



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROCUREMENT BUREAU
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

October 29, 2020

Via Electronic Mail Only meca@stevenlee.com

Maeve Cannon, Esq.
Stevens & Lee
100 Lenox Drive, Suite 200
Lawrenceville, NJ 08648

Re: I/M/O Bid Solicitation #19DPP00408 TSP Maintenance Supply, LLC
Protest of Notice of Intent to Award
T2432 - Recycled, Paper - Napkins, Towels, Toilet Tissue for Distribution and Support Services

Dear Ms. Cannon:

This final agency decision is in response to an email received by the Division of Purchase and Property's (Division) Procurement Bureau (Bureau) from TSP Maintenance Supply, LLC (TSP) on September 25, 2020. TSP's email was forwarded to the Division's Hearing Unit and was accepted as a protest of the Bureau's September 25, 2020, Notice of Intent to Award letter (NOI) letter. In addition, on October 9, 2020 the Division's Hearing Unit received your letter which was accepted as a supplement to the September 25, 2020 email.

By way of background, on February 27, 2020, the Bureau issued Bid Solicitation #19DPP00408 for T2432 Recycled, Paper - Napkins, Towels, Toilet Tissue for Distribution and Support Services (Bid Solicitation).¹ The purpose of the Bid Solicitation was to solicit Quotes for various recycled janitorial and dietary paper products. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State of New Jersey's (State) intent to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation, are most advantageous to the State, price and other factors considered. Ibid.

This Bid Solicitation was designated as a full Small Business Set-Aside. Ibid. N.J.S.A. 52:32-25 requires that:

When a contract or portion thereof has been designated as a set-aside, invitations for bids shall be confined to businesses designated by the department [Division of Revenue and Enterprise Services (DORES)] as appropriate for the set-aside and bids from other bidders shall be rejected.

¹ The Procurement Bureau's September 16, 2020, Recommendation Report incorrectly reflects that the date of advertising was March 18, 2020. A review of the *NJSTART* eProcurement website and The Star Ledger confirms that the date of Advertising was February 27, 2020.

[N.J.S.A. 52:32-25.]

Further, N.J.S.A. 52:32-24 requires that DORES “establish a procedure for annually reviewing the lists and determining whether the businesses on the lists shall continue to be designated as small businesses, minority businesses and female businesses.” N.J.S.A. 52:32-24(c). Accordingly, N.J.A.C. 17:13-3.1(e) provides that designated small businesses, minority businesses and female businesses, shall submit, prior to the anniversary of the registration notice, a verification statement attesting that there has been no change in ownership, revenue eligibility, or control of the business. N.J.A.C. 17-3.1(e). This verification statement is also referred to as the Annual Verification Form. If the Annual Verification Form is not submitted by the anniversary date of the registration notice, the registration will lapse and the business designation will be deemed revoked. N.J.A.C. 17-3.1(e)(1). Notably, the Annual Verification Form Advises companies that the form must be submitted in order to maintain an active status.

Consistent with the statute and applicable regulations, the Bid Solicitation included the following instructions regarding the Small Business Set-Aside requirement:

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, or III** for Small Businesses.

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

....

** IF THE VENDOR {BIDDER/CONTRACTOR} HAS PREVIOUSLY REGISTERED OR BEEN CERTIFIED AS A SMALL BUSINESS ENTERPRISE, THE VENDOR {BIDDER} SHOULD ENSURE IT IS REGISTERED AND THAT ITS REGISTRATION IS ACTIVE WITH THE DIVISION OF REVENUE AND ENTERPRISE SERVICES, SMALL BUSINESS REGISTRATION AND M/WBE CERTIFICATION SERVICES UNIT, PRIOR TO THE QUOTE OPENING DATE, TO BE ELIGIBLE FOR AWARD.

[Bid Solicitation Section 4.4.1.4 *Small Business Set-Aside Blanket P.O.*, emphasis added.]

