



# State of New Jersey

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February 13, 2019

Via Electronic Mail [[Erica.A.Craner@marsh.com](mailto:Erica.A.Craner@marsh.com)] and USPS Regular Mail

Erica Craner-Griffett, Managing Director  
Marsh USA, Inc.  
445 South Street  
Morristown, NJ 07960

Re: I/M/O Bid Solicitation # 18DPP00200 Bid Solicitation Marsh USA, Inc.  
T1352 Division of Risk Management: Brokerage and Advisory Services  
Protest of Notice of Intent to Award

Dear Ms. Craner-Griffett:

This letter is in response to your email of November 1, 2018, on behalf of Marsh USA, Inc. (Marsh) to the Division of Purchase and Property (Division). In that correspondence Marsh protests the October 22, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) indicating an intent to award a Master Blanket Purchase Order (Blanket P.O.)<sup>1</sup> to Willis of New Jersey, Inc. (Willis) for Bid Solicitation #18DPP00200 - T1352 Division of Risk Management: Brokerage and Advisory Services (Bid Solicitation).

By way of background, on January 30, 2018, the Bureau issued the Bid Solicitation on behalf of the Division of Risk Management (DRM), to solicit Quotes from qualified Vendors {Bidders} to provide insurance placement and consulting services to the DRM. Bid Solicitation § 1.1 *Purpose and Intent*. It is

<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.

<i>NJSTART</i> 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

the State's intent to award a Blanket P.O. to that responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation is most advantageous to the State, price and other factors considered. Ibid.

On April 5, 2018, the Division's Proposal Review Unit opened Quotes from three Vendors {Bidders} received through the State's *NJSTART* eProcurement system by the submission deadline. Those Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria* which states in part:

The following evaluation criteria categories, not necessarily listed in order of significance, will 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.

#### **6.7.1 Technical Evaluation Criteria**

Each criterion will be scored and each score multiplied by a predetermined weight to develop the Technical Evaluation Score.

A. Personnel: The qualifications and experience of the Vendor's {Bidder's} management, supervisory, and key personnel assigned to the Blanket P.O. {Contract}, including the candidates recommended for each of the positions/roles required.

B. Experience of firm: 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}.

C. Ability of firm to complete the Scope of Work based on its Technical Quote {Proposal}: The Vendor's {Bidder's} demonstration in the Quote {Proposal} that the Vendor {Bidder} understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Blanket P.O. {Contract}.

On September 6, 2018 the Evaluation Committee completed its report recommending that a Blanket P.O. be awarded to Willis. On September 17, 2018, the Bureau prepared a Recommendation Report to the Director which recommended a Blanket P.O. award to Willis as the Vendor {Bidder} whose Quote, conforming to the Bid Solicitation was most advantageous to the State, price and other factors considered. On October 22, 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 November 1, 2018, the Division received Marsh's protest challenging the intended Blanket P.O. award. Specifically, Marsh states:

We wanted to respond in advance of November 5th, and request the Board reconsider their decision to move the Brokerage relationship to Willis. Over the term of our relationship, Marsh has a proven track record of protecting the balance sheet of the State of NJ. This was most evident with several large claims, under the property especially, which were covered by the broad terms and conditions negotiated by Marsh. In addition, your

policy premiums have been below market pricing year after year (multi-year deals negotiated and flat rates secured), even with the loss activity presented.

Moreover, in our ever increasing Cyber environment, the State's 2016 premium (first year secured) was close to \$500,000, while for the Nov 2018 renewal, the policy premium is \$310k. These are extraordinary results in a volatile marketplace which tends to shy away from Governmental business. This pricing includes significant coverage enhancements which have been achieved year after year (please advise if you would like details).

Lastly, your Total Cost of Risk has remained stable year after year, even as the State exposures have increased. We have not only successfully brokered your various lines of coverage, but have provided unparalleled advice and council (sic), with the support of our Industry Practice whom works with many of your peers.

We thank you for your time and welcome any questions you may have, as well as your decision to remain with Marsh.

In consideration of Marsh's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received and Marsh's protest, the 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 final agency decision on the merits of the protest submitted by Marsh. I set forth herein my final agency decision.

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 fundamental principles of New Jersey's procurement laws

prescribes that when the State advertises a contract and accepts bids, award of the contract "shall be made . . . to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered[.]" "Any or all bids may be rejected when the . . . Director of the Division . . . determines that it is in the public interest to do so."

