



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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May 28, 2021

Via Electronic Mail Only TKurz@silvi.com

Tim W. Kurz
Riverside Construction Materials, Inc.
355 Newbold Road
Fairless Hills, Pa. 19030

Re: I/M/O Bid Solicitation #20DPP00538 Riverside Construction Materials, Inc.
Protest of Notice of Intent to Award
T0213 – Rock Salt, Treated Salt and Solar Salt – Statewide

Dear Mr. Kurz:

This final agency decision is in response to your letter on behalf of Riverside Construction Materials, Inc. (Riverside) which was received by the Division of Purchase and Property’s (Division) Hearing Unit on May 27, 2021. In that letter, Riverside protests the Procurement Bureau’s (Bureau) May 20, 2021, Amended Notice of Intent to Award letter (Amended NOI) issued for Bid Solicitation #20DPP00538 - T0213 Rock Salt, Treated Salt and Solar Salt – Statewide (Bid Solicitation). In that correspondence, Riverside requests that it be permitted to rescind its Quote and further protests the award of any Blanket P.O.s for as set forth in the Amended NOI.

By way of background, on April 14, 2020, the Bureau issued the Bid Solicitation on behalf of the State of New Jersey, Department of Transportation. The purpose of the Bid Solicitation was to solicit Quotes for the supply and delivery of bulk quantities of rock salt, treated rock salt, solar salt for road de-icing, treated solar salt for road de-icing, and solar salt for water treatment, as well as bagged quantities of rock salt, solar salt for road de-icing, solar salt for water treatment and calcium chloride. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award a primary and secondary Master Blanket Purchase Order (Blanket P.O.) for 133 of the 134 price lines¹ listed in the Bid Solicitation to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation, are most advantageous to the State, price and other factors considered. *Ibid*.

¹

Price Line Numbers	Description
1 - 71	New Jersey Department of Transportation (NJDOT) Locations and Commitment Totals
72 – 94	Quasi-State Entity Locations and Commitment Totals
95 - 112	Local Municipality Locations and Commitment Totals
113 -133	County Pricing for Non-Committed Locations
134	Monthly Salt Storage Fee (*for Bulk Product Only)

On June 16, 2020, the Division's Proposal Review Unit opened eleven (11) Quotes submitted by the submission deadline of 2:00 p.m. eastern time. After conducting a preliminary review of the Quotes received, those Quotes which conformed to the mandatory requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.6 *Evaluation Criteria*.

After completing its review and evaluation, on April 1, 2021, the Bureau prepared a Recommendation Report that recommended that Blanket P.O.s be awarded to Atlantic Salt, Inc. (Atlantic); Chemical Equipment Labs of DE, Inc. (Chemical); Morton Salt, Inc. (Morton); Riverside Construction Materials, Inc. (Riverside); East Coast Sale Dist. Inc., (East Coast); and American Rock Salt, Co. LLC (American). On April 13, 2021, the Bureau issued a Notice of Intent to Award advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the April 1, 2021, Recommendation Report.

On April 20, 2021, Chemical wrote to the Bureau and requested that it be permitted to withdraw its Quote. That request to withdraw was accepted by the Bureau. Additionally, on April 20, 2021, Atlantic submitted a protest requesting that it be permitted withdraw its submitted Quote and requesting that the Bid Solicitation and the NOI be declared null and void. On May 19, 2021, the Division issued its final agency decision which accepted Atlantic's request to withdraw its Quote but denied the request that the Bid Solicitation and the NOI be declared null and void.

Following the issuance of that final agency decision, on May 20, 2021, the Bureau prepared a Revised Recommendation Report that recommended that those price line which had previously been listed for award to Chemical or Atlantic be awarded to Cargill Incorporated Salt (Cargill); Morton; and Riverside. On May 20, 2021, the Bureau issued the Amended NOI advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the April May 20, 2021, Recommendation Report.

On May 27, 2021, Riverside submitted a protest to the Division's Hearing Unit stating:

Riverside Construction Materials, Inc. formally rescinds our bid, and protests your intent to award, the supply of bulk Rock Salt, Treated Salt, and Solar Salt Statewide.

The excessive amount of time that has passed (7 months) since we submitted our bid are no longer valid due to steep increases in the supply chain.

In consideration of Riverside's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, Riverside's 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.

As noted above, Riverside states that time between Quote submission and the issuance of the NOI/Amended NOI was "excessive" and that it can no longer hold its Quote pricing due to "steep increases in the supply chain". Riverside requests that it be permitted to withdraw its Quote and challenges the award of any Blanket P.O.s in response to the Bid Solicitation – essentially, Riverside requests that the Bid Solicitation, the NOI and the Amended NOI be declared null and void.

