



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROCUREMENT BUREAU
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April 11, 2018

Via Electronic Mail [salyilmaz12@gmail.com] and USPS Regular Mail

Koksal Yilmaz
Crescent Home Improvement LLC
12 Crescent Ave
Spotswood, NJ 08884

Re: I/M/O Bid Solicitation #: 18DPP00205 Crescent Home Improvement LLC
Protest of Notice of Proposal Rejection
Bid Solicitation Title: T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Yilmaz:

This letter is in response to your email of March 19, 2018, on behalf of Crescent Home Improvement LLC (hereinafter “Crescent”), to the Division of Purchase and Property’s (hereinafter “Division”) Hearing Unit. In that email, Crescent requests that its un-submitted Quote {Proposal} (hereinafter “Quote”)¹ be accepted for consideration for the subject solicitation.

In consideration of Crescent’s protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter “Bid Solicitation”) #18DPP00205 – T0777 Snow Plowing and Spreading Services, Crescent’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

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.

<i>NJSTART</i> 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

and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

By way of background, on January 30, 2018, the Division's Procurement Bureau (hereinafter "Bureau") issued the Bid Solicitation on behalf of the State of New Jersey, Department of Transportation, Bureau of Operations (hereinafter "NJDOT"), to solicit Quotes to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of the NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. The Bid Solicitation sought Quotes for "approximately 303 Snow Sections, with each section requiring a specific amount of equipment to perform snow plowing and spreading services." Bid Solicitation § 1.2 *Background*. It is State's intent to award one or multiple Statewide Blanket P.O.s {Contracts} (hereinafter "Blanket P.O.") to the Vendor {Bidder} "submitting the lowest hourly rate for each Snow Section, and meeting, at a minimum, the criteria for experience and equipment as set forth in [the] Bid Solicitation." Bid Solicitation § 1.1 *Purpose and Intent*.

On February 28, 2018, the Bureau posted Bid Amendment {Addendum} (hereinafter "Addendum") #1, responding to the questions posted by potential Vendors {Bidders}, posting a revised Bid Solicitation, and a revised State-supplied price schedule. The Bid Solicitation and Addendum advised all Quotes were due March 16, 2018, by 2:00 p.m.

On March 16, 2018, the Proposal Review Unit opened 136 Quotes received via *NJSTART* and 41 Quotes received in hardcopy by the submission deadline of 2:00 p.m. A review of the Quotes submitted by the submission deadline reveals the Crescent did not submit a Quote by the 2:00 p.m. deadline as required. On March 17, 2018, after the Quote submission deadline, Crescent wrote to *NJSTART*:

From: Koksai Yilmaz <salyilmaz12@gmail.com>
Date: Sat, Mar 17, 2018 at 11:53 AM
Subject: ATTN: Michelina Groninger - Bid# 18DPP00205 . Spreading Services
To: njstart@treas.nj.gov

I misunderstood the spreading bid opening date it was deceiving (03/16/2018). I didn't get that as only that date. Therefore I missed out to put the bids in for "spreading". Is there any way I can be included in the bids. Thank you in advance. Crescent Home Improvement LLC.
salyilmaz12@gmail.com or 732-995-8446 I was hoping you would cut me a break because I was in Cooper trauma center with a traumatic brain injury!!!

Line# 333 Crew# 311 Req.Trucks# 6 Place=North Brunswick. Bid =\$149.00 Per/hr.
Line# 348 Crew# 329 Req.Trucks# 6 Place=Keasbey. Bid =\$149.00 Per/hr.
Line# 354 Crew#335 Req.Trucks# 9 Place=Keasbey. Bid =\$149.00 Per/hr.

On March 19, 2018 the Division issued Crescent a Notice of Proposal Rejection, advising that the Quote was rejected because it was not timely submitted. Crescent forwarded the email it had sent to *NJSTART* to the Hearing Unit on March 19, 2018, which was accepted as a formal protest of the Notice of Proposal Rejection.

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. In relevant part, the regulations state: "[i]n order to be eligible for consideration for award of contract, the bidder's proposal shall ... [b]e 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)(2) (emphasis added). If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These regulations are stringently enforced to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

Accordingly, the Bid Solicitation advised all potential Vendors {Bidders} of the requirements for proper and timely Quote submission, noting in relevant part:

1.3.2 SUBMISSION OF QUOTES {PROPOSALS}

In order to be considered for award, the Quote {Proposal} must be received by the Procurement Bureau of the Division at the appropriate location by the required time.

