



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 5, 2018

Via Electronic Mail [tsjr@tsanchezltd.com] and USPS Regular Mail

Antonio Sanchez Jr.
Tony Sanchez Ltd.
1685 U.S. Rt. 46
Ledgewood, NJ 07852

Re: I/M/O Bid Solicitation #18DPP00205 Tony Sanchez Ltd.
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Mr. Sanchez:

This letter is in response to your correspondence of August 28, 2018, on behalf of Tony Sanchez, Ltd. (Sanchez) to the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence Sanchez protests the August 24, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) indicating an intent to award Master Blanket Purchase Orders (Blanket P.O.s)¹ to several Vendors {Bidders} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation). Sanchez protests the Bureau's determination that Sanchez was nonresponsive on price lines 37, 38, 40, 80, 81, 83, and 91 for failure to include an all-inclusive hourly rate for snow plowing superintendent.

BACKGROUND

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

By way of background, on January 30, 2018, the 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 Blanket P.O.s to those responsible Vendors {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 Quotes from 164 Vendors {Bidders} received through the State's *NJSTART* eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Thirty-two Vendors' {Bidders'} Quotes were automatically rejected by the Proposal Review Unit for failure to conform to the mandatory administrative requirements for Quote submission.

The remaining Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria* which states:

The following evaluation criteria categories, not necessarily listed in order of significance, may be used to evaluate Quotes {Proposals} received in response to this Bid Solicitation {RFP}. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

- A. Experience of firm (Attachment #2): The Vendor's {Bidder's} documented experience in successfully completing Blanket P.O. {Contracts} of a similar size and scope in relation to the work required by this Bid Solicitation {RFP};
- B. Vendor Equipment (Attachment #1): The quantity and type of Vendor {Bidder} trucks and ability to provide equipment; and
- C. Price: The Vendor's {Bidder's} hourly rate. See Section 6.7.1 below.

With respect to the evaluation of the Vendors' {Bidders'} Quote pricing, Bid Solicitation Section 6.7.1 *Vendor's {Bidder's} Price Schedule* states:

The Bureau will utilize a weighted price model. The price model will be date-stamped and entered into the record before Quote {Proposal} opening.

One (1) or multiple awards will be made to the Vendor {Bidder} submitting the lowest hourly rate for each Snow Section and meeting, at a minimum, the criteria for experience and equipment set forth in this Bid Solicitation {RFP}, in the following order:

Snow Plowing and Hauling Services:

- 1st – Vendors {Bidders} supplying all required Class A trucks with equipment;
- 2nd – Vendors {Bidders} supplying all required Class A trucks without equipment;

- 3rd – Vendors {Bidders} supplying all required Class B trucks with equipment;
- 4th – Vendors {Bidders} supplying all required Class B trucks without equipment;
- 5th – Vendors {Bidders} supplying fewer than the required number of Class A trucks with equipment; and
- 6th – Vendors {Bidders} supplying fewer than the required number of Class B trucks without equipment.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class A trucks with Vendor {Bidder} owned equipment, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class A trucks without equipment.

Spreading Services:

- 1st – Vendors {Bidders} supplying all required Class R trucks with an on board wetting system;
- 2nd – Vendors {Bidders} supplying all required Class R trucks;
- 3rd – Vendors {Bidders} supplying all required Class Q trucks with an on board wetting system;
- 4th – Vendors {Bidders} supplying all required Class Q trucks;
- 5th – Vendors {Bidders} supplying all required Class P trucks with an on board wetting system;
- 6th – Vendors {Bidders} supplying all required Class P trucks;
- 7th – Vendors {Bidders} supplying V Box trucks with an on board wetting system;
- 8th – Vendors {Bidders} supplying V Box trucks;
- 9th – Vendors {Bidders} supplying mid-body style trucks with an on board wetting system; and
- 10th – Vendors {Bidders} supplying mid-body style trucks.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class R trucks, with an on board wetting system, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class R trucks without an on board wetting system.

The evaluation of Quotes received and submission of Quote pricing was conducted in three phases as set forth in Bid Solicitation Section 1.1 *Purpose and Intent* which states:

Award of this Bid Solicitation {RFP} will be conducted in three (3) consecutive phases, as described further below. All phases will continue until all Snow Sections have been awarded. Pricing shall not be released until completion of all phases and the final Notice of Intent to Award has been issued.

