



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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April 28, 2020

*Via Electronic Mail Only* [jmorse@atlasflasher.com](mailto:jmorse@atlasflasher.com)

Jason Morse, Vice President  
Atlas Flasher & Supply Co. Inc.  
430 Swedesboro Avenue  
P.O. Box 488  
Mickleton, New Jersey 08056

Re: I/M/O Bid Solicitation #20DPP00483 Atlas Flasher & Supply Co. Inc.  
Protest of Notice of Intent to Award  
T2908 Attenuators: Truck-Mounted, Trailer-Mounted, and Maintenance and Repair Parts

Dear Mr. Morse,

This letter is in response to your email on behalf of Atlas Flasher & Supply Co. Inc. (Atlas Flasher) to the Hearing Unit of the Division of Purchase and Property (Division), dated January 17, 2020. In that letter Atlas Flasher protests the Notice of Intent to Award letter (NOI) issued on January 14, 2020, by the Division's Procurement Bureau (Bureau) for Bid Solicitation #20DPP00483 T2908 Attenuators: Truck-Mounted, Trailer-Mounted, and Maintenance and Repair Parts (Bid Solicitation).

By way of background, on September 19, 2019, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Transportation to solicit Quotes for Attenuators: Truck Mounted, Trailer Mounted, and Replacement Parts. See Bid Solicitation Section 1.1 *Purpose and Intent*. The intent of the Bid Solicitation was to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation, are most advantageous to the State, price and other factors considered. Ibid.

In accordance with the Bid Solicitation Instructions, potential Vendors {Bidders} were permitted to submit questions to the Bureau through the Division's **NJSTART** eProcurement system by 2:00 pm on October 3, 2019. See, Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*. There were no questions submitted by potential Vendors {Bidders}.

On November 1, 2019, the Proposal Review Unit opened three (3) Quotes received by the submission deadline of 2:00 pm EST, from the following Vendors {Bidders}:

1. Transpo Industries, Inc. (Transpo)
2. Traffic Safety Services, LLC (Traffic Safety)
3. Atlas Flasher

After conducting a preliminary review of the Quotes received, the Proposal Review Unit forwarded the Quotes to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.6 *Evaluation Criteria*.

On January 14, 2020, the Bureau completed the Recommendation Report that recommended a Blanket P.O. award to Traffic Safety. Accordingly, the Bureau issued the NOI advising all Vendors {Bidders} that it was the State's intent to award the Blanket P.O. to Traffic Safety for all groups.

On January 17, 2020, Atlas Flasher submitted a protest email to the Hearing Unit stating that:

Atlas Flasher was found to be Non-Responsive to the Attenuator bid based on the manufacturer certifications[;] however these items were scanned in with the required price sheets, along with other items called for. All Items quoted matched the specification requirements with no exceptions! Is it possible to protest in order to become a responsive bidder?

[See Atlas Flasher's January 17, 2020 email.]

In consideration of the Atlas Flasher's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the protest, the relevant statutes, regulations, and case law. The issues raised by Atlas Flasher 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 based on the written record. I set forth herein my Final Agency Decision.

With respect to the attenuators, the Bid Solicitation advised potential Vendors {Bidders} that the Traffix Scorpion and Blade makes/models shall be considered responsive to the technical requirements for the attenuators sought. See, Bid Solicitation Section 3.4.2 *Manufacturer's Standard Model Truck-Mounted Attenuator (Group 1, Price Line 1)*, Bid Solicitation Section 3.4.9 *NJDOT Specific Truck-Mounted Attenuator (Group 2, Price Line 8)* and Bid Solicitation Section 3.4.17 *Manufacturer's Standard Model Trailer-Mounted Attenuator (Group 3, Price Line 16)*. The Bid Solicitation did not limit Vendors {Bidders} to submitting Quotes for only those two make/models of attenuators; however, to ensure that any proposed attenuator met the requirements identified in Bid Solicitation Section 3.0 *Scope of Work*, the Bureau required that Vendors {Bidders} submit a manufacturer's certification with the Quote. Bid Solicitation Section 4.4.3 *Submittals* stated that:

The Vendor {Bidder} shall submit with its Quote a manufacturer's certification confirming that all items offered in response to this Bid Solicitation conform to the requirements set forth in Section 3.0 of this Bid Solicitation.

Manufacturer's certification shall be submitted on company letterhead and signed by an officer of the company.

On October 31, 2019, Atlas Flasher submitted its Quote in response to the Bid Solicitation. Atlas Flasher's Quote contained the documents shown on the screenshot below:

