



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 4, 2020

Via Electronic Mail Only nsggroup75@gmail.com

Abraham Ali, Managing Member
NSG Group, LLC
289 Colonia Blvd.
Colonia, NJ 07067

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

Dear Mr. Ali:

This letter is in response to your July 15, 2020, correspondence to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of NSG Group, LLC (NSG). In that correspondence, NSG 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 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 Quotes 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

On July 15, 2020, the Division received NSG's protest challenging the intended Blanket P.O. awards. Specifically, NSG states:

We are writing in response to the above referenced Notice of Intent to Award Letter for Bid Solicitation 20DPP00525. We bid on several sections for both plowing and spreading. While we were awarded some sections, we were also outbid on others.

Canyon Trucking Inc. was awarded some of those sections we were interested in. However, please see the attached Safer report taken from the Department of Transportation website for Canyon Trucking Inc. DOT #645169. Their operating status is listed as "Not Authorized". "Not Authorized" means they are not able to function as a trucking company under their DOT number. If someone is not authorized as a trucking company, how can they justifiably hold a contract with the State of New Jersey and perform plowing and spreading services with heavy duty equipment on public roadways?

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.

We are filing this Letter of Protest and request that the Department investigate this matter further and amend its award status as deemed appropriate.

Canyon Trucking, Inc. (Canyon) was provided the opportunity to respond to the protest filed by NSG. On August 2, 2020, Canyon submitted a response to the Division's Hearing Unit.² In that response, Canyon states in pertinent part as follows:

Not Authorized has nothing to do with a DOT Number. "Not Authorized" refers a Motor Carrier#, known as MC#, or Freight Forwarder#, known as FF#, it simply means that a Motor Carrier is not authorized to engage in Interstate Commerce.

Canyon Trucking Inc. has been a Licensed Motor Carrier engaged in Interstate Commerce since 1990. In 2016 for personal reasons, I ceased my Interstate operations. I sold all of my trailers and tractors. It was not necessary to maintain an Active MC # because Canyon was no longer involved in any Interstate Operations. Therefore there was no need to have an "Authorized" status. As a result my Motor Carrier status for Interstate Operations changed from "Authorized" to "Not Authorized."

Canyon Trucking for many years has been actively involved in the rental and leasing of trucks and drivers. I also operate a small fleet of trucks that operate solely within the State of NJ - the term for this is called "INTRASTATE" Operations. These are the vehicles referenced to in the last update on our MSC-150 form. According to the Federal guidelines and rules a USDOT Number is only required if a carrier is involved in Interstate Commerce, and their vehicles have a Gross Vehicle Weight over 10,000 GVW. Canyon Trucking is an Intrastate Carrier and is not required to maintain an "Authorized" status.

[Canyon Protest Response, p.1.]

In consideration of NSG'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.

² On August 2, 2020, in response to NSG's protest, and two weeks after the protest deadline, Canyon submitted a protest against NSG. Per the July 13, 2020, Notice of Intent to Award letter, all Vendors {Bidders} were advised that the deadline to submit a protest was July 20, 2020 at 4:00 pm eastern time. In accordance with the Division's governing regulations, the Director may disregard any protest received after the protest deadline. N.J.A.C. 17:12-3.3(b)(3). Accordingly, the Division has not accepted Canyon's protest as timely filed. That being said, I note that the NJDOT advises that NSG is a current contractor for snow removal having been awarded Blanket P.O. 18-PROS1-00532; and that NJDOT has not had any concerns or complaints regarding NSG's work, performance or safety record under the its current contract.

“The Federal Motor Carrier Safety Administration (FMCSA) was established within the Department of Transportation on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 113).” See <https://www.fmcsa.dot.gov/mission/about-us>. The “Administration's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. Activities of the Administration contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations; targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness.” *Ibid.* A USDOT Number is required for a company that is operating in interstate commerce³ and which meets the following criteria: (1) has vehicles that are over 10,000 lbs. (GVWR, GCWR, GVW or GCW); (2) transports between 9 and 15 passengers (including the driver) for compensation, whether direct or indirect; (3) transports 16 or more passengers; or (4) hauls hazardous materials.⁴ See https://ask.fmcsa.dot.gov/app/answers/detail/a_id/109/kw/Do%20i%20need%20a%20registration, <https://www.fmcsa.dot.gov/registration/do-i-need-usdot-number>

Consistent with NSG’s allegation, a review of the U.S. Department of Transportation Federal Motor Carrier Safety Administration - Safety and Fitness Electronic Records (SAFER) System reveals that Canyon’s operating status is listed as “Not Authorized”. However, the SAFER System indicates that designation of “Not Authorized” means that the company is “not authorized to operate as for hire in interstate commerce.” See https://ask.fmcsa.dot.gov/app/answers/detail/a_id/569/kw/Not%20Authorized. In response to the protest Canyon states that in 2016 it ceased its interstate operations and changed its operating status from “Authorized” to “Not Authorized.” Further, as noted above, the purpose of this Bid Solicitation is to award Blanket P.O.s to qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of NJDOT. There is no interstate commerce sought under this Bid Solicitation which would require Canyon to maintain an operating status of “Authorized” with FMCSA. Therefore, Canyon’s operation status of “Not Authorized” to engage in interstate commerce, does not impact its ability to perform the work required by this Bid Solicitation or affect its designation as an intended awardee.

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 unawarded price lines 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

³ “Interstate commerce” is defined as trade, traffic, or transportation that is (1) between a place in a state and a place outside of such state (including a place outside of the United States); (2) between two places in a state through another state or a place outside of the United States; or (3) between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States. “Intrastate commerce” is defined as trade, traffic, or transportation exclusively in your business’s domicile state. See https://ask.fmcsa.dot.gov/app/answers/detail/a_id/249.

⁴ “The USDOT Number serves as a unique identifier when collecting and monitoring a company's safety information acquired during audits, compliance reviews, crash investigations, and inspections.” See, <https://www.fmcsa.dot.gov/registration/do-i-need-usdot-number>

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

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: M. Dunn
R. Regan
K. Popso
K. Centofanti
Canyon Trucking, Inc.