



State of New Jersey

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

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February 11, 2025

Via Electronic Mail Only to kjordan@iccgrpinc.com

Kim Jordan
President & CEO
Industrial Commercial Cleaning Group Inc.
14 S. Burnt Mill Road
Voorhees, NJ 08043

Re: I/M/O Bid Solicitation #24DPP01014 – Industrial Commercial Cleaning Group Inc.
Protest of Notice of Intent to Award
T1374 – Grounds Maintenance Services – Capital and West Trenton

Dear Kim Jordan:

This final agency decision is in response to the protest application (“Protest”), submitted by Industrial Commercial Cleaning Group, Inc. (“ICCG”) and received by the Division of Purchase and Property’s (“Division”) Hearing Unit on January 3, 2025. In that correspondence, ICCG protests the Notice of Intent to Award letter (“NOI”) issued on December 23, 2024, by the Division’s Procurement Bureau (“Bureau”) for Bid Solicitation #24DPP01014 – T1374 – Grounds Maintenance Services – Capital and West Trenton (“Bid Solicitation”). In their Protest, ICCG stated that “ICCG believes that the information submitted by Clarke Moynihan Landscaping and Construction LLC regarding size and scope of projects were misrepresented”. Protest, page 1. Additionally, ICCG stated that “based on the attached information, the ‘30 Employees’ are believed to be employed as Seasonal Landscapers and NOT Grounds Maintenance Personnel”. Protest, page 2.

By way of background, on June 28, 2024, the Procurement Bureau issued the Bid Solicitation on behalf of the Department of Treasury, Division of Property Management and Construction (“NJDPMC”). The purpose of the Bid Solicitation was to solicit “Quotes for Grounds Maintenance Services at the Capital and West Trenton Complexes and the James J. Howard Marine Lab in Highlands”. Bid Solicitation Sec. 1.1, *Purpose and Intent*. “It is the intent of the State to award a Contract to that responsible Bidder whose Quote, conforming to this Bid Solicitation are most advantageous to the State of New Jersey (State), price and other factors considered.” Bid Solicitation Sec. 1.1, *Purpose and Intent*.

As stated on page three (3) of the Recommendation Report dated November 19, 2024 (“Recommendation Report”), on October 8, 2024, the Division’s Proposal Review Unit opened five (5) 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 four (4) responsive Quotes contained mandatory Bid Solicitation forms and were released

to the Bureau for further evaluation. It should be noted that one bidder, Next Enterprises LLC submitted a “No Bid Quote” which was deemed “non-responsive to the mandatory requirements of the Bid Solicitation and is ineligible for a Contract award”. Recommendation Report, page 4.

The four (4) Quotes that were released to the Bureau were evaluated pursuant to Bid Solicitation Section 8.1.9, *Technical Evaluation Criteria*, which evaluated a Bidder’s demonstration in the Quote that the Bidder understood and was able to complete the requirements pursuant to the Bid Solicitation, and Bid Solicitation Section 8.9.2, *Price Evaluation*, which used a weighted consumption model (which was date stamped prior to Quote Opening) to evaluate pricing. In accordance with Bid Solicitation Section 8.12, *Best and Final Offer (BAFO)*, the Bureau requested a BAFO from all responsive Bidders on October 30, 2024, with responses due on November 7, 2024. ICCG and Mercer Landscape Service LLC (“Mercer”) responded to the BAFO and maintained the same pricing as in their Quotes. Recommendation Report page 8. Clarke Moynihan Landscaping & Construction LLC (“Clarke”) and Evergreen Consolidated LLC (“Evergreen”) did not respond to the request for BAFO, therefore the pricing submitted with their original Quotes was used for evaluation. Recommendation Report, page 8. For this Bid Solicitation, “[t]he State intends to award **one (1)** Contract award”. Bid Solicitation Section 8.16, *Contract Award*, emphasis in the original.

In their Protest, ICCG states that they “believe that the information submitted by Clarke Moynihan Landscaping and Construction LLC regarding size and scope of projects were misrepresented.” Protest, page 1. ICCG also states that “based on the attached information, the ’30 Employees’ are believed to be employed as Seasonal Landscapers and NOT Grounds Maintenance Personnel.” Protest, page 2. Finally, ICCG argues that “none of the Essex County awards and The state of New Jersey Lawn Maintenance Services Capital Complex . . . are similar in, size, scope and performance requirements to the description found on page 33 and the Grounds Maintenance Specifications.” Protest, page 2.

Although ICCG has 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 ICCG. 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 ICCG 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).

In their Protest, ICCG states that they "believe that the information submitted by Clarke Moynihan Landscaping and Construction LLC regarding size and scope of projects were misrepresented." Protest, page 1. ICCG also states that "based on the attached information, the '30 Employees' are believed to be employed as Seasonal Landscapers and NOT Grounds Maintenance Personnel." Protest, page 2. Finally, ICCG argues that "none of the Essex County awards and The state of New Jersey Lawn Maintenance Services Capital Complex . . . are similar in, size, scope and performance requirements to the description found on page 33 and the Grounds Maintenance Specifications." Protest, page 2.

