



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 31, 2020

Via Electronic Mail Only aitexp97@gmail.com

Ali Turker
AIT Express LLC
931 King Way
Brenigsville, PA 18031

Re: I/M/O Bid Solicitation #20DPP00525 AIT Express LLC
Protest of Notice of Intent to Award
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Turker:

This letter is in response to your July 14, 2020, email to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of AIT Express LLC (AIT). In that email, AIT protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) on July 13, 2020. The NOI advised all Vendors {Bidders} of the Division's intent to award Master Blanket Purchase Orders (Blanket P.O.) to several Vendors {Bidders} who submitted Quotes in response to Bid Solicitation #20DPP000525 - T0777 Snow Plowing and Spreading Services - NJDOT (Bid Solicitation).

By way of background, on April 9, 2020, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified Vendors {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 Contracts 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 May 14, 2020, the Bureau issued Bid Amendment #1 extending the Quote Submission Due Date to 2:00 p.m. eastern time on June 2, 2020. On May 28, 2020, the Bureau issued Bid Amendment #2 responding to the questions posed by potential Vendors {Bidders}. Bid Amendment #2 also extended the Quote Submission Due Date to 2:00 p.m. eastern time on June 9, 2020. On June 9, 2020, at the closed of the Quote submission due date and time, the Division's Proposal Review Unit opened 215 Quotes, submitted by 197 Vendors {Bidders}. After conducting a review of the Quotes received for compliance with the mandatory requirements for Quote submission, the Division's Proposal Review Unit issued several Notices of Proposal Rejection to those Vendors {Bidders} whose submitted Quote failed to conform to the mandatory administrative requirements for Quote submission.

The remaining Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*. After the review and evaluation of all

Quotes received in response to the Bid Solicitation was completed, the Bureau completed 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. On July 13, 2020, 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.¹ As it relates to AIT, the Recommendation Report stated that AIT was the proposed awardee for Price Lines 324 and 365.²

On July 14, 2020, the Division received AIT's protest email stating the following:

I have received the intent to award letter and list. My name is on Price Line 324-365. They both Class P and Class Q trucks, before I put price on these I asked if I could perform the work with Class R Trucks on these sections, over the phone state told me yes, I want to double check and so I can get my trucks ready for inspections.

[AIT 7.14.2020 Protest Email].

In consideration of AIT'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.

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)).

In its July 14, 2020, protest email, AIT appears to request confirmation from the Division that it can perform the work for Price Lines 324 and 365 with Class R trucks instead of Class P and Class Q trucks. The Bid Solicitation and the State-Supplied Price Sheet require 3 Class P Trucks for Price Line 324 and 3 Class Q Trucks for Price Line 365. As is shown below in AIT's submitted State-Supplied Price Sheet, for the two lines in question, AIT did not provide any additional information with its Quote to indicate that it could not do the work with the Classes of trucks that were required, nor did AIT provide any additional information to indicate that it was offering Class R trucks for either Price Line 324 or Price Line 365.

¹ The list of Vendors {Bidders} who are recommended to receive a Blanket P.O. award are listed in the Bureau's July 9, 2020 Recommendation Report.

² See July 9, 2020 Recommendation Report, Pgs. 116, 118.

Copy of Copy of T0777 State-Supplied Price Sheet - Spreading Services-2 (3) - Excel

Circle and/or check YES or NO if you will be providing On-Board Wetting System for all trucks.
 YES

A	B	C	D	E	F	G
	CLASS R - 6					
324	SPREADING SERVICES - D.O.T. REGION: NORTH CREW #: 212 FORT LEE YARD EDWIN AVENUE, FORT LEE, NJ	1	HOURLY RATE	Style of trucks that will be provided. Please circle and/or check one (1) option below. Tailgate Mounted <input checked="" type="checkbox"/> Vbox <input type="checkbox"/> MidBody <input type="checkbox"/>	Circle and/or check YES or NO if you will be providing On-Board Wetting System for all trucks. YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	\$ 198.00
	NUMBER OF TRUCKS REQUIRED:					
	CLASS P - 3					
325	SPREADING SERVICES - D.O.T. REGION: NORTH CREW #: 213 LODI YARD RT. 17 & GREGG STREET, LODI, NJ	1	HOURLY RATE	Style of trucks that will be provided. Please circle and/or check one (1) option below. Tailgate Mounted <input checked="" type="checkbox"/> Vbox <input type="checkbox"/> MidBody <input type="checkbox"/>	Circle and/or check YES or NO if you will be providing On-Board Wetting System for all trucks. YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	\$ 198.00
	NUMBER OF TRUCKS REQUIRED:					
	CLASS R - 10					
	SPREADING SERVICES - D.O.T.					