Quote 00003700 - Atlas Flasher & Supply Co. Inc.						
<a href="#">General</a>   <a href="#">Items</a>   <a href="#">Questions</a>   <a href="#">Subcontractors</a>   <a href="#">Terms &amp; Conditions</a>   <a href="#">Attachments(16)</a>   <a href="#">Evaluations</a>   <a href="#">Preference</a>   <a href="#">Reminders</a>   <a href="#">Summary</a>						
Files						
Name	Description	Confidential	Order	Attached By	Attached Date	
<a href="#">T2908 Revised Bid Solicitation</a> (view details)	Revised Bid Solicitation	<input type="checkbox"/>	1	Cynthia Sabol	10/31/2019	
<a href="#">Revised State Supplied Price Sheet</a> (view details)	Price Sheet	<input checked="" type="checkbox"/>	2	Cynthia Sabol	10/31/2019	
<a href="#">Offer and Acceptance</a> (view details)	Offer and Acceptance	<input checked="" type="checkbox"/>	3	Cynthia Sabol	10/31/2019	
<a href="#">Ownership Disclosure</a> (view details)	Ownership Disclosure	<input checked="" type="checkbox"/>	4	Cynthia Sabol	10/31/2019	
<a href="#">Activities in Iran</a> (view details)	Disclosure of Investment Activities in Iran	<input checked="" type="checkbox"/>	5	Cynthia Sabol	10/31/2019	
<a href="#">Investigations</a> (view details)	Disclosure of Investigations and Other Actions Involving the Vendor Form	<input checked="" type="checkbox"/>	6	Cynthia Sabol	10/31/2019	
<a href="#">Cooperative Purchasing</a> (view details)	Cooperative Purchasing Form	<input checked="" type="checkbox"/>	7	Cynthia Sabol	10/31/2019	
<a href="#">Subcontractors</a> (view details)	Subcontractors Utilization Form	<input checked="" type="checkbox"/>	8	Cynthia Sabol	10/31/2019	
<a href="#">Bidder Data</a> (view details)	Bidder Data Form	<input checked="" type="checkbox"/>	9	Cynthia Sabol	10/31/2019	
<a href="#">Business Registration</a> (view details)	Atlas Flasher Business Registration	<input checked="" type="checkbox"/>	10	Cynthia Sabol	10/31/2019	
<a href="#">Affirmative Action Compliance</a> (view details)	Atlas Flasher Certificate of Employee Information Report	<input checked="" type="checkbox"/>	11	Cynthia Sabol	10/31/2019	
<a href="#">Chapter 51</a> (view details)	Two Year Chapter 51 Certification and Disclosure of Political Contributions	<input checked="" type="checkbox"/>	12	Cynthia Sabol	10/31/2019	
<a href="#">Checklist</a> (view details)	T2908 Bid Solicitation Checklist	<input checked="" type="checkbox"/>	13	Cynthia Sabol	10/31/2019	
<a href="#">Amendment #1</a> (view details)	Amendment #1	<input checked="" type="checkbox"/>	14	Cynthia Sabol	10/31/2019	
<a href="#">Upgrades &amp; Accessories</a> (view details)	Upgrades & Accessories	<input checked="" type="checkbox"/>	15	Cynthia Sabol	10/31/2019	
<a href="#">Parts</a> (view details)	Parts	<input checked="" type="checkbox"/>	16	Cynthia Sabol	10/31/2019	

Forms

No Form Attachments

After reviewing the Quote submitted by Atlas Flasher, the Bureau found that there was no manufacturer's certification included in Atlas Flasher's Quote. As noted above, Bid Solicitation Section 4.4.3 *Submittals* required that the Vendor {Bidder} submit a manufacturer's certification with its Quote. Because the Bid Solicitation mandated that the manufacturer's certification be submitted with the Quote, the Bureau did not seek a clarification or request that Atlas Flasher provide a copy of the manufacturer's certification after the Quote opening. Accordingly, the Bureau concluded that Atlas Flashers' Quote deviated from the mandatory requirements of the Bid Solicitation Section 4.4.3 *Submittals*, and determined that Quote was non-responsive. The Bureau's Recommendation Report stated that:

Atlas did not provide the required manufacturer's certification with its Quote.

Bid Solicitation Section 4.4.3 (Specification Conformance) states, in pertinent part (emphasis added in bold): "The Vendor {Bidder} shall submit with its Quote a manufacturer's certification confirming that all items offered in response to this Bid Solicitation conform to the requirements set forth in Section 3.0 of this Bid Solicitation. Manufacturer's certification shall be submitted on company letterhead and signed by an officer of the company."

Without confirmation by way of manufacturer's certification, there was no way for the state to confirm that the products bid met the requirements set forth In Bid Solicitation Section 3.0.

As such, the Quote by Atlas is non-responsive.<sup>1</sup>

[See Recommendation Report, pg. 5-6.]

<sup>1</sup> The Bureau also deemed the Quote submitted by Transpo to be non-responsive to the requirements of the Bid Solicitation because Transpo failed to provide the required manufacturer's certification. See Recommendation Report, pg. 6.

In its protest email, Atlas Flasher states that “manufacturer certifications . . . were scanned in with the required price sheets, along with other items called for.” (See January 17, 2020 email). The Hearing Unit’s independent review of Atlas Flasher’s Quote reveals that there were no manufacturer’s certification included with the price sheet attachment. Furthermore, the review of all of Atlas Flasher’s Quote attachments reveals that there was no manufacturer’s certification included with its Quote.

However, the Hearing Unit’s review of the record reveals that Atlas Flasher proposed the TrafFix Scorpion attenuator in its submitted Quote, a pre-approved make/model listed in the Bid Solicitation. As noted above, the purpose of the manufacturer’s certification was to ensure that the proposed attenuators (and arrow board) met the requirements of the Bid Solicitation. By submitting a pre-approved make/model, Atlas Flasher’s Quote, as it relates to the attenuator, meets the requirements set forth in Bid Solicitation Section 3.0. Accordingly, Atlas Flasher’s submitted Quote should not have been deemed non-responsive, due to its failure to submit a manufacturer’s certification for the attenuator with its Quote.

In the light of the findings set forth above, I overturn the Bureau’s Notice of Intent to Award and remand this matter back to the Bureau for further review and evaluation. This is my final agency decision with respect to the protest submitted by Atlas Flasher.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RD

c: D. Warren  
S. Ghorbani  
K. Thomas  
J. Kerchner  
Transpo Industries, Inc.  
Traffic Safety Services, LLC