



State of New Jersey

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

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July 21, 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 #23DPP00860 Clarke Moynihan Landscape & Construction
Protest of Notice of Intent to Award
T2924 – Snow Plowing Services By Area - NJDOT

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 23, 2025 (“Protest”). In that letter, Moynihan protests the Procurement Bureau’s (“Bureau”) June 6, 2025, Notice of Intent to Award letter (“NOI”) issued for Bid Solicitation #23DPP00860 – T2924 Snow Plowing Services By Area - NJDOT (“Bid Solicitation”). Moynihan protests the awards to several Bidders in their letter. Moynihan argues that Double O Landscape Design LLC (“Double O”) does not have sufficient experience required under the Bid Solicitation and additionally does not have enough trucks to service the Price Lines they were awarded. Moynihan argues that the pricing provided by DI Trucking LLC (DI) “is so low . . . that it seems unlikely that a company being awarded ([a]t [l]east) 56 trucks worth of snow plowing routes . . . will be able to sustain at these prices.” Protest, page 2. Finally, Moynihan argues that Terco Enterprises LLC (“Terco”) and Terrytown Equipment (“Terrytown”) “are essentially the same company under two different EIN numbers, simultaneously using the same employees, same subcontractors, same office, and the same ownership, while bidding on the same price lines, at very similar pricing.” Protest, page 2.

By way of background, on March 13, 2024, the 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 23 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

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. Each criterion will be scored, and each score multiplied by a predetermined weight to develop the Technical Evaluation Score:

- A. Personnel: The qualifications and experience of the Bidder's management, supervisory, and key personnel assigned to the Contract, including the candidates recommended for each of the positions/roles required;
- B. Experience of firm: The Bidder's documented experience in successfully completing Contract of a similar size and scope in relation to the work required by this Bid Solicitation; and

- C. Ability of firm to complete the Scope of Work based on its Technical Quote: The Bidder's demonstration in the Quote that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Contract.

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 June 6, 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 23, 2025, the Division received Moynihan's protest challenging the intended Contract awards. Specifically, MVT's Protest states in relevant part as follows:

With respect to Double O, Moynihan argues:

The Bidder Double O Landscape Design (DOLD) submitted a Bidder Data Sheet that should outline the past experience of the contractor with similar contracts of size and scope. The bidder demonstrated no experience. The bidder even states in Attachment 2 that they have no experience plowing public roadways. The State is proposing to award the bidder (DOLD) at least one full route consisting of 7 trucks. Bid Solicitation Section 4.12.1- *The Contractor must supply (7) Class A trucks for each Maintenance Area it is assigned to.* However, the bidder only owns 5 trucks (Exhibit A), and listed no subcontractors, that could satisfy the remaining 2 trucks needed to perform the work.

With respect to DI, Moynihan argues:

It should be noted that the pricing of these line items seem extremely imbalanced. The pricing is so low in fact that it seems unlikely that a company being awarded (At Least) 56 trucks worth of snow plowing routes (In this region alone) will be able to sustain at these prices.

With respect to Terco and Terrytown, Moynihar argues:

It should also be noted that the above mentioned bidders, (Terco) being an apparent proposed awardee, and (Terrytown) another bidder are essentially the same company under two different EIN numbers, simultaneously using the same employees, same subcontractors, same office, and the same ownership, while bidding on the same price lines, at very similar pricing. It also appears that one of (Their) subcontractors is also a low bidder on this project. At a minimum, this situation poses cloudiness and or doubt to these firms' bidding intentions.

¹ The list of Bidders who are recommended to receive Contract awards are listed in the Bureau's May 19, 2025 Recommendation Report.

Additionally, with respect to Double O's bid, Moynihan states "that this is a SBE Small Business set aside contract, and the bidder DOLD is not listed as a registered small business within the State [o]f New Jersey." Protest, page 2.

Moynihan argues that Double O's bid should be rejected for "failure to demonstrate that it owns and or controls the required equipment to perform the work.". Protest, page 2. Moynihan does not state what relief they are seeking with respect to their arguments regarding DI, Terco and/or Terrytown.

Moynihan submitted a Quote for Price Lines: 1, 2, 4, 5, 7, 8, 10, 11, 16, 17, 19, 20, 22, 23, 28, 29, 34, 35, 40, 41, 46, and 47.

Bid Solicitation Section 4.2, *Contractor Requirements – All Regions* required bidders "Possess, at a minimum, two (2) years' experience performing snow plowing on public roadways;". Bidders were also required to submit Attachment 4 – Bidder Experience Form on which they were required to certify that they possessed the required two (2) years' experience. Double O provided a completed Attachment 4, however it appears that they answered "No" to Question 2, "Does your company have experience with snow plowing on public roadways?". However, in question 3., Double O listed experience with public roadway plowing. To prepare a response to Moynihan's Protest regarding Double O's experience, the Hearing Unit contacted Double O via email to determine if selecting "No" to question 2 was a clerical error or if Double O indeed did not have experience snow plowing on public roadways. Double O provided locations and time periods for snow plowing services performed as a subcontractor with Owl Contracting, as a subcontractor with Tony Sanchez and for the township of Mt. Arlington. Therefore, Double O satisfies the requirement that they have at least two (2) years' experience in snow plowing on public roadways.