Copy of Copy of T0777 State-Supplied Price Sheet - Spreading Services-2 (3) - Excel

Circle and/or check YES or NO if you will be providing On-Board Wetting System for all trucks.
 YES

A	B	C	D	E	F	G
	NUMBER OF TRUCKS REQUIRED:			MidBody <input type="checkbox"/>		
	CLASS Q - 4					
365	SPREADING SERVICES - D.O.T. REGION: CENTRAL CREW #: 334 MANAHAWKIN YARD GROVE, NJ	1	HOURLY RATE	Style of trucks that will be provided. Please circle and/or check one (1) option below. Tailgate Mounted <input checked="" type="checkbox"/> Vbox <input type="checkbox"/> MidBody <input type="checkbox"/>	Circle and/or check YES or NO if you will be providing On-Board Wetting System for all trucks. YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	\$ 198.00
	NUMBER OF TRUCKS REQUIRED:					
	CLASS Q - 3					
366	SPREADING SERVICES - D.O.T. REGION: CENTRAL CREW #: 335 KEASBEY YARD CROWS MILL ROAD, KEASBEY, NJ	1	HOURLY RATE	Style of trucks that will be provided. Please circle and/or check one (1) option below. Tailgate Mounted <input checked="" type="checkbox"/> Vbox <input type="checkbox"/> MidBody <input type="checkbox"/>	Circle and/or check YES or NO if you will be providing On-Board Wetting System for all trucks. YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	\$ 188.00
	NUMBER OF TRUCKS REQUIRED:					
	CLASS R - 9					

Furthermore, contrary to the statement in AIT's protest email, neither the Bureau, nor NJDOT has any record of any communication with AIT, whereby the Bureau or NJDOT might have discussed the requirements of the Bid Solicitation with AIT.

Allowing AIT to correct its submitted Quote after the Quote opening date by offering anything other than the three (3) Class P trucks that it bid on for Price Line 324 and the three (3) Class Q trucks that it bid on for Price Line 365 would result in an impermissible supplementation of the Quote, which the Division cannot allow as doing so would be contrary to the Court's holding in *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract*, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In *On-Line Games* the Appellate Division held that "in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal,

the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP". Here, the Division cannot accept a Quote revision after the issuance of the NOI as requested, as doing so is an impermissible supplementation, change and correction to the submitted Quote, and furthermore, such a Quote revision would result in a deviation for the Bid Solicitation requirements.

In response to a question posed by a potential Vendor {Bidder}, the Bureau advised, "If a Vendor {Bidder} requests to withdraw snow sections/price lines following the issuance of the Notice of Intent to Award and during the Protest Period, the State will review such a request. There is no guarantee that such a request will be granted by the State." See Bid Amendment #2, question 12. Accordingly, I remand this matter back to the Bureau for review and clarification as to whether AIT can perform the services with the requisite number and classes of trucks indicated in its Quote as required by the Bid Solicitation, in order to complete the work for Price Lines 324 and 365. Should AIT confirm that it will perform the services for these Price Lines then the Bureau's award recommendation is sustained, however should AIT request to withdraw its submitted Quote for Price Lines 324 and 365, I instruct the Bureau to recommend new awards as may be appropriate. I note that this remand only affects Price Lines 324 and 365.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with *NJSTART* at www.njstart.gov. I encourage you to monitor the New Jersey Department of Transportation's website and the Division's *NJSTART* eProcurement website for future bidding opportunities for these services related to the current procurement. You should also 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. This is my final agency decision with respect to the protest submitted by AIT.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: TCR

c: M. Dunn
R. Regan
K. Popso
K. Centofanti