



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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June 18, 2018

Via Electronic Mail [AIsacoff@floriolaw.com] and USPS Regular Mail

Adrienne L. Isacoff, Esq.
Florio Perrucci Steinhardt & Cappelli, LLC
218 Route 17 North, Suite 410
Rochelle Park, New Jersey 07662

Re: I/M/O Bid Solicitation #18DPP00205
T0777 Snow Plowing and Spreading Services – NJDOT
Specification Challenge
Utility and Transportation Contractors Association of New Jersey

Dear Ms. Isacoff:

This letter is in response to your correspondence of June 15, 2018, on behalf of the Utility and Transportation Contractors Association of New Jersey (“Association”) which was received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that email, the Association protests the receipt of bids for phase 2 pricing for all un-awarded snow sections under Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (“Bid Solicitation”).

By way of background, on January 30, 2018, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)¹ to those responsible Vendors

¹ For consistency, this final agency decision uses terminology employed by the State of New Jersey’s **NJSTART** eProcurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

| NJSTART Term | Statutory, Regulatory and/or Legacy Term |
|-------------------------------|---|
| Bid Solicitation | Request For Proposal |
| Bid Amendment | Addendum |
| Change Order | Contract Amendment |
| Master Blanket Purchase Order | Contract |
| Offer and Acceptance Page | Signatory Page |
| Quote | Proposal |
| Vendor {Bidder} | Bidder |
| Vendor {Contractor} | Contractor |

{Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On March 16, 2018, the Division's Proposal Review Unit opened 136 Quotes submitted through the State's *NJSTART* eProcurement system and 41 Quotes received in hardcopy format by the submission deadline of 2:00 pm eastern time. On June 11, 2018, consistent with Bid Solicitation Section 1.1 *Purpose and Intent*, the Bureau requested pricing under phase 2 of the Bid Solicitation.

On June 15, 2018, the Association submitted a protest to the Division challenging the specifications of the subject Bid Solicitation. The Association challenges Bid Solicitation Section 1.1 which states that phase 2 pricing will only be accepted from those Vendors {Bidders} who submitted Quotes that were responsive to the phase 1. The Association claims that refusing to accept Quotes from those potential Vendors {Bidders} who did not submit a Quote in response to phase 1 undermines the public bidding law. Specifically, the Association points to N.J.S.A. 53:34-12(a) which states in pertinent part:

Whenever advertising is required: (a) specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency and shall, wherever practicable, include such factors as life-cycle costs, sliding percentage preference scales, or other similar analysis as shall be deemed effective by the Director of the Division of Purchase and Property, hereinafter referred to as the director, (b) the advertisement for bids shall be in such newspaper or newspapers and other medium or media selected by the State Treasurer as will best give notice thereof to bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding; (c) the advertisement shall designate the time and secure location when and where proposals, which may be submitted in electronic or other format designated by the director, shall be received, opened and publicly announced, the amount of the cash or certified check, if any, which must accompany each bid, and such other terms as the State Treasurer may deem proper; (d) notice of revisions or addenda to advertisements or bid documents relating to bids shall be published in a newspaper or newspapers and other medium or media selected by the State Treasurer to give notice to bidders at least seven days, Saturdays, Sundays and holidays excepted, prior to the bid due date...

In consideration of the Association's protest, I have reviewed the record of this procurement, including the Bid Solicitation, 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. I set forth herein the Division's Final Agency Decision.

First, the Division's public procurement program reflects the New Jersey statutory and regulatory requirements that have been affirmed by New Jersey courts. A basic precept of the Division's governing statutes and regulations requires that Bid Solicitations must be publically advertised and that Quotes must be submitted by the deadline specified in the public advertisement and website notice. The Division's regulations set forth procurement notification requirements at N.J.A.C. 17:12-2.1 Advertising which states in pertinent part:

- (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.

The record of this procurement shows that the procurement was conducted in full accordance with the Division's governing statutes and regulations and by its standard announcement procedures and practices. Notice of the subject Bid Solicitation was publicly advertised on the Division's **NJSTART** eProcurement site, and as shown below, notice was also published in The Star-Ledger on January 30, 2018 as required by the applicable regulation. N.J.A.C. 17:12-2.1(a) and (c)

NOTICE OF NJSTART
BID SOLICITATION

NOTICE IS HEREBY GIVEN THAT
SEALED QUOTES (PROPOSALS) WILL
BE RECEIVED IN THE PROCUREMENT
BUREAU RECEPTION ROOM, 9TH
FLOOR, 33 WEST STATE STREET, P.O.
BOX 230, TRENTON, N.J., 08625-
0230, UNTIL 2:00 P.M. ON **MARCH
16, 2018** AND WILL BE PUBLICLY
OPENED AND ANNOUNCED FOR
THE FOLLOWING NJSTART PRO-
CUREMENT PROGRAM SOLICITA-
TION:

18DPP00205 (T-0777) - Snow Plow-
ing and Spreading Services -
NJDOT

VENDORS (BIDDERS) ARE ALSO RE-
QUIRED TO COMPLY WITH THE
STANDARD TERMS AND CONDI-
TIONS CONTAINED IN THE BID SO-
LICITATION (RFP).

INFORMATION ON THE NJSTART
PROCUREMENT PROGRAM AND BID
SOLICITATION (RFP) DOCUMENTS
ARE AVAILABLE AT: www.njstart.gov
AND ON THE DIVISION'S WEBSITE
AT:
www.state.nj.us/treasury/purchase

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND
PROPERTY
1/30/2018 \$60.45

Further, the Division's regulations set forth electronic procurement notification requirements at N.J.A.C. 17:12-2.1 which states in pertinent part:

- (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 [NJSTART]. 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 [NJSTART] 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.

In keeping with regulation, all Vendors {Bidders} who were registered with *NJSTART* for *NIGP Commodity Code 968-72/Snow and Ice Removal Services*, received electronic notification of the procurement. Moreover, during the procurement, the Bid Solicitation was open and available for review and submission of a Quote by any potential Vendor {Bidder}, regardless of the commodity for which it registered.

A review of the record of this procurement reveals that the Bid Solicitation was publically advertised as required; the advertised Bid Solicitation advised all potential Vendors {Bidders} that the procurement would be conducted in phases; the Bureau accepted questions from potential Vendors {Bidders} and answered those questions received by posting Bid Amendment #1. As such, this procurement was conducted in accordance with the Division's governing statutes and regulations.

Second, although I have addressed the specification challenge above, the Association's challenge to the Bid Solicitation's specifications are out of time. The Division's regulations regarding protests to specifications have specific timing requirements, allowing such protests to be submitted between the posting of answers to the questions posed by potential bidders and the Quote opening date:

The written protest [challenging a specification] shall be submitted to the Director only after the Division has formally responded to questions posed during the RFP-established question and answer period and in sufficient time to permit a review of the merits of the protest and to take appropriate action as may be necessary, prior to the scheduled deadline for proposal submission.

...

3. In order to provide sufficient time for full assessment of the issue(s) of the challenge and, if merited, to effect changes to the RFP and public notice of such changes, the Director may disregard any protest of specifications filed fewer than seven business days prior to the scheduled deadline for proposal submission.

[N.J.A.C. 17:12-3.2(b), *emphasis added.*]

The Association submitted this challenge to the Bid Solicitation's specification well after the scheduled deadline for such a challenge. Quotes were due and submitted on March 16, 2018; therefore, any challenge to the specifications should have been submitted no later than March 7, 2018. Therefore, the Association's specification challenge is untimely.

In light of these findings, the protest regarding the specifications of Bid Solicitation #18DPP00205 is denied. This is my final agency decision.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger