



State of New Jersey

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

Via Electronic Mail Only westphalwaste@gmail.com

Christina Westphal, Vice President
Westphal Waste Services
P.O. Box 123
Norwood, NJ 07648

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

Dear Ms. Westphal:

This letter is in response to your emails of July 14, 2020 and July 15, 2020, to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of Westphal Waste Services (Westphal). In that correspondence, Westphal 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*, 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

With respect to the Quote submitted by Westphal, the Recommendation Report states:

The Quote submitted by Westphal Waste Services (WWS) was deemed by the Bureau to be responsive to all 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.

WWS submitted a Quote for Snow Plowing Services only. The Bureau determined that the Vendor {Bidder} was responsive for all Price Lines submitted as part of its Quote.

As required by Bid Solicitation Section 4.4.3, *Experience of Vendor {Bidder}*, the Vendor {Bidder} submitted Attachment #1 – Experience of Vendor {Bidder} with its Quote. As part of Attachment #1, the Vendor {Bidder} states that it has four (4) years of experience providing Snow Plowing Services and confirmed that it possesses two (2) or more years of

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.

experience performing Snow Plowing Services on public roadways. Based upon this information, the Bureau determined that WWS met the minimum experience requirements of two (2) or more years of experience providing Snow Plowing Services on public roadways in order to be considered eligible for award.

[July 9, 2020 Recommendation Report, p. 91.]

Despite being responsive to the mandatory requirements for Quote submission, Westphal was not recommended for a Blanket P.O. award.

On July 14, 2020 and July 15, 2020, the Division received Westphal's protest emails challenging the intended Blanket P.O. awards. Specifically, Westphal states in part:

We bid on sections 5 9 and 10 for 1st and 2nd preference like we did the last contract. Due to covid and a limited office staff I overlooked the states ruling if you bid on 1st or 2nd preference it would automatically defer to 2nd preference, but I have to ask if the state wants 1st preference why would it defer to automatic 2nd preference when the state wants 1st preference. This makes absolutely no sense and I feel we should be entitled to a 2nd review on sections 5 9 and 10 we are the incumbent contractor for 2 sections now, we own our own equipment we have never been written up in the past, why would the state overlook our proposal and award to a company twice as high when we bid on the 1st preference. We felt as a company all options needed to be bid and if so should default to 1st preference. There is a section if we left anything blank the bid would be incomplete. This is the exact same way we bid the contract last time and we were awarded 1st preference.

[Westphal's July 14, 2020, protest email.]

Good morning, as discussed yesterday I find it hard to believe that if a contractor bids on 1st and 2nd option why would it automatically kick down to 2nd preference when we bid 1st preference wouldn't it be automatically kicked to 1st preference. We are the incumbent on 2 snow routes now, we invested in 10 brand new plows we own and maintain our own equipment we have never been written up on any sections and we are considered a contractor not to be "babysat" The one section we bid on the contractor is well over \$600.00 per hour over our bid this is such a waste of state money. I know a lot of things were changed this year and the state did a great job answering calls and emails but due to covid and limited office staff this was an oversight on our part I would have never bid second preference if I knew we didn't have to, all bids we do must be complete or they will be denied. I have attached a copy of our last bid just like we filled it out this year...

[Westphal's July 15, 2020, email.]

With its July 15, 2020 email, Westphal included a portion of price sheet submitted in response to Bid Solicitation 18DPP000205, the prior procurement for Snow Plowing and Spreading Services.

In consideration of Westphal’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.

As noted above, the subject Bid Solicitation was advertised by the Bureau on April 9, 2020. The scope of work for this Bid Solicitation was created to meet NJDOT’s current operational needs and specifically cautioned Vendors {Bidders} that they should not rely upon requirements from the prior procurement. Specifically, the Bid Solicitation Section 1.2 *Background* stated “Vendors {Bidders} are cautioned that this new Bid Solicitation addresses current requirements. *Vendors {Bidders} should not rely upon or use data from the prior Blanket P.O.” Emphasis added.*

Additionally, on April 23, 2020 the Bureau held an optional pre-quote conference to review the current Bid Solicitation with potential Vendors {Bidders}. During that conference the Bureau cautioned Vendors {Bidders} to review the price sheet submission requirements.

State-Supplied Price Sheet Snow Plowing and Hauling Services

- ▶ See Bid Solicitation Section 4.4.5.2.1 *Snow Plowing and Hauling Services Price Sheet Instructions for directions.*
- ▶ Price lines 1 – 312.

T0777 - Snow Plowing and Spreading Services - NJDOT							
Vendor (Bidder) Name:							
Please reference Section 4.4.5.2 of the Bid Solicitation							
LINE NO.	DESCRIPTION	QTY	UNIT	1 ST PREFERENCE	2 ND PREFERENCE	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING EXPERIENCE #1	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING EXPERIENCE #2
				ALL-INCLUSIVE HOURLY RATE: CLASS A AND/OR CLASS B SNOW PLOWING TRUCK WITH SNOW PLOW	ALL-INCLUSIVE HOURLY RATE: CLASS A AND/OR CLASS B SNOW PLOWING TRUCK WITHOUT SNOW PLOW		
22	SNOW PLOWING SERVICES - 0.0.T. FREDON NORTH CREW 28 TOTOWA SUBSECTION M1 SNOW SECTION 30328 ROUTE 10 HWY 600/PA. 88.13 ROUTE 66 & GIP) TO 1.8 (LANCET ST. IN PATERSON) NUMBER OF TRUCKS REQUIRED: 6	1	HOURLY RATE				
23	SNOW PLOWING SERVICES - 0.0.T. FREDON NORTH CREW 205 WEST ORANGE SUBSECTION M2 SNOW SECTION 30328 1.200 FROM THE GARDEN STATE PARKWAY, EAST ORANGE CITY TO NEW JERSEY TURNPIKE, KENNETH TOWN INCLUDING RAMP(S) (HP 16.1 TO 17.9) NUMBER OF TRUCKS REQUIRED: 7	1	HOURLY RATE				
24	SNOW PLOWING SERVICES - 0.0.T. FREDON NORTH CREW 205 WEST ORANGE SUBSECTION M2 SNOW SECTION 30328 1.200 FROM PLEASANT VALLEY MHC, WEST ORANGE TOWN TO THE GARDEN STATE PARKWAY, EAST ORANGE CITY (HP 7.5 TO HP 0.1) 1.200 FREEWAY DIVIDE EAST & WEST PARALLEL FRANKFORDS (HP) BY DR. HILFPOSTS EAST ORANGE CITY INCLUDING RAMP(S) (HP 16.5 TO 18.0) NUMBER OF TRUCKS REQUIRED: 8	1	HOURLY RATE				

[April 23, 2020 Pre-Quote Conference PowerPoint Presentation, slide 14.]

As to the submission of Quote pricing for snow plowing and hauling services, the Bid Solicitation advised potential Vendors {Bidders} as follows:

1st Preference and 2nd Preference Columns - All-Inclusive Hourly Rate – Class A and/or Class B Snow Plowing Truck – Vendors {Bidders} shall provide hourly rate unit pricing for either the 1st Preference or 2nd Preference option of each price line being bid. Failure to provide unit pricing for one (1) of these two (2) options shall result in the Quote being deemed non-responsive and ineligible for award of the respective price line. *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. Refer to Section 6.7.1, Equipment Preference and Pricing Evaluation, subsections included, for more information.

[Bid Solicitation Section 4.4.5.2.1 *Snow Plowing and Hauling Services Price Sheet Instruction, Emphasis added.*]

Further, with respect to the evaluation of Quotes received for snow plowing and hauling services, the Bid Solicitation advised potential Vendors {Bidders}:

1st Preference – Vendors {Bidders} supplying all required trucks, that are all a combination of either Class A and/or Class B trucks, all with Vendor {Bidder} provided snow plows; and

2nd Preference – Vendors {Bidders} supplying all required trucks, that are all a combination of either Class A and/or Class B trucks, all without Vendor {Bidder} provided snow plows.

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.

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.

[Bid Solicitation Section 6.7.1.1 *Snow Plowing and Hauling Services, Emphasis added.*]

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 the protest, Westphal challenges the Quote submission requirements and evaluation methodology set forth in the Bid Solicitation and suggests that an alternative methodology be employed. If Westphal disagreed with the submission requirements and evaluation methodology set forth in the Bid Solicitation, its opportunity to do so was prior to the submission of Quotes. N.J.A.C. 17:12-3.2. Had Westphal submitted a challenge to the submission requirements and evaluation methodology prior to the Quote opening, the Bureau could have addressed any concerns, and doing so would have maintained a level playing field for all potential Vendors {Bidders} with respect to the submission requirements and evaluation methodology to be employed.

In consideration of Westphal’s protest, the Division’s Hearing undertook a review of submission requirements and evaluation methodology for the subject Bid Solicitation. There was no error, mistake or

inaccuracy in the specifications which would have required an amendment had a challenge to the specification been filed prior to the Quote opening date. In the protest, Westphal acknowledges that it misread the requirements of the current Bid Solicitation, and rather submitted the Quote consistent with the requirements of the prior Bid Solicitation. 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. Unfortunately, the Bureau cannot allow Westphal to amend its submitted price sheet after the Quote opening as doing so 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". 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 Westphal Waste Services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

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