



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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September 30, 2021

Via Electronic Mail Only ATolley@AmericanEcotech.com

Mr. Andy Tolley, CEO
American Ecotech L.C.
100 Elm Street
Warren, RI 02885

Re: I/M/O Bid Solicitation #21DPP00589 American Ecotech, L.C. and Ambilabs LLC
Protest of Notice of Intent to Award
T0983 Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality
Testing and Monitoring

Dear Mr. Tolley:

This final agency decision is in response to your letter dated August 6, 2021, submitted by American Ecotech, L.C. (American Ecotech) on behalf of both American Ecotech and Ambilabs LLC¹ (Ambilabs) (collectively "Bidders"). That letter was received by the Division of Purchase and Property's (Division) Hearing Unit on August 10, 2021. In that correspondence Bidders protest the Notice of Intent to Award (NOI) issued by the Division's Proposal Review Unit for Bid Solicitation #20DPP00589 - T0983 Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality Testing and Monitoring (Bid Solicitation). The record of this procurement reveals that the Quotes of both American Ecotech, L.C. and Ambilabs LLC were deemed non-responsive for failure to submit financial information, as requested pursuant to Bid Solicitation Section 4.4.4 *Financial Capability of the Vendor {Bidder}*.

By way of background, on October 30, 2020, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of State Using Agencies and Cooperative Purchasing Program participants. Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality Testing and Monitoring. *Ibid*. It is the State's intent to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. *Ibid*.

¹ The Ownership Disclosure Forms submitted by American Ecotech, and Ambilabs both indicate that the bidding entity is owned by Ambient Monitoring Technologies Inc. (Ambient) Both Bids were non-responsive for the same reason and one protest letter was submitted. Therefore the Division responds with one Final Agency Decision.

On December 18, 2020, the Division's Proposal Review Unit opened fifteen Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Bureau determined that pursuant to Bid Solicitation Section 4.4.4 it was necessary to request the financial information from certain Vendors to enable the State to assess the financial strength and creditworthiness of the Vendor {Bidder} and its ability to undertake and successfully complete the Blanket P.O. pursuant to Bid Solicitation Section 4.4.4. The Bureau made multiple requests to the Bidders seeking the financial information but no such financial information was submitted.

After completing its review and evaluation, on July 26, 2021, the Bureau prepared a Recommendation Report that recommended that Blanket P.O.s be awarded to the eleven (11) responsive Vendors {Bidders}. Accordingly, on July 28, 2021, the Bureau issued the NOI advising the Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the July 26, 2021, Recommendation Report.

On August 6, 2021, American Ecotech wrote to the Division's Hearing Unit on behalf of both American Ecotech and Ambilabs stating that they were protesting the Division's determination that their Quote submissions were non-responsive and challenging the Division's release of a recommendation report which American Ecotech and Ambilabs believe implied that the companies might be "financially insecure".

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

In the protest letter the Bidders state the following:

Item 1: The email addresses that Ambilabs and American Ecotech had requested to be used (as per the companies' submitted proposals) were not always utilized. Instead, for some correspondence, the State used older and erroneous company email addresses. Consequently, it is possible that certain correspondences did not reach the correct and intended project personnel within the two companies. We ask going forward for correspondence be issued to the following email addresses:

ATolley@AmericanEcotech.com
RHollis@Ambilabs.com

Item 2: In the interest of efficiency, we made requests to communicate with the State of NJ Department of the Treasury, Division of Purchase and Property via telephone. A telephone conversation would have served to resolve these issues quickly. Unfortunately, the Department declined a verbal conversation, while continuing to use the incorrect email addresses.

Item 3: The State of NJ Department of the Treasury, Division of Purchase & Property is enabling large multicorporate entities to have their financial information accepted at no cost, while insisting that small businesses incur a cost. Large corporate entities are publicly traded, and therefore their financial information is already publicly accessible. Meanwhile, the Division has been actively asking at least two small business entities (American Ecotech L.C. and Ambilabs LLC) to provide full certified audit financial information, which would require an additional out of pocket

upfront cost to those small businesses of \$14,000. (refer to attached letter from CPA to verify this cost). This represents an unfair and unbalanced requirement which is not required by any other State or Federal agencies, and seems very un-necessary given that there are other means of verification of financial stability. As such it could be deemed to be discriminatory against US small businesses. This also seems to be grossly out of alignment with the State of New Jersey's priorities and objective, for example on July 21st, NJEDA Chief Executive Officer Tim Sullivan stated that supporting small businesses is a central component of the Governor's plan for a stronger, fairer recovery from the COVID-19 pandemic. Again, in this particular case, a quick clarifying phone call would likely have resolved this matter very quickly. Even just an email agreeing that (for example) the provision of the companies' corporate tax return/s (redacted) may suffice to verify financial stability (along with assurances from the Department that such information will remain confidential). This would also then help to eliminate what is currently a perception of an unfair discrimination against small businesses.

