



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

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

June 4, 2021

Via Electronic Mail Only MECA@stevenslee.com

Maeve Cannon, Esq.
Stevens & Lee
100 Lenox Drive, Suite 200
Lawrenceville, NJ 08648

Re: I/M/O Bid Solicitation #20DPP00471 Parsons Environment and Infrastructure Group, Inc.
Specification Challenge
T1628 Enhanced Motor Vehicle Inspection Maintenance System

Dear Ms. Cannon:

This final agency decision is in response to your letter of May 21, 2021, on behalf of Parsons Environment and Infrastructure Group, Inc. (Parsons) that was received by the Division of Purchase and Property's (Division) Hearing Unit. In that letter, Parsons challenges certain specifications of Bid Solicitation Bid Solicitation #20DPP00471 – T1628 Enhanced Motor Vehicle Inspection Maintenance System (Bid Solicitation).

BACKGROUND

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 May 25, 2021, Parsons submitted a challenge to the certain specifications of the Bid Solicitation. Specifically, Parsons raises the following concerns regarding the Bid Solicitation: (1) Parson is at a disadvantaged with respect to Quote pricing because it has specific information regarding maintenance, repairs and renovations that are needed at the various inspection facilities; (2) that inaccurate/incomplete information has been provided to potential Bidders with respect to the requirement to hire the current inspection workforce; (3) there was no information included in the Bid Solicitation regarding required COVID protocols; and, (4) the Bid Solicitation failed to include or reference new and emerging technologies.

In consideration of Parsons' 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 Parsons' specification challenge.

DISCUSSION

A. Routine and Capital Maintenance, Repairs and Renovations at Centralized Inspection Facilities

In the protest, Parsons claims that it will be at a disadvantaged when submitting its Quote pricing. As the current vendor, Parson's states that is aware of approximately 3.1 million dollars of needed maintenance, repairs and renovations at various facilities across the State; and therefore, it is in a position to account for such needed maintenance, repairs and renovations in developing its Quote pricing. Parsons believes that this will put it at a disadvantage with respect to pricing because other potential Bidders have not been provided with the information regarding the necessary maintenance, repairs and renovations as identified in Parsons' protest Exhibits A and B.

With respect to routine maintenance, repairs and renovations at the State's CIFs, Bid Solicitation Section 3.21.2 *Routine Maintenance and Operations of Buildings and Grounds* state in part:

- A. The Vendor {Contractor} shall provide at its own expense all routine service operations, maintenance, and repairs, as listed in this section. Appendix 3.2H specifies the responsibilities of the Vendor {Contractor} and the State at all facilities and lists the current Vendor's {Contractor's} monthly electric and gas utility cost for each of the three shared sites (Newark, Eatontown, and Wayne). All workers performing building services (as defined in N.J.S.A. 34:11-56.59) on State-owned or State-leased property shall be paid prevailing wage pursuant to N.J.S.A. 34:11-56.58 - .70.
- B. The Vendor {Contractor} shall provide routine service operations, maintenance, and repairs to the buildings and grounds of the CIFs as

well as three (3) SIFs (Asbury Park, Westfield, and Winslow). Two (2) facilities, Asbury Park and Westfield, are standalone SIFs. Winslow SIF is co-located with Winslow CIF. MVC agency operations and inspection services share the same building in three (3) facilities (Newark, Eatontown, and Wayne). There are additional shared facilities whereby MVC may utilize nominal square footage in a CIF's office space for operations and driver testing. In co-located facilities, MVC Operations (agency and driver testing) and a CIF are typically housed in separate buildings on the same property.

- C. The Vendor {Contractor} shall be responsible for queuing, parking, entrance, and exit driveways, all walkways, grounds landscaping, loose debris, and signage over each entire site at all facilities.