Vendors {Bidders} shall submit a Quote {Proposal} either electronically through *NJSTART* or via hard copy.

QUOTES {PROPOSALS} NOT RECEIVED PRIOR TO THE QUOTE {PROPOSAL} OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE {PROPOSAL} OPENING ARE INDICATED ON THE BID SOLICITATION {RFP} COVER SHEET AND ON THE "SUMMARY" TAB OF THE BID SOLICITATION WEBPAGE WITHIN *NJSTART*.

In its protest, Crescent states that the Quote submission date was "deceiving" because Crescent did not understand that Quotes could be submitted "only [on] that date." However, I note that Quotes could have been submitted at any time prior to the Quote opening deadline. *NJSTART* permits Vendors {Bidders} to upload Quotes at any time immediately following the posting of a Bid Solicitation. It is only at the designated time and date that the *NJSTART* system will lock the Bid Solicitation so that no Quotes can be uploaded afterward. Here, at 2:00:59 p.m., all Quote submissions would have been unsuccessful. The Bureau received 136 Quotes submitted through *NJSTART* in a timely fashion, the earliest of which was uploaded on February 2, 2018. Accordingly, I cannot conclude that the Quote submission date was deceiving or otherwise misleading.

The author of Crescent's protest states that it was unable to submit a Quote on time "because I was in Cooper trauma center with a traumatic brain injury." See, Crescent March 17, 2018 email. While the Quote submission deadline must apply to all Vendors {Bidders} in equal fashion, N.J.A.C. 17:12-2.6(a) sets forth narrow circumstances where the Quote submission date can be postponed:

The Director may, in the event of inclement weather or other condition affecting or likely to affect bidders' timely delivery or proposals, postpone the deadline to the next operable business day. If timely delivery of a physical or electronic proposal is not possible due to documentable cause of delay on the date of proposal opening and that is beyond the control of said vendor, said vendor can request, prior to the set deadline, that the Director postpone the deadline. If the Director determines that a postponement is in the State's best interest, the Director shall designate a revised same-day deadline. In either of these circumstances, the Director shall post notice of the postponement of the deadline for proposal submission on the Division's website.

[N.J.A.C. 17:12-2.6(a) (emphasis added).]

Here, even assuming Crescent would be able to provide “documentable cause of delay” supporting its assertion that it was unable to submit a Quote, the Division is unable to postpone the Quote submission deadline because Crescent did not request a postponement before the deadline. Therefore, while it appears tragic circumstances played a role in preventing Crescent from submitting a Quote, I am without discretion to postpone the published Quote opening deadline.

Finally, it is noted that Crescent still has not submitted a Quote package as required by the Bid Solicitation. Specifically, Bid Solicitation § 4.4.3 *Submittals* required all Vendors {Bidders} to:

. . . furnish all information required by completing the forms accompanying this Bid Solicitation {RFP} for one (1) or more Snow Sections and offering optional graders and loaders. These forms must be submitted by the Vendor {Bidder} with its Quote {Proposal}. Failure to submit the forms with the Quote {Proposal} will result in rejection of the Quote {Proposal}.

- A. Attachment #1 – Vendor Equipment Form; and
- B. Attachment #2 – Experience of the Bidder.

Accordingly, even if the Division could accept Crescent’s email indicating pricing information for three price lines, Crescent’s failure to include forms required by the Bid Solicitation would require the Bureau to deem the Quote non-responsive to the Bid Solicitation’s requirements. The Bureau would be unable to allow Crescent to submit these forms after the Quote submission due date as doing so would put Crescent in a position of advantage over other Vendors {Bidders}, and would unlevel the playing field because the State received responsive Quotes with all necessary information, documents, and pricing within the Quote as required.

Similarly, despite Crescent’s desire to submit a Quote for the subject solicitation, under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, the Division cannot accept Crescent’s Quote as timely submitted. Such acceptance would un-level the playing field. In light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision.

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise and experience in the field. In the future, I encourage earlier initiation of submissions to ensure timely receipt of Quotes and to allow for any issues which may arise during the electronic Quote submission process. Thank you for registering your company with *NJSTART* at www.njstart.gov, the State of New Jersey’s new eProcurement system. I look forward to your company’s continuing interest in doing business with the State of New Jersey.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: REG

c: A. Davis
K. Anderson-Thomas
M. Groninger