



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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June 29, 2021

Via Electronic Mail Only rheineman@krollfirm.com

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Re: I/M/O Bid Solicitation #20DPP00471 Service Employees International Union, Local 32B-J
Specification Challenge
T1628 Enhanced Motor Vehicle Inspection Maintenance System

Dear Mr. Heineman:

This final agency decision is in response to your letter of June 23, 2021 to Governor Philip Murphy, on behalf of the Service Employees International Union, Local 32B-J, (SEIU) that was received by the Division of Purchase and Property's (Division) Hearing Unit. In that letter, SEIU challenges the workforce specifications of Bid Solicitation #20DPP00471 – T1628 Enhanced Motor Vehicle Inspection Maintenance System (Bid Solicitation). The Division therefore treats your letter as a protest of the specifications.

By way of background, the Clean Air Act (CAA) Amendments of 1990 gave the United States Environmental Protection Agency (EPA) the authority to require metropolitan areas designated as serious, severe or extreme non-attainment for carbon monoxide or ozone to implement an Inspection and Maintenance (I/M) Program. In New Jersey, the Motor Vehicle Commission (MVC) and the Department of Environmental Protection (DEP) are partners in the effort to protect the health and safety of New Jersey residents by overseeing the I/M Program. Since its inception over 81 years ago, when it was introduced as a vehicle safety initiative, the I/M Program has gone through many changes. Many of these changes were based upon amendments to the various State and federal laws and regulations, including the CAA Amendment of 1990 which govern the I/M Program.

By way of summary, in August 1995, the enhanced version of the I/M program was adopted. This enhanced program is an integral part of New Jersey's compliance plan with the National Ambient Air Quality Standards (NAAQS), and a component of the State Implementation Plan (SIP) which is designed to attain and maintain the health-based NAAQS for ozone and designed to improve air quality and protect the health and safety of the State's residents as well as the environment. Although the MVC operates the I/M Program, DEP is the lead agency responsible for ensuring the State meets the mandates of the CAA, its amendments and federal regulations. Further, DEP is charged with monitoring compliance with the SIP.

In August 1998, the State awarded a contract to privatize the centralized vehicle inspection program. The contractor retrofitted/built and equipped 132 inspection lanes, designed and built a vehicle inspection database, and assumed the operation of the Centralized Inspection Facilities (CIFs). Private Inspection Facilities (PIFs) remain part of New Jersey's I/M program. The current I/M program is considered a hybrid system, meaning it utilizes both CIFs and PIFs. There are approximately 2,100,000 emission inspections performed annually.

On August 28, 2019, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of MVC and DEP. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation is to solicit Quotes for implementing the next generation Motor Vehicle Inspection and Maintenance program (NGSystem). The Inspection and Maintenance program is the mandatory periodic inspection of vehicles to assure compliance with standards established by the State and the federal government. *Ibid*. The intent of this Bid Solicitation is to award a Master Blanket Purchase Order (Blanket P.O. or Contract) to that responsible Vendor {Bidder} (Bidder) whose Quote, conforming to this Bid Solicitation, is most advantageous to the State, price and other factors considered. *Ibid*. Bid Solicitation Section 7.2 *Final Blanket P.O. Award*.

Pursuant to Bid Solicitation Section 1.3.4 *Mandatory Site Visit*, a Mandatory Site Visit was held on September 15, 2019. To be eligible to submit a Quote, potential Bidders were required to attend the site visit at each of the three identified locations:

1. Bakers Basin Inspection Facility
3200 Brunswick Pike Rte. 1 North, Lawrenceville, NJ 08648
(6-lane station built in 1956)
2. Flemington Inspection Facility
181 Routes 31 & 202, Ringoes, NJ 08551
(3-lane station built in 1978)
3. Washington Inspection Facility
Route 31 North and Pershing Avenue, Washington, NJ 07882
(1-lane station built in 1938)

On September 17, 2021, Bid Amendment #1 was posted identifying those potential Bidders who participated in the Mandatory Site Visit. Thereafter, on October 29, 2019, Bid Amendment 2 was posted which solicited information on whether potential Bidders desired to participate in additional site visits. Based upon the responses received, Bid Amendment 3 was posted that identified the follow Optional Site Visits scheduled as follows:

