



State of New Jersey

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

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July 28, 2025

Via Electronic Mail Only to clarke@moynihancompanies.com

Clarke Moynihan
Clarke Moynihan Landscaping & Construction
229 Main Street
Andover, NJ 07821

Re: I/M/O Bid Solicitation #25DPP01050 Clarke Moynihan Landscape & Construction
Protest of Notice of Intent to Award
T1136 – Lawn Maintenance Services Capital Complex, Glen Gardner,
Paramus, and West Trenton

Dear Mr. Moynihan:

This final agency decision is in response to your letter delivered via electronic mail on behalf of Clarke Moynihan Landscaping & Construction (“Moynihan”) received by the Division of Purchase and Property’s (“Division”) Hearing Unit on June 5, 2025 (“Protest”). In that letter, Moynihan protests the Procurement Bureau’s (“Bureau”) May 22, 2025, Notice of Intent to Award letter (“NOI”) issued for Bid Solicitation #25DPP01050 – T1136 – Lawn Maintenance Services Capital Complex, Glen Gardner, Paramus, and West Trenton (“Bid Solicitation”). Moynihan protests the awards to several Bidders in their letter. Moynihan argues that Mercer Landscape Service, LLC (“Mercer”) and Industrial Commercial Cleaning Group, Inc. (“Industrial”) do not have sufficient experience required under the Bid Solicitation, failed to meet the requirements related to how the contract would be performed, and that Industrial failed to provide required paperwork.

By way of background, on January 24, 2025, the Bureau issued the Bid Solicitation on behalf of New Jersey Department of Treasury, Division of Property Management & Construction (“DPMC”). The purpose of the Bid Solicitation was to solicit Quotes for turf management and maintenance services, as well as chemical turf treatment primarily for, but not limited to, the Capital Complex, Glen Gardner, West Trenton, and Paramus locations. 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. This Bid Solicitation contains ninety-two (92) Price Lines grouped into five (5) locations as follows:

Group 1	Capitol Complex – Price Lines 1 – 38
Group 2	West Trenton Complex – Price Lines 39 -70
Group 3	Bridgeton – Price Lines 71 – 76
Group 4	Glen Gardner – Price Lines 77 - 84

Group 5	Paramus – Price Lines 85 – 92
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Pursuant to Bid Solicitation Section 1.1 *Purpose and Intent*, the State intends to award one contract for each group as set forth in the chart in Bid Solicitation Section 1.1.

In accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on January 28, 2025, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. There were no attendees for the optional teleconference.

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 11, 2025. No questions were received from potential Bidders.

On March 19, 2025, the Division’s Proposal Review Unit (“PRU”) opened four (4) Quotes. Three (3) Quotes were deemed administratively complete by the Proposal Review Unit and released to the Bureau for further review and evaluation. GK Landscaping LLC (“GK”) was deemed non-responsive and automatically rejected by PRU for non-submission of the mandatory Ownership Disclosure Form (ODF), as required by Bid Solicitation Section 3.13.2, *Ownership Disclosure Form*. This section provides in pertinent part that failing to submit the information required by N.J.S.A. 52:25-24.2 will result in the rejection of the Quote as non-responsive, and removes the Bidder from being eligible for Contract award. The list of bidders who submitted administratively complete Quotes and could be evaluated by the Unit are Moynihan, Industrial, and Mercer.

The Bureau determined that the Quotes submitted by Moynihan, Industrial, and Mercer were responsive with mandatory elements of the Bid Solicitation, and therefore eligible for award. Recommendation Report, page 3. Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on May 22, 2025, the Bureau issued the NOI advising all Bidders that it was the State’s intent to award Contracts to the two (2) Bidders set forth in the chart on page 6 of the Recommendation Report dated May 5, 2025 (“Recommendation Report”).

On June 5, 2025, prior to the close of the protest period, Moynihan submitted a Protest challenging the Division’s awards to various other Bidders.

Although Moynihan did not 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 Moynihan. 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 Moynihan 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 Bid Solicitations issued by the Division are drafted to provide information in a consistent and organized manner. A review of the Bid Solicitation shows that Sections 1 and 2 are primarily information related to the purpose of the advertised procurement, and basic information related to the general bidding process. Section 3 provides guidelines for bidders, and also establishes requirements imposed on bidders with respect to documentation and other information that needs to be submitted in accordance with each specific subsection's requirements. Section 4 provides the Scope of Work (SOW) that awarded contractors will be required to perform. Sections 5, 6, 7, and 9 establish contract specific legal, IT security, modifications to the State's Standard Terms and Conditions, and definitions. Finally, Section 8 establishes how the responsive Quotes will be evaluated so all parties have a clear expectation of the contract award process. Collectively, along with any noted exhibits, attachments, or other documents, these sections form the bases of the Contract.

