



## State of New Jersey

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

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*Acting Director*

September 12, 2025

*Via Electronic Mail Only to Mlaconelli@klehr.com*

Michael A. Iaconelli, Esq.  
Klehr Harrison Harvey Branzburg LLP  
10000 Lincoln Drive East  
Suite 201  
Marlton, NJ 08053

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

Dear Mr. Iaconelli:

This final agency decision is in response to your letter delivered via electronic mail on behalf of BVW Services, LLC (“BVW”) received by the Division of Purchase and Property’s (“Division”) Hearing Unit on September 10, 2025 (“Protest”). In that letter, BVW 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issued for Bid Solicitation #25DPP01134 – T0777 Snow Plowing and Spreading Services - NJDOT (“Bid Solicitation”) which rescinded the prior award of one hundred ten (110) Price Lines to BVW.

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 (1<sup>st</sup> preference), or Class A Snow Plowing Truck – With NJDOT Provided Snow Plow (2<sup>nd</sup> 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"), and that the awarded bidders were required to confirm the price lines they were accepting prior to the end of the protest period. 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 10, 2025, prior to the close of the protest period set forth in the September NOI, BVW submitted a Protest challenging the Division's determination that the award of the 110 awarded Price Lines for BVW were to be rescinded. According to the Revised Recommendation Report dated September 4, 2025 ("Revised Recommendation Report"), while BVW responded to the request by NJDOT to inspect BVW's equipment, BVW failed to schedule an inspection so NJDOT could not ascertain if BVW possessed

the equipment necessary to service the lines awarded. In their Protest, BVW essentially claims that they made their “facility” available for inspection, and that it was willing to make its equipment available on dates of its choosing, not in coordination with and well beyond those offered by NJDOT.

Although BVW 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 BVW. 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 BVW 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 compliant 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).

**A. The Bid Solicitation Provided Bidders with Notice That Inspections Could Occur to Ensure an Awarded Contractor had the Ability to Perform the Contract.**

In their Protest, BVW essentially claims that they made their “facility” available for inspection, and that it was willing to make its equipment available on dates of its choosing well beyond those offered by NJDOT, and that it was not required to have its trucks and plows available for inspection until after October 1<sup>st</sup>, the date BVW claims is the start of the contract term. BVW’s misinterpretation of the applicable Bid Solicitation sections leads to its incorrect conclusion regarding its obligations, and its failure to meet the clear requirements set forth therein.

