



State of New Jersey

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

33 WEST STATE STREET

P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039

<https://www.njstart.gov>

Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

TAHESHA L. WAY
Lt. Governor

AMY F. DAVIS, ESQ.
Acting Director

May 2, 2025

Via Electronic Mail only to christina@vaspatz.com

Christina Wein
V.A. Spatz and Sons Construction, Inc.
35 Frontage Road
Hampton, NJ 08827

Re: I/M/O Bid Solicitation #25DPP01134 V.A. Spatz and Sons Construction, Inc.
Protest of Notice of Proposal Rejection
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Ms. Wein:

This final agency decision is in response to the protest application ("Protest Application") and accompanying letter dated April 8, 2025 ("Protest Letter"), submitted by V.A. Spatz and Sons Construction Inc. ("Spatz"). The Protest Application was received by the Division of Purchase and Property's ("Division") Hearing Unit on April 10, 2025. In that correspondence, Spatz protests the rejection of its Quote by the Division's Proposal Review Unit ("PRU"), as "Not prepared in ink, typewritten, or submitted electronically". Spatz alleges that "on the due date of the bid solicitation, the NJStart website was down, our home page was in maintenance mode and we were unable to view open bids or to submit quotes online." Protest Letter, page 1. Spatz further states that, for their initial quote (prior to contract award in 2020), they "were instructed to submit all bid documents via email ONLY . . . even though we were a registered vendor in NJStart." Protest Letter, page 1.

By way of background, on January 23, 2025, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of the 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 Section 1.1 *Purpose and Intent*. "It is the intent of the State of New Jersey (State) to award Contracts to those responsible Bidders whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. The State may award any or all price lines." *Id.*

On April 4, 2025, the PRU opened one hundred seventy seven (177) Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, it was determined that Spatz's Quote was non-responsive because it was "Faxed or emailed". Pursuant to Bid Solicitation Section 3.1, *Quote Submission*, "In order to be considered for award, the Quote must be received electronically by the Division's Proposal Review Unit, through [NJSTART](https://www.njstart.gov), by the required date and time."

In consideration of Spatz's Protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quote received, the relevant statutes, regulations, and case law. This review of the record 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. I set forth herein the Division's final agency decision.

DISCUSSION

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

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

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

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. Super. at 216.]

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

The Bid Solicitation expressly advises bidders of the requirements for proper submission:

3.1 QUOTE SUBMISSION

In order to be considered for award, the Quote must be received **electronically** by the Division's Proposal Review Unit, through **NJSTART**, by the required date and time.

The date and time of the Quote opening are indicated on the Bid Solicitation cover sheet and on the "Summary" Tab of the Bid Solicitation webpage within **NJSTART**. If the Quote opening deadline has been revised, the new Quote opening deadline will be shown on the posted Bid Amendment and on the "Summary" Tab of the Bid Solicitation webpage within **NJSTART**. Quotes not received prior to the Quote opening deadline shall be rejected.

[Emphasis added.]

The Bid Solicitation also advises Bidders to consult with the Division's Quick Reference Guides and supporting material in preparing Quotes for submission:

1. INTRODUCTION AND SUMMARY OF THE BID SOLICITATION

This Bid Solicitation is issued by the Department of the Treasury, Division of Purchase and Property (Division), Procurement Bureau, on behalf of New Jersey Department of Transportation (NJDOT). Quotes submitted in response to this Bid Solicitation **shall** be through the State of New Jersey's eProcurement system, **NJSTART**. Bidders are advised to thoroughly read all sections of this Bid Solicitation and follow all instructions.

Bidders are strongly encouraged to visit the NJSTART Vendor Support Page, which contains Quick Reference Guides (QRGs), supporting videos, a glossary of **NJSTART** terms, and helpdesk contact information. Bidders should utilize the QRGs before attempting to submit a Quote through **NJSTART**. **It is the Bidder's responsibility to ensure that the Quote and attachments have been properly submitted.** Inquiries concerning the use of **NJSTART** may be directed to njstart@treas.nj.gov. The Division will not respond to substantive questions related to the Bid Solicitation or any other Contract via this email address.

[Emphasis added.]

Not only does this section encourage Bidders to review the Quick Reference Guides provided by the Division, but it includes a hyperlink to the NJSTART portal containing all of the Quick Reference Guides and videos.

New Jersey Administrative Code Section 17:12-2.2, *Requirements for Bidding and Contract Award*, states in pertinent part, "9. Be prepared in ink or typewritten or, as applicable, in the electronic format specified by the RFP." In this case, it was clearly stated in Bid Solicitation Section 3.1, *Quote*

Submission, that to be considered for award, a “Quote must be received electronically by the Division’s Proposal Review Unit, through *NJSTART*, by the required date and time.”

The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion. Specifically the Bid Solicitation Section 9.0 *Glossary* states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

Spatz argues that in the past the PRU has accepted emailed quotes and in fact that is how they bid on the prior bid solicitation and received an award. While prior bid solicitations may have allowed for Quotes to be submitted via email, this Bid Solicitation did not make that allowance and required all Quotes to be submitted electronically. Procedures change and in Bid Solicitation Section 3.2, *Bidder Responsibility*, bidders are cautioned that “The Bidder assumes sole responsibility for the complete effort required in submitting a Quote in response to this Bid Solicitation. No special consideration will be given after Quotes are opened because of a Bidder’s failure to be knowledgeable as to all of the requirements of this Bid Solicitation.” It should be noted that one hundred seventy seven (177) other Vendors successfully uploaded Quotes on or before the Quote submission deadline. The Division cannot waive or relax the submission requirements for one Vendor at the expense of the other compliant Vendors. “Requiring adherence to material specifications maintains a level playing field for all bidders competing for a public contract.” Barrick v. State, 218 N.J. 247, 259 (2014).

Spatz further argues that they were unable to submit their Quote prior to the 2pm deadline on April 4, 2025 because they were “directed to a maintenance page after logging in.” Protest Application, page 2. A screenshot dated April 4, 2025, 1:47:47pm EST showing “Maintenance Home Page for: V.A. Spatz and Sons Construction, Inc.” was included with their Protest Letter. Spatz states that they called NJStart Vendor Assistance and were not able to speak with a live agent, and the Quick Reference Guides referenced in the Bid Solicitation and in the pre-recorded message on the NJSTART Vendor Assistance line were not helpful in their situation. Additionally, Spatz emailed the provided help email requesting assistance with submitting their bid at 2:02pm on April 4, 2025. A response was provided by NJSTART at 2:21pm on Friday, April 4, 2025. NJSTART responded, “NJSTART was down for maintenance last night but is back online and running normally. Please attempt to submit your quote before today’s 2:00pm deadline.” Email from NJSTART, Attachment 3 of Protest Letter.

Based on an email from Spatz to NJDOT on April 4, 2025 at 11:36am, it does not appear that Spatz was aware that T0777 was being re-procured as Ms. Wein stated in her email that “Paul Spatz heard that bids are due today for the 2025/2026 plowing season, could you please let us know if this is correct?” Ms. Canulli from DOT responded to Ms. Wein at 11:38am on April 4, 2025 and said “Yes due today. Please log in to NJSTART and submit your bid asap. T0777 is the contract.” It should be noted that the Bid Solicitation was available to the public on NJSTART on January 23, 2025, more than two (2) months prior to the Quote due date of April 4, 2025 and Quotes could be uploaded to NJSTART beginning on January 23, 2025.

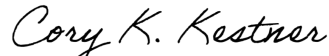
Although Spatz indicates that it was experiencing technical difficulties submitting information via NJSTART, it is again noted that one hundred seventy seven (177) other Vendors successfully uploaded Quotes on or before the Quote submission deadline. The Division cannot waive or relax the submission requirements for one Vendor at the expense of the other compliant Vendors. “Requiring adherence to material specifications maintains a level playing field for all bidders competing for a public contract.” Barrick v. State, 218 N.J. 247, 259 (2014).

Based upon the foregoing, I find no reason to disturb the PRU's April 7, 2025 rejection of Spatz's bid for failing to submit their bid electronically. This is my final agency decision.

Thank you for your company's continuing interest in doing business with the State of New Jersey, I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Cory K. Kestner
Acting Chief Hearing Officer

CKK:CMD

c: C. Clarke
M. Maciolek