<u>Monday 11/18/19</u>	<u>Tuesday 11/19/19</u>	<u>Wednesday 11/20/19</u>	<u>Thursday 11/21/19</u>
Newton	Newark	Lakewood	Manahawkin
Randolph	Rahway	Southampton	Cape May
Wayne	Kilmer	Cherry Hill	Millville
Paramus	So. Brunswick	Deptford	Salem
Lodi	Eatontown	Winslow	
Secaucus	Freehold	Mays Landing	

In addition to the site visits, potential Bidders were permitted to submit questions and/or proposed modifications to the Bid Solicitation and State of New Jersey Standard Terms and Conditions through the **NJSTART** eProcurement System by September 18, 2019. Bid Solicitation 1.3.1 *Electronic Questions and*

Answer Period. On December 27, 2019, the Bureau issued Bid Amendment #4 responding to 48 questions received; on March 18, 2020, the Bureau posted Bid Amendment #6, responding to an additional 103 questions. Thereafter, the Bureau permitted potential Bidders to submit a second round of Questions through June 1, 2020 and then a third round of Questions through March 12, 2021. On August 19, 2020, the Bureau posted Bid Amendment #9, responding to eight questions received regarding Bid Solicitation Section 3.14 *Workforce*. On March 1, 2021 and April 16, 2021, the Bureau posted Bid Amendments #14 and #15 respectively responding to the remaining questions received during the second and third round of Q&A.

On June 23, 2021, SEIU submitted a challenge to the workforce specifications of the Bid Solicitation.¹ In consideration of SEIU's specification challenge, I have reviewed the record of this procurement, including the Bid Solicitation, relevant statutes, regulations and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed final agency determination regarding SEIU's specification challenge.

To respond to SEIU's protest requires a brief review of the Federal Clean Air Mandate Compliance Act (Act) which was enacted by the New Jersey Legislature in 1995. In part, the Act states that

...

The Legislature further finds and declares that the inspection and maintenance program being imposed by the Environmental Protection Agency pursuant to the federal law will be expensive and burdensome on the citizens of this State, but that the alternative to adopting this program is a series of federal sanctions that would result in the loss of federal highway monies, more stringent permitting criteria for industry and the imposition of an air pollution control program by the Environmental Protection Agency.

The Legislature further finds and declares that it would not adopt this enhanced motor vehicle inspection and maintenance program if the federal government were not forcing such action by the threat of the above-mentioned sanctions.

The Legislature further finds and declares that it shall take this opportunity to improve the existing motor vehicle inspection system by authorizing competitive contracting for or privatization of motor vehicle inspections and making other necessary legislative reforms to the provisions of Title 39 of the Revised Statutes.

[N.J.S.A. 39:8-42, emphasis added.]

With the move toward privatizing the State's inspection and maintenance program, the Senate Committee reviewing the Bill (S1700, dated February 6, 1995) recognized that a number of state employees

¹ On May 25, 2021, Parsons Environment and Infrastructure Group, Inc. (Parsons), the current Vendor {Contractor} submitted a challenge to the certain specifications of the Bid Solicitation. In part, Parsons claimed that the Bid Solicitation provided inaccurate/incomplete information to potential Bidders with respect to the requirement to hire the current inspection workforce. On June 4, 2021, the Division issued a final agency decision stating that the governing law did not require that the potential Vendors {Bidders} be required to hire the current workforce and advising that the current workforce were not employees of the State.

could be left without jobs; and therefore, the Senate Committee substitute proposed “several contract provisions to make the program more consumer-friendly, including... offering employment to full-time DMV employees whose employment is terminated as a result of the act.” See, Senate Natural Resources, Trade and Economic Development Committee, Statement to Senate Committee Substitute for S1700, dated February 6, 1995. Accordingly, when enacted, P.L. 1995, c. 112 included the following language:

All qualified full-time employees whose employment with the division² is terminated as a result of P.L.1995, c.112 (C.39:8-41 et al.) shall be offered full-time employment. If more than one contract for the operation of official inspection facilities is awarded, each contractor shall offer full-time employment to a percentage of the number of such employees that is equal to the percentage of the total number of inspection lanes that will be operated by that contractor.