This procurement will be bid in three consecutive phases, numbered One, Two and Three. The first Phase will be Phase One (1). In Phase One (1), the State will attempt to award all Snow Sections. To the extent that any

Snow Sections remain un-awarded following Phase One (1), the State will request that all Vendors {Bidders} who submitted a Quote {Proposal} to this Bid Solicitation {RFP} for Phase One (1) submit a Phase Two (s) price sheet addressing any Snow Sections that remain un-awarded that the Vendor {Bidder} is interested in. The State will attempt to award all remaining Snow Sections in Phase Two (2) based on the Phase Two price sheets received. In the event that any Snow Sections remain un-awarded after Phase Two (2) is completed, the State will request that all Vendors {Bidders} submit a Phase Three (3) price sheet, addressing any Snow Sections that remain un-awarded, that the Vendor {Bidder} is interested in.

Under no circumstances shall any Vendor {Bidder}, when submitting a Phase Two (2) or Phase Three (3) price sheet after being requested to do so by the State, submit any supplemental or additional information regarding any other aspects of its previously-submitted bid. During Phase Two and Phase Three, the State will only consider the price sheets, and will not consider any additional or supplemental information or documents.

1. **Phase One (1)** – will apply to all Vendors {Bidders} that have submitted a responsive Quote {Proposal};
2. **Phase Two (2)** – will apply to all Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase One (1) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Two (2); and
3. **Phase Three (3)** – will apply to Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase Two (2) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Three (3).

In other words, only those Vendors {Bidders} whose original submitted Quotes were responsive to the requirements of the Bid Solicitation would be able to participate in, and submit pricing for Phase Two and Phase Three.

In accordance with the procedure set forth in Bid Solicitation Section 1.1 *Purpose and Intent*, after the review and evaluation of all Quotes received in response to Bid Solicitation Phase One was completed, the Bureau issued a preliminary notice. That preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One submitted Quotes. Thereafter, the Bureau commenced Phase Two to solicit Quotes pricing for those snow plowing and spreading sections for which no responsive Quotes had been received. On June 11, 2018, requests for Phase Two pricing were sent to all Vendors {Bidders} who submitted Quotes which were deemed initially responsive. Phase Two Quote submission pricing was due to the Bureau on June 18, 2018 at 2:00 p.m.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase Two was completed, the Bureau issued a second preliminary notice. That second preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One and Phase Two submitted Quotes. Thereafter, the Bureau commenced Phase Three to solicit Quote pricing for those snow plowing and spreading sections for which no responsive Quotes had been received in either Phase One or Phase Two. Requests for Phase Three pricing were sent to all responsive Vendors {Bidders} on June 26, 2018 with a Phase Three Quote submission due date of June 28, 2018 at 2:00 p.m.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase Three was completed, the Bureau issued a third preliminary notice. That third preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One, Phase Two and Phase Three submitted Quotes.

Thereafter, on August 22, 2018, the Bureau issued a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered.² On August 24, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O.s consistent with the Bureau's Recommendation Report.

On August 28, 2018, the Division received Sanchez's protest challenging the intended Blanket P.O. awards. Sanchez wrote:

As you are aware, Tony Sanchez LTD has been contracted with the State for over 30 years with successful snow plow removal on multiple routes in Northern New Jersey. In the referenced bid above, **we had full intentions of giving the supervisor for free.** We complied by providing on the line item request for total hourly price; the price of the supervisor **WAS** included in that, making the supervisor free of charge. Please refer to the enclosed page of the original bid in our application. The State neglected to provide us with a clarification request.

This is a formal request for a hearing to explore why our bid was rejected.

We respectfully request you review and reconsider our bid application. Our intent is to continue to have a successful working relationship in snow removal for Northern New Jersey. Thank you for your reconsideration. We can be reached at the above contact information should we need to discuss further or provide additional documentation. We are confident we will hear back from you upon review.

Included with Sanchez's protest were excerpts from the State-supplied price sheet/schedule that Sanchez submitted with its Quote. In relevant part,³ Sanchez submitted pricing on the following price lines with the all-inclusive hourly rate snow plowing superintendent line blank:

² The list of Vendors {Contractors} who are recommended to receive Blanket P.O. awards are listed in the attachment to the Bureau's August 22, 2018 Recommendation Report.

