



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 18, 2021

Via Electronic Mail Only jen@gardenstatesealing.com

Robert Fell, Vice President
Garden State Sealing
300 Commerce Drive
Tinton Falls, NJ 07753
c/o Jennifer O'Brien

Re: I/M/O Bid Solicitation 21DPP00618 Garden State Sealing, Inc.
Protest of Notice of Cancellation
T3123 New Jersey State Police Salting and Snow Removal

Dear Mr. Fell:

This final agency decision is in response to your letter of August 6, 2021, on behalf of Garden State Sealing, Inc. (Garden State) that was received by the Division of Purchase and Property's (Division) Hearing Unit on August 9, 2021. In that letter, Garden State protests the July 29, 2021, Notice of Cancellation issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation 21DPP00618 – T3123 New Jersey State Police Salting and Snow Removal. (Bid Solicitation).

By way of background, on April 27, 2021, the Bureau issued the Bid Solicitation on behalf of the New Jersey State Police. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for a Vendor {Contract} to perform salting and snow removal during the winter season at the State Police Division Headquarters and the Regional Operations and Intelligence Center (ROIC). *Ibid*.

On June 23, 2021, the Division's Proposal Review Unit opened two (2) Quotes received by the submission deadline. After conducting an initial review of the Quotes received for the compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded the Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*.

After completing the initial review of the submitted Quotes, on July 2, 2021 the Bureau prepared a Recommendation Report that recommended that the Bid Solicitation be cancelled. The Recommendation Report noted that neither Vendor {Bidder} submitted a responsive Quote.

On July 29, 2021, Notice of Cancellation was sent to both Vendors {Bidders} advising them that it was the State's intent to cancel the Bid Solicitation and re-procure the service sought, consistent with the Bureau's Recommendation Report.

On August 9, 2021, Garden State submitted a protest letter to the Division challenging the Bureau's decision to cancel the Bid Solicitation. In the protest, Garden State states

Please accept this letter of protest in response to the cancelation of our bid for salting and snow removal at the Division headquarters and ROIC. While the pricing sheet states that the vendor shall provide pricing in yellow highlighted cells; it does not clearly state that they all must be filled in. The missing fields were due to the dollar amount not changing for years 2 and 3. This is our first time using the online bid procedure. I am happy to resubmit using the same number/amounts for year one for years 2 and 3. I appreciate your consideration in rethinking the cancelation.

In consideration of Garden State's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received and Garden State'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, in the protest, Garden State admits that it did not submit pricing for Year 2 and Year 3 for all price lines as required; however, Garden State states that the Bid Solicitation instructions were unclear claiming "it does not clearly state that they all must be filled in. The missing fields were due to the dollar amount not changing for years 2 and 3." Unfortunately, Garden State misunderstood the requirements of the Bid Solicitation as it related to the completion of the State supplied price sheet. With respect to the submission of pricing, to assist Vendors {Bidders} in completing the State-Supplied Price Sheet, the Bid Solicitation advised in part:

The State-Supplied Price Sheet has been divided into 12 price lines per location (Division Headquarters and ROIC), for a total of 24 price lines. The Vendor {Bidder} must provide unit pricing for all price lines and locations. The Vendor {Bidder} must¹ provide firm-fixed unit cost pricing for each year (Year 1, Year 2, and Year 3) of all 24 price lines. Failure to submit the required unit cost pricing for all price lines will result in the Vendor's {Bidder's} Quote being deemed non-responsive and ineligible for award.

[Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions*, emphasis added.]

¹ Bid Solicitation Section 2.2 *General Definitions* defines "Must – Denotes that which is a mandatory requirement."

Further, as shown on the screen shot below, the State-Supplied Price Sheet instructed that “the Vendors {Bidders} shall² provide pricing in the yellow highlighted cells”.