In this procurement, responsive Quotes were evaluated by the Bureau consistent with the requirements of Bid Solicitation Section 8.9 *Evaluation Criteria*, which states in relevant part as follows:

8.9 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. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

8.9.1 TECHNICAL EVALUATION CRITERIA

The following criteria will be used to evaluate and score Quotes received in response to this Bid Solicitation:

- A. The Bidder's demonstration in the Quote that the Bidder understands and is able to complete the requirements of the Scope of Work as sought.

After the review and evaluation of all Quotes received in response to the Bid Solicitation was completed, the Bureau completed a Recommendation Report which recommended Contract awards to those responsive and responsible Bidders whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. On May 22, 2025, the NOI was issued advising all Bidders that it was the State's intent to award Contracts consistent with the Bureau's Recommendation Report.¹

On June 5, 2025, the Division received Moynihan's protest challenging the intended Contract awards. A review of Moynihan's Protest displays that it misunderstands the difference between the requirements of the Bid Solicitation's different sections, and to whom they apply and when. Specifically, Moynihan's Protest tries to use bidder requirements to limit the scope of evaluation established in Bid Solicitation Section 8.9.1 by narrowing the scope of evaluation to only the information provided on certain documents, while also trying to place a greater set of requirements on the bidders by arguing Industrial and

¹ The list of Bidders who are recommended to receive Contract awards are listed in the Bureau's May 5, 2025 Recommendation Report.

Mercer failed to provide information only required by contractors after award. As shown below, these arguments are made in error.

A. Mercer and Industrial Both Provided the Information required and Were Responsive to the Bid Solicitation's Requirements.

As quoted above, Bid Solicitation Section 8.9.1 informed bidders that they must demonstrate “in **the Quote** that the Bidder understands and is able to complete the requirements of the Scope of Work as sought.” Emphasis added. Bid Solicitation Section 9 provides a definition of the term “Quote” that would be applied in understanding the meaning for Bid Solicitation Section 8.9.1. That definition establishes a Quote as a

Bidder's timely response to the Bid Solicitation including, but not limited to, technical Quote, price Quote including Best and Final Offer, any licenses, forms, certifications, clarifications, negotiated documents, and/or other documentation required by the Bid Solicitation.

[Bid Solicitation Section 9.2, *Definitions*.]

Moynihan starts by claiming that both Mercer and Industrial failed to meet the requirements of Bid Solicitation Sections 3.14, *Technical Quote*, 3.15, *Bidder Quote Overview Form*, and 3.26, *Contract Schedule*, and that these failures were non-waivable defects. Specifically, for Bid Solicitation Section 3.14, Moynihan argues that

Neither Mercer nor Industrial provided a response to these requirements. As to Mercer, it simply provided a vague statement regarding its purported experience in response to the first question stating:

We have been organizing and managing turf and landscaping maintenance crews for over 30 years. We have also been working on large turf and landscape projects for the State of NJ (NJSP) for over 10 years, continuing to this day.

A copy of Mercer's Overview Form is annexed hereto as Exhibit “**D**.” As to the second question, Mercer again provided a vague general response stating:

As stated above, we have been managing these crews for many years. Other than regular services we do not provide or supply any goods or deliverables that necessitate timely delivery.

Id. No description of its plan to perform the Contract. No identification of any of its key personnel and no draft Contract schedule per Section 3.26 of the Bid Solicitation.

As to Industrial, it did not respond to the second question at all. A copy of Industrial's Overview Form is annexed hereto as Exhibit “**E**.”

[Protest, pgs. 2-3, emphasis in original.]

Moynihan argues that the responses provided fail to provide the State with assurances that the contract will be performed as required in the Bid Solicitation. However, this view fails to consider the instructions in each of the sections, and how evaluations will be performed in accordance with Bid Solicitation Section 8.9.1. A review of the submitted Quotes, the Bid Solicitation, and the Recommendation Report all evidence that the Bureau had adequate support for its proposed Contract awards, and that Mercer and Industrial's Quotes did not contain non-waivable defects.

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).

Here, Mercer and Industrial were required to submit a Technical Quote under Bid Solicitation Section 3.14 as a “shall” requirement, although that section does not limit the ways in which a bidder may provide that information. The Recommendation Report confirms that both did in fact provide this mandatory information, as did Moynihan. Recommendation Report, page 3. As the mandatory information was provided, the requirement was satisfied and all parties remained eligible for evaluation and consideration for a Contract award.

With respect to Bid Solicitation Sections 3.15 and 3.26, both are “should” requirements according to the language of each section. The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion, while others are merely recommended. Specifically the Bid Solicitation Section 9.2, *Definitions* states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

May – Denotes that which is permissible or recommended, not mandatory.

Should – Denotes that which is permissible or recommended, not mandatory.

Although Moynihan did not choose to participate in the optional Pre-Quote Conference, the slideshow from the presentation was available for all bidders to review on the NJSTART page for the T1136 procurement. Especially applicable in the instant analysis is the second bullet point under “Reminders” on Slide 5:



[Optional Pre-Quote Conference slideshow, Slide 5.]

When considered together with the definition of “should”, the language in Bid Solicitation Sections 3.15 and 3.26, and the evaluation method outlined in Bid Solicitation Section 8.9.1, Moynihan’s argument fails because the required information was provided, and the other sections only impacted the technical score during the evaluation process. Moreover, these sections were all pieces of a larger review, with no single section being given greater weight than any other.

Having reviewed the Bid Solicitation, Industrial and Mercer's Quotes, and the Recommendation Report, I see nothing that causes me to question the Procurement Specialist's responsiveness determinations, and Industrial and Mercer were both correctly determined to be eligible for evaluation and possible Contract award.

B. Mercer and Industrial Both Displayed Relevant Experience Indicating They Would be Capable of Performing the Contract.

Moynihan again confuses mandatory and optional information, and the impact that the two have on the procurement process. Additionally, rather than argue that no information was provided, it chooses to argue that the information provided was inadequate despite the submitted information being similar to the information found in Moynihan's own Quote.

Bid Solicitation Section 8.9.1, *Technical Evaluation Criteria*, states that Bidders would be evaluated and scored based on the Quote that was provided by a bidder, stating:

8.9.1 TECHNICAL EVALUATION CRITERIA

The following criteria will be used to evaluate and score Quotes received in response to this Bid Solicitation:

- A. The Bidder's demonstration in the Quote that the Bidder understands and is able to complete the requirements of the Scope of Work as sought.

The Recommendation Report expressly addressed the evaluation criteria by addressing the criteria for each bidder:

ICCG: The Bureau found ICCG's Quote to be in the scoring range of " Good ", receiving a technical score of 2 on a scale of 1-3. ICCG stated it would assign a Project Manager (PM) to manage overall day to day operations of the Contract, and crews to ensure compliance and quality control are met as required by the Bid Solicitation. The PM will communicate with the SCM at regular intervals and attend periodic progress meetings with the SCM. The firm stated it has qualified landscapers on staff and that they would be provided transport vehicles to accommodate personnel and equipment needed to successfully complete the SOW. ICCG noted having Contracts of similar size and scope with DPMC and South Eastern Pennsylvania Transport Authority at various locations across the State (Commonwealth of Pennsylvania). ICCG provided sufficient amount of information with its Quote that adequately addressed the Bid Solicitation's requirements. Therefore, based on these factors, the Bureau is satisfied with ICCG's qualifications and its ability to successfully complete the requirements of the Scope of Work as sought.	
Mercer: The Bureau found Mercer's Quote to be in the scoring range of " Good ", receiving a technical score of 2 on a scale of 1-3. Mercer stated it has been organizing and managing turf and landscaping maintenance crews for over 30 years. Mercer listed three (3) Contracts of similar size and scope. The firm stated it has been providing landscaping services for the New Jersey State Police (NJSP) in various parts of the State for 10+ years.	
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STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF PURCHASE AND PROPERTY	RECOMMENDATION REPORT
Mercer provided sufficient amount of information with its Quote that adequately addressed the Bid Solicitation's requirements. Therefore, based on these factors, the Bureau is satisfied with Mercer's qualifications and its ability to successfully complete the requirements of the Scope of Work as sought.	

The Procurement Specialist provided a score based on specific information identified across each bidders' multiple documents. While Moynihan seeks to add its own spin to the language in each bidders' documents, that alone is insufficient support to overturn the Procurement Specialist's analysis, or reject the information regarding how the contract would be performed or experience with contracts of a similar nature. The information provided by Mercer and Industrial both display that each intends to use its experience organizing and managing similar contracts to perform the work outlined in Bid Solicitation Section 4.

Additionally, Moynihan confuses the bidder "should" requirement in Bid Solicitation Section 3.18, *Disclosure of Product Composition*, with the Contractor requirement found in several subsections in Bid Solicitation Section 4 "to provide a list of all products planned for use while performing work prior to beginning treatment and must be approved by the SCM." See Bid Solicitation Sections 4.5, *Weed Control Treatment*; 4.6, *Control of Storm Water Pollution*. Moreover, while Moynihan has knowledge of the individual properties and prior soil analysis and testing as an incumbent contractor, a bidder would not have this detailed information and could only guess at exactly what treatments may be necessary to complete the required work. As such, providing information on the specific products to be used must be provided by the awarded Contractor for the SCM's approval, and Industrial and Mercer are neither non-responsive nor lacking experience for not providing the documents with their Quotes.

Moynihan finally cites Commercial Cleaning Corp. v. Sullivan, 47, N.J. 539 (1966), as holding that the Division should bypass Industrial and Mercer because Moynihan claims it is more experienced and better suited for the work. This proposition missed the point of Commercial Cleaning that the Division can bypass a lower priced bidder when the Division provides an adequate foundation supporting its actions. Here, whether Moynihan is more experienced than Industrial and/or Mercer does not diminish the ability of either to perform the Contract. The Bid Solicitation was very clear that bidders would be evaluated first on whether "the Bidder understands and is able to complete the requirements of the Scope of Work as sought", and then ranked by pricing under Bid Solicitation Section 8.9.2, *Price Evaluation*. A Contract award would then be made under Bid Solicitation Section 8.16, *Contract Award*, to the conforming bidder whose Quote is "most advantageous to the State, price, and other factors considered."

Having reviewed the Bid Solicitation, Industrial and Mercer's Quotes, and the Recommendation Report, I see nothing that causes me to question the Procurement Specialist's determination, or the Technical Quote evaluation scoring, or the decision to award as recommended in the May 22, 2025, Notice of Intent to Award letter, including the award for Group 3.

C. The Alleged Defects are Not Material Nor Required at the Time of Quote Submission.

Moynihan alleges the following defects in Industrial's Quote:

As noted in the Report, Industry's subcontractor "is not compliant with the mandatory requirements of the Bid Solicitation Section 3.13.10 *Affirmative Action*, which states in pertinent part: *'The intended Contractor and its named Subcontractors(s) must submit a copy of a New Jersey Certificate of Employee Information Report or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program.'*" See Exhibit "G" (emphasis in original).

Furthermore, Industrial's Subcontractor Utilization Form also does not include the Estimated Value of Work to be Subcontracted. See Exhibit "I," annexed hereto.

Finally, Industrial did not submit an executed Certification of Non-Involvement in Prohibited Activities in Russia or Belarus. See Exhibit “J,” annexed hereto.

[Moynihan Protest, pages 6-7, emphasis in original.]

These overly simplistic statements fail to correctly address the requirements of each cited section, and do not impact the awards outlined in the Recommendation Report.

Pursuant to N.J.A.C. 17:27-3.1, Awarding of public agency contracts,

No public agency shall award a contract or pay money to any contractor or subcontractor which has not agreed and guaranteed to afford equal employment opportunity in performance of the contract in accordance with an affirmative action program and, except with respect to affectional or sexual orientation, approved under the terms established in these rules.

Here, only a notice of intended award has been provided, and no monies have been paid to any Contractor or Subcontractor. The documentation must be provided in accordance with the cited regulation, and the Bid Solicitation’s language that the “intended Contractor and its named Subcontractor(s)” must submit the documentation is consistent with the law’s requirements. Thus, Industrial would remain eligible for award had it received one.

Regarding the Subcontractor Utilization Form, there is no mandatory requirement to provide an estimated value, but only to list the intended subcontractors. As such, no requirement can be imposed now post-Quote opening that was not mandated in the Quote.

Moynihan again makes a “should” form mandatory by arguing that Industrial’s Quote is defective because the form was not include with its Quote. As indicated in Bid Solicitation Section 3.13.14, the bidder should provide the form with its Quote, but must provide the form within seven (7) days if requested by the Bureau.

Here, the issues complained of by Moynihan do not fall outside of the Bid Solicitation’s requirements such that they would cause any of the Bidders listed in Moynihan’s Protest to be non-responsive and ineligible for contract award. Each of the respective Bidders’ documents provided the required information in an appropriate manner within the relevant time period. As such, the recommended awards were made in accordance with the bidding requirements for this procurement.

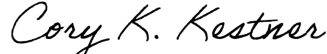
CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the Contract be awarded as outlined in the Recommendation Report. Accordingly, I sustain the May 22, 2025, 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

c: C. Clarke
K. Young