



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 28, 2020

Via Electronic Mail Only lokman_cakir65@hotmail.com

Lokman Cakir
LC Trucking, LLC
1203 Salem Road
Burlington, NJ 08016

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

Dear Mr. Cakir:

This letter is in response to your July 20, 2020 and July 24, 2020, emails to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of LC Trucking, LLC (LC Trucking). In those emails, LC Trucking 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 LC Trucking, the Recommendation Report stated:

LC Trucking submitted a Quote for both Snow Plowing Services and Spreading Services. LC Trucking was deemed partially responsive for Snow Plowing Services and non-responsive for Spreading Services, as detailed below. It is noted that LC Trucking submitted multiple Quotes. The Bureau evaluated all Price Lines submitted by LC Trucking.

The Bureau determined that LC Trucking was non-responsive for Snow Plowing Price Line 121-125 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.*" LC Trucking was deemed responsive for all other Snow Plowing Price Lines bid.

The Bureau recommended that LC Trucking be awarded the following price lines: 127, 128, 129, 130, 149, 158, 159, 171, 223, 224, 226, 228, 229, 230, 237, 247, 283.

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

I made a mistake on the snow plowing contracts. I am having issues because of the mistake I made. I was unaware that we get paid half during standby. I thought it was same as previous years. That is why I gave lower prices. My subcontractors do not want to work for the prices of standby because it doesnt cover their cost to send trucks out there. If there any way we can fix the prices. If not I am in a tough spot that I cant do any of the sections I have. Sorry for this mistake. Please get back to me as soon as possible

Later that day, LC Trucking wrote the Bureau advising that it wished to withdraw its submitted Quote. Specifically LC Trucking stated:

We have no choice but to withdraw because I made a mistake and was unaware of the deploy time. I talked with my subcontractors and no one wanted to work. I don't have enough trucks myself to cover any of these

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.

sections. We have no choice but to withdraw from the bids. I'm sorry but we have to withdraw.

Based on that correspondence, the Hearing Unit contacted LC Trucking to confirm that it wished to withdraw its submitted Quote. On July 24, 2020, LC Trucking responded noting the following:

From:	lokman cakir
To:	DPP Protest
Subject:	[EXTERNAL] Re: Winter Contracts
Date:	Friday, July 24, 2020 8:27:25 AM

127	SNOW PLOWING SERVICES – D.O.T.
	REGION: CENTRAL CREW 316 LAWRENCE
	SUBREGION: C2
	SNOW SECTION: 5316262
	INTERSTATE 95, FROM FEDERAL CITY ROAD, LAWRENCE TOWNSHIP TO ROUTE 1, LAWRENCE TOWNSHIP (MP 7.2 TO MP 8.9)
	INTERSTATE 295, FROM ARENA DRIVE, HAMILTON TOWNSHIP TO ROUTE 1, LAWRENCE TOWNSHIP (MP 61.4 TO MP 67.8)
	NUMBER OF TRUCKS REQUIRED: 7

Goodmorning

On my own I can do this section only. Like I stated before I cant find subcontractors to work. I have to withdraw from the other sections. But I can do price line 127 myself. Please let me know what you guys decide on.

In consideration of LC Trucking'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, LC Trucking requests the ability to "fix" the submitted hourly pricing submitted as part of its Quote because of its misunderstanding regarding the terms of the Bid Solicitation. Allowing LC Trucking to revise its pricing information after the Quote submission deadline 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 and revised hourly rate after the issuance of the NOI as requested, as doing so is an impermissible supplementation, change and correction to the submitted Quote.

Here, LC Trucking has requested permission to withdraw its submitted Quote for all price lines except price line 127. 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 LC Trucking's request to partially withdraw its submitted Quote and to recommend new awards as may be appropriate. I note that this remand affects only those price lines which the Bureau recommended be awarded to LC Trucking in the July 9, 2020 Recommendation Report.

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 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. Please monitor the New Jersey Department of Transportation's website and the Division's **NJSTART** eProcurement website for future bidding opportunities for these services. This is my final agency decision with respect to the protest submitted by LC Trucking.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

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