



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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May 11, 2023

*Via Electronic Mail Only to [pdoyle@bartoncooney.com](mailto:pdoyle@bartoncooney.com)*

Pat M. Doyle, Managing Member  
Barton & Cooney LLC  
300 Richards Run  
Burlington, NJ 08016

Re: I/M/O Bid Solicitation 23DPP00866 Barton & Cooney LLC  
Protest of Notice of Cancellation  
T0764 Printing and Mailing Services – Taxation & State Agencies

Dear Mr. Doyle:

This final agency decision is in response to your letter on behalf of Barton & Cooney LLC (Barton) that was received by the Division of Purchase and Property's (Division) Hearing Unit on April 28, 2023. In that letter, Barton protests the April 25, 2023, Notice of Cancellation issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation 23DPP00866 – T0764 Printing and Mailing Services – Taxation and State Agencies (Bid Solicitation).

By way of background, on January 17, 2023, the Bureau issued the Bid Solicitation on behalf of the State of New Jersey. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for expedited printing and mailing services that will be ordered weekly, monthly, yearly, and on an as-needed basis. *Ibid*.

Forty-one (41) potential Bidders were sent notifications on this Bid Solicitation via NJSTART. The electronic questions due date in response to Bid Solicitation Section 2.1 was on February 2, 2023. The Division received zero (0) questions in response to the Bid Solicitation. On February 21, 2023, an administrative Amendment was posted listing updated hyperlinks to Division specific websites. On March 8, 2023, the Division's Proposal Review Unit (PRU) opened one (1) Quote received by the submission deadline. After conducting an initial review of the Quote received for compliance with the mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded the Quote to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 8.9 *Evaluation Criteria*.

After completing the initial review of the submitted Quote, on March 29, 2023, the Bureau prepared a Recommendation Report that recommended that the Bid Solicitation be cancelled. The Recommendation Report noted that the Bidder submitted a non-responsive Quote.

On April 25, 2023, Notice of Cancellation was sent to the Bidder advising 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 April 28, 2023, Barton submitted a protest letter to the Division challenging the Bureau's decision to cancel the Bid Solicitation. In the protest, Barton states:

Point # 1: My protest is based on the fact that approximately 41 identified potential bidders were sent notification on this bid solicitation via the NJSTART and only one responded. That being Barton & Cooney. I am at a loss as to why we should be penalized for someone else's failure to respond. Not sure either why the amount of questions on the bid solicitation was zero. Unless the 40 other bidders contacted through NJSTART had zero interest in bidding. As for Barton & Cooney, we had no reason to raise any questions due to the fact that we have been handling, flawlessly, all the State of NJ's printing and mailing requirements for close to 15 years now.

Point #2: At the time we were filling out the quote and uploading the attachments, NJSTART was having issues and was unresponsive for a period of time. It was at this point the incorrect price grid was uploaded, unfortunately one of the earlier ones, not the correct one. There was also an issue with the pricing tab on NJSTART not holding the \$1.00 price which we needed assistance from NJSTART support to get corrected. Question comes up and that is, we were notified when the \$1.00 price in the quote was not holding, why were we not also notified about the PMS Magnetic Inks and the PCW% content of the paper we would be using?

Point #3: This bid I believe is a full Set-Aside Contract for Category I, II and III for Small Business. Of the 40 other vendors that had the opportunity to bid how many fit into these 3 categories'? Could be an answer to your response rate.

Point #4: Most of the price lines that were missing are simply a matter of entering in percentages that would be the same across all Price Lines. As for the PMS Magnetic Ink this would also be a very simple and short fix.

Considering that Barton & Cooney was the only respondent to the Bid Solicitation # 23DPP00866 we feel that your decision is not a fair one and instead of re-issuing another round of bidding going to all the non-responders allow us to fill in the missing blocks on the pricing grid.

[Barton protest letter dated April 28, 2023.]

