



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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Telephone (609) 292-4886 / Facsimile (609) 984-2575

June 18, 2014

Via USPS Regular Mail and facsimile (609-652-5610)

Violet F. Meyer  
President  
Chestnut Neck Boat Yard Co.  
758 Old New York Rd.  
Port Republic, NJ 08241

RE: Protest of Award of Contract T0969  
RFP #14-X-23348 Marine Craft: Boat, Motor, Trailer (Parts, Repairs, Accessories & Purchases)

Dear Ms. Meyer:

This letter is in response to your letter dated May 1, 2014, and received May 19, 2014, referencing the subject Request for Proposal ("RFP") and regarding the Award of State Contract T0969 by the Procurement Bureau of the Division of Purchase and Property ("the Division"). In your letter, you protest the solicitation and award of the subject contract and contend that Chestnut Neck Boat Yard Co. ("CNBY") was unaware the RFP had been issued. On behalf of CNBY, you claim you did not receive a letter by mail notifying you to submit a proposal for the new contract and that the email notification was "too vague."

I have reviewed the record of this procurement, including the RFP, CNBY's correspondence, and relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of CNBY's protest.

In 2010, CNBY was awarded price lines 1 through 24 of T0969, Contract #A76463, solicited as RFP # 10-X-20903 Boat, Motor & Trailer Repairs, Motor & Trailer Purchases. The contract was originally effective April 1, 2010 to March 31, 2012, subsequently extended to March 31, 2013, and then again extended until March 31, 2014.

On December 2, 2013, a procurement specialist from the Procurement Bureau mailed the following letter to CNBY, at 758 Old New York Road, Port Republic, NJ 08241, referencing T0969, Contract # A76463:

Pursuant to Section 5.4, Contract Transition, of the referenced contract, please note that it is the State's intent to exercise this option by extending your contract while the State transitions to a new contract. During the term of this extension all terms, specifications and pricing remain in effect.

In addition, Section 5.3 of the contract provides for the following:

In the event that a new contract has not been awarded prior to contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than ninety (90) days beyond the expiration date of the contract.

The contract's expiration was scheduled for March 31, 2014. The transitional extension period will begin April 1, 2014, and will end July 31, 2014, or when the new contract is awarded and made fully operational. At no time shall this transition period extend more than ninety (90) days.

On December 9, 2013, RFP #14-X-23348 was posted on the Division's website<sup>1</sup> under "Current Bidding Opportunities." The Proposal Submission Date, February 20, 2014, was prominently displayed on the website and a "Proposal Solicitation" advertisement was placed in *The Star-Ledger* newspaper on December 12, 2013.

The Procurement Bureau mailed<sup>2</sup> a second letter to CNBY, at the same address previously listed, on December 10, 2013, stating:

This letter is being sent as a courtesy to advise you that all proposal documents pertaining to RFP 14-X-23348 (Marine Craft: Boat, Motor, Trailer (Parts, Repairs, Accessories & Purchases)) will be or are currently available for download at the following website:

<http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml>. You should cut and paste this website link to your "Favorites" and check the "Bidding Opportunities" website frequently for current bidding opportunities.

This letter is also being sent to inform you of the State's free eRFP eMail Notification Service. In an effort to ensure more vendors are aware of bidding

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<sup>1</sup> Current bidding opportunities can be found at <http://www.nj.gov/treasury/purchase/>. The Division's website is continually updated to display only those opportunities which are currently open for bidding, contracts that have been updated within the last 10 days, special notices, and notices of award.

<sup>2</sup> Although CNBY's letter of protest states it "received an email on December 13, 2010" that it "interpreted as being another extension or bidding opportunity," the Division's records indicate a letter was dated and mailed, not emailed, on December 10, 2013.

opportunities, we are encouraging vendors to enroll in this service. If you are interested in receiving email notification of upcoming proposals, it is imperative that you register for our eRFP Notification Service at the following website: <https://wwwnet1.state.nj.us/treasury/dpp/ebid/NotificationUserLogin.aspx>. In the interim, it is advised that you continue to check the "Bidding Opportunities" website frequently for current bidding opportunities.

There is a section on the eRFP Notification website that addresses frequently asked questions. If you need technical assistance during the application process, the FAQ Section provides instructions for submittal of questions.

Following the proposal submission date, the Procurement Bureau evaluated all responsive proposals, prepared a Recommendation Report and, having received no protests, awarded T0969 to ten vendors. The new contract is effective April 16, 2014 to April 30, 2017, with two (2) one-year extension options.

On April 14, 2014, the procurement specialist mailed CNBY a final letter, which stated:

Please be advised Solicitation #10-X-20903 — Boat, Motor & Trailer Repairs, Motor & Trailer Purchasers will expire, effective July 31, 2014.

