



State of New Jersey

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

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July 18, 2025

Via Electronic Mail Only to JJanho3@cedarhilllandscaping.com

John Janho
Cedar Hill Landscaping
127 Cedar Grove Lane
Somerset, NJ 08873

Re: I/M/O Bid Solicitation #23DPP00860 Cedar Hill Landscaping
Protest of Notice of Intent to Award
T2924 – Snow Plowing Services By Area - NJDOT

Dear Mr. Janho:

This final agency decision is in response to your letter delivered via electronic mail on behalf of Cedar Hill Landscaping (“Cedar Hill”) received by the Division of Purchase and Property’s (“Division”) Hearing Unit on June 16, 2025 (“Protest”). In that letter, Cedar Hill states that they submitted a bid and received confirmation that their bid was received but upon Quote opening, “our bid was not listed and our name does not appear” (Protest, page 1) for Bid Solicitation #23DPP00860 – T2924 Snow Plowing Services By Area - NJDOT (“Bid Solicitation”).

By way of background, on March 13, 2024, the Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of New Jersey Department of Transportation (“NJDOT”). A Revised Bid Solicitation and Revised State Supplied Price Sheet were issued on May 28, 2024. The purpose of the Bid Solicitation was to solicit Quotes for “strike force” snow plowing services for areas of 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 3.21, *State Supplied Price Sheet Instructions*, there were Price Lines broken up into 14 maintenance areas, and type of equipment (Truck and Snow Plowing Equipment and/or Trucks Only). Bidders were not required to bid on all areas or types of equipment. Any Price Lines that Bidders submitted bids for they were also required to submit a snow plowing supervisor rate which could not exceed 30% of the plowing rate. Pursuant to Bid Solicitation Section 1.1 *Purpose and Intent*, the State intends to award a maximum of fifty six (56) contract awards per area and/or equipment type 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 March 27, 2024, providing all potential Bidders with an overview

of the Bid Solicitation and Quote submission procedures and requirements. Representatives from two (2) potential bidding entities attended (Akgun Transportation and NSG Group LLC).

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 April 12, 2024. Two (2) Bid Amendments were issued for this Bid Solicitation, which provided revisions to the Bid Solicitation and responses to questions received from potential Bidders. A Revised State-Supplied Price Sheet was also issued for this Bid Solicitation.

On June 12, 2024, the Division's Proposal Review Unit ("PRU") opened forty (40) Quotes which were deemed administratively complete by the Proposal Review Unit and released to the Bureau for further review and evaluation. The list of bidders who submitted administratively complete Quotes and could be evaluated by the Unit are listed below. Note, some bidders submitted separate quotes for different price lines. The list below contains the thirty eight (38) bidders whose Quotes were evaluated by the Unit.

A&M Paving and Excavating LLC	Gondul Trucking
Akgun Transportation	J&K Toro Trucking LLC
American Asphalt & Trucking	M & M Trucking Gudullu LLC
AW Kurth Trucking	Matthew J. Yuhas Trucking LLC
BVW Services LLC	Messercola Excavating Co Inc.
Caner Transportation, LLC	MYK TRUCKING LLC
Cedar Hill Landscaping	G GROUP LLC
Clarke Moynihan Landscaping & Construction LLC	On Point Excavation LLC
Colonnelli Brothers, Inc.	OZY Trucking, LLC
Darby Trucking LLC	P. Maio Construction LLC
DeMarino Trucking	P. Esposito Construction, LLC
DeSantis Construction Inc	Rockstar Transportation LLC
DI Trucking LLC	Samson Concrete & Masonry
Double O Landscape Design LLC	SFB Trucking LLC
EMA Trucking LLC	Terco Enterprises LLC
Enes Trucking LLC	Terrytown Equipment
Esposito Construction LLC	UN Transportation Inc.
Golden Boys Trucking LLC	Woolston Construction Company Inc.
Gomez Brothers Trucking Inc.	Zingo Trucking LLC

As part of the responsiveness review, the Bureau determined that numerous Quotes required a Request for Clarification, in accordance with Bid Solicitation Section 8.4, *Clarification of Quote*, for the Bureau to determine whether or not the Quotes were responsive to mandatory material requirements of the Bid Solicitation as outlined in the Recommendation Report dated May 19, 2025 ("Recommendation Report") with the resultant determination also contained within the Recommendation Report.

The Bureau determined that the Quotes submitted by Cedar Hill Landscaping, EMA Trucking, M&M Trucking Gudullu LLC, and P. Maio Construction LLC, were non-responsive due to non-compliance with mandatory elements of the Bid Solicitation and therefore ineligible for award.

Recommendation Report at pgs. 12-13. 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 6, 2025, the Bureau issued the NOI advising all Bidders that it was the State's intent to award Contracts to the fifteen (15) Bidders set forth in the chart on pages 1-5 of the Recommendation Report.

On June 16, 2025, prior to the close of the protest period, Cedar Hill submitted a Protest alleging that at Quote opening, their Quote "was not listed and our name does not appear". Protest, page 1.

Although Cedar Hill 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 Cedar Hill. 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 Cedar Hill on the written record, as such an in-person hearing is not warranted. I set forth herein the Division's Final Agency Decision.

DISCUSSION

As set forth on page 2 of this final agency decision, as well as on pages 7-8 in the Recommendation Report, Cedar Hill's Quote was received and opened by the PRU at the Quote opening on June 12, 2024. As further set forth in the Recommendation Report on page 9, Cedar Hill's Quote was released by the PRU to the Bureau for evaluation. There could be a number of reasons why Cedar Hill did not hear their company name read out during the public reading of the Quotes on June 12, 2024, but the record reflects that Cedar Hill's Quote was opened by the PRU on June 12, 2024, and released to the Bureau for evaluation.

Cedar Hill's Quote was found to be non-responsive by the Bureau during the evaluation of its Quote. Although this issue is not raised by Cedar Hill in their Protest, we will address that in this final agency decision as well.

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).

Cedar Hill failed to provide any information as to its approach and plans for accomplishing the work required under the Bid Solicitation as was required pursuant to Bid Solicitation Section 3.14, *Technical Quote*. Recommendation Report, page 12. Providing this information was a mandatory requirement under the Bid Solicitation.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

(a) In order to be eligible for consideration for award of contract, the bidder's proposal shall conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a)]

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State's bidding process.

The subject procurement was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 3.0, *Quote Submission Requirements*. Bid Solicitation Section 3.14, *Technical Quote*, requires that bidders "shall describe its approach and plans for accomplishing the work outlined in the Scope of Work. The Bidder must set forth its understanding of the requirements of this Bid Solicitation and its approach to successfully complete the Contract. The Bidder should include the level of detail it determines necessary to assist the Evaluation Committee in its review of the Bidder's Quote."

The term "must" denotes a mandatory requirement as further set forth in the Bid Solicitation's glossary:

Must – Denotes that which is a mandatory requirement.

[Bid Solicitation Section 9, *GLOSSARY*]

The term "shall" also denotes that which is a mandatory requirement as further set forth in the Bid Solicitation's glossary:

Shall – Denotes that which is a mandatory requirement.

[Bid Solicitation Section 9, *GLOSSARY*]

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).

There is no question that Cedar Hill failed to submit information regarding its approach and plan to accomplish the work required under the Bid Solicitation as was required in Bid Solicitation

Section 3.14, *Technical Quote*. Failure to submit this information prior to Quote opening is a non-waivable deviation rendering the Quote non-responsive as pursuant to the standard set forth in River Vale.

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 June 6, 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,



Cory K. Kestner
Acting Chief Hearing Officer

CKK:CMD

c: C. Clarke
K. Young