The goal of New Jersey's statutory and regulatory laws governing State procurement is that an "award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, will

be most advantageous to the State, price and other factors considered.” *N.J.S.A.* 52:34-12a.(g). “Courts have interpreted this provision as conferring broad discretion on the Director of the Division of Purchase and Property to determine which bid will be most advantageous to the State. *State v. Ernst & Young, L.L.P.*, 386 N.J. Super. 600, 619 (App. Div. 2006). “The reasonableness of the time period for an award of a State contract will obviously be dependent on the facts and circumstances of the particular procurement.” *In re Bellmawr Truck Repair Co.*, 2017 N.J. Super. Unpub. LEXIS 308, *6, 2017 WL 490529, citing *Barrick v. State*, 218 N.J. 247, 253, (2014) (upholding an award made sixteen months after the submission of bids). Bidders are put on notice of this through Bid Solicitation Section 7.2 *Final Award* which states in part “Blanket P.O. awards will be made with reasonable promptness by written notice to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation, are most advantageous to the State, price, and other factors considered.” The Bureau did not specify an award date in the Bid Solicitation as there are a number of factors that can delay the time it takes for the Bureau to complete the evaluation of Quotes received, including the complexity of the Bid Solicitation, the total number of Quotes received and whether there is a need to request clarification or additional information from any Vendor {Bidder}.

The Bid Solicitation was issued on April 14, 2020; on June 16, 2020 the Proposal Review Unit opened eleven (11) Quotes. On August 7, 2020, the Bureau requested Best and Final Offers from the Vendors {Bidders}, with responses due no later than August 12, 2020. This Bid Solicitation sought pricing for nine different categories of salt to be delivered to over 100 discrete locations across the State, and a review of 134 price lines in total for each of the 11 Quotes that were submitted. In reviewing the Quotes submitted, the Bureau took all reasonable steps to conduct a thorough Quote evaluation and to make an award as expeditiously as possible for to those Vendors {Bidders} whose Quotes were most advantageous to the State, price and other factors considered.

The time between the submission of Quotes and the issuance of the NOI left all Vendors {Bidders} on an even playing field at the time of Quote submission through the issuance of the NOI. All Vendors {Bidders} were aware that prices quoted were to remain firm to through the issuance of the Blanket P.O. See Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet*, and State of New Jersey Standard Terms and Conditions Section 6.1 *Price Fluctuation During Contract* states in part that “[u]nless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.” Notably, the Bid Solicitation did not specify a date certain when the Blanket P.O. would begin. Rather, Bid Solicitation Section 5.2 *Blanket P.O. Term and Extension Option* stated in part “[i]f delays in the procurement process result in a change to the anticipated Blanket P.O. Effective Date, the Vendor {Bidder} agrees to accept a Blanket P.O. for the full term of this Blanket P.O.” To that end, “[t]he award of a contract pursuant to *N.J.S.A.* 52:34-12(g) generally will not be disturbed absent a showing of bad faith, corruption, fraud or gross abuse of discretion.” *Ibid.*, citing, *Commercial Cleaning Corp. v. Sullivan*, 47 N.J. 539, 549 (1966).

The New Jersey Courts have long recognized that the purpose of the public bidding process is to “secure for the public the benefits of unfettered competition.” *Meadowbrook Carting Co. v. Borough of Island Heights*, 138 N.J. 307, 313 (1994). To that end, the “public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good.” *Borough of Princeton v. Board of Chosen Freeholders*, 169 N.J. 135, 159-60 (1997). The objective of New Jersey’s statutory procurement scheme is “to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” *Barrick v. State of New Jersey*, 218 N.J. 247, 258 (2014) (citing *Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop.*, 99 N.J. 244, 256 (1985)). Here, Riverside offers nothing more than its own opinion that the time from Quote opening to the issuance of the NOI was too long a period for the award of this contract. It fails to offer any facts to support that its perceived delay restricted competition or favored particular bidders; or how the Bureau’s actions demonstrate “bad faith, corruption, fraud or gross abuse of discretion” such that the NOI should be set aside and the Bid Solicitation declared null and void requiring a re-procurement. The Division has

received responsive Quotes from Morton, East Coast, American and Cargill. None of these Vendors {Bidders} have indicated they are unable to hold their respective Quote pricing. Therefore, the Bureau can move forward with making Blanket P.O. awards to these Vendors {Bidders} consistent with the NOI and the Amended NOI.

Second, Riverside's protest indicated it "formally rescinds our bid" stating that it can no longer hold its Quote pricing due to "steep increases in the supply chain." Bid Solicitation Section 1.4.7.2 *Quote Withdrawal After Quote Opening But Prior to Blanket P.O. Award*, permits a Bidder to withdraw a Quote if the request "is made in good faith, and the State will not be significantly prejudiced by granting the withdrawal of the Quote beyond the loss of the benefit of the bargain to the State of the withdrawing Vendor's {Bidder's} offer." While Riverside has not offered any specific support, the Division is aware that the costs of fuel and shipping have increased dramatically over the past year, in part due to the COVID-19 pandemic. Therefore, the Division does not dispute Riverside's statement that it has experienced increases in its supply chain costs. Accordingly, I do not believe the request has been made in bad faith; and therefore, the Division accepts Riverside's request to withdraw its Quote.

Based upon the foregoing, Riverside's request that the Bid Solicitation, the NOI, the Amended NOI, be declared null and void is denied. However, Riverside's request to withdraw its Quote is granted. This matter is remanded back the Bureau for the issuance of a Second Amended Notice of Intent Award to re-award those price lines for which Riverside was listed as either the primary or secondary Vendor {Contractor}. This is my final agency decision with respect to the protest submitted by Riverside.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov. I encourage you to log into [NJSTART](http://www.njstart.gov) to select any and all commodity codes for procurements you may be interested in submitting a Quote for, and to ensure that contact information is up to date, so that you may receive notification of future bidding opportunities.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
S. Ghorbani
D. Warren