Moynihan states that "This is a SBE Small Business set aside contract, and the bidder DOLD is not listed as a registered small business . . ." Protest, page 2. Pursuant to Bid Solicitation Section 1.1 *Purpose and Intent*, and Section 3.13.8.1, *Small Business Subcontracting Set-Aside Contract*, the Small Business set aside applies to subcontracting. There is no requirement that prime contractors be Small Businesses Enterprises as Moynihan states.

With respect to Moynihan's argument that Double O's bid should be rejected because it has not demonstrated that it owns or controls the equipment required to do the work, it should be noted that pursuant to Bid Solicitation Section 4.11.1, *Equipment Inspections*, Bidders' equipment is subject to inspection by NJDOT, at any time during the Contract.

Moynihan states that the pricing that DI provided is so low that it is unlikely that DI "will be able to sustain at these prices." Protest, page 2. Pursuant to State of New Jersey Standard Terms and Conditions, Section 6.1 *Price Fluctuation During Contract*, "all prices quoted shall be firm through issuance of contract". Bid Solicitation Section 4.10.1, *Fuel Price Adjustment*, also requires that "All pricing must remain firm for the first year of the Contract's base term.". After the first year of the contract, Bid Solicitation Section 4.10.1, *Fuel Price Adjustment* allows a contractor to request a price adjustment based on fuel increases. DI provided a complete and responsive Quote to the Bid Solicitation. They are required to keep their pricing firm through at least the first year of the Contract. DI provided pricing information and the amounts they bid is a business decision. Speculation as to whether their business can "sustain at these prices" (Protest, page 2), is not actionable nor can this conjecture be rewarded by relief (which Moynihan fails to request) in the absence of facts.

Finally, Moynihan argues that Terco and Terrytown "are essentially the same company". Protest page 2. 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).

New Jersey Administrative Code (N.J.A.C.) 17:12-2.2 is the Division's governing regulation with respect to "Requirements for bidding and contract award" in the State of New Jersey. The regulation states:

(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:

1. Be enclosed and sealed, which for electronic format submissions shall be as described in the RFP document. Faxed or e-mailed proposals shall not be accepted when the submission of a sealed proposal is a requirement;
2. Be submitted on or before the due date and time and at the place specified in the RFP;
3. Be signed by a representative of the bidding entity in accordance with the provisions for such signature as set forth in the RFP;
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;
5. Be accompanied by bid security in the amount and form specified, when required by the RFP;
6. Include all RFP-required pricing information;
7. Be preceded by the bidder's attendance and registration at any pre-proposal conference and/or site inspection for which attendance and registration is mandatory pursuant to the RFP. However, the Director reserves the right to waive this requirement upon terms the Director deems acceptable, if doing so is in the State's best interest;
8. Contain initials adjacent to any actual or apparent price alterations.
[. . .] In the event of a rejection of a single line of a proposal responding to a request for multiple prices for multiple items, the remainder of the proposal shall be evaluated, unless otherwise stipulated in the RFP;
9. Be prepared in ink or typewritten or, as applicable, in the electronic format specified by the RFP. If information essential for an effective evaluation, including, but not limited to, price, terms, and product description, is submitted in pencil, the proposal shall be rejected unless

that same essential information appears elsewhere in the proposal, or in the copies thereof, either typewritten or printed, and provided that the information is entirely consistent with the information submitted in pencil and does not invite any other interpretation; and

10. If the RFP contains set-aside program provisions for a specified category or specified categories of businesses, be submitted by a business properly approved by and registered with the New Jersey Department of the Treasury unit responsible for administering the State's small business registration program in accordance with the administrative rules at N.J.A.C. 17:13, governing the State's set-aside programs.

(b) Any proposal failing to comply with the provisions of (a) above shall be subject to automatic rejection.

Bid Solicitation Section 3, *Quote Submission Requirements*, further defines the documents required under N.J.A.C 17:12-2.2(a)(4) in the Bid Solicitation document. These documents contain the information required from bidders by New Jersey statutes, as well as the documents required for a responsibility determination by the Division.

After reviewing the Quotes submitted by both Terco and Terrytown, it is clear that each bidder satisfied all requirements contained in N.J.A.C. 17:12-2.2 and the Bid Solicitation, thereby providing responsive Quotes for this Bid Solicitation.

The mere fact that Terco and Terrytown may share some resources does not in and of itself mean that Terco and Terrytown "are essentially the same company" as Moynihan alleges in their Protest. Protest, pages 2-3. Based on the required documents provided with their Quotes, these two companies do share a physical address, fax number and the Ownership Disclosure Form provided show that one individual for both businesses. However there are some significant differences between the two companies which can be gleaned from the documents provided with their respective quotes.

1. Each company is a legally separate business with a different Federal Employer Identification Number (FEIN) which is used by businesses for tax and financial purposes.
2. Each company has a different New Jersey Business Registration Certificate with a unique identifier.
3. Each company has a different New Jersey Certificate of Information Report.
4. Each company has different entities listed under contracts of similar size and scope under which they have performed.

Based upon this review, there are sufficient and substantial differences between Terco and Terrytown to find that they are legally separate business entities with independent legal identities in the eyes of both the Federal government and the State of New Jersey. Despite any shared resources, which is not generally prohibited under New Jersey law, and not prohibited under the terms of this Bid Solicitation, the two businesses are separate, independent commercial businesses for purposes of issuing an award under this Bid Solicitation. It should also be noted that Terrytown did not receive an award under this Bid Solicitation.

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).

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 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