³ Sanchez's Quote included bids on price lines 37, 38, 40, 80, 81, 83, 91, 302, 318, and 327. Price lines 302, 318, and 327 are not relevant to this protest and therefore are not discussed in this sFinal Agency Decision.

LINE NO	DESCRIPTION	QTY	UNIT	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING-TRUCK ONLY	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING TRUCK & EQUIPMENT	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING SUPERINTENDENT	ALL-INCLUSIVE HOURLY RATE HAULING ONLY
37	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 218 NETCONG SUBREGION: N2 SNOW SECTION: 5218263 INT 80, FROM COUNTY RT 617, ALLAMUCHY TWP TO RT 206/183 ROXBURY TWP, INCLUDING RAMPS (MP 19.9 TO MP 27.2) RT 206, FROM RT 183 MT OLIVE TWP TO ACORN STREET, STANHOPE BORO (MP 95.7 TO 98.4) NUMBER OF TRUCKS REQUIRED: 8	1	HOUR	\$180.00 as	N/A as		\$180.00 as
38	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 218 NETCONG SUBREGION: N2 SNOW SECTION: 5218264 INT 80, FROM RT 46 NETCONG BORO TO COUNTY ROAD 634 (MAIN STREET) IN WHARTON (INCLUDING RAMPS AT LANDING RD & RT 183) (MP 26.3 TO MP 33.6) NUMBER OF TRUCKS REQUIRED: 8	1	HOUR	\$180.00 as	N/A as		\$180.00 as
40	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 246 NETCONG SUBREGION: N2 SNOW SECTION: 5227266 RT 16, FROM LEDGEWOOD CIRCLE, ROXBURY TWP TO SALEM STREET, RANDOLPH TWP (MP 6.0 TO MP 7.0) NUMBER OF TRUCKS REQUIRED: 8	1	HOUR	\$180.00 as	N/A as		\$180.00 as
80	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 227 ROCKAWAY SUBREGION: N2 SNOW SECTION: 5227261 RT 15 FROM DOVER TOWN AT RT 46 TO ESPANONG RD IN JEFFERSON (MP 6.0 TO MP 7.0) NUMBER OF TRUCKS REQUIRED: 6	1	HOUR	\$180.00 as	N/A as		\$180.00 as
97	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 229 YELLOW FRAME SUBREGION: N1 SNOW SECTION: 5229263 RT 206 FROM ACORN STREET STANHOPE BORO TO NORTH OF NEWTON TOWN INCLUDING NEWTON SQUARE (MP 98.4 TO MP 110.0) NUMBER OF TRUCKS REQUIRED: 4	1	HOUR	\$200.00 as	N/A		\$200.00 as
81	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 227 ROCKAWAY SUBREGION: N2 SNOW SECTION: 5227262 INT 80 FROM HOWARD BLVD MT ARLINGTON TO MOUNT HOPE AVENUE, ROCKAWAY TWP, INCLUDING RAMPS (MP 30.6 TO MP 35.4) NUMBER OF TRUCKS REQUIRED: 7	1	HOUR	\$180.00 as	N/A as		\$180.00 as
85	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 227 ROCKAWAY SUBREGION: N2 SNOW SECTION: 5227264 RT 15 FROM ESPANONG RD IN JEFFERSON TO RT 181 IN SPARTA (MP 6.85 TO MP 14.2) NUMBER OF TRUCKS REQUIRED: 7	1	HOUR	\$180.00 as	N/A		\$180.00 as

With respect to Sanchez's request for a hearing, pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an information hearing." N.J.A.C. 17:12-3.3(d). In consideration of Sanchez's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Sanchez's Quote and protest, the relevant statutes, regulations, and case law. The issues raised in Sanchez's protest are sufficiently clear such that a review of the record of this procurement 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 submitted by Sanchez on the written record. I set forth herein the Division's Final Agency Decision.

DISCUSSION

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 shall⁴ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added*.]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed within Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

The Vendor {Bidder} must submit its pricing using the format set forth in the State-supplied price sheet/schedule(s) accompanying this Bid Solicitation {RFP}.

