



State of New Jersey

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

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

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

October 28, 2020

Via Electronic Mail Only frontoffice@njmedicalwaste.com

Suri Moskowitz
NJ Medical Waste (on behalf of R. Mor Enterprises, Inc.)
31 Suttons Lane
Piscataway, New Jersey 08854

Re: I/M/O Bid Solicitation #19DPP00422 R. Mor Enterprises, Inc.
Protest of Notice of Intent to Award
T0845 Regulated Medical Waste, DEA Pharmaceutical, & RCRA Hazardous Waste Disposal Statewide

Dear Ms. Moskowitz:

This final agency decision is in response to your October 14, 2020, correspondence to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of R. Mor Enterprises, Inc. (R. Mor). In that correspondence, R. Mor protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) on September 30, 2020. The NOI advised all Vendors {Bidders} of the Division's intent to award Master Blanket Purchase Order (Blanket P.O.) to Approved Storage and Waste Hauling, Inc. (Approved Storage) who submitted a Quote in response to Bid Solicitation #19DPP00422 - T0845 Regulated Medical Waste, DEA Pharmaceutical, & RCRA Hazardous Waste Disposal – Statewide (Bid Solicitation).

By way of background, on October 7, 2019, the Bureau issued the Bid Solicitation on behalf of Using Agencies, to solicit Quotes for the pick-up, transportation, and disposal of Regulated Medical Waste (RMW), controlled substances also known as Drug Enforcement Administration (DEA) Pharmaceutical Waste, and Resource Conservation and Recovery Act (RCRA) hazardous waste. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award a Master Blanket Purchase Order (Blanket P.O.) to that responsible Vendor {Bidder} whose Quote, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. Ibid.

On November 29, 2019, 2020, the Bureau issued Bid Amendment #1 extending the Quote Submission Due Date to December 18, 2019. On December 9, 2019 the Bureau issued Bid Amendment #2 responding to the questions posed by potential Vendors {Bidders}. On December 18, 2019, the Division's Proposal Review Unit opened three Quotes, received by the Quote submission due date and time. After conducting a review of the Quotes received for compliance with the mandatory requirements for Quote submission, the Division's Proposal Review Unit forwarded all three Quotes 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 a Blanket P.O. award to Approved Storage, whose Quote, conforming to the Bid Solicitation was most advantageous to the State, price and other factors considered.¹ On September 30, 2020, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O. consistent with the Bureau's Recommendation Report dated September 8, 2020.

On October 14, 2020, the Division received R. Mor's protest challenging the intended Blanket P.O. award and, more specifically, the Bureau's determination that R. Mor's Quote was non-responsive. R. Mor. states in part:

Per the terms of the RFQ, I recall that none of the work was allowed to be given to a subcontractor (3rd party) and therefore, we opted not to bid on the DEA waste removal. According to the award letter, Approved Storage is using a third party and therefore we feel that our denial is invalid.

We work with a NJ Corporation that is licensed to haul and destroy DEA waste and would have submitted their information as part of our bid packet but based on your terms, did not.

[R. Mor Protest, pp. 1.]

In consideration of R. Mor'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, the Price Sheet Instructions for the Bid Solicitation were clear:

The State-Supplied Price Sheet has been divided into 48 price lines. The Vendor {Bidder} must provide firm-fixed unit cost pricing for each year (Year 1, Year 2, and Year 3) of each price line. Failure to submit required pricing in all price lines will result in the Vendor's {Bidder's} Quote being deemed non-responsive and ineligible for award.

In the event that a Vendor {Bidder} using **NJSTART** to submit a Quote uploads a State-Supplied Price Sheet and completes the "Items" Tab in **NJSTART** (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet will govern.

[Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions* (Emphasis added).]

The relevant portions of the State-Supplied Price Sheet submitted by R. Mor with its Quote are shown below:

¹ Approved Storage was also the only Vendor {Bidder} whose Quote was responsive to the requirements of this Bid Solicitation.

