



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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May 23, 2018

Via Electronic Mail [Aaramini@colonnelli.com] and USPS Regular Mail

Nino Colonnelli, President
Colonnelli Brothers, Inc.
409 South River Street
Hackensack, NJ 07601

Re: I/M/O Bid Solicitation #18DPP00222 Colonnelli Brothers, Inc.
Protest of Notice of Proposal Rejection
T2924 Snow Plowing Services by Area – NJDOT

Dear Mr. Colonnelli:

This letter is in response to your email of April 20, 2018, on behalf of Colonnelli Brothers, Inc. (“Colonnelli”) which was received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that email, Colonnelli protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00222 – T2924 Snow Plowing Services by Area - NJDOT (“Bid Solicitation”). The record of this procurement reveals that Colonnelli’s Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

By way of background, on February 13, 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 services for areas of State interstates and highways under the jurisdiction of the 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

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

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

On March 16, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On April 12, 2018, the Division's Proposal Review Unit opened 21 Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Colonnelli for failure to submit the *Ownership Disclosure Form* with its Quote.

In response to the Notice of Proposal Rejection, on April 20, 2018, Colonnelli wrote to the Division's Hearing Unit stating:

We are in receipt of the rejection letter for Bid#DPP00222 for Snow Plowing Services NJDOT. During the electronic bidding process which is new to us, we had some difficulties navigating through the process. In which we thought that upon submission and receipt of the confirmation of the quote, we had submitted all the proper documents.

Today we received a rejection letter and we are immediately responding with The State of New Jersey Division of Purchase Property Ownership Disclosure Form. Furthermore, Colonnelli Brothers Inc. is prequalified with The NJDOT and The State of New Jersey Department of the Treasury Division of Property Management and Construction. On our annual renewal please note that the same ownership is consistent and has not changed in several years.

Please accept our plea to have our quote re-considered and accept our proposal. Please see attached documents supporting our position.

In consideration of Colonnelli's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Colonnelli's proposal and 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 and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any [Blanket P.O.] nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all

stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

Further, 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 shall² 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*.]

If the requirements of N.J.S.A. 52:25-24.2 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These statutes and regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

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

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

² "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

Among those forms required to be submitted with the Quote is the *Ownership Disclosure Form* discussed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

Vendors {Bidders} using **NJSTART** to submit a Quote {Proposal} shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the [Division's website](#). This form is also available in **NJSTART** (www.njstart.gov).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the "Maintain Terms and Categories" Tab within its profile. With respect to ownership, Vendors {Bidders} are able to select one of the descriptors listed in the figure below:

<p>Category: Ownership Disclosure</p> <p>Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.</p> <p><i>Please select at most one category value</i></p> <p>Select</p> <p><input type="checkbox"/> The bidder is a non-profit entity and is exempt from the ownership disclosure requirement. See Disclosure of Non-Profit Officers and Directors below. (No Ownership Disclosure form is required.)</p> <p><input type="checkbox"/> There are no individuals, partnerships or corporations with a 10% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement. (No Ownership Disclosure form is required.)</p> <p><input type="checkbox"/> Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.</p>
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As shown in the screenshot below, Colonnelli did select an Ownership Disclosure category as required. However, the specific Ownership Disclosure category that Colonnelli selected required that it complete and submit the *Ownership Disclosure Form* either with its Quote or attach the form to its Vendor Profile within *NJSTART*.

Category: Ownership Disclosure

Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.

Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

As shown in the screenshot below, Colonnelli did not upload the *Ownership Disclosure Form* to its profile.

Vendor Profile - Colonnelli Brothers, Inc.

Organization Information Users Address Commodity Codes and Services Regions Terms & Categories **Attachments** Vendor Performance

Attachments Information

No Attachments found for this vendor.

Forms

No Form Attachments

Close Window

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Nor, as noted above, did Colonnelli submit the *Ownership Disclosure Form* with its Quote.

The *NJSTART* system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, Colonnelli did not comply with any of the options available to it for the submission of ownership information. Accordingly, Colonnelli's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

Notwithstanding Colonnelli's interest in competing for this procurement, to allow Colonnelli to submit the completed and signed *Ownership Disclosure Form* after bid opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2, a requirement that this Division is not authorized to waive. This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Proposal. However, 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 on this matter.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger