



State of New Jersey

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

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July 31, 2020

Via Electronic Mail Only Barbara.breen@breeninc.com

Barbara Bush-Breen, President
Breen Topsoil, Inc.
319 West Pleasantview Avenue
Hackensack, NJ 07601

Re: I/M/O Bid Solicitation #20DPP00525 Breen Topsoil, Inc.
Protest of Notice of Intent to Award
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Ms. Bush-Breen:

This letter is in response to your July 20, 2020, correspondence to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of Breen Topsoil, Inc. (Breen). In that correspondence, Breen 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 a Master Blanket Purchase Orders (Blanket P.O.) to several Vendors {Bidders} who submitted Quote 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*, which states in relevant part as follows:

6.7 EVALUATION CRITERIA

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate Quotes received in response to this Bid Solicitation.

- A. Experience of Vendor {Bidder} (Revised Attachment #1): The Vendor {Bidder} must have at least two (2) years of experience performing the specific service (snow plowing and/or spreading) on public roadways in order to be considered for award of that service;
- B. Equipment Preference: The type of Vendor {Bidder} equipment bid on the State-Supplied Price Sheet. See Section 6.7.1, subsections included; and
- C. Price: The Vendor's {Bidder's} pricing provided on the State-Supplied Price Sheet for each price line. See Section 6.7.1, subsections included, for information regarding the pricing evaluation methodology.

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 With respect to the Quote submitted by Breen, the Bureau's Recommendation Report in part states the following:

The Quote submitted by Breen Topsoil Inc. (Breen Topsoil) was deemed by the Bureau to be responsive to all mandatory requirements of the Bid Solicitation. The Vendor {Bidder} is in compliance with ownership disclosure, certification of non-involvement in prohibited activities in Iran, business registration, MacBride Principles, disclosure of investigations and actions involving bidder, and source disclosure requirements.

Breen Topsoil submitted a Quote for both Snow Plowing Services, Spreading Services, and Other Equipment - Class "H" Front End Loader - 4 to 6 CY. The Bureau determined that the Vendor {Bidder} was responsive for all Price Lines submitted as part of its Quote.

[July 9, 2020 Recommendation Report, p. 19.]

The Bureau recommended that Breen be awarded a Blanket P.O. for price line 318 for a Class "H" Front End Loader – 4 to 6 CY, for snow section 5213261.

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.

On July 20, 2020, the Division received Breen's protest challenging the intended Blanket P.O. awards. Specifically, Breen states in relevant part as follows:

Spreading Services - DOT

Region: North

Crew #213 Lodi Yard

Caner Transportation LLC bid 20 routes statewide with a total of 128 trucks. Do they have proof that they are capable of providing on-board wetting systems operational for all 128 trucks by the contract start date? In addition they are located in the southern part of the state and they bid 2 sections in the Northern Region and one in Central Region as well as 17 in the southern region, how will they be able to supply the state? Are they providing all the trucks themselves and if not do they have subcontractor utilization forms for all the subcontractors, and do they have registrations and insurance certificates for all 128 trucks and proof that all trucks are equipped with the on-board wetting systems?

My Company had no problem purchasing or installing the on-board wetting systems on our vehicles but did not want to say we would have them unless we knew that we had a contract as they cost \$5,000 per unit installed.

Spreading Services – DOT

Region: North

Crew #211 Ramsey Yard

With regards to the loader for the Ramsey yard whenever it has been bid in the past we have been told that an "H" loader which is 4-6 CY bucket is required to load both state and contractor salting trucks so that all the trucks can be loaded in a timely manner. Wallace Trucking who received notice of intent for their loader bid with a "G" loader which is ONLY 3 - 3 3/4 CY bucket and Breen Topsoil, Inc. bid with an "H" loader which is 4 - 6 cy bucket.

Breen ask that the Division review the awards made.

In consideration of Breen'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.

As shown in the screenshots below, Breen submitted a Quote for snow plowing price line 6, spreading price lines 323 and 325, and other equipment price line 318.

T0777 - Snow Plowing and Spreading Services - NJDOT State-Supplied Price Sheet Snow Plowing and Hauling Services							
Vendor {Bidder} Name:							
Please reference Section 4.4.5.2 of the Bid Solicitation							
LINE NO	DESCRIPTION	QTY	UNIT	ALL-INCLUSIVE HOURLY RATE: CLASS A AND/OR CLASS B SNOW PLOWING TRUCK - WITH SNOW FLOW	ALL-INCLUSIVE HOURLY RATE: CLASS A AND/OR CLASS B SNOW PLOWING TRUCK WITHOUT SNOW FLOW	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING SUPERINTENDENT	ALL-INCLUSIVE HOURLY RATE HAULING ONLY
4	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 210 PATERSON SUBREGION: N0 SNOW SECTION: 0210264 RT 4 FROM RT 30 PATERSON CITY TO MAYWOOD AVENUE, PARAMUS BORO INCLUDING RAMPS AND INTERSECTIONS (MP 0.6 TO MP 4.7) NUMBER OF TRUCKS REQUIRED: 6	1	HOURLY RATE				
5	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 210 PATERSON SUBREGION: N0 SNOW SECTION: 0210265 RT 4 FROM MAYWOOD AVENUE PARAMUS BORO TO RT 9W AT FLETCHER AVENUE, FORT LEE BORO INCLUDING ALL RAMPS AND INTERSECTIONS (MP 4.7 TO 10.9) NUMBER OF TRUCKS REQUIRED: 6	1	HOURLY RATE				
6	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 211 RAMSEY SUBREGION: N0 SNOW SECTION: 0211261 RT 17 FROM RTS 4 & 17 INTERCHANGE, PARAMUS BORO, INCLUDING RAMPS TO E. ALLENDALE AVENUE, SADDLE RIVER BORO, BERGEN CO (MP 12.3 TO 20.7) NUMBER OF TRUCKS REQUIRED: 8	1	HOURLY RATE		\$ 229.55	\$ 95.00	

T0777 - Snow Plowing and Spreading Services - NJDOT State-Supplied Price Sheet Spreading Services							
Vendor {Bidder} Name:							
Please reference Section 4.4.5.2 of the Bid Solicitation							
LINE NO	DESCRIPTION	QTY	UNIT	Style of Trucks	On-Board Wetting System	Unit Price	
322	\$SPREADING SERVICES - D.O.T. REGION: NORTH CREW #: 210 PATERSON YARD PATERSON, NJ NUMBER OF TRUCKS REQUIRED: CLASS R - 8	1	HOURLY RATE	Style of trucks that will be provided. Please circle and/or check one (1) option below. Tailgate Mounted <input 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 type="checkbox"/> NO <input type="checkbox"/>		
323	\$SPREADING SERVICES - D.O.T. REGION: NORTH CREW #: 211 RAMSEY YARD 16 ARROW ROAD, RAMSEY, NJ NUMBER OF TRUCKS REQUIRED: CLASS R - 8	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 type="checkbox"/> NO <input checked="" type="checkbox"/>	\$ 224.55	
326	\$SPREADING SERVICES - D.O.T. REGION: NORTH CREW #: 213 LODI YARD RT. 17 & OREGON STREET, LODI, NJ NUMBER OF TRUCKS REQUIRED: CLASS R - 10	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 type="checkbox"/> NO <input checked="" type="checkbox"/>	\$ 224.55	

SNOW PLOWING SERVICES/ OTHER EQUIPMENT							
LINE NO	DESCRIPTION	QTY	UNIT	QUANTITY OF TRUCKS AVAILABLE	INCLUDE SNOW SECTION FOR EQUIPMENT (E.G. SNOW SECTION 546263)	ALL-INCLUSIVE HOURLY RATE FOR OTHER EQUIPMENT	DO NOT USE
313	CLASS "C" GRADER – 20,000 TO 27,999 LBS	1	HOURLY RATE				
314	CLASS "D" GRADER – 28,000 LBS AND UP	1	HOURLY RATE				
315	CLASS "E" FRONT END LOADER – 1% TO 2 CY	1	HOURLY RATE				
316	CLASS "F" FRONT END LOADER – 2 1/4 - 2 1/2 CY	1	HOURLY RATE				
317	CLASS "G" FRONT END LOADER – 3 TO 3 1/2 CY	1	HOURLY RATE				
318	CLASS "H" FRONT END LOADER – 4 TO 6 CY	1	HOURLY RATE		SNOW SECTION: 5211261 Ramsey	\$ 165.45	
319	CLASS "I" FRONT END LOADER – 6 1/2 CY TO 8 CY	1	HOURLY RATE				
320	CLASS "J" FRONT END LOADER – 8 1/2 CY TO 10 CY	1	HOURLY RATE				
321	CLASS "K" FRONT END LOADER – 10 1/2 CY AND UP	1	HOURLY RATE				

SNOW PLOWING SERVICES/ OTHER EQUIPMENT							
LINE NO	DESCRIPTION	QTY	UNIT	QUANTITY OF TRUCKS AVAILABLE	INCLUDE SNOW SECTION FOR EQUIPMENT (E.G. SNOW SECTION 546263)	ALL-INCLUSIVE HOURLY RATE FOR OTHER EQUIPMENT	DO NOT USE
313	CLASS "C" GRADER – 20,000 TO 27,999 LBS	1	HOURLY RATE				
314	CLASS "D" GRADER – 28,000 LBS AND UP	1	HOURLY RATE				
315	CLASS "E" FRONT END LOADER – 1% TO 2 CY	1	HOURLY RATE				
316	CLASS "F" FRONT END LOADER – 2 1/4 - 2 1/2 CY	1	HOURLY RATE				
317	CLASS "G" FRONT END LOADER – 3 TO 3 1/2 CY	1	HOURLY RATE				
318	CLASS "H" FRONT END LOADER – 4 TO 6 CY	1	HOURLY RATE	N/A	SNOW SECTION: 5211261	\$ 189.00	
319	CLASS "I" FRONT END LOADER – 6 1/2 CY TO 8 CY	1	HOURLY RATE				
320	CLASS "J" FRONT END LOADER – 8 1/2 CY TO 10 CY	1	HOURLY RATE				
321	CLASS "K" FRONT END LOADER – 10 1/2 CY AND UP	1	HOURLY RATE				

The record of this procurement reveals that seven Vendors {Bidders} submitted a Quote which was responsive to the requirements for price line 6. Two of those seven Vendors {Bidders}, submitted a Quote for the first preference of truck and plowing equipment. Bid Solicitation Section 6.7.1.1 *Snow Plowing and Hauling Services* states:

6.7.1.1 SNOW PLOWING AND HAULING SERVICES

1st Preference – Vendors {Bidders} supplying all required trucks, that are all a combination of either Class A and/or Class B trucks, all with Vendor {Bidder} provided snow plows; and

2nd Preference – Vendors {Bidders} supplying all required trucks, that are all a combination of either Class A and/or Class B trucks, all without Vendor {Bidder} provided snow plows.

In response to the price line 6, Breen submitted a Quote for the second preference. The Bureau’s July 9, 2020, Recommendation Report indicates that an award will be made to De Marino Trucking, who submitted a Quote for the lowest total hourly rate for the first preference. Bid Solicitation Section 6.7.1 *Equipment Preference and Pricing Evaluation* states:

6.7.1 EQUIPMENT PREFERENCE AND PRICING EVALUATION

The Division intends to award to one (1) responsive Vendor {Bidder} per price line for Snow Plowing and Hauling Services (excluding *Other Equipment – Loaders and Graders*, as detailed by Section 6.7.1.3), and to one (1) responsive Vendor {Bidder} per price line for Spreading Services.

Vendors {Bidders} will be evaluated based upon the equipment preferences detailed in Sections 6.7.1.1 and 6.7.1.2. If two (2) or more Vendors {Bidders} are offering the same equipment preference for the same price line, then the Division will evaluate and rank based upon pricing, from lowest to highest, as specified below:

A. Snow Plowing and Hauling Services – Pricing Evaluation
Methodology

Vendors {Bidders} within the same equipment preference will be ranked based upon the Total Hourly Rate for the respective price line. The Total Hourly Rate will be calculated for each price line as follows:

(# of trucks x per truck hourly rate) + Superintendent hourly rate = Total Hourly Rate

The All-Inclusive Hauling Hourly Rate, if applicable, is not including in the Total Hourly Rate.

Further, the record of this procurement reveals that seventeen Vendors {Bidders} submitted a Quote which was responsive to price line 323. Three of those seventeen Vendors {Bidders}, submitted a Quote for the first preference of truck and plowing equipment. Bid Solicitation Section 6.7.1.2 *Spreading Hauling Services* states:

6.7.1.2 SPREADING SERVICES

1st Preference – Vendors {Bidders} supply all of the price line specific, required Class R, Q, and/or P trucks that are all Tailgate Mounted, all with an On-Board Wetting System;

2nd Preference – Vendors {Bidders} supply all of the price line specific, required Class R, Q, and/or P trucks that are all Tailgate Mounted, all without an On-Board Wetting System;

...

