



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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July 28, 2020

Via Electronic Mail Only gwpenterprises@comcast.net

Gary Putz
GWP Enterprises, Inc.
P.O. Box 498
Franklinville, NJ 08322

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

Dear Mr. Putz:

This letter is in response to your July 20, 2020, email to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of GWP Enterprises, Inc. (GWP). In those emails, GWP 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 GWP, the Recommendation Report stated:

GWP submitted a Quote for Snow Plowing Services only. The Bureau determined that GWP was non-responsive for Snow Plowing Price Lines 264, 266, and 267, 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." GWP was deemed responsive for all other Snow Plowing Price Lines bid.

The Bureau recommended that GWP be awarded the following price lines: 234, 241, 252, 253, and, 256.

On July 20, 2020, the Division received GWP's email stating the following:

We would like to surrender our awarded section #234 out of West Deptford.

We are asking if there is a second opportunity to re-bid the sections that we were deemed as nonresponsive due to missing information.

In consideration of GWP'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 20, 2020, protest email, GWP requests the ability to "re-bid" the section of its submitted Quote for which it was deemed non-responsive. Allowing GWP to correct its submitted Quote after the Quote opening date would result in an impermissible supplementation of the Quote, which the Division

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.

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. However, I encourage GWP 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, and to monitor the New Jersey Department of Transportation's website and the Division's **NJSTART** eProcurement website for future bidding opportunities for these services.

Additionally, GWP has requested permission to withdraw its submitted Quote for price line 234. 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 consideration of GWP's request to withdraw its submitted Quote for price line 234 and to recommend new awards as may be appropriate. I note that this remand only affects price line 234.

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. This is my final agency decision with respect to the protest submitted by GWP.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

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