State-Supplied Price Sheet Bid Solicitation #21DPP00618- T3123- New Jersey State Police Salting and Snow Removal- Division Headquarters and ROIC					
Vendor {Bidder} Name:					
Directions: Refer to Bid Solicitation Section 4.4.5 for Vendor {Bidder} instructions. The Vendor {Bidder} shall provide pricing in the yellow highlighted cells below. The Vendor {Bidder} must not alter the price schedule in any matter.					
Line No.	Item Description	Unit of Measure	Year 1 Unit Cost	Year 2 Unit Cost	Year 3 Unit Cost
DIVISION HEADQUARTERS					
1	ITEM DESCRIPTION: ALL INCLUSIVE SNOW PLOWING EVENT RATE .01"-3" SNOW EVENT	Per Event			

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)). Consistent with this purpose, the New Jersey procurement law provides that “any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do.” N.J.S.A. 52:34-12(a).

The Division’s administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall³ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:
 - ...
 - 6. Include all RFP-required pricing information.

[N.J.A.C. 17:12-2.2(a), emphasis added.]

² Bid Solicitation Section 2.2 *General Definitions* defines “Shall – Denotes that which is a mandatory requirement.”

³ “Shall – Denotes that which is a mandatory requirement.” Bid Solicitation § 2.2 *General Definitions*.

In reviewing the Quote submitted by Garden State, the Bureau recognized that Garden State had failed to submit pricing for Year 2 and Year 3 for all price lines as required by the Bid Solicitation instructions. See screen shot below.

State-Supplied Price Sheet					
Bid Solicitation #21DPP00618- T3123- New Jersey State Police Salting and Snow Removal- Division Headquarters and ROIC					
Vendor {Bidder} Name:					
Directions: Refer to Bid Solicitation Section 4.4.5 for Vendor {Bidder} instructions. The Vendor {Bidder} shall provide pricing in the yellow highlighted cells below. The Vendor {Bidder} must not alter the price schedule in any matter.					
Line No.	Item Description	Unit of Measure	Year 1 Unit Cost	Year 2 Unit Cost	Year 3 Unit Cost
DIVISION HEADQUARTERS					
1	ITEM DESCRIPTION: ALL INCLUSIVE SNOW PLOWING EVENT RATE .01"-3" SNOW EVENT	Per Event	#####		

The Hearing Unit’s independent review of the Bid Solicitation instructions for the submission of pricing finds that the instructions were clear. “The Vendor {Bidder} must provide firm-fixed unit cost pricing for each year (Year 1, Year 2, and Year 3) of all 24 price lines. Failure to submit the required unit cost pricing for all price lines will result in the Vendor’s {Bidder’s} Quote being deemed non-responsive and ineligible for award.” Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions*. Further, to clarify the cells that must be completed, the State-Supplied Price Sheet noted that the Vendor {Bidder} shall provide pricing in the yellow cells. Therefore, the Bureau correctly determined that the Quote submitted by Garden State was non-responsive because Garden State did not submit a fully completed price sheet as required; and therefore, Garden State was not eligible for an award. This decision is in line with the Division’s primary goal of ensuring that the public bidding process allows for unfettered competition. *Meadowbrook, supra*, 138 N.J. at 313. Because no responsive Quotes were received, the Bureau recommended, and I concurred, that it was in the public interest to cancel the Bid Solicitation.

In the protest, Garden State requests the ability to re-submit the price sheet with the information for Year 2 and Year 3 completed. However, allowing Garden State to revise its pricing information after the Quote submission deadline would result in an impermissible supplementation of the Quote, which the Division cannot allow as doing so would be contrary to the Court’s holding in *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract*, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In *On-Line Games* the Appellate Division held that “in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP”. Here, the Division cannot accept Garden State’s pricing for Year 2 and Year 3, after the Quote opening, even if Garden State were to submit the same pricing as proposed for Year 1, as doing so is an impermissible supplementation, change and correction to the submitted Quote.

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the subject Bid Solicitation be cancelled. Accordingly, I sustain the July 29, 2021 Notice of Cancellation. This is my final agency decision.

Thank you for your company's interest in doing business with the State of New Jersey. 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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: M. Dunn
R. Regan
J. Loughran