[N.J.S.A. 39:8-44(c)(7).]

As written, the Act required that the original contractor awarded a contract for privatization the State’s inspection and maintenance program, offer employment to all then full time employees of the Division of Motor Vehicles. The Act did not require that any future contractor be obligated to hire the employees of any prior contractor providing the services for the State’s inspection and maintenance program.

Recognizing that it may be beneficial for a newly awarded contractor to have employees on staff who are familiar with the State’s inspection and maintenance program, which should help to ensure a seamless transition, the Bid Solicitation states in relevant part:

- A. To ensure an uninterrupted transition from the current inspection program to the new program, the Vendor {Contractor} should³ offer employment under the NGSystem to any qualified personnel currently employed with the current vendor prior to the Blanket P.O. effective date.
- B. In the event the Vendor {Contractor} determines it is not practicable or possible to retain any individual(s), the Vendor {Contractor} should provide a written report to the SCM documenting its best efforts along with recommendation to fulfill staffing requirements.

[Bid Solicitation Section 3.14 *Workforce*, emphasis added.]

SEIU mistakenly believes that the Bid Solicitation requires that the successful Vendor {Bidder} “offer employment under the to (sic) any qualified personnel currently employed with the current vendor” but “does not provide current employees with the right of first refusal.” Accordingly, SEIU urges the State to modify Bid Solicitation Section 3.14 *Workforce* as follows:

The most critical component to a successful centralized lane operation is a competent, experienced and well-trained workforce of inspectors and

² N.J.S.A. 39:8-43 defines Division as “the Division of Motor Vehicles in the Department of Law and Public Safety;” the Division of Motor Vehicles is now known as the Motor Vehicle Commission.

³ Bid Solicitation Section 2.2 *General Definitions* defines “Should – Denotes that which is permissible or recommended, not mandatory.”

managers. To ensure that there is a seamless and uninterrupted transition from the current inspection program to the new program, the contractor shall give all qualified personnel of the current vendor the right of first refusal with regard to employment under the new contract, in order of seniority. In order to encourage the current trained and qualified workforce to continue in employment and to avoid disruption in service, contractor shall maintain the current prevailing level of wages, health and retirement benefits and the monetary equivalent of the other terms and conditions of employment, as established in the collective bargaining agreement between the current vendor and the exclusive majority collective bargaining representative of the employees of the current vendor.

In support of its position, SEIU states that during the April 26, 2021 Town Hall, Governor Murphy stated that he was “sympathetic to prevailing wages and that [he] wanted an the (sic) Motor Vehicle Inspection System to be operated by a contractor who respected the rights of labor.” SEIU protest, p. 1.

The current workforce is not employees of the State, they are employees of the current Vendor {Contractor}, Parsons. The State was not a party to the employment agreement or collective bargaining agreement between Parsons and SEIU. N.J.S.A. 39:8-44(b)(4). Therefore, the State cannot require that a potential Vendor {Bidder} pay any specific wage, or provide any specific benefit to those employees. Further, as noted above, the Bid Solicitation advised potential Vendors {Bidders} that they “should” offer employment to any current employee to ensure “an uninterrupted transition from the current inspection program to the new program,” but were not required to do so as the applicable law did not require that those current be offered a position. To the extent that any current employee does not wish to accept a position if one is offered, those employees, would be free to accept or reject any position.⁴

Based upon the foregoing, although I understand SEIU’s concerns, I find no reason to amend Bid Solicitation Section 3.14 *Workforce* as this represents the current needs of the MVC as established by their subject matter experts. This is my final agency decision.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD/DK

c: L. Leonardi
C. Iversen

⁴ During the Question and Answer Period, there were several questions asked related to a Bid Solicitation Section 3.14 *Workforce*. See, Bid Amendment #9.