Potential Vendor(s) {Bidder(s)} were permitted to submit questions to the Bureau, using the Division’s **NJSTART** eProcurement system, by 2:00 pm eastern time on March 12, 2020. Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*. The Bureau answered all questions received through the posting of Bid Amendment #1 on March 18, 2020. No questions were received regarding the Small Business Set-Aside requirement.

On May 1, 2020, the Division's Proposal Review Unit opened seven (7) Quotes submitted through the State's *NJSTART* eProcurement system by the submission deadline of 2:00 p.m. eastern time. After conducting a preliminary review of the Quotes submitted, those Quotes which conformed to the mandatory requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7.1. As noted in the Recommendation Report, the Bureau found that the Quote submitted by TSP was non-responsive to the mandatory requirements of the Bid Solicitation because TSP was not registered as a Small Business Enterprise (SBE) as of the Quote opening date.

On September 25, 2020, TSP submitted a protest challenging the Bureau's determination that it was not properly registered as a SBE. On October 9, 2020, the Division's Hearing Unit received a supplement letter from TSP's counsel. In that supplemental letter, TSP acknowledges that its Small Business Certification had lapsed prior to the bid opening date, but argues that because of the COVID-19 pandemic it was unable to receive assistance from the Division of Revenue and Enterprise Services to have its Small Business Certification reinstated; and therefore, requests that the contract be re-bid.

Pursuant to subsection (d) of the N.J.A.C. 17:12-3.3 Protest procedures, challenge to a contract award decision:

The protest accepted by the Director shall be resolved by written decision on the basis of the Director's review of the written record including, but not limited to, the written protest, the terms, conditions and requirements of the RFP, the proposals submitted in response to the RFP, the evaluation committee report and/or the award recommendation document, pertinent administrative rules, statutes, and case law, and any associated documentation the Director deems appropriate. In cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.

[N.J.A.C. 17:12-3.3(d).]

Furthermore, "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest." N.J.A.C. 17:12-3.3 (e).

In consideration of TSP's protest, I have reviewed the record of this procurement, including the Bid Solicitation, TSP's Quote 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.

With the September 25, 2020, protest email, TSP included a copy of its SBE certification from DORES which indicated that on November 14, 2018, TSP was approved as a SBE for Categories 2 and 4. A copy of the certification is shown below. While the certification notes an expiration date of November 14, 2021, it also alerts Vendors to the requirement that Vendors must complete the annual verification in order to maintain the SBE certification status.


State of New Jersey

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE & ENTERPRISE SERVICES
P.O. BOX 026
TRENTON, NJ 08625-034
PHONE: 609-292-2146 FAX: 609-984-6679

ELIZABETH MAHER MUOIO
Acting State Treasurer

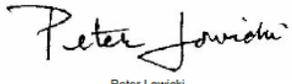
APPROVED
under the
Small Business Set-Aside Act and Minority and Women Certification Program

This certificate acknowledges TSP Maintenance Supply, LLC as a Category 2 and 4 approved Small Business Enterprise that has met the criteria established by N.J.A.C. 17:13 and/or 17:14.

This registration will remain in effect for three years. Annually the business must submit, not more than 60 days prior to the anniversary of the registration notice, an annual verification statement in which it shall attest that there is no change in the ownership, revenue eligibility or control of that business.

If the business fails to submit the annual verification statement by the anniversary date, the SBE registration will lapse and the business SBE status will be revoked in the New Jersey Selective Assistance Vendor information (NJSAVI) database that lists registered small businesses. If the business seeks to be registered again, it will have to reapply and complete the New SBE online registration located at: www.njportal.com/DOR/SBERegistry/.


Issued: 11/14/2018
Certification Number: A0078-99


Peter Lowicki
Deputy Director
Expiration: 11/14/2021

Further, as shown on the screenshot below, on September 15, 2019, prior to the COVID-19 pandemic, DORES sent an email to TSP, reminding TSP to complete the annual verification form.

From: smwbe.notices@treas.state.nj.us
Sent: Sunday, September 15, 2019 12:20 AM
To: Notices, SMWBE
Subject: Registration - Verification -- Ending Year -- 1 Application Id: 1065536 EMA=> peacock@tspsupply.com

09/15/2019

Dear Registered Small Business Owner:

We hope you have had a successful year. This notice is a reminder that your SBE Annual Verification Form is due on 11/14/2019.

Please complete the new online SBE Annual Verification Form, which is available at:
www.njportal.com/DOR/SBERegistry/

This form should be completed and submitted online to us not more than 60 days prior to the anniversary date of issue. There is no fee required to accompany this completed form.

If you fail to submit the annual verification form by 11/14/2019, your SBE registration will be revoked. The business will be removed from the database of state registered small businesses. After revocation, it will be necessary for your firm to reapply and pay the non-refundable \$100 application fee to obtain approved small business status.

Sincerely,

Small Business Registration and M/WBE/VOB/DVOB Certification Services Unit New Jersey Department of the Treasury
Division of Revenue and Enterprise Services
(609)292-2146

IMPORTANT NOTE: Please do not respond to this email. Responding to this email will result in a non-response status.

From the records maintained by DORES, it appears that TSP did not complete the annual verification form; and therefore, on February 12, 2020, prior to the Quote opening date, TSP's SBE certification was revoked. TSP's *NJSTART* Vendor Profile further reveals that the certification was revoked on February 12, 2020, prior to the Quote opening date.

Category: Certification: Small Business Category
Description: This Certification status is updated daily. If you have questions regarding Small Business eligibility, please see the following link: Link
Category B - for Goods & Services businesses fitting in Category 2 and 4, respectively.
Category: Certification: Small Business Enterprise
Description: This Certification status is updated daily. If you have questions regarding Small Business eligibility, please see the following link: Link
Revoked or Expired
Notes:
EXPIRATION DATE 2021-11-14, REVOCATION DATE 2020-02-12

While TSP asserts through its counsel that, due to the COVID-19 pandemic and the fact that some State employees are working from home, it was unable to verify with DORES that it was registered and that its registration was active, TSP has not provided any evidence that the COVID-19 pandemic affected its ability to complete the annual verification form in order to maintain its SBE certification or that it made attempts to contact DORES for assistance in completing the annual verification form prior to the Quote opening date. Instead, the TSP emails, including the October 9, 2020, supplemental protest letter, and the referenced phone calls, show attempts by TSP to contact DORES after the issuance of the September 25, 2020 NOI, not before. Moreover, DORES advises that it has no record of TSP attempting to contact DORES by email until October 7, 2020. A representative from DORES did respond to TSP's October 7, 2020, inquiry.

A review of the records maintained by the DORES reveals that TSP failed to submit the Annual Verification form as required to maintain its' SBE designation. TSP does not dispute that its' SBE certification was revoked for failing to complete the Annual Verification form. Unfortunately, due to the revocation, at the time of Quote opening, TSP was not certified as a SBE; and therefore, was not a designated SBE eligible for this Small Business Set-Aside Blanket P.O award. Accordingly, the Bureau properly determined that TSP was ineligible for the contract award.

The Division encourages competition and appreciates the time and effort put forth by TSP in preparing and submitting a Quote, and while I am sure this was an oversight on the part of TSP, the Division does not have the power to waive the statutory requirements for eligibility to bid on a Small Business Set Aside contract. In light of the findings set forth above, I have no choice but to uphold the Bureau's determination to award Master Blanket P.O. in the accordance with the September 25, 2020 NOI. This is my final agency decision on this matter.

I encourage TSP to log into [NJSTART](#) at www.njstart.gov to select any and all commodity codes for procurements it may be interested in submitting a Quote for so that it may receive notification of future bidding opportunities. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
G. Gerstenacker
S. Brandbergh
TSP Maintenance Supply, LLC