



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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September 10, 2025

Via Electronic Mail Only to agrano@persistentconstruction.com

Anthony Grano
Persistent Construction Company
58 Industrial Ave.
Fairview, NJ 07022

Re: I/M/O Bid Solicitation #25DPP01134 Persistent Construction Company
Protest of Notice of Intent to Award
T0777 – Snow Plowing and Spreading Services - NJDOT

Dear Mr. Grano:

This final agency decision is in response to your letter delivered via electronic mail on behalf of Persistent Construction Company (“Persistent”) received by the Division of Purchase and Property’s (“Division”) Hearing Unit on September 8, 2025 (“Protest”). In that letter, Persistent protests the Procurement Bureau’s (“Bureau”) September 5, 2025, Revised Notice of Intent to Award letter (“September NOI”) issued for Bid Solicitation #25DPP01134 – T0777 Snow Plowing and Spreading Services - NJDOT (“Bid Solicitation”) which rescinded the prior award of Price Lines 43, 65 and 67 to Persistent.

By way of background, on January 23, 2025, the Bureau issued the Bid Solicitation on behalf of New Jersey Department of Transportation (“NJDOT”). The purpose of the Bid Solicitation was to solicit Quotes for snow plowing and spreading services on all State interstates and highways under the jurisdiction of the NJDOT. Bid Solicitation Sec. 1.1, *Purpose and Intent*. Bid Solicitation Section 1.2, *Background*, cautioned Bidders that this Bid Solicitation addressed the State’s current requirements. Pursuant to Bid Solicitation Section 3.17, *State Supplied Price Sheet Instructions*, there were three (3) categories (and accompanying price sheets) that Bidders could submit bids for. The first category is for Snow Plowing and Hauling Services. The second category is for Other Equipment that the Bidder can provide to the NJDOT. The third category is for Spreading Services. Pursuant to Bid Solicitation Section 1.1 *Purpose and Intent*, for the first category (Price Lines 1-317, Snow Plowing and Hauling Services), “the Division intends to award one (1) responsive Bidder per Price Line for Snow Plowing and Hauling Services, Class A Snow Plowing Truck – With Bidder Provided Snow Plow (1st preference), or Class A Snow Plowing Truck – With NJDOT Provided Snow Plow (2nd Preference).” (Emphasis in the original). With respect to the second category (Price Lines 318-326, Snow Plowing and Hauling Services; Other Equipment – Loaders and Graders), “the Division Intends to award all Price Lines to all responsive Bidders for Snow Plowing and Hauling Services; Other Equipment – Loaders and Graders.” Id. Finally, for the third category (Price Lines 327-392, Spreading Services), “the Division intends to award one (1) responsive Bidder per Price Line.” Id.

In accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on February 6, 2025, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. Representatives from eight (8) potential bidding entities attended (Mathis Construction, Jersey Construction, Inc., Mark Veniero Trucking, Seashore Asphalt Corp., IEW Construction Group, Inc., J&K Toro Trucking, Gomez Brothers Trucking, and Encalada Trucking).

In accordance with Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders until 2:00 P.M. Eastern Time on February 13, 2025. One (1) Bid Amendment was issued for this Bid Solicitation, which provided revisions to the Bid Solicitation and responses to questions received from potential Bidders.

On April 4, 2025, the Division's Proposal Review Unit ("PRU") opened one hundred seventy-six (176) Quotes. The Quotes submitted by BLM Contractors LLC, Kaya Trucking, Longford Landscapes & Excavation, Inc., Mathis Construction Co Inc., Samson Concrete and Masonry, Shimp Farms, South Jersey Contracting LLC, V.A. Spatz and Sons Construction, Inc., and Woolston Construction Company, were Automatically Rejected by the PRU pursuant to the provisions of N.J.A.C. 17:12-2.2. Protests were received from Longford Landscapes & Excavation, Inc., Samson Concrete and Masonry, South Jersey Contracting LLC, V.A. Spatz and Sons Construction, Inc., and Woolston Construction Company. Final Agency Decisions responding to the protests and upholding the PRU automatic rejections were sent to these bidders and no appeals were filed in response to the Final Agency Decisions stemming from PRU rejections. The PRU also issued formal notice and a warning letter to four (4) Bidders that they were not in compliance with Business Registration Certificate requirements. The remaining one hundred sixty-eight (168) Quotes were deemed administratively complete by the Proposal Review Unit and released to the Bureau for further review and evaluation.

