



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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July 30, 2020

Via Electronic Mail Only clarke@moynihancompanies.com

Clarke Moynihan
Clarke Moynihan Landscaping and Construction, LLC
229 Main Street
Andover, NJ 07821

Re: I/M/O Bid Solicitation #20DPP00525 Clarke Moynihan Landscaping and Construction, LLC
Protest of Notice of Intent to Award
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Moynihan:

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 Clarke Moynihan Landscaping and Construction, LLC (Moynihan). In that letter, Moynihan 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*. 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 Moynihan, the Recommendation Report stated in part:

The Quote submitted by Clarke Moynihan Landscaping & Construction LLC (Clarke Moynihan) was deemed by the Bureau to be partially responsive to 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.

Clarke Moynihan submitted a Quote for Snow Plowing Services only. The Bureau determined that Clarke Moynihan was non-responsive for Snow Plowing Price Lines 39 and 40 due to its failure to provide the Hauling Rate, as required by Bid Solicitation Section 4.4.5.2.1(D-2), Snow Plowing and Hauling Services Price Sheet Instructions, which states the following: "If the hauling rate is required for a price line, the Vendor {Bidder} must provide a per truck hauling rate in order to be considered eligible for award of the respective price line. Failure to provide hauling pricing for a price line listed above shall result in the Quote being deemed non-responsive and ineligible for award of that respective price line."

Clarke Moynihan was deemed responsive for all other Snow Plowing Price Lines bid. Clarke Moynihan provided both 1st and 2nd Preference pricing for some Snow Plowing Price Lines. In accordance with Bid Solicitation Section 4.4.5.2.1, Snow Plowing and Hauling Services Price Sheet Instructions, the Bureau only evaluated the 2nd Preference pricing in these instances.

[Recommendation Report, p. 23-24, *emphasis added*.]

The Bureau recommended that Moynihan be awarded the following price lines: 37, 80, 83, and, 91.

On July 20, 2020, the Division received Moynihan's letter stating the following:

This letter is sent with the intent to resolve a dispute regarding providing our own plowing equipment, and the use of the State of New Jersey's equipment. When we submitted our bid pricing proposal, we had not taken into consideration that the pricing bid with our own equipment would be voided, had we given alternative prices for The State Of New Jersey's equipment as well. Therefore, it appears we were ineligible to receive an indeed award for numerous routes, based on this rule, for example (Line

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.

Item 24) we would have been low bidder with our own equipment, among others.

However, being that we have the equipment ready to deploy for our *intended, awarded* routes, and we have submitted pricing for such, we are requesting that we be granted the ability to use that equipment on our intended awarded routes, and that the intended award be changed to reflect this request. We believe it may be in the states (sic) best interest for us to provide this equipment based on their preferences as well it be in our best interest as well, being we own the equipment, and maintain the staff to do so, and also being that was ultimately our intent.

In summary, Moynihan requests that it be permitted to use its own equipment for awarded price lines rather than equipment to be provided by NJDOT.

In consideration of Moynihan’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 record of this procurement reveals that in submitting a Quote for snow plowing and hauling services, Vendors {Bidders} had the option to submit Quote pricing for a “Class A and/or Class B Snow Plowing Truck – With Snow Plow (snow plows provided by Vendor {Contractor})” or Class A and/or Class B Snow Plowing Truck – Without Snow Plow (snow plows provided by NJDOT).” Bid Solicitation Section 4.4.5.2.1 Snow Plowing and Hauling Services Price Sheet Instructions. Further, in evaluating the Quotes received, Bid Solicitation Section 6.7.1.1 Snow Plowing and Hauling Services advised Vendors {Bidders} “If a Vendor {Bidder} provides unit pricing for both the 1st Preference and 2nd Preference options of a price line, only the 2nd Preference pricing shall be considered and evaluated.”

