



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

SHEILA Y. OLIVER
Lt. Governor

MAURICE A. GRIFFIN
Acting Director

August 5, 2020

Via Electronic Mail Only kmartin2512@embarqmail.com

Kathy Martin
John P. Martin Excavating LLC
112 Ferry Road
Flemington, NJ 08822

Re: I/M/O Bid Solicitation #20DPP00525 John P. Martin Excavating LLC
Protest of Notice of Intent to Award
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Ms. Martin:

This letter is in response to your July 16, 2020, correspondence to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of John P. Martin Excavating LLC (Martin). In that correspondence, Martin 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 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 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 a Blanket P.O.s consistent with the Bureau's Recommendation Report.¹

On July 16, 2020, the Division received Martin's protest challenging the intended Blanket P.O. awards. In its protest, Martin writes:

Please consider this letter a formal notification of protest for the award of line items 179 (Snow Plowing Services) and 361 (Tailgate Mounted & On-Board Wetting System). The recommendation report indicates that our quote was deemed non-responsive due to mandatory requirements of the Bid Solicitation. During the bidding process we were contacted about different additional information on several occasions and believe to have responded back in the time set forth by the notification. John P Martin Excavating LLC did answer the forms as we understand them to be completed. We are unclear as to whether the discrepancy between the forms submitted with this bid proposal exists. Our intent was not to provide misinformation on any of the documentation. We would like the opportunity to correct any typos or un-intentional misinformation in the forms. To be clear and transparent, John P Martin Excavating is owned by both John Martin and Kathleen Martin (50/50).

[Martin, July 16, 2020 Letter of Protest].

In consideration of Martin'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 record for this procurement shows that Martin submitted an *Ownership Disclosure Form* with its Quote in accordance with Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form*. Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* requires that:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or limited liability company, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a

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.

Blanket P.O. to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

[Emphasis added].

A copy of Martin's submitted *Ownership Disclosure Form* is shown below.

	STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF PURCHASE AND PROPERTY 33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230
OWNERSHIP DISCLOSURE FORM	
BID SOLICITATION #:	20DPP000525
VENDOR (BIDDER):	John P. Martin Excavating LLC
<small>ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE THE INFORMATION REQUESTED PURSUANT TO N.J.S.A. 52:25-24.2. PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.</small>	
PART 1	
Are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor (Bidder)?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<small>If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein.</small>	
NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____
NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____
NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____
NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____
NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____
<small>Attach Additional Sheets if Necessary.</small>	

PART 2

Of those entities disclosed above owning a 10% or greater interest in the Vendor (Bidder), are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest of those listed entities? YES NO

If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein. Please note that this disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been identified.

Name of the entity listed above to which the disclosure below applies: _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

Attach Additional Sheets if Necessary.

PART 3

As an alternative to completing this form, a Vendor (Bidder) with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.

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Martin checked “No” in response to Question #1 on its *Ownership Disclosure Form*, indicating that there are no individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor {Bidder}. Martin also checked “No” to Question #2 on its *Ownership Disclosure Form*, indicating the same. As shown in the screenshots above, Martin left the remainder of the *Ownership Disclosure Form* blank.

However, in its review of Martin’s Quote, the Bureau discovered a potential discrepancy between Martin’s submitted *Ownership Disclosure Form* and the information contained in Martin’s *Offer and Acceptance Page* and *Disclosure of Investment Activities in Iran Form* submitted with Martin’s Quote. Both of those forms identified John P. Martin as “Owner” of Martin. A screenshot of Martin’s *Offer and Acceptance Page* is shown below, as an example of the discrepancy between the information found on Martin’s *Ownership Disclosure Form* and the information found on other forms that were submitted as part of Martin’s Quote.²

² Martin’s Disclosure of Investment Activities in Iran Form also lists “John P. Martin” as “Owner” of Martin.

OFFER AND ACCEPTANCE PAGE

State of New Jersey
Department of the Treasury
Division of Purchase and Property
33 West State Street, P.O. Box 230
Trenton, New Jersey 08625-0230

Bid Solicitation Title T0777 - Snow Plowing and Spreading Services - NJDOT
Bid Solicitation No. 20DPP00525
Blanket P.O. Term See Bid Solicitation Section 5.2

Open to Cooperative Purchasing

TO THE STATE OF NEW JERSEY:
The Undersigned hereby offers and agrees to furnish the good, products, or services in compliance with all terms of this Master Blanket Purchase Order (Blanket P.O.) as defined in Section 2.0 of the Bid Solicitation.

Vendor (Bidder) John P Martin Excavating LLC	Authorized Signature 
Address 112 Ferry Road	Printed Name John P Martin
City, State, Zip Code Flemington New Jersey, 08822	Title Owner
Phone Number 908-782-2512	Email Address john@jmartinexcavation.com
Fax Number 908-782-8157	FEIN [REDACTED]

Pursuant to P.L. 2017, c. 95, please indicate whether the Vendor (Bidder) self-identifies as any of the following as defined in N.J.S.A. 52:32-19:
 Minority-Owned Business Women-Owned Business Small Business Not Applicable
For set-aside contracts only, a Vendor (Bidder) must be registered with the N.J. Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit. Please refer to N.J.A.C. 17:13-3.1 & 17:13-3.2 for additional information.

By signing and submitting this Offer, the Vendor (Bidder) certifies and confirms that:

- The Vendor (Bidder) has read, understands, and agrees to all terms, conditions, and specifications set forth in the State of New Jersey Standard Terms and Conditions and the provisions set forth in the Bid Solicitation Section 4.4.1.1.1 (MacBride Principles Certification), Section 4.4.1.1.2 (Non-Collusion), and Section 4.4.1.1.3 (New Jersey Business Ethics Guide Certification);
- The Vendor's (Bidder's) failure to meet any of the terms and conditions of the Blanket P.O. as defined in the Bid Solicitation shall constitute a breach and may result in suspension or debarment from further State bidding;
- A defaulting Vendor (Contractor) may also be liable, at the option of the State, for the difference between the Blanket P.O. price and the price bid by an alternate Vendor (Bidder) of the goods or services in addition to other remedies available; and
- By signing and submitting this Offer, the Vendor (Bidder) consents to receipt of any and all documents related to this Bid Solicitation and the resulting Blanket P.O. by electronic medium.

THIS FORM SHOULD BE SIGNED, COMPLETED AND INCLUDED WITH THE VENDOR'S (BIDDER'S) QUOTE

ADDITIONAL VENDOR (BIDDER) REQUIREMENTS

<input type="checkbox"/> Bid Security Amount _____	<input type="checkbox"/> Payment Security Amount _____
<input type="checkbox"/> Performance Security Amount _____	<input type="checkbox"/> Retainage Percentage _____

ACCEPTANCE OF OFFER (For State Use Only)

The Offer above is hereby accepted and now constitutes a Blanket P.O. (Contract) with the State of New Jersey. The Vendor (Contractor) is now bound to sell the goods, products, or services listed by the attached Blanket P.O. (Contract) as defined by Section 2.0 of the Bid Solicitation. The Vendor (Contractor) shall not commence any work or provide any good, product, or service under this Blanket P.O. (Contract) until the Vendor (Contractor) complies with all requirements set forth in the Bid Solicitation and receives written notice to proceed.

Blanket P.O. Number _____
Blanket P.O. Award Date _____ Blanket P.O. Effective Date _____

Pursuant to Bid Solicitation Section 6.4, *Clarification of Quote / State's Right to Request Further Information*, on June 30, 2020, the Bureau sent Martin a "Request for Clarification – **Third and Final Request**" (Clarification Letter) to ascertain who the owner(s) of Martin were. The Clarification Letter stated, in pertinent part,

As part of its Quote, your firm answered "No" to Question #1 on its Ownership Disclosure Form, indicating that there are no individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Company. However, your firm's Offer and Acceptance Page and Disclosure of Investment Activities in Iran Form submitted with the Quote identifies John P Martin as "Owner". The Procurement Bureau is requesting that your Company clarify this ambiguity.

Please confirm whether or not John P Martin owns a 10% or greater interest in the Company. Additionally, please confirm whether or not there are any additional individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Company.

[Emphasis added].

In its July 1, 2020 Clarification Response, Martin stated, “Per the “Request for Clarification – Final Request” due today[,] John and Kathy Martin own 100% of John P. Martin Excavation (sic) LLC. No partners or investors are involved in John P Martin Excavating. We are a family run business for over 30 years with no partners or investors.” Emphasis added. Based upon this response, the Bureau determined that there are two individuals whom owned the bidding entity. The information provided in response to the clarification response contradicted that provided by Martin on the *Ownership Disclosure Form* submitted with the Quote. The Bureau concluded that Martin failed to meet the requirements of N.J.S.A. 52:25-24.2, which requires that a current, completed and accurate statement of a Vendor’s {Bidder’s} ownership be submitted with the Quote.³ Thus, the Bureau found Martin to be non-responsive to the requirements of the Bid Solicitation, and Martin’s Quote was not given further consideration for award.

The Hearing Unit’s independent review of Martin’s Quote and Martin’s response to the clarification letter confirms that the Bureau properly determined that the *Ownership Disclosure Form* submitted with Martin’s Quote was neither complete nor was it accurate as required by N.J.S.A. 52:25-24.2. Martin’s July 16, 2020 Letter of Protest further substantiates Martin’s July 1, 2020 Clarification Response indicating that there is an additional owner of Martin that was not disclosed on the *Ownership Disclosure Form* submitted by Martin with its Quote. In its letter of protest, Martin states, “To be clear and transparent, John P Martin Excavating is owned by both John Martin and Kathleen Martin (50/50).” This additional information about Kathleen Martin’s ownership of Martin cannot be accepted after Quote opening in order to correct a deficiency in Martin’s originally submitted *Ownership Disclosure Form*.

In reviewing a Quote submitted, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} certify with its Quote the Bidder’s company ownership structure. Only the New Jersey Legislature can change a requirement it has mandated. If the requirements of N.J.S.A. 52:25-24.2 are not met, a Quote must be rejected. The statute mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State’s bidding process.

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation for award. The Bureau was correct to exclude Martin from consideration for award for Price Lines 179 and 361, as Martin was ineligible for an award because it did not submit a complete and accurate statement of ownership with the Quote as required by N.J.S.A. 52:25-24.2. 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 unawarded price lines for 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 Martin.

Sincerely,


Maurice A. Griffin
Acting Director

³ See July 9, 2020 Recommendation Report, Pg. 6

MAG: TCR

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