The replacement contract, Solicitation #14-X-23348 Marine Craft: Boat, Motor, Trailer (Parts, Repairs, Accessories & Purchases) will begin effective April 16, 2014 through March 31, 2017.

All invoices for Solicitation # 10-X-20903 should be finalized before July 31<sup>st</sup>.

Although CNBY claims it did not receive any mailings, as evidenced above, three separate letters were mailed to CNBY, at the return address listed on your letter of protest, sent via certified mail, advising CNBY of the contract expiration date and the posting of new RFP documents. None of these letters were returned as undeliverable.

Furthermore, the Division's records indicate that the email address [violet\\_chestnut@comcast.net](mailto:violet_chestnut@comcast.net), the email address listed as your contact on CNBY's website, was registered with the Division's eRFP Notification Service "to receive email notifications on new and updated RFPs." This email address was registered to receive notifications of RFPs affiliated with numerous NIGP Commodity Codes, including class 120 Boats, Motors, and Marine Equipment and class 959 Marine Construction and Related Services; Marine Equipment Maintenance and Repair, both of which were associated with RFP #14-X-23348. In accordance with the eRFP notification system, three messages were sent to the registered email address:

- The first, dated December 9, 2013, advised registered vendors of the RFP posting and a hyperlink to access the RFP documents;
- The second, dated February 11, 2014, stated that an Addendum to the RFP had been posted; and

- The third, dated February 13, 2014, reminded all potential bidders that a proposal “must be received at or before the opening time and date of 2/20/2014 2:00 p.m.”

The Division’s technical support unit confirmed the delivery of these emails.

The Division’s responsibility to advertise procurement opportunities is governed by N.J.A.C. 17:12-2.1<sup>3</sup> *Advertising*, which provides:

- (a) Advertising is required when the contract amount is expected to exceed the public bidding threshold or is not subject to the relevant exceptions of N.J.S.A. 52:34-6, 9, or 10. Public notice of the bidding opportunity shall be placed on the Division's website and with other media, including newspapers, as required by law at N.J.S.A. 52:34-12 and determined by the State Treasurer to provide best notice thereof to bidders. Advertisements shall be made a minimum of seven business days in advance of the announced deadline for receipt of proposals to encourage free and open competition.
- (b) If, during the course of an advertised procurement pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such alterations shall be set forth in addenda to the RFP and shall be advertised a minimum of seven business days in advance of the announced deadline for receipt of proposals.
- (c) In addition to statutorily mandated public advertising, the Division shall also publish notices of bidding opportunities on the Division's website.
- (d) As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service known as the e-RFP Notification Service. Vendors and other interested parties can register to receive direct e-mail notices pertaining to the Division's procurements for goods or services based upon specific commodity classes or codes. As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for e-RFP Notification Service registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division.

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<sup>3</sup> The Division’s administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

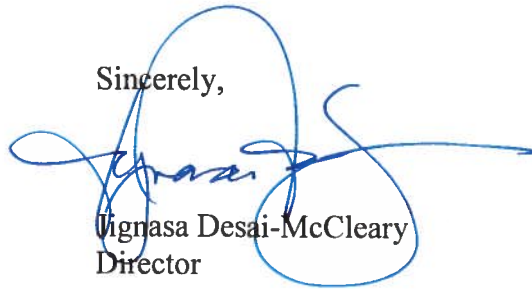
In this case, the Procurement Bureau mailed three separate letters to CNBY: the first stating its contract would expire and a new contract be awarded; the second sent as a "courtesy" to provide notice that RFP #14-X-23348 was posted for download and to explain the eRFP notification system availability; and the third explaining when the new contract would take effect. In addition, as a subscriber to the eRFP notification system, three separate emails were sent to [violet\\_chestnut@comcast.net](mailto:violet_chestnut@comcast.net) to provide notice of the posting of RFP #14-X-23348, notice of the posting of an addendum, and a reminder of the proposal submission deadline.

Based on the findings and conclusions set forth above, which establish that this procurement opportunity was advertised and posted in accordance with statutory and regulatory requirements, I must deny your protest. I also note that the procurement team went above and beyond what was legally required with its various notifications and communications. This is my final decision on this matter.

This is an unfortunate situation, as the Division encourages competition and welcomes your participation in its procurement process. If the email address registered with the eRFP Notification System is no longer in use, I suggest you update your contact information and regularly check the Division's website or *The Star-Ledger* for contracting opportunities.

Thank you for your interest in doing business with the State of New Jersey. I invite you to take this opportunity to register your business with **NJ START** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system, which is scheduled to go live this fall and will provide a "one-stop shop" for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,



Vignasa Desai-McCleary  
Director

JD-M:DF

c: L. DuBois  
E. Mackay  
L. Spildener  
A. Miller