Item 4: The State of NJ Dept of Treasury, Division of Purchase and Property then went a step further by naming each of those two companies in a report which was then issued via various multiple emails to each of our industry competitors. The assertion thereby being implied by the Division (incorrectly) that both companies might be "financially insecure". This is grossly un-true, however by publishing this information, unfortunately some industry reputational damage has now occurred.

[Emphasis added.]

First, the Bidders allege that the Bureau used the wrong e-mail addresses to communicate with them regarding the requested financial information. In their respective submitted Quotes, American Ecotech and Ambilabs included the following email address: atolley@americanecotech.com and rhollis@ambilabs.com. However, a review of the record reveals that the Bureau did not utilize the Bidders' specified contact information when requesting the submission of the financial information. Rather, the Bureau directed the requests to bids@americanecotech.com and info@ambilabs.com, the email addresses included in their respective *NJSTART* Vendor Profiles.² In the protest, the Bidders state the email addresses contained in the *NJSTART* Vendor Profiles are old and/or erroneous. However, it must be noted that it is the Vendor's obligation to set up a *NJSTART* Vendor Profile and to maintain and update that profile with accurate contact information. Nevertheless, the fact that the Bidder gave more recent contact information in the submitted Quotes provided the Bureau with the most up to date contact information for the Bidders.

Further, prior to the final correspondence being sent, the Bureau did reach out to the Bidders via telephone, simply to confirm the contact information or an alternate contact e-mail address. The Bidders provided an alternate e-mail contact for John Carney (jcarney@americanecotech.com) which was utilized in the June 2, 2021, letters.

Vendor {Bidder}: Ambilabs LLC

² As of the date of this final agency decision, these are still the email addresses listed in *NJSTART*.

	Sent Date	Due Date	Delivery Receipt Date	Read Receipt Date
Original Request for Financials Letter	4/1/2021	4/13/2021	4/1/2021	4/2/2021
Second Request for Financials Letter	5/5/2021	---	5/5/2021	---
Third Request for Financials Letter	5/18/2021	---	5/18/2021	5/18/2021
Alternative Request for Financials Letter	6/2/2021	6/9/2021	6/2/2021	---

Vendor {Bidder} : American Ecotech				
	Sent Date	Due Date	Delivery Receipt Date	Read Receipt Date
Original Request for Financials Letter	4/1/2021	4/13/2021	4/1/2021	4/2/2021
Second Request for Financials Letter	5/5/2021	---	5/5/2021	---
Third Request for Financials Letter	5/18/2021	---	5/18/2021	5/18/2021
Alternative Request for Financials Letter	6/2/2021	6/9/2021	6/2/2021	6/3/2021

Despite these communications, the Bureau did not receive the financial information requested.

Second, as to the Bidder’s assertion that a telephone conference would have resolved the issues and the Bureau declined verbal conversations, the Bidders are again directed to the language of Bid Solicitation Section 1.3.1 which states “A Vendor {Bidder} shall not contact the Using Agency and/or the Procurement Specialist directly, in person, by telephone or by e-mail, concerning this Bid Solicitation, prior to the final award of the Blanket P.O.” This language is expressly included in all bid solicitations to ensure the integrity of the procurement process for the benefit of all bidders.

Third, the Bidders object to the requirement that they, and all Vendors {Bidders} submit financial information to the Division. Bid Solicitation Section 4.4.4 *Financial Capability of the Vendor {Bidder}* states in pertinent part:

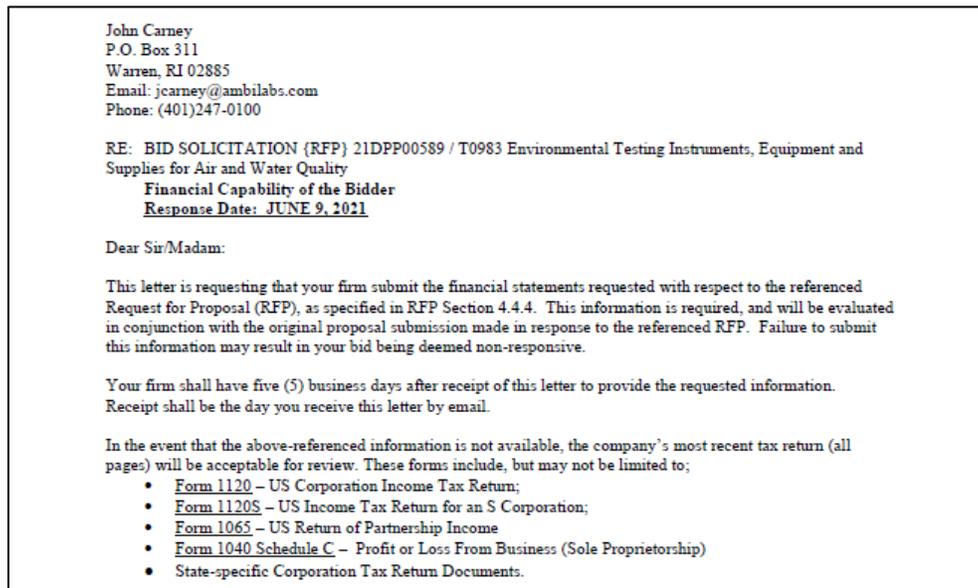
The Vendor {Bidder} should provide sufficient financial information to enable the State to assess the financial strength and creditworthiness of the Vendor {Bidder} and its ability to undertake and successfully complete the Blanket P.O. In order to provide the State with the ability to evaluate the Vendor’s {Bidder’s} financial capacity and capability to undertake and successfully complete the Blanket P.O., the Vendor {Bidder} should submit the following:

- A. For publicly traded companies the Vendor {Bidder} should provide copies or the electronic location of the annual reports filed for the two most recent years.
- B. For privately held companies the Vendor {Bidder} should provide the certified financial statement (audited or reviewed) in accordance with applicable standards by an independent Certified Public Accountant which include a balance sheet, income statement, and statement of cash flow, and all applicable notes for the most recent calendar year or the Vendor’s {Bidder’s} most recent fiscal year.

If the information is not supplied with the Quote, the State may still require the Vendor {Bidder} to submit it. If the Vendor {Bidder} fails to comply

with the request within seven (7) business days, the State may deem the Quote non-responsive.

Accordingly, in order for the Bureau to assess the financial strength and creditworthiness of the Bidders, and their ability to undertake and successfully complete the Blanket P.O., the Bureau requested that the Bidders supply certified financial statements. As noted above, no response to the requests was received and the Quotes were deemed non-responsive. Now, as part of the protest, the Bidders object to the requirement because of the costs associated with obtaining a certified financial statement. However, in the June 2, 2021 correspondence the Bureau advised that the Bidders could provide alternate information if the certified financial statements were not available, see screen shot below. However, even after the Bureau sent this request for alternate financial information, to the new e-mail address provided by the Bidders, the Bidders still failed to submit the requested financial information.



Based upon the failure to provide the requested financial information the Recommendation Report states “the Bureau was unable to determine if the Vendor {Bidder} was financially capable of undertaking any proposed Blanket P.O. award for the subject procurement, thereby rendering American Ecotech’s [and Ambilabs] Quote[s] non-responsive in its entirety.” (Recommendation Report p. 9)

Finally, the Bidders object to the Bureau’s issuance of the NOI and the accompanying Recommendation Report. The Bidders assert that the Recommendation Report “implies” something as to the financial health of the Vender. No such implication was made in the Recommendation Report, rather the report simply states that the Bidders’ Quotes were deemed non-responsive based upon the failure to submit the required financial information, there were no statements made regarding the Bidders the financial strength or creditworthiness.

All Vendors were sent the request for financial information pursuant to Bid Solicitation Section 4.4.4. The Vendors that submitted the information in a timely manner were then evaluated for an award under the Bid Solicitation. In this instance, it is not clear that the Bureau used the Bidders’ current contact information throughout the process. It is therefore unclear if the Bidders were properly contacted by the Bureau or made aware of the Bureau’s request for financial records in the same way that all other Vendors {Bidders} were contacted.

Accordingly, I overturn the Bureau's determination that the Bidders' Quotes were non-responsive for failure to submit financial information. In light of the findings set forth above, I remand this matter back to the Bureau and direct that the Bureau re-send the June 2, 2021 correspondence to the Bidders at the e-mail addresses provided in their respective Offer and Acceptance Page. The Bidders shall be required to respond to the request within the time set forth in the Bureau's letter.

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. I also encourage you to update any contact and other information in your profile. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD/DK

- c. J. Kerchner
- K. Thomas
- C. Murphy
- R. Bowen
- Ambilabs LLC