The State's Price Sheet/Schedule solicits pricing for the following:

- A. Snow Plowing and Hauling Services;
- B. Snow Plowing Services/Other Equipment; and
- C. Spreading Services.

The Vendor {Bidder} is not required to submit pricing for all line items in order to be considered for award. The Vendor {Bidder} may submit pricing for one (1) or multiple line items.

A. Snow Plowing Services - Price Lines one (1) to 298:

1. The Vendor {Bidder} must submit an all-inclusive hourly rate to provide snow plowing services with one of the following options:
 - i. Snow plowing truck only; or

⁴ The terms "shall" and "must" are defined to mean "that which is a mandatory requirement." Bid Solicitation § 2.2 *General Definitions*. The terms "should" and "may" are defined to mean "that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

- ii. Snow plowing truck and equipment, as defined in Sections 3.12.2 and 3.12.3 of this Bid Solicitation {RFP}.
2. The Vendor {Bidder} must submit an all-inclusive hourly rate for the following:
 - i. Snow Plowing Superintendent; and
 - ii. Hauling Services.

B. Snow Plowing Services/Other Equipment – Price Lines 299 to 309:

1. The Vendor {Bidder} must submit an all-inclusive hourly rate for any other additional equipment offered.

C. Spreading Services – Price Lines 310 – to 375:

1. The Vendor {Bidder} must submit an all-inclusive hourly rate to provide spreading services.

In the event that a Vendor {Bidder} using *NJSTART* to submit a Quote {Proposal} uploads a price sheet/schedule attachment and completes the “Items” Tab in *NJSTART* (instead of entering a Unit Cost of \$1.00 as instructed), the price sheet/schedule attachment will govern.

[Bid Solicitation § 4.4.4.2 *Price Sheet/Schedule Attachment Instructions*.]

The Bid Solicitation provided further guidance on how to complete the State-supplied price sheet/schedule in section 4.4.4.3 *Use of “No Bid” Versus “No Charge” on the Price Sheet/Schedule*. This section stated:

If the Vendor {Bidder} is not submitting a price for an item on a price line, the Vendor {Bidder} must indicate “No Bid” on the State-supplied price sheet/schedule(s) attachment accompanying this Bid Solicitation {RFP}. If the Vendor {Bidder} will supply an item on a price line free of charge, the Vendor {Bidder} must indicate “No Charge” on the State-supplied price sheet/schedule(s) attachment accompanying this Bid Solicitation {RFP}. The use of any other identifier may result in the Vendor’s {Bidder’s} Quote {Proposal} being deemed non-responsive. If the Vendor {Bidder} leaves a price line blank, this shall mean that it was the Vendor’s {Bidder’s} intent to not submit a price for that price line.

[Bid Solicitation § 4.4.4.3 *Use of “No Bid” Versus “No Charge” on the Price Sheet/Schedule* (emphasis added).]

While Sanchez submitted a State-supplied price sheet/schedule as required by Bid Solicitation sections 4.4.4 *Price Schedule/Sheet* and 4.4.4.2 *Price Sheet/Schedule Attachment Instructions*, it did not include all of the information that was required. Bid Solicitation section 4.4.4.2 *Price Sheet/Schedule Attachment Instructions* required Vendors {Bidders} submitting Quotes for snow plowing services to include (1) an all-inclusive hourly rate to provide the plowing services (either providing the truck alone or with plowing equipment) plus all-inclusive hourly rates for (2) snow plowing superintendent and (3) hauling services. Bid Solicitation § 4.4.4.2 *Price Sheet/Schedule Attachment Instructions*. While Sanchez argues that it left the snow plowing superintendent rate column blank on the State-supplied price sheet because it intended to provide this item for free, the Bid Solicitation required Sanchez to indicate this intent by writing “No Charge” on the State-supplied price sheet/schedule. Because Sanchez did not include an all-inclusive hourly rate for snow plow superintendent on any of the price lines it quoted Sanchez’s Quote

contained a deviation from the Bid Solicitation's requirements. Sanchez's failure to indicate "No Charge" on an item that it asserts it intended to provide for free also represents a deviation from the Bid Solicitation's requirements. Accordingly, the issue is whether Sanchez's failure to include an all-inclusive hourly rate for snow plow superintendent hauling services on the State-supplied price sheet is a material deviation from the Bid Solicitation's requirements.

