

While there is no evidence of favoritism, improvidence, extravagance and corruption in this procurement, I note that the lack of a description of an 'escape kit' did lead to inconsistent results. By way of example, reviewing the Bureau's recommendation report as it relates to the three kits proposed by All Hands, the Bureau deemed All Hands proposed "Water Rescue Motor Packages" kit non-responsive to the requirements of the Bid Solicitation because "[t]he price list submitted for the All Hands Kits and Packages Water Rescue Motor Packages contains boat motors and accessories. These products are not covered under this procurement. Therefore, All Hands is non-responsive for the brand All Hands Kits and Packages Water Rescue Motor Packages." Recommendation Report p. 28. The Bureau accepted the two other kits proposed by All Hands as responsive to the specification. However, applying the same reasoning as applied to the "Water Rescue Motor Packages," to the "Water Rescue PPE Package", the Bureau should have deemed All Hands' "Water Rescue PPE Package" as non-responsive to the requirements of the Bid Solicitation as the kit included items not covered under this procurement; specifically, dry suits, personal floatation devices. All Hands third proposed set of kits, "Rescue Kits," simply contained a listing of the available kits, without any description of the items comprising the kit, the Bureau concluded that the "Rescue Kits" were responsive to the Bid Solicitation. Without a description of the items comprising the individual kits the Bureau could not make a determination on whether the items contained in the kits were in fact products sought by the Bid Solicitation.

As noted above, the Division's overriding mission in conducting sealed, advertised bidding is to "encourage free and open competition." N.J.A.C. 17:12-2.1. It is only through maintaining a level playing field for all potential Vendors {Bidders} that the public policy of "thwarting favoritism, improvidence, extravagance, and corruption" underlying the public bidding process can be realized. Barrick, supra, 218 N.J. at 258-59 (2014). Because the Division did not include a definition or description of an escape kit, the bidding community did not know what would be accepted by the States as responsive. Further, where no itemized listing of the products contained within a proposed escape kit was provided in the Quote, the State does not know what items the Vendor {Bidder} will sell to the State.

In light of the findings set forth above, I must overturn the Bureau's intended award to All Hands for Category 8 for the All Hands Water Rescue PPE Packages and the All Hand Fire Equipment Kits and Packages Rescue Kits. Further, I direct the Bureau to review all of the responsive Quotes submitted for Category 8 and remove any kits and/or packages proposed as an "escape kit" from the submitted Quotes. 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.

Should the State require "escape kits," that item can be procured separately with a more specific description.

This is my final agency decision with respect to the protest submitted by Firefighter.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: J. Kerchner  
K. Thomas  
K. Popso  
All Hands Fire Equipment  
Vendors {Bidders} listed on Attachment A

## Attachment A

1st Choice Safety Equipment LLC  
Akron Brass Company  
All American Hose  
All Hands Fire Equipment LLC  
Avon Protection Systems, Inc.  
Black Diamond Group  
E.D. Bullard Company  
Continental Fire & Safety, Inc.  
Cutters Edge Division of Edge Industries, Inc.  
Draeger, Inc.  
Elkhart Brass Manufacturing Company Inc.  
Emergency Equipment Sales, LLC  
ESI Equipment, Inc.  
Fire-Dex, LLC  
Firefighter One LLC  
FLIR Commercial Systems, Inc.  
Globe Manufacturing Company, LLC  
Grace Industries, Inc.  
HAIX North America Inc.  
Morning Pride Manufacturing d/b/a Honeywell  
Howell Rescue Systems Inc.  
Innotex Corp.  
Jersey Fire & Safety Products LLC  
Lakeland Industries  
Lion First Responder PPE, Inc.  
Majestic Fire Apparel  
Municipal Emergency Services  
Mine Safety Appliances  
OHD, LLLP  
Paratech Inc.  
Quaker Safety Products Corporation  
Ricochet Manufacturing Company, Inc.  
Scott Technologies, Inc. d/b/a Scott Safety  
Stanfield's Ltd.  
Sterling Rope Company, Inc.  
Teufelberger Fiber Rope Corporation  
Turnout Fire & Safety Inc.  
Union Fire Equipment Corp.  
Veridian Fire & Safety, Inc.