



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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April 11, 2018

Via Electronic Mail [tat_trucking@yahoo.com] and USPS Regular Mail

Thomas Gerace
TAT Trucking & Contracting
104 Main St.
Fallsington, PA 19054

Re: I/M/O Bid Solicitation #18DPP00205 TAT Trucking
T0777 Snow Plowing and Spreading Services

Dear Mr. Gerace:

This letter is in response to your email of April 3, 2018, on behalf of TAT Trucking & Contracting (“TAT Trucking”) to the Division of Purchase and Property asserting Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services – NJDOT (“Bid Solicitation T0777 Snow Plowing and Spreading Services”) was unfair and deliberately confusing in light of a second Bid Solicitation #18DPP00222 – T2924 Snow Plowing Services by Area – NJDOT (“Bid Solicitation T2924 Snow Plowing Services by Area”) being reprocured in parallel with Bid Solicitation T0777 Snow Plowing and Spreading Services.

By way of background, on January 30, 2018, the Division’s Procurement Bureau (“Bureau”) issued Bid Solicitation T0777 Snow Plowing and Spreading Services on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes¹ from qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of NJDOT. Bid Solicitation T0777 Snow Plowing and Spreading Services § 1.1 *Purpose and Intent*. It is the State’s intent to award Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)² to those responsible Vendors

¹ Bid Solicitation T0777 Snow Plowing and Spreading Services § 2.2 *General Definitions* defines “Quote {Proposal} [as a] Vendor’s {Bidder’s} timely response to the Bid Solicitation {RFP} including, but not limited to, technical Quote {Proposal}, price Quote {Proposal}, and any licenses, forms, certifications, or other documentation required by the Bid Solicitation {RFP}.” *Emphasis added.*

² 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

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

Bid Solicitation T0777 Snow Plowing and Spreading Services 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 T0777 Snow Plowing and Spreading Services § 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 T0777 Snow Plowing and Spreading Services § 1.1 *Purpose and Intent*.

In contrast, Bid Solicitation T2924 Snow Plowing Services by Area is seeking³ Quotes “to provide snow plowing services for areas of State interstates and highways under the jurisdiction of the NJDOT.” Bid Solicitation T2924 Snow Plowing Services by Area § 1.1 *Purpose and Intent*. Bid Solicitation T2924 Snow Plowing Services by Area divides the State into three regions, with each region divided into pre-defined “Maintenance Areas.” Ibid. Bid Solicitation T0777 Snow Plowing and Spreading Services notes that State roadways are “broken down into Snow Sections and assigned to contracted snow plows to clear the roadways. During more intense storms, the existing resources are unable to meet demand to continually maintain a safe level of services for all roadways; thus requiring the NJDOT to use additional resources to provide snow plowing services.” Bid Solicitation T2924 Snow Plowing Services by Area § 1.2 *Background*. Thus, while both Bid Solicitations seek Quotes for a type of snow plowing services, Bid Solicitation T0777 Snow Plowing and Spreading Services has a focus on specific Snow Sections while Bid Solicitation T2924 Snow Plowing Services by Area has a focus on Maintenance Areas to supplement the Snow Section plowing when needed.

On February 28, 2018, the Bureau issued Bid Amendment #1 to Bid Solicitation T0777 Snow Plowing and Spreading Services responding to the questions posed by potential Vendors {Bidders}. In relevant part, questions ten and eleven read as follows:

Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

³ It is noted that the Quote submission date for Bid Solicitation T2924 Snow Plowing Services by Area is currently April 12, 2018.

10	New Bid 18DPP00222	<p>I received the new RFP today and I don't understand why it's by area? Using seven trucks? We usually use 6-7 per section.</p> <p>Vendors (Bidders) are advised that the following Bid Solicitations (RFPs) and currently advertised are two (2) separate Bid Solicitations (RFPs):</p> <ol style="list-style-type: none"> 1. 18DPP00205 – is for Snow Plowing and Spreading Services-NJDOT; and 2. 18DPP00222 – is for Snow Plowing Services by Area-NJDOT. <p>Vendors (Bidders) are advised to thoroughly read both Bid Solicitations (RFPs) as they are two (2) completely different Bid Solicitations (RFPs)</p>
11	Bid# 18DPP00205	<p>Which of these is the correct date for bid opening? Is it now April?</p> <p>The Quote (Proposal) Submission Date for 18DPP00205 Snow Plowing and Spreading Services-NJDOT is March 16, 2018.</p> <p>The Quote (Proposal) Submission Date for 18DPP00222 Snow Plowing Services by Area-NJDOT is April 12, 2018.</p>

Similarly, on March 16, 2018, the Bureau posted Bid Amendment #1 to Bid Solicitation T2924 Snow Plowing Services by Area including the same guidance:

3	New Bid 18DPP00222	<p>I received the new RFP today and I don't understand why it's by area? Using seven trucks? We usually use 6-7 per section.</p> <p>The purpose of this Bid Solicitation is to solicit Quotes (Proposals) to provide snow plowing services for <u>areas</u> of State interstates and highways. This Bid Solicitation requires the Vendor (Bidder) to supply seven (7) trucks for each area it is awarded.</p> <p>Vendors (Bidders) are advised that the following Bid Solicitations (RFPs) are two (2) separate Bid Solicitations (RFPs):</p> <ol style="list-style-type: none"> 1. 18DPP00205 – is for T0777 – Snow Plowing and Spreading Services-NJDOT; and 2. 18DPP00222 – is for T2924 – Snow Plowing Services by Area-NJDOT. <p>Vendors (Bidders) are advised to thoroughly read each Bid Solicitation (RFP) as each one addresses different requirements.</p>
4	Bid #18DPP00205	<p>1. Which of these is the correct date for bid opening?</p> <p>The Quote (Proposal) Submission Date for <u>18DPP00205</u> Snow Plowing and Spreading Services – NJDOT is <u>March 16, 2018</u>.</p> <p>2. Is it now April?</p> <p>The Quote (Proposal) Submission Date for 18DPP00222 Snow Plowing Services by Area – NJDOT is <u>April 12, 2018</u>.</p>

On March 16, 2018, the Division's Proposal Review Unit opened 136 Quotes submitted in response to Bid Solicitation T0777 Snow Plowing and Spreading Services 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 April 3, 2018, after the Quote submission deadline for Bid Solicitation T0777 Snow Plowing and Spreading Services, TAT Trucking wrote to the Hearing Unit stating:

From: Thomas Gerace
To: DPP Protest
Subject: Dispute Snow Plow Bid 18Dpp00205
Date: Tuesday, April 3, 2018 1:29:40 PM

I would like to dispute the snow plow bid 18DPP00205 due to an unfair bid. During the First round of snow plow bids amendments were sent to our email for the second snow plow bid 18DPP00222 with an opening date of 4/12/18 causing confusion for the opening bid dates. This resulted in many companies believing they had more time to construct there bids. With many companies failing to get the bids in on time this results in the state of New Jersey not receiving the lowest bids. And us being a faithful contractor for the last 16 year being deliberately confused by the way these two bids were presented together.

Thank you,
Thomas Gerace

TAT Trucking's email was accepted as protest.

In consideration of TAT Trucking's protest, I have reviewed the record of this procurement, including both Bid Solicitations, 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.

The Division's public procurement program reflects the New Jersey statutory and regulatory requirements that have been affirmed by New Jersey courts. The Division's regulations set forth procurement notification requirements at N.J.A.C. 17:12-2.1 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.

Here, notice of Bid Solicitation T0777 Snow Plowing and Spreading Services and Bid Amendment #1 to Bid Solicitation T0777 Snow Plowing and Spreading Services were publicly advertised on the Division's *NJSTART* eProcurement site, and as shown below, notice was also published in The Star-Ledger on January 30 and March 1, 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 PROCUREMENT PROGRAM SOLICITATION:

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

VENDORS (BIDDERS) ARE ALSO REQUIRED TO COMPLY WITH THE STANDARD TERMS AND CONDITIONS CONTAINED IN THE BID SOLICITATION (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

NOTICE OF NJSTART
BID SOLICITATION

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

NOTE: Bid Amendment (Addendum) 1 e-Filed: February 26, 2018 Original Quote (Proposal) Submission: March 16, 2018 No Change

VENDORS (BIDDERS) ARE ALSO REQUIRED TO COMPLY WITH THE STANDARD TERMS AND CONDITIONS CONTAINED IN THE BID SOLICITATION (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
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3/1/2018 \$68.20

Accordingly, 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.

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 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

In keeping with this regulation, all Vendors {Bidders} who were registered with **NJSTART** for *NIGP Commodity Code 968-72/Snow and Ice Removal Services*, the sole class code associated with Bid Solicitation T0777 Snow Plowing and Spreading Services, received electronic notification of the procurement and all Bid Amendments.⁴ It is noted that Bid Solicitation T2924 Snow Plowing Services by Area also used *NIGP Commodity Code 968-72/Snow and Ice Removal Services*. Therefore, all Vendors {Bidders} registered with this code in their Vendor Profiles, like TAT Trucking, would have received all notices regarding both procurements.

Although TAT Trucking asserts Bid Solicitation T0777 Snow Plowing and Spreading Services was “unfair” and “deliberately” confusing, Bid Amendments for both Bid Solicitations cautioned potential Vendors {Bidders} that the Division was issuing two separate solicitations with different Quote submission deadlines. Furthermore, I note that the Bureau received more than 135 Quotes submitted in a timely fashion, the earliest of which was uploaded on February 2, 2018. Accordingly, I cannot conclude that procurement of Bid Solicitation T0777 Snow Plowing and Spreading Services was unfair or misleading. As stated in the Division’s regulations, Vendors {Bidders} must “exercise due diligence in reviewing the notices on the Division’s website to assure their awareness of State bidding opportunities announced by the Division.” N.J.A.C. 17:12-2.1(d).

In light of the findings set forth above, I must deny your protest. This is my final agency decision. This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field.

Thank you for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey’s 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: P. Michaels
L. Spildener
M. Groninger

⁴ Bid Solicitation T0777 Snow Plowing and Spreading Services was a reprocurement and combination of two separate contracts, T-0777 Snow Plowing & Hauling Services Statewide for the N.J.D.O.T. (previously procured under RFP 13-X-22591, 13-X-22747 (Rebid for Open Snow Sections), and 13-X-22837 (Rebid #2 for Open Snow Sections)) and T-1415 Spreading Services for Deicing Chemicals and Abrasives (previously procured under RFP numbers 13-X-22592, 13-X-22748 (Rebid for Open Snow Sections) and 13-X-22838 (Rebid #2 for Open Snow Sections)). It is noted that both pre-existing contracts were procured using NIGP code 968-72, the same NIGP code as the current Bid Solicitation T0777 Snow Plowing and Spreading Services.