



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROCUREMENT BUREAU
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April 30, 2021

Via Electronic Mail Only chris@changemywindshield.com

Christopher Burchell
Tycar Automotive, LLC
54 Wilson Avenue
Wayne, NJ 07470

Re: IMO Bid Solicitation #20DPP00496 Tycar Automotive, LLC
Protest of Notice of Intent to Award
T0084 Automotive Glass Parts and Windshield Repair/Replacement

Dear Mr. Burchell:

This final agency decision is in response to your email of April 25, 2021, on behalf of Tycar Automotive, LLC (Tycar) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, Tycar protests the Bureau's Notice of Intent to Award (NOI) the North and Central regions to a single Vendor {Bidder} and questions why it did not received an award.

By way of background, on October 30, 2020, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation #20DPP00496 - T0084 Automotive Glass Parts and Windshield Repair/Replacement (Bid Solicitation) on behalf of all New Jersey State-Using Agencies and Cooperative Purchasing Program participants. The purpose of this Bid Solicitation is to solicit Quotes for Automotive Glass Parts and Windshield Repair/Replacement. Bid Solicitation § 1.1 *Purpose and Intent*. The Division intended to award one (1) or more Blanket P.O. per Region/Location (North Region, Central Region, South Region, Motor Pool, and State Police) for each of the specified service categories identified in Bid Solicitation Section 1.2.1 *Region and Agency Location Information*. There was no minimum or maximum number of awardees required. Bid Solicitation § 7.2 *Final Blanket P.O. Award*.

This Bid Solicitation was designated as a full Small Business Set-Aside. Bid Solicitation § 1.1 *Purpose and Intent*. N.J.S.A. 52:32-25 requires that, "When a contract or portion thereof has been designated as a set-aside, invitations for bids shall be confined to businesses designated by the department [Division of Revenue and Enterprise Services (DORES)] as appropriate for the set-aside and bids from other bidders shall be rejected." *Emphasis added*. Consistent with the statute, the Bid Solicitation included the following instructions regarding the Small Business Set-Aside requirement:

Pursuant to the provisions of N.J.S.A. 52:32-17 and N.J.A.C. 17:13 this is a full Set-Aside Blanket P.O. for **Category I, II, or III** for Small Businesses.

The Vendor {Bidder} must be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened. Evidence that the Vendor {Bidder} has registered as a small business should be submitted with the Quote. Vendors {Bidders} should verify its Small, Minority, Veteran, and Women Owned Business Certification status on the “Maintain Terms and Categories” Tab within its profile in *NJSTART*. In the event of an issue with a Vendor’s {Bidder’s} Small, Minority, Veteran, and Women Owned Business Certification status, *NJSTART* provides a link to take corrective action.

....

** IF THE VENDOR {BIDDER/CONTRACTOR} HAS PREVIOUSLY REGISTERED OR BEEN CERTIFIED AS A SMALL BUSINESS ENTERPRISE, THE VENDOR {BIDDER} SHOULD ENSURE IT IS REGISTERED AND THAT ITS REGISTRATION IS ACTIVE WITH THE DIVISION OF REVENUE AND ENTERPRISE SERVICES, SMALL BUSINESS REGISTRATION AND M/WBE CERTIFICATION SERVICES UNIT, PRIOR TO THE QUOTE OPENING DATE, TO BE ELIGIBLE FOR AWARD.

[Bid Solicitation Section 4.4.1.4 *Small Business Set-Aside Blanket P.O.*, emphasis added.]

The bidding community was cautioned that this Bid Solicitation was designed to address current requirements and therefore, Vendors {Bidders} should not rely upon or use data from the prior Blanket P.O. Bid Solicitation Section 1.2 *Background*. Potential Vendor(s) {Bidder(s)} were permitted to submit questions to the Bureau, using the Division’s *NJSTART* eProcurement system, by 2:00 pm eastern time on November 30, 2020. (Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*). The Bureau answered all questions received through the posting of Bid Amendment #1 on December 30, 2021. No questions were received regarding the Small Business Set-Aside requirement.

On December 30, 2020, the Division’s Proposal Review Unit opened six (6) Quotes received by the submission deadline.¹ After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation § 6.7 *Evaluation Criteria*.

After completing its review and evaluation, on April 15, 2021, the Bureau prepared a Recommendation Report that recommended that a Blanket P.O.s be awarded as follows:

North Region	Central Region	South Region	Central Motor Pool	State Police
American Mobile Glass of NJ, Inc.				
		Normans Auto Services	R&R Auto Body and Glass	Normans Auto Services

¹ Quotes were received from American Mobile Glass of NJ, Inc. (American); Normans Auto Services (Normans); R&R Auto Body and Glass (R&R); Tycar Automotive, LLC (Tycar); ABS Auto Glass, LLC (ABS); and, Cumberland County Auto Glass (Cumberland).

With respect to the Quote submitted by Tycar, the Recommendation Report noted that:

The Quote submitted by Tycar was determined by the Bureau to be non-responsive to the mandatory requirements of the Bid Solicitation. Tycar failed to be registered as a Small Business for Categories I, II, or III at the time of Quote opening in accordance with Section 4.4.1.4 of the Bid Solicitation. As specified by Section 4.4.1.4, "*Pursuant to the provision of N.J.S.A. 52:32-17 and N.J.A.C. 17:13, this is a full Set Aside Blanket P.O. for Categories I, II, or III for Small Business. The Vendor {Bidder} must be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened.*" The Bureau verified the Vendor's {Bidder's} lack of qualifying Small Business Registration through the State's NJSAVI database and the Vendor's {Bidder's} NJSTART Vendor Profile.

The Bureau notes that available records show that Tycar was previously registered as a qualifying Small Business, but its registration was revoked on November 11, 2018.

Based upon the above determination, Tycar's Quote was removed from consideration and not further evaluated.

[April 14, 2021 Recommendation Report, p. 5.²]

On April 19, 2021, the Bureau issued the NOI advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the April 14, 2021, Recommendation Report.

On April 25, 2021, Tycar submitted a protest challenging the Bureau's NOI. Tycar states in part:

I am protesting the intent to award a Master Blanket Purchase order to a single vendor giving them a monopoly in the North and Central regions. I am protesting this since there has never been a single vendor. I am also protesting the servicing of the State Police and Central motor pools in these regions as they also have only a single vendor.

I have been servicing the State of New Jersey flawlessly through the state contract for over 12 years. This year, I did not receive a notice of denial, or a reason for not being considered and would like to understand why. My pricing may not have been the most competitive over those years. It was, however, competitive enough to keep my company on contract and cover the level of workmanship the state received. I have consistently kept my paperwork in order, and it is a large reason why I have been servicing the state for so long. During those 12 years, there were times that purchasing was structured to use the most competitive shop first, and I was

² The Recommendation Report reveals that three of the six Vendors {Bidders} were deemed non-responsive for not being registered as a SBE as the time of Quote Opening; and therefore, were not eligible for a Blanket P.O. award.

a secondary. Regardless, my business was always in contract because I followed contract procedure.

This year, it seems to be done differently by choosing only one vendor for the Northern and Central regions. I object to one vendor having a monopoly on half of the state and here is why:

- What would happen if the vendor were to go out of business?
- What would happen if the state had to terminate the contract with the vendor for some reason?
- What if one of the state locations were to have an emergency and the vendor could not make it?
- What if multiple locations required service on the same day in the multiple regions?
- If one of the state locations were to have a specific issue with said vendor, they would have no secondary option to choose from. What would they do in that situation?

[Tycar protest, pgs. 1-2.]

In consideration of Tycar' protest, I have reviewed the record of this procurement, including the Bid Solicitation, Tycar' Quote and protest, 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, after receiving the NOI, it appears that Tycar did not request a copy of the Bureau's Recommendation Report which identified the reason why Tycar was not eligible for a Blanket P.O. award. Here, Tycar was not eligible for a Blanket P.O. because it was not registered as a SBE at the time of Quote Opening, a mandatory requirement for Quote submission. A review of the records maintained by the DORES reveals that Tycar was not certified as an SBE by DORES on the Quote opening date as required by N.J.S.A. 52:32-25 and Bid Solicitation Section 4.4.1.4 *Small Business Set-Aside Blanket P.O.* While Tycar was previously certified as an SBE on August 20, 2015, that certification expired on August 20, 2018. Accordingly, the Bureau properly determined that Tycar was ineligible for a contract award because it was not SBE certified as of the Quote opening date as required by the governing law. Tycar does not dispute that its SBE certification was expired at the time of Quote opening.

