



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 4, 2020

Via Electronic Mail Only MRV34LLC@GMAIL.COM

Merve Turker, President
MRV Express, LLC
931 King Way
Brenigsville, PA 18031

Re: I/M/O Bid Solicitation #20DPP00525 MRV Express, LLC
Protest of Notice of Intent to Award
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Turker:

This letter is in response to your July 18, 2020, correspondence to the Division of Purchase and Property's (Division) Hearing Unit, submitted on behalf of MRV Express, LLC (MRV). In that correspondence, MRV protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) on July 13, 2020. The NOI advised all Vendors {Bidders} of the Division's intent to award Master Blanket Purchase Orders (Blanket P.O.) to several Vendors {Bidders} who submitted Quotes in response to Bid Solicitation #20DPP000525 - T0777 Snow Plowing and Spreading Services - NJDOT (Bid Solicitation).

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*, which states in relevant part as follows:

6.7 EVALUATION CRITERIA

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate Quotes received in response to this Bid Solicitation.

- A. Experience of Vendor {Bidder} (Revised Attachment #1): The Vendor {Bidder} must have at least two (2) years of experience performing the specific service (snow plowing and/or spreading) on public roadways in order to be considered for award of that service;
- B. Equipment Preference: The type of Vendor {Bidder} equipment bid on the State-Supplied Price Sheet. See Section 6.7.1, subsections included; and
- C. Price: The Vendor's {Bidder's} pricing provided on the State-Supplied Price Sheet for each price line. See Section 6.7.1, subsections included, for information regarding the pricing evaluation methodology.

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 Blanket P.O.s consistent with the Bureau's Recommendation Report.¹ With respect to the Quote submitted by MRV, the Bureau's Recommendation Report in part, states the following:

The Quote submitted by MRV Express LLC (MRV) was deemed by the Bureau to be responsive to all mandatory requirements of the Bid Solicitation. The Vendor {Bidder} is in compliance with ownership disclosure, certification of non-involvement in prohibited activities in Iran, business registration, MacBride Principles, disclosure of investigations and actions involving bidder, and source disclosure requirements.

MRV submitted a Quote for Spreading Services only. The Bureau determined that the Vendor {Bidder} was responsive for all Price Lines submitted as part of its Quote.

[July 9, 2020 Recommendation Report, p. 62.]

The Bureau did not recommended MRV for an award of any price lines.

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.

On July 18, 2020, the Division received MRV's protest challenging the intended Blanket P.O. awards. Specifically, MRV states as follows:

I am and many of us protesting for almost half of the New Jersey sections to one company, As couple of company that I know and we are minority company, I am WBE and I would like to request what percentage you give contract to minority companies, 25% of the state contract suppose to give (sic) to minority companies, Please provide us a break down.

In consideration of MRV'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.

First, MRV has not specified which company it disputes being awarded multiple price lines. However, I note that the Bureau's Recommendation Report reveals that numerous companies were listed as the intended awardee for multiple price lines. For those Vendors {Bidders} who are listed as the intended awardee for multiple price lines, the Bid Solicitation was clear, advising all Vendors {Bidders} as follows:

Please note: When a Vendor {Bidder} submits a rate for a specific price line, it is certifying that it shall provide the required quantity of trucks and Class of trucks called for by that specific price line. It is also further certifying, that it shall provide all equipment associated with the Preference that it has selected by utilizing the above reference directions. If awarded, the Vendor {Bidder} shall be contractually obligated to provide the services, trucks, and equipment as indicated on its State-Supplied Price Sheet.

[Bid Solicitation Section 4.4.5.2.2 *Spreading Services Price Sheet Instructions.*]

Accordingly, those Vendors {Bidders} who submitted Quote for multiple price lines, certified that they had the ability to provide the required number of trucks and equipment necessary to complete the work awarded.

Second, as to the award of contracts to Blanket P.O.s to women owned business or minority owned business, the Division encourages minority, women, and veteran owned businesses, as well as small businesses to submit Quotes in response to all Bid Solicitations; however, I note that the current governing statutory law and case law do not permit the Division to set contracts aside for women owned businesses or minority owned businesses.² That being said, all business are provided the opportunity to submit a Quote

² In 1984, the New Jersey legislature adopted the New Jersey Set-Aside Act, N.J.S.A. 52:32-17 et seq. to address historic discrimination based upon race and gender in the State's procurement practices. However, 1989, the United State Supreme Court concluded that that a race-based set-aside program established by a local government entity was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it was not justified by a compelling interest and narrowly tailored to accomplish a remedial purpose and that government set-aside programs based on racial classifications must adhere to strict constitutional standards, including that such programs or policies must be justified based on strong evidence of actual discrimination carried out by the governmental entity and that the program or policy must be narrowly tailored to remedy the discrimination. *City of Richmond v.*

in response to the Bid Solicitation and awards were made to those Vendors {Bidders} whose submitted Quote were most advantageous to the State price and other factors considered, consistent with the evaluation criteria set forth in Bid Solicitation Section 6.7 *Evaluation Criteria*. Here, among those Vendors {Bidders} listed as an intended awardee in the Bureau's July 9, 2020 Recommendation Report, one company is currently registered with the State as a women owned business and another is registered as both a women owned business and a minority owned business.³

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 MRV Express, LLC.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

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

J.A. Croson Co., 488 U.S. 469 (1989). Following the United States Supreme Court's decision, in 1989, Governor Thomas Kean issued E.O. No. 213 establishing the "Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts" (the "Commission"). The Commission issued its report in 1993, and thereafter, Governor James J. Florio issued Executive Order No. 84 (1993) establishing a set-aside program mandating that minority- and women-owned firms be awarded specific percentages of public contracts. In 2001, a non-minority owned company claimed wrongful denial of bid opportunity for State jobs because of affirmative action programs favoring MBE and WBE firms. *GEOD v. State of New Jersey*, Civil Action No. 01-2656 (SRC) (D.N.J.). In 2003, the Set-Aside Act was permanently enjoined by a Consent Decree entered by the federal district court in response to that matter. Following entry of the Consent Decree, Governor McGreevey issued Executive Order No. 71 (2003) eliminating set-aside goals for minority- and women-owned businesses and instead instituting a race- and gender-neutral small business set-aside program.

³ MRV did self-identify as a women owned business on the *Offer and Acceptance Page*; however, the company is not registered as a small business, women owned business, or minority owned business with the New Jersey Department of the Treasury Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit.