



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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*Acting Director*

October 1, 2019

Via Electronic Mail [jriehl@riehlstowing] and USPS Regular Mail

Jonathan Riehl  
Riehl's Towing  
185 Timberlane Road  
Clarksboro, NJ 08020

Re: I/M/O Bid Solicitation #19DPP00334 Riehl's Towing  
T2171 – Vehicle Towing and Roadside Services  
Protest of Notice of Intent to Award

Dear Mr. Riehl:

This letter is in response to your email of August 19, 2019, on behalf of Riehl's Towing to the Division of Purchase and Property's (Division) Hearing Unit requesting that its Quote be considered for an award of a Master Blanket Purchase Order (Blanket P.O.) for Bid Solicitation #19DPP00334 T2171 – Vehicle Towing and Roadside Services (Bid Solicitation). The record of this procurement reveals that the Division's Procurement Bureau (Bureau) deemed Riehl's Towing's Quote non-responsive to the requirements of the Bid Solicitation because it was not certified as a Small Business Enterprise as of the Quote opening date.

By way of background, on January 18, 2019, the Bureau issued the Bid Solicitation on behalf of the Bureau of Transportation Services, Division of Administration, Department of the Treasury (Transportation), to solicit Quotes from qualified Vendors {Bidders} to provide vehicle towing and roadside repair services. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award up to five Blanket P.O.s in each county to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. *Ibid.* On February 28, 2019, the Bureau issued Bid Amendment #1 extending the Quote submission deadline to April 3, 2019. On March 25, 2019, the Bureau issued Bid Amendment #2 responding to the questions received from potential Vendors {Bidders} and extending the Quote submission deadline to April 11, 2019.

On April 11, 2019, the Division's Proposal Review Unit opened 34 Quotes received by the submission deadline of 2:00 pm eastern time. On July 30, 2019, after completing its review and evaluation of the Quotes received, the Bureau completed a recommendation report which recommended Blanket P.O. awards be made to sixteen Vendors {Bidders} whose submitted Quotes were most advantageous to the State, price and other factors considered. On August 9, 2019, the Bureau issued a Notice of Intent to Award Letter (NOI) advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s to the following Vendors {Bidders}:

A&B Auto Repair	Jack's Auto Service
A-1 Towing	John's Main Auto Body
Bergen Brookside Towing	Johnson Specialized Transportation
City Wide Towing	Nick's Towing Service
Donald Rzepka (a/l Al's Auto Body)	P.P.T.D. LLC
GJ Auto Repair & Service	Puleio's Service Center
Glendola Service Center	SHT Corporation
Hy-Way Towing & Collision	TruckMasters Inc.

On August 19, 2019, Riehl's Towing submitted a protest to the Division's Hearing Unit stating:

Are the correct forms attached?  
Thank you, Let me know Please,  
Jon Riehl  
Riehl's Towing

With the protest, Riehl's Towing submitted a copy of its New Jersey Business Registration Certificate.

In consideration of Riehl's Towing's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the 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 Riehl's Towing. I set forth herein my final agency decision.

In 1983 the New Jersey Legislature enacted the "Set-Aside Act for Small-Businesses, Female Businesses and Minority Businesses." See, N.J.S.A. 52:32-17 et seq. The law required that the Division, when setting contracts aside for award to Small Business Enterprises advise the bidding community of the same and reject all Quotes from those businesses which are not certified as of the Quote opening date. See, N.J.S.A. 52:32-25. The regulations promulgated by the Department of the Treasury regarding Small Business Set-Asides similarly states "[i]f a business is to be eligible to bid on a specific set-aside contract or participate in the subcontracting target programs for purposes of this chapter, it must be registered as a small or veteran-owned business by [DORES] on or before the date the bid or proposal is due at the State contracting agency." See, N.J.A.C. 17:13-3.2. A review of the subject Bid Solicitation reveals that all Vendors {Bidders} were put on notice that awards would be confined to those businesses certified as Small Business Enterprise as of the Quote opening date. Specifically, the Bid Solicitation stated that

Pursuant to the provisions of N.J.S.A. 52:32-17 and N.J.A.C. 17:13 this is a full Set-Aside Blanket P.O. for Category I, II, & III for Small Businesses. The Vendor {Bidder} must<sup>1</sup> be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened. Evidence that the Vendor {Bidder} has registered as a small business should be submitted with the Quote. Vendors {Bidders} should verify its Small, Minority, Veteran, and Women Owned Business Certification status on the "Maintain Terms and Categories" Tab within its profile in *NJSTART*. In the event of an issue with a Vendor's

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<sup>1</sup> "Must – Denotes that which is a mandatory requirement." See, Bid Solicitation Section 2.2 *General Definitions*.