In response to price line 37, 80, 83, and, 91, Moynihan submitted the following:

T0777 - Snow Plowing and Spreading Services - NJDOT State-Supplied Price Sheet Snow Plowing and Hauling Services							
Vendor {Bidder} Name:							
<i>Please reference Section 4.4.5.2 of the Bid Solicitation</i>							
LINE NO	DESCRIPTION	QTY	UNIT	1ST PREFERENCE: ALL-INCLUSIVE HOURLY RATE: CLASS A AND/OR CLASS B SNOW PLOWING TRUCK - WITH SNOW PLOW	2ND PREFERENCE: ALL-INCLUSIVE HOURLY RATE: CLASS A AND/OR CLASS B SNOW PLOWING TRUCK WITHOUT SNOW PLOW	ALL-INCLUSIVE HOURLY RATE: SNOW PLOWING SUPERVISOR/MENT	ALL-INCLUSIVE HOURLY RATE HAULING ONLY
37	SNOW PLOWING SERVICES – D.O.T. REGION: NORTH CREW 218 NETCONG SUBREGION: N2 SNOW SECTION: S218263 RT 80, FROM COUNTY RT 517, ALLAMUCHY TWP TO RT 265/183 ROXBURY TWP, INCLUDING RAMPS (MP 19.9 TO MP 27.2) RT 208, FROM RT 183 MT OLIVE TWP TO ACORN STREET, STANHOPE DORO (MP 95.7 TO 98.4) NUMBER OF TRUCKS REQUIRED: 8	1	HOURLY RATE	\$228.00	\$175.00	\$58.00	
80	SNOW PLOWING SERVICES – D.O.T. REGION: NORTH CREW 227 ROCKAWAY SUBREGION: N2 SNOW SECTION: S227261 RT 15 FROM DOVER TOWN AT RT 46 TO ESPANONG RD IN JEFFERSON (MP 0.0 TO MP 7.0) NUMBER OF TRUCKS REQUIRED: 6	1	HOURLY RATE		\$180.00	\$60.00	

83	SNOW PLOWING SERVICES – D.O.T. REGION: NORTH CREW 227 ROCKAWAY SUBREGION: N2 SNOW SECTION: 5227264 RT 45 FROM ESPANONO RD IN JEFFERSON TO RT 161 IN SPARTA (MP 5.85 TO MP 14.2) NUMBER OF TRUCKS REQUIRED: 7	1	HOURLY RATE	\$245.00	\$180.00	\$60.00	
91	SNOW PLOWING SERVICES – D.O.T. REGION: NORTH CREW 229 YELLOW FRAME SUBREGION: N1 SNOW SECTION: 5229263 RT 206 FROM ACORN STREET STANHOPE BORO TO NORTH OF NEWTON TOWN INCLUDING NEWTON SQUARE (MP 96.4 TO MP 119.0) NUMBER OF TRUCKS REQUIRED: 6	1	HOURLY RATE	\$215.00	\$170.00	\$60.00	

Additionally, the record of this procurement reveals that seven Vendors {Bidders} submitted Quotes which were responsive to price line 37, of those Vendors {Bidders} only Moynihan submitted pricing for both the first and second preference. For price line 80, seven Vendors {Bidders} submitted Quotes which were responsive to price line 80, of those Vendors {Bidders} only one Vendor {Bidder}, not Moynihan, submitted pricing for both the first and second preference. For price line 83, seven Vendors {Bidders} submitted Quotes which were responsive to price line 83, of those Vendors {Bidders} only Moynihan and one other Vendor {Bidder} submitted pricing for both the first and second preference. In response to price line 91, four Vendors {Bidders} submitted Quotes which were responsive to price line 91, only Moynihan submitted pricing for both the first and second preference.

Based on the evaluation methodology set forth in the Bid Solicitation, Moynihan’s Quote was evaluated using the submitted pricing for the second preference.

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)). With respect to the price lines in question, I find that the Bureau conducted its evaluation of the Quotes received consistent with the evaluation methodology set forth in the Bid Solicitation. Doing so ensured that there was no favoritism, improvidence, extravagance and corruption in the evaluation of the Quotes received.

In the protest, Moynihan acknowledges that it misread the requirements of the Bid Solicitation and asks that the Bureau award it the first preference contrary the submission requirements and evaluation methodology set forth in the Bid Solicitation. The Bureau cannot now allow Moynihan to amend its submitted Quote as if it had only submitted pricing for the first preference or award it the first preference in conflict with the requirements of the Bid Solicitation. Permitting Moynihan to amend its Quote at this juncture would result in an impermissible amendment 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”. Additionally, the Division cannot amend the evaluation methodology after the Quote opening as to do so would result in an unlevel playing field, as other Vendors {Bidders} having read the requirements of the Bid Solicitation, submitted Quote for only the 1st or the 2nd preference.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation for award. Accordingly, I sustain the July 13, 2020 Notice of Intent to Award.

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 Clarke Moynihan Landscaping and Construction, LLC.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

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