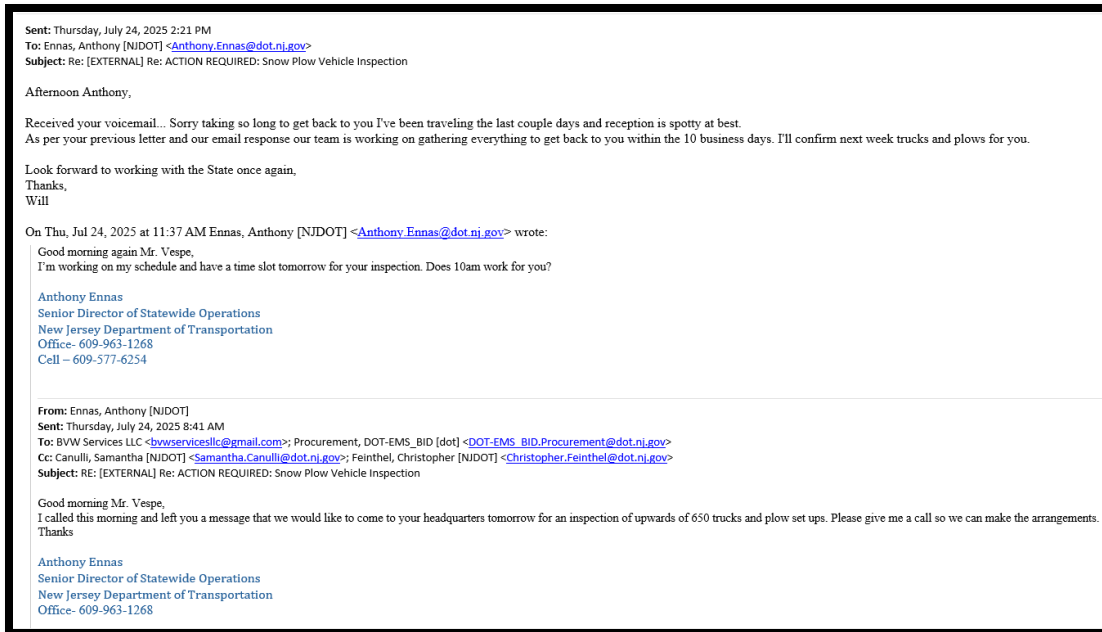
Inspections of equipment are set forth for in Bid Solicitation Section 8.7 *State’s Right to Inspect Bidder’s Facilities*, and Bid Solicitation Section 4.12.2 *Equipment Inspections*, both of which state that all bidders’ facilities, vehicles, and equipment, whether provided by the Contractor or the NJDOT, shall be subject to inspection to ensure the bidder can perform the contract. The NJDOT Letter advised BVW that the NJDOT needed to inspect the equipment of BVW and any approved subcontractors they were intending to use for the 110 Price Lines they were awarded. BVW’s first argument is akin to a manufacturer bidding on work to manufacture parts, and arguing it can perform the contract because it owns a building that fails to contain any manufacturing equipment. BVW was provided with abundant notice in the Bid Solicitation, as further explained below, that if it chose to bid 1<sup>st</sup> Preference, then it would need to provide its equipment for inspection.

Moreover, BVW was provided with ample opportunities to present its equipment to satisfy the inspection requirements on a date of its choosing, and at its own facility, to which BVW affirmatively stated that it was working to get the information required for the inspection instead of voicing opposition to the required inspection. As BVW notes in its Exhibit 1, Confirmation of June 25 Award, “We acknowledge that for all awarded Price Lines in the Snow Plowing and Hauling Services category (Lines 1–317), BVW will furnish our own plows in full compliance with Section 3.17.1 of the solicitation.” In a letter to BVW dated July 17 2025, (“NJDOT Letter”) NJDOT confirmed to BVW that they were the intended awardee under the Bid Solicitation of 110 Price Lines<sup>1</sup>, and that an Equipment Inspection would be conducted “of all 635 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. Finally, the NJDOT Letter referred to the Price Lines, preferences, and number of trucks that had been awarded to BVW.

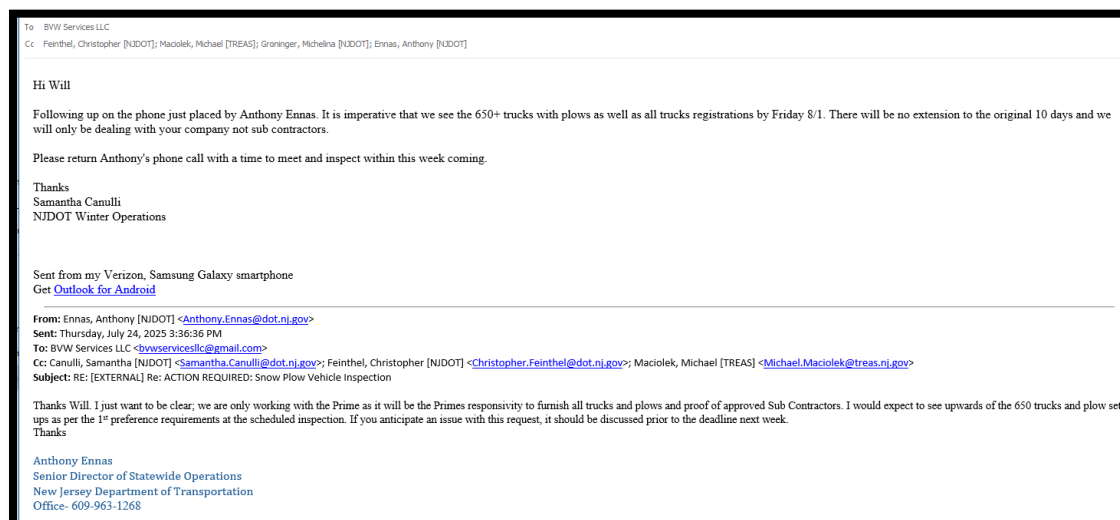
This chain continued on the same day with the following correspondence by email:

