



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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August 7, 2020

Via Electronic Mail Only diexcavatingandtrucking@gmail.com

Patricia DePinto
D&I Excavating & Trucking, Inc.
18 Herbert Road
Robbinsville, NJ 08691

Re: I/M/O Bid Solicitation #20DPP00525 D&I Excavating & Trucking, Inc.
Protest of Notice of Intent to Award
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Ms. DePinto:

This letter is in response to your correspondence of July 20, 2020, to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of D&I Excavating & Trucking, Inc. (D&I). In that correspondence, D&I requests that the Division clarify why D&I did not receive any communications regarding its submitted Quote.

By way of background, on April 9, 2020, 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 Contracts 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 May 14, 2020, the Bureau issued Bid Amendment #1 extending the Quote Submission Due Date to 2:00 p.m. eastern time on June 2, 2020. On May 28, 2020, the Bureau issued Bid Amendment #2 responding to the questions posed by potential Vendors {Bidders}. Bid Amendment #2 also extended the Quote Submission Due Date to 2:00 p.m. eastern time on June 9, 2020. On June 9, 2020, at the closed of the Quote submission due date and time, the Division's Proposal Review Unit opened 215 Quotes, submitted by 197 Vendors {Bidders}. After conducting a review of the Quotes for compliance with the mandatory requirements for Quote submission, the Division's Proposal Review Unit issued several Notices of Proposal Rejection to those Vendors {Bidders} whose Quotes failed 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*. After the review and evaluation of all Quotes received in response to the Bid Solicitation was completed, the Bureau prepared 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. On July 13, 2020, 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.¹

On July 20, 2020, the D&I submitted an email to the Division's Hearing Unit questioning had not received any communication regarding it submitted Quote, when other Vendors {Bidders} has received notice that the Bureau had issued the NOI.² Specifically, D&I stated:

I am writing this letter to protest / Contest Non Award. I submitted my bid on June 8, 2020 I received confirmation (quote # 00004652) that the bid was submitted. When I went back to check on NJ Start, It was there. Everything seemed in order. On July 14, 2020 I was told by another contractor that the bids were awarded. On July 15, 2020 I sent numerous emails to find out what happened because we did not receive any notification for the bid we submitted. The first email back from the Treasury I gave my bid # 0004652. I was told when they put that number in all they could see was that the status of the bid is still Award In Process. I then proceeded to send more emails to get some answers. Then the next email stated that bid was not received. Our company D & I Excavating and Trucking has been plowing for the state for over 20 years. We have an outstanding reputation. When we are needed we have been called out for extra areas if they are shorthanded. I am hoping for complete clarification of these findings. I definitely know and can see that the bid was submitted. I hope that we will be able to somehow resolve this matter.

In consideration of D&I's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, 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. A basic precept of the Division's governing statutes and regulations requires that Quotes must be submitted by the deadline specified in the public advertisement and website notice. N.J.A.C. 17:12-2.1 to -2.14. The Division's governing regulations further require that "[i]n order to be eligible for consideration for award of [Blanket P.O.], the bidder's [Quote] shall ... [b]e submitted on or before the due date and time and at the place specified in the [Bid Solicitation]." N.J.A.C. 17:12-2.2(a), *emphasis added*.

Consistent with the governing regulations, the Bid Solicitation specifically advised all Vendors {Bidders} of the Quote submission requirements stating:

¹ The list of Vendors {Bidders} who are recommended to receive a Blanket P.O. award are listed in the Bureau's July 9, 2020 Recommendation Report.

² D&I's protest was not received by the Division's Hearing Unit until August 4, 2020. D&I's original July 20, 2020 email was sent an incorrect email address, specifically DDP.protest@treas.nj.gov and not DPP.Protest@treas.nj.gov. Because D&I has attempted to timely submit its protest, the Division will accept and render a decision on D&I protest.

1.3.2 SUBMISSION OF QUOTES

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

Vendors {Bidders} shall submit a Quote electronically through [NJSTART](#).

QUOTES NOT RECEIVED PRIOR TO THE QUOTE OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE OPENING ARE INDICATED ON THE BID SOLICITATION COVER SHEET AND ON THE “SUMMARY” TAB OF THE BID SOLICITATION WEBPAGE WITHIN [NJSTART](#).

IF THE QUOTE OPENING DEADLINE HAS BEEN REVISED, THE NEW QUOTE OPENING DEADLINE SHALL BE SHOWN ON THE POSTED BID AMENDMENT AND ON THE “SUMMARY” TAB OF THE BID SOLICITATION WEBPAGE WITHIN [NJSTART](#).

Inquiries concerning the use of [NJSTART](#) may be directed to njstart@treas.nj.gov.

The Division will not respond to substantive questions related to the Bid Solicitation or any other Blanket P.O. via this e-mail address. For inquiries related to substantive questions refer to Section 1.3.1 (Electronic Question and Answer Period).