Second, in the protest Tycar claims that there has never been a single vendor awarded to a region of the State. However, Tycar is mistaken. The current awarded Blanket P.O.s are by County, seven of the State's 21 counties have only one (1) awarded Contractor. I note that a review of the files maintained the Division's Contract Compliance and Audit Unit does not show any complaints on file during the term of the current contract related to a State using agency or a cooperative purchasing participants not receiving service when needed because the country was only served by one vendor. In fact, there were no complaints on file during the term of the current contract.

Further, as to the proposed awards, six Quotes were submitted by the Quote opening date in response to the Bid Solicitation. Three of those Vendors {Bidders}, Tycar, ABS and Cumberland, were determined to be non-responsive to the Bid Solicitation because they were not certified as an SBE by DORES on the Quote opening date as required by N.J.S.A. 52:32-25 and Bid Solicitation Section 4.4.1.4 *Small Business Set-Aside Blanket P.O.*; and therefore, they were not eligible for an award. With respect to

the remaining three Vendors {Bidders}, all of whom received awards, a review of the Bureau's Recommendation Report reveals the following:

American submitted pricing for all three regions of the State, Central Motor Pool and New Jersey State Police. The Bureau determined that American's Quote was responsive to all of Bid Solicitation Requirements; and therefore, American was awarded a Blanket P.O. for all areas.

R&R submitted pricing for Central Motor Pool only. The Bureau determined that R&R's Quote was responsive to all of Bid Solicitation Requirements; and therefore, R&R was awarded a Blanket P.O. for that area.

Normans submitted pricing for the Central and South regions of the State, Central Motor Pool and New Jersey State Police. The Bureau determined that Normans' Quote was responsive to all of Bid Solicitation Requirements for the South region and New Jersey State Police; therefore, Normans was awarded a Blanket P.O. for those two areas. As to its submitted Quote for the Central region and Central Motor Pool, the Bureau determined that Normans' Quote was not responsive to the requirements of the Bid Solicitation. Recommendation Report p. 4. Therefore, Normans was not awarded a Blanket P.O. for either of these areas. Normans did not dispute the Bureau's finding that its Quote for Central region and Central Motor Pool was not responsive to the requirements of the Bid Solicitation.

While Tycar questions the Bureau's decision to award only one Blanket P.O. for the Northern and Central regions, the Division's governing regulations state that a Bid Solicitation shall be structured to provide a single contract award to a single bidder. *N.J.A.C. 17:12-1A-1*. A Bid Solicitation may be structured to provide contract awards to multiple bidders if the needs of the State using agencies and cooperative purchasing participants so dictate. *Ibid*. Here, while the Bid Solicitation permitted multiple awards, it did not require it. The Bid Solicitation specifically stated the Division intended to award one (1) or more Blanket P.O. per Region/Location (North Region, Central Region, South Region, Motor Pool, and State Police) for each of the specified service categories identified in Bid Solicitation Section 1.2.1 *Region and Agency Location Information*. There were no minimum or maximum number of awardees. Bid Solicitation § 7.2 *Final Blanket P.O. Award*, emphasis added. Therefore, I find no reason to overturn the Bureau's intended awards.

The Division encourages competition and appreciates the time and effort put forth by Tycar in preparing and submitting a Quote, and while I am sure this was an oversight on the part of Tycar, the Division does not have the power to waive the statutory requirements for eligibility to bid on a Small Business Set Aside contract. Additionally, the Bureau's intended awards are consistent with the requirements of the Bid Solicitation and consistent with the anticipated needs of the State using agencies and cooperative purchasing participants. In light of the findings set forth above, I have no choice but to uphold the Bureau's determination to award Master Blanket P.O.s in the accordance with the April 19, 2021 NOI. This is my final agency decision on this matter.

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 it may be interested in submitting a Quote for so that it may receive notification of future bidding opportunities.

Sincerely,



Maurice A. Griffin
Acting Director

MAG:RUD

- c. M. Dunn
- R. Regan
- J. Loughran