In consideration of Barton's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received and Barton'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, Barton admits that it did not submit complete pricing for all price lines as required; however, Barton states that “[m]ost of the price lines that were missing are simply a matter of entering in percentages that would be the same across all Price Lines.” Barton additionally makes the same claim with respect to the percentage of post-consumer material content and total recovered materials content required by the Bid Solicitation. Unfortunately, Barton seems to misunderstand 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 Bidder **must** submit pricing for all Price Lines to be considered for an award. **Failure to submit pricing for all Price Lines will result in the Bidder’s Quote being deemed nonresponsive.**

The Bidder **must** enter, on the pricing page, the percentage of post-consumer material content and total recovered materials content for each item submitted. Failure to enter the percentage of post-consumer material content and total recovered materials content on the Quote price line will result in the rejection for that price line only. Consideration shall be given to recycled products containing the highest percentage of post-consumer material.

The minimum post-consumer material content is 50%. The total recovered materials content is 100%. **Failure to submit the minimum post-consumer material content or total recovered materials content will result in the Bidder’s Quote being deemed nonresponsive.**

The Bidder **must** submit a post-consumer material content of at least 50% for all Line Items in the below Categories, for Range 1,000-2,999 to Range 1MM and Up:

- A. Paper (Per Thousand); and
- B. Envelopes (Per Thousand).

The Bidder **must** submit a total recovered materials content of 100% for all Line Items in the below Categories, for Range 1,000-2,999 to Range 1MM and Up:

- A. Paper (Per Thousand); and
- B. Envelopes (Per Thousand).

The cost of papers and envelopes are not included in the Line Items for the below Categories:

- A. Laser Printing (Per Thousand);
- B. Perforations and Foldings (Per Thousand);
- C. Pre-Printed Forms – Offset Printing (Per Thousand); and
- D. Offset Printing for Envelopes (Per Thousand).

[Bid Solicitation Section 3.21 *State-Supplied Price Sheet Instructions*, emphasis added.]

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 shall<sup>1</sup> 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.]

In reviewing the Quote submitted by Barton, the Bureau recognized that Barton had failed to submit pricing as required by the Bid Solicitation instructions. See screen shot below.

Bidder	Price Lines Affected	Reasoning/ Bid Solicitation Section(s) Violated/Outcome
Barton	20, 132, 244, 356, 468, 578, 690, 803, 915, 1027, 1141, 1253, 1365, 1477	<p>Barton did <u>not</u> include a price, on the State Supplied Price Sheet submitted with its Quote, for the price lines associated with PMS Ink w/ Magnetic Properties.</p> <p><b>Bid Solicitation Section 3.21</b> <i>State Supplied Price Sheet Instructions</i> states, in pertinent part:</p> <p><i>“The Bidder <b>must</b> submit pricing for <b>all price lines</b> to be considered for an award. Failure to submit pricing for all price lines will result in the Bidder’s Quote being deemed nonresponsive.”</i></p> <p>Barton’s failure to include a price for the subject price lines, renders it’s Quote nonresponsive.</p>
	21-30, 103-114, 133-142, 215-226, 245-254, 327-338, 357-366, 439-450, 469-478, 549-560, 579-588, 661-672, 691-700, 804-813, 886-897, 916-925, 998-1009, 1028-1037, 1110-1123, 1142-1151, 1224-1235, 1254-1263, 1336-1347, 1353-1364, 1366-1375, 1448-1459, 1478-1487, 1560-1571	<p>Barton did <u>not</u> include the percentage of post-consumer material content and total recovered materials content on the State Supplied Price Sheet submitted with its Quote.</p> <p><b>Bid Solicitation Section 3.21</b> <i>State Supplied Price Sheet Instructions</i> states, in pertinent part:</p> <p><i>“The Bidder <b>must</b> enter, on the pricing page, the percentage of post-consumer material content and total recovered materials content for each item submitted. Failure to enter the percentage of post-consumer material content and total recovered materials content on the Quote price line will result in the rejection for that price line only.”</i></p>

<sup>1</sup> “Shall – Denotes that which is a mandatory requirement.” Bid Solicitation § 2.2 *General Definitions*.

		Barton's failure to include the percentage of post-consumer material content and total recovered materials content for the subject price lines renders it's Quote nonresponsive.
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The Hearing Unit's independent review of the Bid Solicitation instructions for the submission of pricing finds that the instructions were clear. The Bidder was clearly informed in the instructions that it must provide pricing for all price lines, and must also submit the percentage of post-consumer material content and total recovered materials content on the State-Supplied Price Sheet, and that failure to submit the required information would result in the Bidder's Quote being deemed non-responsive and ineligible for award. Bid Solicitation Section 3.21 *State-Supplied Price Sheet Instructions*. Therefore, the Bureau correctly determined that the Quote submitted by Barton was non-responsive because Barton did not submit a fully completed price sheet as required; and therefore, Barton 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 concur, that it was in the public interest to cancel the Bid Solicitation.

