



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 31, 2020

Via Electronic Mail Only evan.pickuslaw@gmail.com

Evan Pickus, Esq.
Pickus & Landsberg
802 Ryders Lane
East Brunswick, NJ 08816

Re: I/M/O Bid Solicitation #20DPP00525 Quality 1st Contracting, Inc.
Protest of Notice of Intent to Award
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Pickus:

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 Quality 1st Contracting, Inc. (Quality). In that correspondence, Quality 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 Master Blanket Purchase Orders (Blanket P.O.) to several Vendors {Bidders} who submitted Quotes 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 close 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 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*.

After the review and evaluation of all Quotes received in response to the Bid Solicitation was completed, the Bureau prepared 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 Blanket P.O.s consistent with the Bureau's Recommendation Report.¹

On July 15, 2020, the Division received Quality's protest challenging the intended Blanket P.O. award of price lines to Prieto Enterprises, LLC. Specifically, Quality states in part:

Having reviewed my client's bid, it seems that my client's application offered an hourly rate that is substantially lower than the rate to be charged by the successful bidder. Specifically, my client specified a rate of \$238.50 per hour, and Prieto Construction specified a rate of \$294.00 per hour- a difference of more than \$50.00 per hour, or seventeen percent. Both bids were otherwise compliant with the solicitation requirements.

It is our understanding that the Division must award its contract to the lowest bidder; that was not done here. It is our further understanding that the Division may choose to pass over a low bidder due to past poor performance, but my client contracted with the Division for this route for the 2019/2020 season, and we know of no issues that arose during that time.²

[Quality Protest Letter at 1.]

In consideration of Quality'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.

First, Quality misstates the award methodology required for New Jersey State procurement. Under State procurement law, the Division is not required to make an award to the lowest bidder. The Division's Director has broad discretion to select among qualified, responsive bidders in public contracting matters. *In re Request for Proposals ##17DPP00144*, 454 N.J. Super. 527, 559 (App. Div. 2018). N.J.S.A. 52:34-12(a)(g) states that the "award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered." "Any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property

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.

² Although not at issue here, Quality is correct that the Division's governing regulations permit the Bureau to bypass a Vendor {Bidder} who has submitted a responsive Quote, if the Vendor {Bidder} has a record of poor performance. N.J.A.C. 17:12-2.8. *See also* Bid Solicitation Section 6.10 *Poor Performance*.

determines that it is in the public interest so to do.” N.J.S.A. 52:34-12(a). Thus, our State’s “public bidding statutory scheme vests discretion in the Director of the Division to select which of the responsive bids is ‘most advantageous to the State.’” *Barrick v. State*, 218 N.J. 247, 258 (2014) (quoting N.J.S.A. 52:34-12(a)). Thus, price is only one of the factors to be considered. As will be discussed below, the type of equipment proposed by each Vendor {Bidder} was of importance in the evaluation, and the ranking of the various equipment types which could be utilized for spreading services was set forth in Bid Solicitation 6.7.1 *Equipment Preference and Pricing Evaluation*.

Second, the record of this procurement indicates that Quality submitted a Quote for spreading services only. While Quality did not identify the specific price line award to Prieto Enterprises, LLC (Prieto) it sought to challenge, the record of this procurement reveals that Quality submitted a Quote for price line 347 only. Quality’s submitted Quote price sheet including the following information for price line 347:

347	SPREADING SERVICES – D.O.T.	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 checked="" 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 checked="" type="checkbox"/> NO <input type="checkbox"/>	\$250
	REGION: CENTRAL					
	CREW #: 313 HAZLET YARD					
	15 ALLAN STREET, HAZLET, NJ					
NUMBER OF TRUCKS REQUIRED: CLASS Q - 3 CLASS R - 4						

On June 23, 2020, the Bureau sent a BAFO request to Quality as permitted by Bid Solicitation Section 6.8 *Negotiation and Best and Final Offer (BAFO)*. In response to the Bureau’s BAFO request, Quality submitted a reduced hourly rate as follows:

347	SPREADING SERVICES – D.O.T.	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 checked="" 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 checked="" type="checkbox"/> NO <input type="checkbox"/>	\$238.50
	REGION: CENTRAL					
	CREW #: 313 HAZLET YARD					
	15 ALLAN STREET, HAZLET, NJ					
NUMBER OF TRUCKS REQUIRED: CLASS Q - 3 CLASS R - 4						

Accordingly, the Bureau evaluated Quality’s Quote using the submitted BAFO pricing.