The Bureau determined that the Quotes submitted by Colonnelli Brothers, Inc., Whittendale Excavating Corp., Eazy Trucking LLC, NKO Trucking LLC, UIN Transportation Inc., Liberty US Transport LLC, M. Matias Trucking Inc., MYK Trucking LLC, Garden State Pavement Solutions LLC, Ankapoint LLC, Ken Nagy Jr and Son Trucking LLC, Seashore Asphalt Corpl, J&D Trucking Inc, DI Trucking LLC, Stratton Contracting LLC, and JDG Transport LLC, were fully non-responsive due to non-compliance with mandatory elements of the Bid Solicitation and therefore ineligible for award. Recommendation Report at pgs. 49-52. The Bureau found that the remaining Quotes met, and complied with, the mandatory requirements for at least one award-eligible Price Line of the Bid Solicitation.

Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on June 27, 2025, the Bureau issued a Notice of Intent to Award letter ("June NOI") advising all Bidders that it was the State's intent to award Contracts to the 64 Bidders set forth in the chart on pages 1-14 of the Recommendation Report dated June 25, 2025 ("Recommendation Report"). Several protests were received in response to the June NOI and were resolved. On July 15, 2025, the Bureau issued a Revised Notice of Intent to Award letter ("July NOI"). No protests were received in response to the July NOI.

On September 8, 2025, prior to the close of the protest period set forth in the September NOI, Persistent submitted a Protest challenging the Division's determination that the award of Price Lines 43, 65 and 67 awarded to Persistent were to be rescinded. According to the Revised Recommendation Report dated September 4, 2025 ("Revised Recommendation Report"), while Persistent responded to the request by NJDOT to inspect Persistent's equipment, Persistent failed to schedule an inspection so NJDOT could not ascertain if Persistent possessed the equipment necessary to service the lines awarded.

Although Persistent requested an in-person presentation as permitted by N.J.A.C. 17:12-3.3(e), it should be noted that “[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 informal hearing.” N.J.A.C. 17:12-3.3(d). I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the Bureau’s Recommendation Report, the relevant statutes, regulations, case law, and the protest submitted by Persistent. The issues raised in the protest were 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 Persistent on the written record, as such an in-person hearing is not warranted. I set forth herein the Division’s Final Agency Decision.

DISCUSSION

The New Jersey Courts have long recognized that the purpose of the public bidding process is to “secure for the public the benefits of unfettered competition.” Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the “public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good.” Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey’s statutory procurement scheme is “to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)).

When evaluating Quotes received, the Division is charged with ensuring that the Contract is awarded to that responsible Bidder whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Bid Solicitation Section 1.1 *Purpose and Intent*. A responsive Quote is a Quote that is deemed by the Division and/or evaluation committee to have adequately addressed all material provisions of a Bid Solicitation’s terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3. A Quote that is not complaint or responsive to the material requirements of the Bid Solicitation shall not be eligible for further consideration for award of a Contract and the bidder offering said Quote shall receive notice of the rejection of its Quote. N.J.A.C. 17:12-2.7(c).

It is firmly established in New Jersey that material deviations may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co., *supra*, 138 N.J. at 315, the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, the court declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity.” In re Protest of Award of On-Line Games Prod. and Operation Servs. Contract, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, *supra*, 127 N.J. Super. 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. Super. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” On-Line Games, supra, 279 N.J. Super. at 595 (citing River Vale, supra, 127 N.J. Super. at 222).

In their Protest, Persistent claims that they “submitted our registrations on the same day they were due. We were in the process of trying to assemble all our trucks and subs in one location, were not aware that we could schedule supervisor inspections on Saturdays. We were told weekdays only.” Protest pages 1-2. With their Protest, Persistent included an email on August 19, 2025 from Anthony Grano to Derek Milik at NJDOT (“August 19, 2025 email”) stating “Good Afternoon Derek, I apologize for the miscommunication please see attached for truck registrations by route T”. The email contained photos of fourteen (14) vehicle registration cards. Three (3) vehicle registration cards purporting to be for trucks necessary for Price Line 43 were in the name of Donerite Construction Inc. (“Donerite”). Three (3) registration cards purporting to be for trucks necessary for Price Line 65 were in the name of Matco Enterprises Inc. and an additional three (3) registration cards purporting to be for trucks for the same Price Line were in the name of Persistent. Five (5) registration cards purporting to be for trucks for Price Line 67 were in the name of Persistent.