With respect to capital expenditures, Bid Solicitation Section 3.21.3 *CIF Capital Maintenance, Repairs and Renovations at Existing CIFs*, states in part:

The Vendor {Contractor} must, within 90 days after award of a Blanket P.O., accept responsibility for Capital Maintenance, Repairs, and Renovations Work (Work) at authorized NJ State inspection facilities (facilities). The Vendor {Contractor} shall be solely responsible for all work and costs associated with capital maintenance, repairs, and renovations deemed necessary by the State at the CIF and SIF inspection facilities. Upon commencement of the Blanket P. O., the Vendor {Contractor} and State shall mutually assess each facility to determine the current physical site condition. The Vendor {Contractor} shall accept the current assessed condition of all authorized NJ State inspection facilities (CIFs and SIFs) as routinely maintained and in operable condition. Conversely, any necessary capital repairs, maintenance or renovations identified during each mutual site assessment must be identified, dated, mutually reported, and recorded. The Vendor {Contractor} shall within 45 days of the commencement of the Blanket P.O. prepare and submit a report on the condition of the facilities, as part of the CIF Capital Project Plan (see D below), to the SCM for review and approval. Annually thereafter, the State shall assess the condition of all facilities to ensure each site is properly maintained in accordance with the requirements of the Blanket P.O. In the event the State determines any facility is not maintained in accordance with the requirements of the Blanket P.O., the Vendor {Contractor} shall be directed to submit to the SCM, within 30 days of the evaluation, a corrective action plan for the remediation of the differences discovered in the evaluation.

Regardless of the type of maintenance or repair to be performed, the Bid Solicitation requires that the Contractor shall pay for all such expenses.

To ensure that all potential Bidders had to opportunity to inspect the CIF's and make a preliminary assessment of the routine and/or capital repairs, maintenance or renovations which may be required, the State afforded potential Bidders the opportunity to visit each of the 25 CIFs and gather information that they could then use in preparing their respective Quote pricing.

After the site visits, potential Bidders were afforded the opportunity to ask questions through the Questions and Answer process. There were numerous questions posed and answered regarding Bid Solicitation Section 3.21.2 *Routine Maintenance and Operations of Buildings and Grounds* and Bid Solicitation Section 3.21.3 *CIF Capital Maintenance, Repairs and Renovations at Existing CIFs* related to historical costs, responsibility for the cost of performing any necessary maintenance and repairs and outstanding costs. There were no questions specifically raised about the ability to perform more in-depth inspections of the buildings or any equipment; and therefore, no additional inspections were scheduled.

Further, in order to provide potential Bidders with the historical data on the costs of maintenance and repairs required by Bid Solicitation Section 3.21.2 and Bid Solicitation Section 3.21.3, included with the Bid Solicitation was Appendix 3.2H which set forth more detailed information regarding the annual costs for routine maintenance items and for the historical capital expenditures. For example, the capital expenditures for the preceding ten (10) years is as follows:

1												
2												
3												
4	Facility Expenditures											
	Facility Renovations, Maintenance and Repairs Includes items such as or repairs to : carpentry, plumbing, electrical, heating, ventilation, air conditioning, parking lot lighting, locksmithing, painting, plumbing, roofing and repairs to parking lots, sidewalks, driveways, curbing, paving, lane floor repairs, and erosion control measures.	Fiscal year 2009	Fiscal year 2010	Fiscal year 2011	Fiscal year 2012	Fiscal year 2013	Fiscal year 2014	Fiscal year 2015	Fiscal year 2016	Fiscal year 2017	Est- Fiscal year 2018	
5												
6		\$486,877	\$1,347,487	\$473,116	\$458,140	\$590,302	\$481,282	\$650,000	\$514,886	\$500,151	\$679,728	
7												
8												
9												

Parsons asserts that there are numerous requests for maintenance and repairs which have not been approved by MVC totaling approximately 3.1 million dollars. With respect to those items, MVC has not indicated that it will require that these repairs be made at the inception of a new Contract award. In fact, through the site inspections potential Bidders could have made their own assessment of necessary maintenance and repairs; and more importantly, the awarded Contractor will be performing its own detailed assessment of necessary maintenance and repairs; it will not know of or be required to perform Parsons' list of maintenance and repairs.

The Bid Solicitation provided potential Bidders with the historical data on the costs of maintenance and repairs required by Bid Solicitation Section 3.21.2 and the historical capital expenditure costs for the maintenance and repairs required by Bid Solicitation Section 3.21.3. Additionally, during the procurement process, potential Bidders were afforded the opportunity to visit each of the State's 25 Centralized Inspection Facilities. Moreover, Question #19 on Bid Amendment #14 reminded all potential Bidders that "The actual capital repair expenses for the last 12 years are located in Appendix 3.2 H. All Vendors {Bidders} should use these costs in estimating capital repair costs. Updated facility costs chart has been uploaded as T1628 Revised Appendix 3.2H 03/01/2021." Taken together potential Bidders have the information necessary to account for the annual costs of maintenance and repairs required by Bid Solicitation Section 3.21.2 and Bid Solicitation Section 3.21.3 when developing their respective Quote pricing.

Based upon the foregoing, no amendment to Bid Solicitation Section 3.21.2 *Routine Maintenance and Operations of Buildings and Grounds* or Bid Solicitation Section 3.21.3 *CIF Capital Maintenance, Repairs and Renovations at Existing CIFs* is necessary. However, an amended response to Questions #1 and 2 on Bid Amendment #15 has been posted as MVC has confirmed that the State will not reimburse the

Contractor for any costs incurred for maintenance and repairs performed by the Contractor as required by Bid Solicitation Section 3.21.2 and Bid Solicitation Section 3.21.3. See Bid Amendment #18.

B. Workforce

Next, Parsons alleges that the Bid Solicitation has misled potential Bidders by indicating that the awarded Contractor “should” offer positions to the current employees. Parsons states that the applicable law “requires” that the current employees be offered positions. Parsons claims that because of this misstatement, potential Bidders, other than Parsons, will not properly account for the costs of unionized workforce when preparing their respective Quote pricing. In support its position that the awarded Contractor is required to offer employment to and hire all current employees, Parsons refers to a portion of the Federal Clean Air Mandate Compliance Act, stating “Specifically, the Federal Clean Air Mandate Compliance Act, *N.J.S.A.* 39:8-41, et seq., mandated that “[a]ll qualified full time employees whose employment with the division is terminated as a result of P.L. 1995, c. 112 (C. 39:8-41 et al.) *shall be offered full-time employment.*” *N.J.S.A.* 39:8-44c(7), *emphasis supplied.*” Parson’s protest, pgs. 14-15.

To respond to Parson’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 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 division 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), emphasis added.]

Importantly, the Act defines Division as “the Division of Motor Vehicles in the Department of Law and Public Safety.”¹ N.J.S.A. 39:8-43.

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 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} should 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.*]

During the Question and Answer Period, there were several questions asked related to a Bid Solicitation Section 3.14 *Workforce*. Consistent with the governing laws, in response to the questions posed, the Bureau stated that there was no requirement to hire or offer employment to the current workforce as the current “contractor’s employees shall not be deemed employees of the State for any purpose” and the State is not a party to any employment agreement or collective bargaining agreement between the current contractor and its employees. N.J.S.A. 39:8-44(b)(4). See, Bid Amendment #9.

Based upon the foregoing, no amendment to Bid Solicitation Section 3.14 *Workforce* is necessary.

¹ The Division of Motor Vehicles is now known as the Motor Vehicle Commission.

C. COVID-19 Related Protocols

Next, Parsons questions the Bid Solicitation's silence as it relates to COVID-19 protocols, operational issues and related costs.

As all potential Bidders should be aware, in light of the dangers posed by the COVID-19 virus outbreak and the declaration by the World Health Organization of a global pandemic, Governor Murphy issued Executive Order No. 103 on March 9, 2020 and Executive Order 119 on April 7, 2020; (https://www.state.nj.us/infobank/eo/056murphy/approved/eo_archive.html) the recitations, facts and circumstances of which are adopted by reference herein, and which declared both a Public Health Emergency and State of Emergency. Successive Executive Orders continued the Public Health Emergency and State of Emergency into the spring of 2021. Most recently, Governor Murphy issued Executive Order 240 on May 14, 2021, extended the Public Health Emergency an additional 30 days. However, Governor Murphy has also issued Executive Orders 238, 241, 242 and 243 which have removed the most significant COVID-19 restrictions.

At this juncture, the State cannot predict how long the Public Health Emergency and/or the State of Emergency will last, or what protocols will be required of a Contractor performing the State's Inspection and Maintenance program. The State's response to Question #3 on Bid Amendment #15 advised potential Bidders that the State was not requiring that any specific protocols be followed with the respect to the current public health emergency or any potential future public health or state of emergency. Rather, potential Bidders were advised that they "may formulate contingency plans in accordance with its own internal health and safety units to address pandemic related issues." Importantly, MVC advised the Hearing Unit that it has not required that the current Contractor have any specific COVID-19 protocols or operational requirements in place while performing the State's Inspection and Maintenance program. Rather, Parsons' has chosen to mirror MVC's approach while continuing operations during the pandemic.

With respect to any Contract awarded in response to this Bid Solicitation, and any other contract awarded by the Division, the costs of compliance with any internal health and safety protocols or mandates of the Center for Disease Control will be borne by the Contractor, not the State.

Finally, Parsons alleges that the Bid Solicitation has failed to address how the temporary shutdown of the State's inspection facilities will impact further volumes and wait times, particularly as it related to liquidated damages. However, Bid Amendment #14, which was issued in March 2021 responded to similar questions advising potential Bidders that it was anticipated that there would be a temporary increase in the inspection volume, however the CIF's had excess capacity to accommodate that volume. Further, MVC anticipates that the inspection volume would return to normal this year; and therefore, there would be no change to the Bid Solicitation language for liquidated damages.

Accordingly, based upon the foregoing, no amendment to the Bid Solicitation is necessary.

D. Technology Improvements

In accordance with the applicable regulations, New Jersey performs vehicle emissions testing via a pass/fail methodology from the information obtained from the vehicle's On Board Diagnostic (OBD) computer.² The OBD reports information regarding various components from the engine and if a

² N.J.A.C. 7:27-14.1 et seq. entitled *Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles*; N.J.A.C. 7:27-15.1 et seq. entitled *Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles*; N.J.A.C. 7:27B-4.1 et seq. entitled *Air Test Method 4: Testing Procedures for Diesel-*

malfunction is found, the vehicle's check engine light comes on. By using the OBD method, not only are those vehicles that currently exceed the vehicle emission standards identified, the process also provides predictive information allowing for repairs to be made before a vehicle starts emitting polluting gases.

The governing regulations do allow for remote OBD inspection, also known as vehicle telematics. This technology employs the use of a transmitter attached to the vehicle OBD port that periodically transmits information, typically to an insurance carrier. An example of this technology is the GMC OnStar System; however, these systems are not commonly used and the data would have to be purchased which could increase the costs of performing vehicle inspections.

In the protest, Parsons alludes to a "laser-based solution" for testing vehicle emissions. This proposed technology requires that testing be performed while the vehicle is being driven at a certain speed. The test provides information on a vehicle's current emissions. Unlike the OBD method, a "laser-based solution" only provides actual current emissions information, it cannot provide any predictive emissions information. For these reasons, New Jersey's regulations governing vehicle inspections do not include the "laser-based solution" as an acceptable method for performing the pass/fail inspections utilized by the State and it was not included as an optional testing solution in the Bid Solicitation.

Based upon the foregoing, no amendment to the Bid Solicitation is necessary, as the current Bid Solicitation conforms with the applicable regulations.

CONCLUSION

Based upon the foregoing, and although I understand Parsons' concerns, I find no reason to amend the specifications of the Bid Solicitation. This is my final agency decision.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: L. Leonardi
C. Iversen