With their Protest, ICCG included several exhibits purporting to support their claims:

1. Exhibit 1 – Portions of Revised Bid Solicitation #24DPP01014; T1374 – Grounds Maintenance Services – Capital and West Trenton Complexes; State Supplied Price Sheet for same; a sheet with search results from the question "what technical difference is lawn maintenance and grounds maintenance [sic]; and ICCG organizational chart
2. Exhibit 2 – Portions of Bid Solicitation #19DPP00433; T1136 – Lawn Maintenance Services Capital Complex, Glen Gardner, Paramus, and West Trenton; Change Order #5 for same; Award Summary for same; and Construction Information Systems "Company Profile" page for Clarke
3. Exhibit A-2 – County of Essex, NJ Awarded Bid Resolution and portions of Bid Request for Bid Number 20-102, Landscape Maintenance or Riverfront Park
4. Exhibit A-3 – County of Essex, NJ Awarded Bid Resolution and portions of Bid Request for Bid Number 20-035, Landscape Maintenance for Northern & Middle Division at Branch Brook Park
5. Exhibit A-4 – County of Essex, NJ Awarded Bid Resolution for Bid Number 21-075, Provide Landscape Improvements at Monte Irvin Orange Park
6. Exhibit A-5 - County of Essex, NJ Awarded Bid Resolution and portions of Bid Request for Bid Number 21-189, Provide Park Landscape Maintenance at Various Parks
7. Exhibit A-6 - County of Essex, NJ Awarded Bid Resolution for Bid Number 22-254, Supplemental Landscape Plantings along the Orange Reservoir
8. Exhibit A-7 - County of Essex, NJ Awarded Bid Resolution and portions of Bid Request for Bid Number 21-036, Park Landscape Maintenance for Northern, Southern & Middle Divisions of Branch Brook Park
9. Exhibit A-8 - County of Essex, NJ Awarded Bid Resolution and portions of Bid Request for Bid Number 24-023, Landscape Maintenance at the Concourse Hill Welcome Center & Park Administration Building at Branch Brook Park

It should be noted that Exhibits A-2 through A-8 provided by ICCG are either Awarded Bid Resolutions and/or Bid Requests and do not contain any information submitted by Clarke in response to those bid solicitations.

Bid Solicitation section 4.1.1, *Service Requirement* states the following:

Services for each location shall include, but not be limited to:

- Weeding;
- General clean-up of areas;
- Edging of beds;
- Trimming of shrubs, groundcover, and low level branches on trees;
- Cutting and removal of fallen tree trunks and branches;
- Planting of flowers, bulbs, shrubs, groundcover and small trees;
- Cleanup of leaves;
- Renovation of bedding and grass areas;
- Small pothole repair with blacktop patch; and
- The handling and transport of any Grounds Maintenance related materials, debris and equipment.

Note: Prior approval from SCM is required before rototillers equipment and chainsaws can be used at the State House.

All areas of work across all locations shall be properly cleaned up at day's end or upon completion of work.

ICCG claims that “none of the Essex County awards and [t]he state of New Jersey Lawn Maintenance Services Capital Complex, Glen Gardner, Paramus and West Trenton Contract . . . are similar in, size, scope and performance requirements to the description found on page 33 and the Grounds Maintenance Specifications. You will note that the Contracts for Essex County and The State of New Jersey involve Mowing, Fertilizing, Leaf Removal are done intermittent intervals such as weekly, monthly, semi-annually and annually. Grounds maintenance contract requires two crews of six, performing daily grounds maintenance services Monday through Friday.” Protest, page 2.

It is believed that the “page 33” referred to by ICCG is Bid Solicitation Section 9.3 *Contract Specific Definitions*. Bid Solicitation Page 33 contains the definition of Grounds Maintenance as shown below:

Grounds Maintenance – Maintenance of the grounds, which shall include, but not be limited to: weeding, clean up, trimming of shrubs, groundcover and low-level branches on trees, and pothole repairs.

Exhibits A-2 – A-8 provided by ICCG include many of the same services as does this Bid Solicitation. For example, Part B of Exhibit A-2, “Garden Bed Maintenance”, states in pertinent part that “Tasks include but are not limited to planting garden materials, weeding, maintaining weed free beds, edging, mulching, pruning and deadheading”. Additionally in Exhibit A-2, Section 1.6, “Required Work at Pruning Specifications” includes subsection 1.6.3.2., “Prune trees and shrubs to maintain their naturalistic, informal shape . . .” Additionally, there are sections in Exhibit A-2 specifically addressing: leaf maintenance (Part C), weeding (Section 4), planting garden materials (Section 6), site cleaning (Section 7), and bed edging (Section 8). Exhibit A-3’s scope of work includes primarily garden bed maintenance, pruning services, weeding, bed edging, and planting garden materials. Exhibits A-4 – A-8 contain similar scopes of work as do Exhibits A-2 and A-3 that a separate discussion of these Exhibits is not warranted. The work required in these exhibits are similar, if not identical to the Scope of Work in this Bid Solicitation as well as the definition of Grounds Maintenance in this Bid Solicitation.

It is unclear why ICCG believes that the Bid Solicitation requires “performing daily grounds maintenance services Monday through Friday” as Bid Solicitation Section 4.7, *Scheduling of Work*, states in pertinent part that, “All work shall be scheduled by state representatives on an as needed basis.”

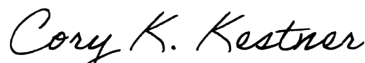
With respect to ICCG’s claim that “based on the attached information, the ‘30 Employees’ are believed to be employed as Seasonal Landscapers and NOT Grounds Maintenance Personnel”, there is no evidence in any of the attachments ICCG provided to support this claim. In fact, the attachments are all portions of bid solicitations (either for the State of New Jersey or the County of Essex, NJ) and there is no information provided by Clarke in any of the exhibits attached by ICCG so it is unclear how ICCG came to the conclusion that Clarke’s “30 employees” are seasonal employees or how ICCG has surmised how many people, whether seasonal or year round Clarke employs but this claim seems to be speculative at best.

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 December 23, 2024, Notice of Intent to Award. 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, Esq.

Acting Chief Hearing Officer

CKK: CMD

- c. C. Clarke
- D. Warren
- O.Olubanjo