It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test for determining materiality as set forth by the court in Township of River Vale v. Longo Construction Co., 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is 'whether a specific non-compliance constitutes a substantial [material] and hence non-waiveable irregularity.'" In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995) (citing River Vale, *supra*, 127 N.J. at 216). The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. at 216.]

"If the non-compliance is substantial and thus non-waiveable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all." Id. at 222.

Based upon a review of the record and applicable law, I find that Sanchez's Quote contains a material deviation from the requirements of the solicitation making its Quote on the affected price lines nonresponsive. With respect to the previously mentioned River Vale factors, I find that Sanchez's failure to include the all-inclusive hourly rate for snow plow superintendent services deprives the State of its assurance that the Blanket P.O. will be entered into, performed, and guaranteed according to the Bid Solicitation's specified requirements. The Bid Solicitation advised all Vendors {Bidders} that they shall provide a superintendent that is available from initial call-out through the completion of the snow plow operations. Bid Solicitation § 3.12.1 *Vendor {Contractor} Superintendent Requirements*. But, because Sanchez did not include an all-inclusive hourly rate for these services, it would not be able to perform the required work, which all other Vendors {Contractors} would be required to provide. Further, failure to include the all-inclusive superintendent rate as required by the Bid Solicitation places Sanchez in a position of advantage over other Vendors {Bidders} who might have bid on the project had they known they could avoid performing superintendent oversight by not providing a rate for these services.

Further, under the circumstances, Sanchez's failure to write "No Charge" on the snow plow superintendent rate column where it intended to provide the item for free also represents a material deviation from the Bid Solicitation's requirements. While Sanchez's post-Quote opening commitment to provide the snow plow superintendent services required by the Bid Solicitation might assure the Division that the Blanket P.O. will be entered into, performed, and guaranteed according to the specifications, it also provides Sanchez with a competitive advantage undermining the necessary standard of competition for the rest of the Vendors {Bidders}.

Sanchez's State-supplied price sheet left the snow plow superintendent rate column blank, without any indication or ambiguity in the rest of its Quote supporting its stated intent to provide these required services free of charge. Even accepting Sanchez's stated intent to underwrite the costs of the snow plow superintendent services as true, the omission of the cost item on the State-supplied price sheet provided Sanchez with a competitive opportunity not provided to other Vendors {Bidders} because Sanchez would be provided with a post-Quote opening opportunity to render its Quote nonresponsive by telling the Bureau that it meant to bid an hourly rate. See On-Line Games, *supra*, 279 N.J. Super. at 599 ("Allowing [the bidder] to respond to a significant RFP requirement *after* it knew what other bidders had proposed and *after* it knew how its price and product stacked up against the other offerings is exactly what our bidding laws were intended to prevent."). Therefore, Sanchez's failure to abide by the requirement to expressly indicate "No Charge" on the State-supplied price sheet set forth in Bid Solicitation section 4.4.4.3 *Use of "No Bid" Versus "No Charge" on the Price Sheet/Schedule* or otherwise indicate its intent to provide the services free of charge represents a material, non-waiveable deviation under the circumstances. Finally, it is noted that New Jersey courts have held "a bidder's deviation from a price term in the solicitation is almost invariably material under a River Vale analysis . . . [because] manipulation of a price term poses one of the clearest threats to the major objective of our bidding laws to promote the honesty and integrity of those bidding and of the system itself." In re Request for Proposals #17DPP00144, Employee Benefits: Pharmacy Benefit Management Contract, 454 N.J. Super. 527, 564 (App. Div. 2018) (internal quotes and citations omitted). For these reasons, the Bureau's determination the Sanchez's Quote contained a material deviation from the Bid Solicitation's requirements rendering the Quote nonresponsive is upheld.

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation. Accordingly, I sustain the August 24, 2018 Notice of Intent to Award. This is my final agency decision with respect to the protest submitted by Sanchez.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey's eProcurement system. I encourage you to log into [NJSTART](http://www.njstart.gov) 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. Please monitor the New Jersey Department of Transportation's, the Division's and the [NJSTART](http://www.njstart.gov) websites for future bidding opportunities for these services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: REG

c: P. Michaels
L. Spildener
M. Groninger