Ultimately, the objective of the State's bidding laws is to serve the public interest, both in obtaining quality goods and services for the public's use and in securing those goods and services at a reasonable cost to the taxpayers. "Public bidding statutes exist for the benefit of taxpayers, not bidders, and should be construed with sole reference to the public good." To serve that public interest, the Legislature has conferred on the Division broad discretion in making decisions in public contracting matters.

[*Securitas Sec. Servs., U.S.A. v. New Jersey Dep't of Treasury*, 2012 N.J. Super. Unpub. LEXIS 35, \*36-37, internal citations omitted, emphasis added.]

A review of the Evaluation Committee's September 6, 2018 report, reveals that both Marsh and Willis submitted Quotes which were in the competitive range demonstrating that each had the ability to successfully perform the scope of work identified in the Bid Solicitation. Specifically, the evaluation report stated:

Marsh received a Total Technical Score of 4,440 out of a possible 5,000 points, with an average technical score of 888, Marsh met all mandatory requirements of the Bid Solicitation and was deemed by the Committee to have provided a Quote that successfully met or exceeded the expectations of the Bid Solicitation. The Quote submitted clearly demonstrates the ability of Marsh to successfully perform the services of the Blanket P.O. Marsh ranked number two (2) in pricing.

Willis received a Total Technical Score of 4,250 out of a possible 5,000 points, with an average technical score of 850. Willis met all mandatory requirements of the Bid Solicitation and was deemed by the Committee to have provided a Quote that successfully met or exceeded the expectations of the Bid Solicitation. The Quote submitted clearly demonstrates the ability of Willis to successfully perform the services of the Blanket P.O. based upon its Quote. Willis ranked number one (1) in pricing.

Based upon the Committee's evaluation and scoring of each Quote, it is clear that Marsh and Willis submitted competitive Quotes that successfully conveyed the ability of each respective firm to complete the Scope of Work as required by the Bid Solicitation. The cumulative difference in Total Technical Score of 190 points, based on a Vendor {Bidder} possible total score of 5,000 between the two (2) firms equates to minor 3.80% difference.

[Evaluation Committee's September 6, 2018 report, p. 16.]

Further, the Evaluation Committee report noted that:

Willis has the experienced staff necessary to perform the work required, and is ready with a seamless transition plan. Willis also provided the lowest pricing with a combined saving of 18.86%. With those factors in mind the Committee is recommending that the Division of Risk Management Brokerage and Advisory Services be awarded to Willis.

Based upon its review of the submitted Quotes, the Bureau recommended that the Blanket P.O., be awarded to Willis as the Vendor {Bidder} "whose Quote {Proposal}, conforming to this Bid Solicitation {RFP}, is most advantageous to the State, price and other factors considered." Bid Solicitation Section 6.7.4 *Evaluation of the Quotes {Proposals}*. On October 16, 2018, the Director accepted the Bureau's recommendation that the Blanket P.O. be awarded to Willis. See, Bureau's September 17, 2018 Recommendation Report.

In its protest, Marsh has not disputed the Evaluation Committee's review and/or scoring of its submitted Quote, or the Quote submitted by its competitor Willis. Nor has Marsh claimed some oversight or error having been made in the procurement process. Rather, Marsh requests that the Division award it the Blanket P.O. based upon its prior history as the State's current Vendor {Contractor}. The Division does not dispute Marsh's statements that it has "not only successfully brokered your various lines of coverage, but have provided unparalleled advice and council (sic);" however, status as an incumbent Vendor {Contractor} does not entitle a Vendor {Bidder} to a contract in perpetuity. As noted above, New Jersey's public procurement laws require that the public bidding process "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). 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 proposed award to Willis was made with the fundamental principles guiding New Jersey's public procurement laws in mind, to provide "quality goods and services for the public's use and [to secure] those goods and services at a reasonable cost to the taxpayers." Securitas Sec. Servs., U.S.A., supra, 2012 N.J. Super. Unpub. LEXIS \*36-37.

Accordingly, I find no reason to disturb the Bureau's recommendation that the Blanket P.O. be awarded to Willis. Accordingly, I sustain the October 22, 2018, NOI. This is my final agency decision with respect to the protest submitted by Marsh.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at [www.njstart.gov](http://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.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: P. Michaels  
L. Spildener  
R. Pavia