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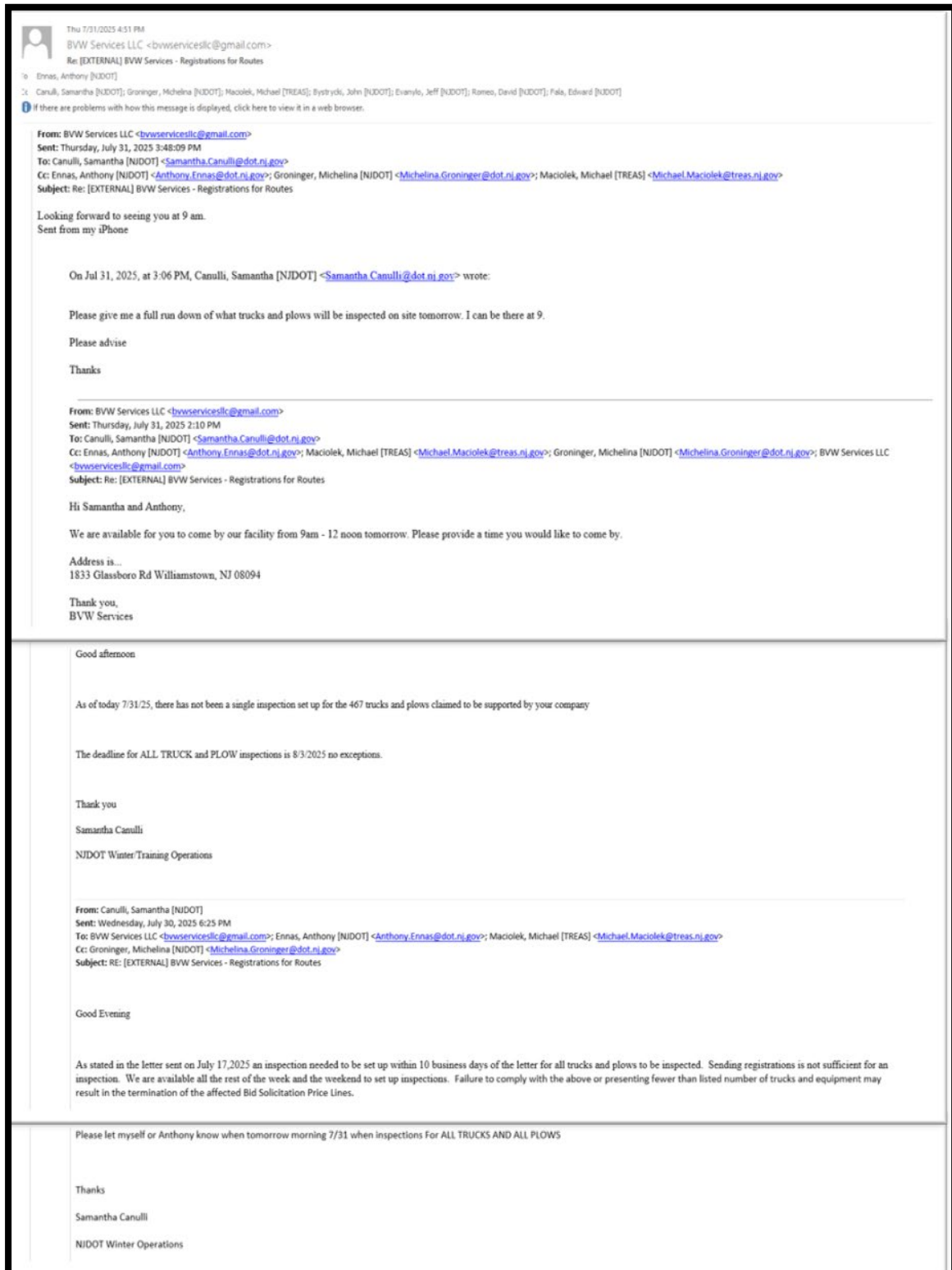
<sup>1</sup> The 110 award Price Lines, as noted in the July 17, 2025, letter to BVW, required six hundred thirty-five (635) trucks and snow plowing equipment.



This email chain continued onto July 25, 2025, with the following exchange, both confirming details from a phone call, and reiterating that NJDOT expected to see all required trucks and plows at the inspection, and that it was the Prime Contractors responsibility to present all of the required equipment, including that of any approved sub-contractors, by the inspection deadline:



The email correspondence continued in a different email chain with the subject line “BVW Services – Registrations for Routes” between July 30, 2025, and July 31, 2025. Again, BVW listed no objection to the required inspection, and did not provide opposition to the requirement to present the required equipment for inspection. Further, NJDOT was clear in the correspondence about its expectations for the inspection—BVW would present all trucks and plows, and the failure to present the required equipment may result in the termination of the awarded Price Lines. See below email chain for details.



NJDOT met with BVW at their facility on August 1, 2025. BVW failed to present any equipment for inspection at that time despite the multiple notifications in the Bid Solicitation, NJDOT Letter, emails, and phone calls that the equipment would need to be presented for inspection to ensure BVW had the equipment it indicated it possessed by bidding 1<sup>st</sup> Preference in its Quote. Thereafter NJDOT requested

BVW's lines be rescinded in accordance with the Bid Solicitation's requirements. 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 work and are in possession of the required equipment.

Bidders could chose to bid 1<sup>st</sup> Preference or 2<sup>nd</sup> Preference on Price Lines 1-317. However, if a bidder submitted a bid for 1<sup>st</sup> Preference, they were advised in multiple Bid Solicitation sections that they would be responsible for providing their own plows for those lines. Bid Solicitation 3.17.1, *Snow Plowing and Hauling Services (Price Lines 1-317) Price Sheet Instructions*, Step 2, outlines the differences relating to equipment needs between bidding 1<sup>st</sup> Preference and bidding 2<sup>nd</sup> Preference.

**Step 2:** For Price Lines 1 – 317, Bidders shall provide hourly rate unit pricing for **either** 1<sup>st</sup> Preference **or** 2<sup>nd</sup> Preference for each Price Line being bid. Failure to provide unit pricing for 1<sup>st</sup> Preference or 2<sup>nd</sup> Preference for Price Lines 1 – 315 shall result in the Quote being deemed non-responsive for the respective Price Line.

**NOTE:** If a Bidder provides unit pricing for both the 1<sup>st</sup> Preference and 2<sup>nd</sup> Preference options of a Price Line, only the 1<sup>st</sup> Preference pricing shall be considered and evaluated. Refer to Section 8.9.2, *Equipment Preference and Pricing Evaluation*, subsections included, for more information.

Bidders are advised that if they bid both 1<sup>st</sup> Preference and 2<sup>nd</sup> Preference on a line, and their 1<sup>st</sup> Preference rate is evaluated and awarded (pursuant to the above and Section 8.9.2.1), that Bidder will be required to provide their own plows for that Price Line. Bidders are advised to only bid 1<sup>st</sup> Preference on lines that they are willing and able to provide their own plows for.