In response to the price line 323, Breen submitted a Quote for the second preference. The Bureau's July 9, 2020, Recommendation Report indicates that an award will be made to DVS Trucking, who submitted a Quote for the lowest hourly rate for the first preference. See Bid Solicitation Section 6.7.1 *Equipment Preference and Pricing Evaluation*. Moreover, the record of this procurement reveals that nineteen Vendors {Bidders} submitted a Quote which was responsive to price line 325. Two of those nineteen Vendors {Bidders}, submitted a Quote for the first preference of truck and plowing equipment. Breen submitted a Quote for the second preference. The Bureau's July 9, 2020, Recommendation Report indicates that an award will be made to Caner Transportation, who submitted a Quote for the lowest hourly rate for the first preference. See Bid Solicitation Section 6.7.1 *Equipment Preference and Pricing Evaluation*.

Turning now to Breen's protest points, Breen protests the Bureau's decision to list Caner Transportation (Caner) as the intended awardee for twenty spreading services price lines.² Breen questions whether there was any indication that Caner has sufficient trucks to perform work required for the awarded areas, whether Caner has a sufficient number of on-board wetting systems, how Caner, a company located in North Jersey, will be able to perform spread services in Central and South Jersey, and whether Caner is using subcontractors to perform any of the work.

With respect to a Vendors {Contractors} ability to perform the work awarded, the Bid Solicitation was clear, advising all Vendors {Bidders} as follows:

² The record of this procurement reveals that Caner submitted a Quote for thirty-three price lines for spreading services.

Please note: When a Vendor {Bidder} submits a rate for a specific price line, it is certifying that it shall provide the required quantity of trucks and Class of trucks called for by that specific price line. It is also further certifying, that it shall provide all equipment associated with the Preference that it has selected by utilizing the above reference directions. If awarded, the Vendor {Bidder} shall be contractually obligated to provide the services, trucks, and equipment as indicated on its State-Supplied Price Sheet.

[Bid Solicitation Section 4.4.5.2.2 *Spreading Services Price Sheet Instructions.*]

Accordingly, in submitting the Quote, Caner certified that it had the ability to provide the required number of trucks and equipment necessary to complete the work awarded.

Additionally, with the submitted Quote, Caner did not list any subcontractors on the *Subcontractor Utilization Form*.³ Additionally, Bid Solicitation Section 4.4.2.3 *Subcontractor Utilization Plan* states in pertinent part:

For a Quote that does NOT include the use of any Subcontractors, by signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} is automatically certifying that in the event the award is granted to the Vendor's {Bidder's} firm and the Vendor {Bidder} later determines at any time during the term of the Blanket P.O. to engage Subcontractors to provide certain goods and/or services, pursuant to Section 5.8 of the SSTC, the Vendor {Bidder} shall submit a Subcontractor Utilization Plan form for approval to the Division in advance of any such engagement of Subcontractors.

Therefore, having submitted the Quote with the signed *Offer and Acceptance Page*, Caner has certified that it will not be utilizing subcontractors to complete the awarded work.

With respect to the Breen's Quote submission in response to Snow Plowing Services/Other Equipment, Bid Solicitation Section 6.7.1.3 *Other Equipment* states "[t]he Division intends to make multiple awards to {Bidders} submitting an All-Inclusive Hourly Rate for other equipment on price lines 313-321. The hourly rates submitted on price lines 313-321 will be evaluated for reasonableness." In response to price line 318 described as "CLASS "H" FRONT END LOADER – 4 TO 6 CY", as shown on the screen shots above, Breen submitted a Quote for snow section 5211261 Ramsey and snow section 5213261 Lodi. The Bureau's July 9, 2020, Recommendation Report states that Breen was responsive for all Price Lines submitted as part of its Quote. There is no discussion as to why Breen was not listed an intended awardee for price line 318 described as "CLASS "H" FRONT END LOADER – 4 TO 6 CY" for snow section 5211261 Ramsey. Accordingly, I remand this Bureau for further review.

Based upon the foregoing, I remand this matter back to the Bureau for further review and evaluation of Breen's submitted Quotes for price line 318 only. The remainder of the July 13, 2020 Notice of Intent to Award is sustained related to Breen's protest.

³ Caner did submit the *Subcontractor Utilization Form*, completing the top portion of the form listing itself as the vendor and its two owners, whom had been identified on the *Ownership Disclosure Form*.

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 Breen Topsoil, Inc.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

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