{Bidder's} Small, Minority, Veteran, and Women Owned Business Certification status, **NJSTART** provides a link to take corrective action.

Inasmuch as this is a full or partial set-aside Blanket P.O., the Vendor {Bidder} should provide, as part of its response to this Bid Solicitation, proof of its current registration as a qualifying small business with the New Jersey Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit. Application and registration requirements are presented on the web at <http://www.nj.gov/njbusiness/contracting/> or by contacting that agency as indicated below during business hours.

New Jersey Department of the Treasury  
Division of Revenue and Enterprise Services  
Small Business Registration and M/WBE Certification Services Unit  
33 West State Street – Fifth Floor  
PO Box 026  
Trenton, NJ 08625-0026  
Telephone: 609-292-2146  
Fax #: 609-292-8764

**\*\* IF THE VENDOR {BIDDER} IS AN INCUMBENT VENDOR {CONTRACTOR} AND/OR HAS PREVIOUSLY REGISTERED OR BEEN CERTIFIED UNDER THE FORMER SBE/MBE/WBE PROGRAM, THE VENDOR {BIDDER} SHOULD ENSURE IT IS REGISTERED ON THE DAY OF QUOTE RECEIPT WITH THE DIVISION OF REVENUE AND ENTERPRISE SERVICES, SMALL BUSINESS REGISTRATION AND M/WBE CERTIFICATION SERVICES UNIT TO BE ELIGIBLE FOR AWARD.**

**IN ORDER TO EXPEDITE THE SMALL BUSINESS REGISTRATION PROCESS FOR THIS PROCUREMENT, THE VENDOR {BIDDER} MAY FAX A COPY OF BID SOLICITATION PAGE ONE (1) REFLECTING THE QUOTE SUBMISSION DATE ALONG WITH THE COMPLETED SMALL BUSINESS REGISTRATION FORM TO THE NEW JERSEY DIVISION OF REVENUE AND ENTERPRISE SERVICES, SMALL BUSINESS REGISTRATION AND M/WBE CERTIFICATION SERVICES UNIT TO THE FAX NUMBER ABOVE.**

[Bid Solicitation Section § 4.4.1.4.1 *Small Business Set-Aside Blanket P.O.* Emphasis added.]

Moreover, in response to a question posed by a potential Vendor {Bidder}, in Bid Amendment #2, the Bureau confirmed the requirement that a Vendor {Bidder} must be registered as Small Business Enterprise by the Quote opening date. See screenshot below.

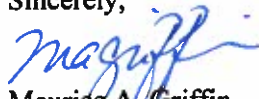
#	Bid Solicitation Section Reference	Question (Bolded) and Answer
7	Section 4.4.1.4.1 Small Business Set-Aside Blanket P.O.	<p><b>My firm has always been a small business. Is it really necessary for me to be registered in order to submit a bid?</b></p> <p>YES. The Vendor {Bidder} must be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened. Evidence that the Vendor {Bidder} has registered as a small business should be submitted with the Quote.</p> <p>Please refer to Section 4.4.1.4.1 for more information related to this Bid Solicitation's Small Business Set-Aside requirements.</p>

A review of the records maintained by DORES reveals that Riehl's Towing was not certified as a Small Business Enterprise on April 11, 2019, the Quote opening date. In fact, the records reveal that Riehl's Towing has not applied for certification as a Small Business Enterprise to DORES. I note that the certification submitted by Riehl's with its protest, does not demonstrate that it was certified by DORES as a Small Business Enterprise. Rather, the certification submitted by Riehl's with its protest, is the Business Registration Certification required pursuant N.J.S.A. 52:32-44, which verifies that a business is registered with the Department of the Treasury; and therefore able to enter into contracts with public agencies in the State.

Based on the findings set forth above, Riehl's Towing is not eligible for a Blanket P.O. award as it was not certified as Small Business Enterprise as of the Quote opening date. Unfortunately, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} be certified as a Small Business Enterprise as of the Quote opening date. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, I must deny your request for eligibility to participate in the competition for the subject Blanket P.O. This is my final agency decision.

Thank you for your company's interest in doing business with the State of New Jersey and for registering your business 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: A. Davis  
R. Regan  
E. Castaldo