Additionally, the Bid Solicitation recommended that Vendors {Bidders} review the Division’s Quick Reference Guides (QRG) for assistance on how to submit a Quote.

1.3.3 VENDOR {BIDDER} SUPPORT

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of [NJSTART](#) terms, and helpdesk contact information.

The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote using the [NJSTART](#) process. It is the Vendor’s {Bidder’s} responsibility to ensure that the [NJSTART](#) Quote and attachments have been properly submitted.

Further, Bid Solicitation Section 4.3.1 [NJSTART Submission of Quote](#) again stated “Vendors {Bidders} may refer to the *Vendor Registration* and *Submit a Quote* QRGs for additional instructions detailing how to enroll in [NJSTART](#) and submit a [NJSTART](#) electronic Quote. QRGs are located on the [NJSTART Vendor Support Page](#).” The *Submit a Quote* QRG provides Vendors {Bidders} with step by step instructions and screenshots on how to locate a Bid Solicitation, how to create a Quote and upload

attachments, and how to submit a Quote in response to that Bid Solicitation.³ See QRG entitled *Submit a Quote* pgs. 10-20.

A review of the record of this procurement reveals that D&I did create a Quote and that it did hit the “Submit Quote” button.

Quote 00004652 - D & I EXCAVATING & TRUCKING										
General	Items	Questions	Subcontractors	Terms & Conditions	Attachments(1)	Evaluations	Preference	Reminders	Summary	Back to Bid
Header Information										
Quote #:	00004652	Bid #:	20DPP00525	Status:	Submitted					
Organization:	Division of Purchase and Property			Delivery Days:	0	Discount Percent:	0.0			
Description:	T0777 - Snow Plowing and Spreading Services - NJDOT			Alternate Bid:	No	Shipping Terms:				
Bid Flag:	No	Payment Term:				Info Contact:				
Freight Terms:				Quote Total	\$0.00					
Ship Via Terms:				User Last Updated:	Damiano Depinto	User Created:	Damiano Depinto			
Promised Date:				Print format:	Quote					
Comment:				Vendor has not reviewed terms & conditions.						
Date Last Updated:	06/08/2020 07:37:17 PM			Bid Acknowledgements:						

However, in completing its submission, as shown on the screenshot below, D&I designated its Quote as a “No Bid”:

Quote 00004652 - D & I EXCAVATING & TRUCKING

General Items Questions Subcontractors Terms & Conditions Attachments(1) Evaluations Preference Reminders Summary Back to Bid

General Evaluations

This is a "No Bid" quote.

Discount only quotes indicate discount amount off of list catalog price.

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Importantly, the QRG notes the following with respect to a Vendor’s {Bidder’s} selection of a Quote as “No Bid”, “*Note: if the Vendor {Bidder} checks “No Bid” the Quote will NOT be submitted nor appear in the Bid Tab after opening.*” See QRG entitled *Submit a Quote* p. 11, *emphasis in the original*.

The responsibility for ensuring that all necessary forms and other submittals are properly completed, and/or uploaded into *NJSTART*, and for ensuring that a Quote has been submitted, necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Although the Division has broad discretion to select among qualified and responsive bidders in public contracting matters, the discretion afforded to the Director, “is not limitless. ‘In line with the policy goal of thwarting favoritism, improvidence, extravagance, and corruption, the Division may not award a contract to a bidder whose proposal deviates materially from the RFP’s requirements.’” *17DPP00144*, 454 N.J. Super. at 559 (quoting *Barrick v. State*, 218 N.J. 247, 258-59 (2014)). For that reason, the Division’s governing regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State’s bidding process. Notably, “to be eligible for consideration for award of contract, the bidder’s proposal shall conform to the following requirements or

³ <https://www.state.nj.us/treasury/purchase/njstart/pdf/Create-a-Quote.pdf>

be subject to designation as a non-responsive proposal for non-compliance” including being submitted by the date and time specified in the Bid Solicitation. N.J.A.C. 17:12-2.2(a). If the requirements of N.J.A.C. 17:12-2.2(a) are not met, a Quote “shall be subject to automatic rejection.” N.J.A.C. 17:12-2.2(b).

Here, unfortunately, D&I designated its Quote as a “No Bid”; therefore, the Quote did not appear in the list of Quotes properly submitted. Despite D&I’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 is unable to accept D&I’s Quote as such acceptance would un-level the Vendor {Bidder} playing field as the Division received 215 Quotes that were properly submitted by the submission deadline.

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation for award. Accordingly, I sustain the July 13, 2020, Notice of Intent to Award. 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 Quote.

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. I encourage you to monitor the New Jersey Department of Transportation’s website and the Division’s *NJSTART* eProcurement website for future bidding opportunities unawarded price lines for these services related to the current procurement. You should also log into *NJSTART* 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. This is my final agency decision with respect to the protest submitted by D&I Excavating & Trucking, Inc.

Sincerely,



Maurice A. Griffin
Acting Director

c: M. Dunn
R. Regan
K. Popso
K. Centofanti