In the protest, Barton requests the ability to re-submit the price sheet with the information completed. However, allowing Barton 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 Barton's pricing and percentage of post-consumer material content and total recovered materials content after the Quote opening, as doing so is an impermissible supplementation, change and correction to the submitted Quote.

Barton also raises that it was contacted by the NJSTART team regarding its failure to enter a Unit Cost of "\$1.00" for each price line item on the items tab. The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a proposal to be accepted. The Division's governing regulations provide in relevant part "In order to be eligible for consideration for award of contract, the bidder's proposal shall...be submitted on or before the due date and time and at the place specified in the RFP." N.J.A.C. 17:12-2.2(a). If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These regulations are strictly enforced to maintain a level playing field for all Bidders and to ensure the integrity of the State's bidding process.

In addition, the Bid Solicitation expressly advises bidders of the requirements for proper submission:

### **3.1 QUOTE SUBMISSION**

In order to be considered for award, the Quote must be received by the Division's Proposal Review Unit, Quote electronically through **NJSTART**, by the required date and time.

The date and time of the Quote opening are indicated on the Bid Solicitation cover sheet and on the "Summary" Tab of the Bid Solicitation webpage within **NJSTART**. If the Quote opening deadline has been revised, the new Quote opening deadline shall be shown on the posted Bid Amendment and on the "Summary" Tab of the Bid Solicitation webpage

within *NJSTART*. Quotes not received prior to the Quote opening deadline shall be rejected.

[Emphasis added.]

The Bid Solicitation also advises Bidders to consult with the Division's Quick Reference Guides and supporting material in preparing Quotes for submission:

## 1. INTRODUCTION AND SUMMARY OF THE BID SOLICITATION

Bidders are strongly encouraged to visit the NJSTART Vendor Support Page, which contains Quick Reference Guides (QRGs), supporting videos, a glossary of *NJSTART* terms, and helpdesk contact information. Bidders should utilize the QRGs before attempting to submit a Quote through *NJSTART*. **It is the Bidder's responsibility to ensure that the Quote and attachments have been properly submitted.** Inquiries concerning the use of *NJSTART* may be directed to [njstart@treas.nj.gov](mailto:njstart@treas.nj.gov). The Division will not respond to substantive questions related to the Bid Solicitation or any other Contract via this email address.

[Emphasis added.]

Not only does this section encourage Bidders to review the Quick Reference Guides provided by the Division, but it includes a hyperlink to the NJSTART portal containing all of the Quick Reference Guides and videos.


In reviewing NJSTART's records with respect to Barton's Quote, NJSTART informed Barton on March 9, 2023, that the system required entry of "\$1.00" on each item bid in the Items Tab of Barton's Quote. Unlike the submission of the State-Supplied Price Sheet which satisfies a substantive requirement of the Quote to be evaluated pursuant to Bid Solicitation Section 8.6, the entry of "\$1.00" on each item bid in the Items Tab of Barton's Quote is a purely administrative function of the NJSTART system. Uploading documents to the NJSTART portal is one step in the process of submitting a Quote to the State of New Jersey, and until and unless the Vendor completes the submission process the PRU is not able to view or consider the uploaded information.

Although Barton indicates that it was experiencing technical difficulties submitting information via NJSTART, the email correspondence indicates Barton was just not aware that it had to enter "\$1.00" in the Items Tab, and the NJSTART team worked with Barton to temporarily provide Barton access to the Items Tab to complete its submission. While Barton insists that it should have been provided notice and an opportunity to correct its Quote similar to its ability to correct this NJSTART issue, the two situations are fundamentally different, and the Division cannot waive or relax the substantive submission requirements for one bidder at the expense of the procurement process. "Requiring adherence to material specifications maintains a level playing field for all bidders competing for a public contract." Barrick v. State, 218 N.J. 247, 259 (2014).

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 April 25, 2023 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,



Cory K. Kestner  
Chief Hearing Officer

c: C. Clarke  
D. Warren  
K. Young