Another portion of Bid Solicitation Section 3.17.1 *Snow Plowing and Hauling Services (Price Lines 1-317) Price Sheet Instructions* informed bidders:

A. 1<sup>st</sup> Preference: All-Inclusive Hourly Rate – Class A Snow Plowing Truck – With Snow Plow (**snow plows provided by Contractor**);

1. This Hourly Rate is PER TRUCK. All trucks must be Class A.

Bid Solicitation Section 4.15.4, *Contractor Supplied Plows, Equipment, and Attachments*, also reminds bidders of the requirement of supplying its own plows stating "If the Contractor is awarded 1<sup>st</sup> Preference for a Price Line (supplying its own plows) . . .". This language can be found again in Bid Solicitation Section 8.9.2.1, *Snow Plowing and Hauling Services*, which states "1<sup>st</sup> Preference – Bidders supplying all required trucks, that are all Class A trucks, all with Bidder provided snow plows".

BVW was not required to submit a Quote and State-Supplied Price Sheet bidding 1<sup>st</sup> Preference. If BVW did not have the required equipment and could not supply 635 trucks and plows, it could have bid 2<sup>nd</sup> Preference for the amount of trucks that it had available to perform its awarded lines. Moreover, BVW could have accepted fewer lines for award when the original Notice of Intent to Award letters were provided on June 25, 2025. Whatever the reason for BVW's failure to provide the required equipment for the permitted inspection, the public's health, safety, and welfare should not be put at risk as a result of BVW's failure to act in accordance with the Bid Solicitation and Contract requirements. Finally, as noted above, 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, supra, 169 N.J. at 159-60. Here, the Division

and NJDOT acted in accordance with the Bid Solicitation's requirements, and took reasonable actions under the Bid Solicitation to ensure the State properly awarded a contract that will benefit the public's safety, and provided BVW with abundant due process and notice for its options to bid, the requirements of the Bid Solicitation, and then presenting BVW with multiple opportunities to meet its obligations..

BVW's requests to push the inspections until a later date may have served its interests, but NJDOT chose a reasonable course of action to ensure an award would be made prior to the start of the October 1<sup>st</sup> snow season. Moreover, as outlined in the Bid Solicitation, NJDOT must provide equipment to the awarded 2<sup>nd</sup> Preference bidders, and NJDOT must now engage in the Waiver of Advertising process permitted by N.J.S.A. 52:34-9 and N.J.S.A. 52:34-10 to obtain contractors for the Price Lines without an awarded contractor. NJDOT's timeframe for inspections is reasonable considering the work that must still be completed prior to the start of the Winter Season.

Finally, contrary to BVW's statement, the term of the Contract does not start October 1, 2025. As defined in Bid Solicitation Section 9.3, *Contract-Specific Definition*, the "Winter Season" commences October 1<sup>st</sup>, and ends on April 30<sup>th</sup>. Pursuant to Bid Solicitation Section 4.2 *Winter Season*, "[t]he Contractor shall provide services during the Winter Season period, October 1<sup>st</sup> through April 30<sup>th</sup> of each year of the Contract term". There is nothing in the Bid Solicitation stating that the Contract begins on October 1<sup>st</sup>. Rather, October 1<sup>st</sup> of each year is the first day Contractors would be required to provide snow plowing and spreading services under the Contract. By conflating the Contract start date with October 1<sup>st</sup> (the start of the Winter Season), BVW is suggesting that a Contractor would have no obligations under the Contract prior to that first day of Winter Season. Since BVW is claiming that the Contract begins on October 1<sup>st</sup>, would they also claim that the contract ends on April 30<sup>th</sup>, the last day of Winter Season? By BVW's logic, each year of the Contract would only begin on October 1<sup>st</sup> and end on April 30<sup>th</sup>. Finally, as noted in BVW's protest, the Bid Solicitation does include requirements and obligations related to the Winter Season. However, these obligations are separate and apart from the start and end dates of the Contract term. As such, BVW's argument has no weight in this final agency decision.

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 [Bid Solicitation'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 [Bid Solicitation] 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).

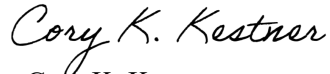
## **CONCLUSION**

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,

A handwritten signature in cursive script that reads "Cory K. Kestner".

Cory K. Kestner  
Acting Chief Hearing Officer

CKK

c: C. Clarke  
M. Maciolek