In a letter to Persistent dated August 8, 2025, (“NJDOT Letter”) NJDOT informed Persistent that they were the intended awardee under the Bid Solicitation of Price Lines 43, 65 and 67 and that an Equipment Inspection would be conducted “of all trucks and snow plowing equipment. At the time of the inspection, each vehicle and equipment must be physically on site and presented with a valid vehicle registration”. NJDOT Letter page 1. The NJDOT Letter requested a list of at least three (3) previous contracts of similar size and scope that Persistent had completed. Finally, the NJDOT Letter referred to the Price Lines, preferences, and number of trucks that had been awarded to Persistent as well as a list of Persistent’s approved subcontractors: Matco Enterprises DBA Matina & Son, and Frank Macchione Construction, Inc. It is important to note that Donerite was not listed on Persistent’s Subcontractor Utilization Form submitted with their Quote as required pursuant to Bid Solicitation Section 3.13.8 *Subcontractor Utilization Plan*, nor on the NJDOT Letter and therefore could not be considered an approved subcontractor under any contract that might arise from this Bid Solicitation, which according to the August 19, 2025 email was Price Line 43, regardless of whether any inspection of Persistent’s equipment (and that of its subcontractors) had been performed.

Inspections of equipment are set forth for in Bid Solicitation Section 8.7 *State’s Right to Inspect Bidder’s Facilities*, and Bid Solicitation Section 4.12.2 *Equipment Inspections*, both of which state that all bidders’ facilities, vehicles, and equipment, whether provided by the Contractor or the NJDOT, shall be subject to inspection to ensure the bidder can perform the contract. The NJDOT Letter advised Persistent that the NJDOT needed to inspect the equipment of Persistent and any approved subcontractors they were intending to use for the three Price Lines they were awarded. There were numerous telephone calls between Anthony Grano of Persistent and Derek Milik of NJDOT. In telephone calls on August 11, 2025 and August 12, 2025 Mr. Grano informed Mr. Milik that he felt the timeframe for inspections was too short and it would be hard and nearly impossible to get all of the trucks to one location for inspection. During these telephone calls, Mr. Milik informed Mr. Grano that Persistent had until Tuesday (August 19, 2025) to complete the inspection and that if Mr. Grano selected a location, Mr. Milik would send someone out to inspect the equipment. On August 19, 2025, the due date for inspection, Mr. Grano informed Mr. Milik by telephone that he read the email wrong and that he has registrations for the trucks that he could send in but the trucks and plows would not be available for inspection. Mr. Milik informed Mr. Grano that he could send the registrations to his email but that the inspection would still be incomplete. Persistent failed to schedule an

inspection for their equipment and that of their approved subcontractors for the three (3) Price Lines they were awarded.

In the numerous telephone conversation between Mr. Milik, and Mr. Grano, Persistent did not request an inspection on a particular day (i.e. Saturday). Without a physical inspection of equipment as permitted by the Bid Solicitation, the State cannot be sure that a bidder possesses the correct quantity of trucks, that those trucks are of the proper class as required pursuant to the Price Lines in the Bid Solicitation and that the equipment is mechanically sound, in good working order and, capable of performing all tasks required under the Bid Solicitation. Without the inspection of equipment, the State cannot be assured “that the contract will be entered into, performed and guaranteed according to its specified requirements” as required pursuant to River Vale, supra. For a contract that impacts the public’s health, safety, and welfare significantly, the Division and NJDOT’s inspection process is a reasonable action to guarantee that its awarded contractors will be able to complete the required and are in possession of the required equipment.

Finally, in their Protest, Persistent stated that “We also know that other contractors did not receive inspections and were not removed or rescinded from award”. Protest, page 2. This point cannot be addressed in this Final Agency Decision as this argument lacks the specificity required for a response by the Division.

Although the State has broad discretion to select among qualified and responsive Bidders in public contracting matters, the discretion afforded to the Director, “is not limitless.” See, In re Request for Proposals #17DPP00144, 454 N.J. Super. 527, 559 (App Div. 2018). “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 [RFQ’s] requirements.” Ibid., 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, “a proposal that is not...responsive to the material requirements of the [RFQ] shall not be eligible for further consideration for award of contract, and the bidder offering said proposal shall receive notice of the rejection of its proposal.” N.J.A.C. 17:12-2.7(c).

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the Contract be awarded as outlined in the Revised Recommendation Report. Accordingly, I sustain the September 5, 2025, Revised Notice of Intent to Award. This is my final agency decision.

Thank you for your company’s interest in doing business with the State of New Jersey. I encourage you to 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 the Division’s final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,


Cory K. Kestner
Acting Chief Hearing Officer

CKK:CMD

c: C. Clarke
M. Maciolek