| Line No. | Item Description | Estimated Annual Quantity* | Unit of Measure | Year 1 | Year 2 | Year 3 | Total Estimated Item Price For 3-Year Term |
|----------|---|----------------------------|-----------------|----------------|----------------|----------------|--|
| | | | | Unit Cost/Year | Unit Cost/Year | Unit Cost/Year | |
| 39 | ITEM DESCRIPTION: Pickup of Regulated Medical Waste at Paramus Memorial Home ITEM DESCRIPTION: Pickup of Regulated Medical Waste at Paramus Memorial Home | 36 | Per Container | \$22.50 | \$22.50 | \$22.50 | \$2,430.00 |
| 40 | ITEM DESCRIPTION: Emergency Pickup of Regulated Medical Waste at Paramus Memorial Home ITEM DESCRIPTION: Emergency Pickup of Regulated Medical Waste at Paramus Memorial Home | 1 | Per Container | \$22.50 | \$22.50 | \$22.50 | \$67.50 |
| 41 | ITEM DESCRIPTION: Pickup of Regulated Medical Waste at Vineland Memorial Home ITEM DESCRIPTION: Pickup of Regulated Medical Waste at Vineland Memorial Home | 36 | Per Container | \$22.50 | \$22.50 | \$22.50 | \$2,430.00 |
| 42 | ITEM DESCRIPTION: Emergency Pickup of Regulated Medical Waste at Vineland Memorial Home ITEM DESCRIPTION: Emergency Pickup of Regulated Medical Waste at Vineland Memorial Home | 1 | Per Container | \$22.50 | \$22.50 | \$22.50 | \$67.50 |
| 43 | ITEM DESCRIPTION: Pickup of DEA Pharmaceutical Waste at Menlo Park Memorial Home ITEM DESCRIPTION: Pickup of DEA Pharmaceutical Waste at Menlo Park Memorial Home | 4 | Per Container | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| 44 | ITEM DESCRIPTION: Emergency Pickup of DEA Pharmaceutical Waste at Menlo Park Memorial Home ITEM DESCRIPTION: Emergency Pickup of DEA Pharmaceutical Waste at Menlo Park Memorial Home | 1 | Per Container | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| 45 | ITEM DESCRIPTION: Pickup of DEA Pharmaceutical Waste at Paramus Memorial Home | 4 | Per Container | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| 46 | ITEM DESCRIPTION: Emergency Pickup of DEA Pharmaceutical Waste at Paramus Memorial Home | 1 | Per Container | \$0.00 | \$0.00 | \$0.00 | \$0.00 |

| Line No. | Item Description | Estimated Annual Quantity* | Unit of Measure | Year 1 Unit Cost Year 1 1 Unit CostYear 1 Unit Cost | Year 2 Unit Cost Year 2 2 Unit CostYear 2 Unit Cost | Year 3 Unit Cost Year 3 3 Unit CostYear 3 Unit Cost | Total Estimated Item Price For 3-Year Term |
|---------------------------|---|----------------------------|-----------------|---|---|---|--|
| 47 | ITEM DESCRIPTION: Pickup of DEA Pharmaceutical Waste at Vineland Memorial Home | 4 | Per Container | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| 48 | ITEM DESCRIPTION: Emergency Pickup of DEA Pharmaceutical Waste at Vineland Memorial Home | 1 | Per Container | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Total Quote Cost** | | | | \$277,627.50 | | | |

* The State makes no guarantee of work volume.

** Price used to rank Quotes in accordance with Bid Solicitation Section 6.7.1.

As shown in the screenshot above, R. Mor indicated a charge of “\$0.00” in response to price line 43-48. As part of its Quote evaluation, on January 24, 2020 the Bureau sent a clarification letter to R. Mor to confirm that R. Mor’s submission of a \$0.00 price was not in error. R. Mor responded confirming that it was not bidding on the price lines for DEA Pharmaceutical Waste, and would have to add an additional subcontractor via a revised Quote to provide the services for price lines 43-48.

Thus, the Bureau determined that R. Mor’s Quote was non-responsive, as R. Mor failed to provide pricing for all 48 price lines as required by the terms of the Bid Solicitation. Therefore, R. Mor was not eligible for a Blanket P.O. award. Furthermore, it would have been impermissible for the Bureau to allow R. Mor to submit a revised Quote, after Quote opening date, that included additional subcontractors pricing for price lines 43-48, 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”.

Second, despite R. Mor’s assertion in its protest, nothing in the Bid Solicitation prevented a Vendor {Bidder} from submitting a Quote that included the use of a subcontractor to carry out any portion of the contract work. In fact, Bid Solicitation Section 4.4.1.3 *Subcontractor Utilization Plan* specifically permitted a Vendor {Bidder} to submit a Quote that included subcontractors, and that section of the Bid Solicitation laid out instructions for doing so:

Please note that the State of New Jersey will not be utilizing the “Subcontractor” Tab in **NJSTART**. Vendors {Bidders} intending to use a Subcontractor shall submit a Subcontractor Utilization Plan form. The Subcontractor Utilization Plan form is located on the [Division’s website](#). Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this

section of the Bid Solicitation through **NJSTART**. QRGs are located on the [NJSTART Vendor Support Page](#).

[Emphasis added.]

Thus, nothing prevented R. Mor from submitting a Quote that included the use of subcontractors. If R. Mor had any questions regarding its ability to submit a Quote that included subcontractors, R. Mor could have raised those questions during the Question and Answer period. The Bureau did not receive any questions from R. Mor or from any other interested Vendor {Bidders} related to the use of subcontractors to perform any of the work sought in this Bid Solicitation. It was also acceptable for Approved Storage to designate Reliable Pharmaceutical Returns, LLC (Reliable) as a subcontractor in its Quote, provided that Reliable possessed all of the required certifications, at time of Quote opening, that were required by the Bid Solicitation, in order to carry out its portions of the awarded Blanket P.O.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation for award. Accordingly, I sustain the September 30, 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 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 R. Mor.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: TCR

c: M. Dunn
R. Regan
J. Loughran