For price line 347 Prieto’s submitted Quote price sheet including the following:

347	SPREADING SERVICES – D.O.T.	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 checked="" type="checkbox"/> NO <input type="checkbox"/>	\$274
	REGION: CENTRAL					
	CREW #: 313 HAZLET YARD					
	15 ALLAN STREET, HAZLET, NJ					
NUMBER OF TRUCKS REQUIRED: CLASS Q - 3 CLASS R - 4						

Prieto did not respond to the Bureau’s June 23, 2020, BAFO request. Therefore, Prieto’s Quote was evaluated based upon its original Quote pricing.

The Bureau’s July 10, 2020, Recommendation Report indicates that the Quotes submitted by Quality and Prieto were both responsive to the requirements of the Bid Solicitation. The record of this procurement indicates that twelve Vendors {Bidders}, including Quality and Prieto, submitted a responsive Quote for price line 347. The Quotes submitted by the twelve responsive Vendors {Bidders} were evaluated based upon the equipment preferences detailed in Bid Solicitation Section 6.7.1 which states in part:

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. Spreading Services – Pricing Evaluation Methodology

Vendors {Bidders} within the same equipment preference will be ranked based upon the hourly rate Unit Price for the respective price line.

If two (2) or more Vendors {Bidders} are offering the same equipment preference and are tied on pricing based upon the above pricing evaluation methodologies (both A & B), then the Division will rank based upon the years of experience recorded on Revised Attachment #1, for the respective service in question.

Please refer to the examples listed below in Section 6.7.1.1 and 6.7.1.2 for more information.

....

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;

3rd Preference – Vendors {Bidders} supplying all of the price line specific, required Class R, Q and/or P trucks that are all Vbox, all with an On-Board Wetting System;

4th Preference – Vendors {Bidders} supplying all of the price line specific, required Class R, Q and/or P trucks that are all Vbox, all without an On-Board Wetting System;

5th Preference – Vendors {Bidders} supplying all of the price line specific, required Class R, Q and/or P trucks that are all Midbody, all with an On-

Board Wetting System; and

6th Preference – Vendors {Bidders} supplying all of the price line specific, required Class R, Q and/or P trucks that are all Midbody, all without an On-Board Wetting System.

Style of Trucks - If the Vendor {Bidder} checks and/or circles more than one (1) of the options, only the least favorable preference option shall be considered and evaluated.

On-Board Wetting System – If the Vendor {Bidder} leaves this column blank, or circles and/or checks both “Yes” and “No”, the State will evaluate the Quote as if it is not providing On-Board Wetting Systems for the respective price line.

Refer to Bid Solicitation Section 4.4.5.2, *State-Supplied Price Sheets*, including subsections, for information regarding instructions for the State-Supplied Price Sheets.

[Emphasis added.]

Three Vendors {Bidders} including Prieto submitted a Quote for a Tailgate Mounted truck with an On-Board Wetting System, the first preference for award. Among those three Vendors {Bidders} Prieto submitted the lowest hourly rate at \$274.00/hour. Accordingly, the Bureau recommended that the Blanket P.O. award be made to Prieto. Eight Vendors {Bidders} submitted a Quote for a Tailgate Mounted truck with No On-Board Wetting System, the second preference for award. Quality submitted a Quote for a Vbox truck with an On-Board Wetting System, the third preference for award. See Bid Solicitation Section 6.7.1.1 *Spreading Services*. Reviewing the Quotes submitted, there were several responsive Vendors {Bidders} in both the 1st and 2nd preference categories that would have been in line for a Blanket P.O. award for price line 347 before Quality would have been reached for an award.

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. This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote.

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 Quality.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

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