



State of New Jersey

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

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August 8, 2025

Via Electronic Mail Only to robert@nationalhighway.com

Robert Green
President
National Highway Products, Inc.
301 Riverside Drive
Millville, NJ 08332

Re: I/M/O Bid Solicitation #25DPP01069
Protest of Notice of Intent to Award
T2018 – Retroreflective Fluorescent Roll-Up Warning Signs - Statewide

Dear Mr. Green:

This final agency decision is in response to the protest dated July 7, 2025 (“Protest”) submitted by National Highway Products, Inc. (“National”) and received by the Division of Purchase and Property’s (“Division”) Hearing Unit on July 7, 2025. In that correspondence, National protests the Notice of Intent to Award letter (“NOI”) issued on July 2, 2025, by the Division’s Procurement Bureau (“Bureau”) for Bid Solicitation #25DPP01069 – T2018 – Retroreflective Fluorescent Roll-Up Warning Signs - Statewide (“Bid Solicitation”). In their Protest, National argues that S&S Signs and Safety Equipment, Inc. (“S&S”) is not a legally registered business in New Jersey. National claims that they “conducted multiple variations of the name through the Business Record Service and found no match.” Protest, page 2. National argues that S&S and Eastern Metal of Elmira (“Eastern”) are not independent companies but rather that S&S is “a DBA or closely affiliated entity of Eastern Metal of Elmira, Inc.” Protest, page 2. National claims that there were several instances where line items were granted to both S&S and Eastern as “tie” bids – a situation that artificially inflates the appearance of competition and may be a direct violation of the intent of fair, open, and competitive bidding.” Protest, page 2. Finally, National argues that there were pricing irregularities with “[s]everal line items that require: A complete roll-up sign, A storage bag, . . . and an overlay . . . were bid at lower unit prices than other line items that only call for the sign and bag (no overlay). This is illogical from a pricing and material standpoint and suggests that the bidder may have only included the overlay component price, ignoring the requirements for the full sign assembly, storage bag and labeling” Protest, page 2.

By way of background, on August 23, 2024, the Procurement 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 various types and sizes of retroreflective fluorescent roll-up warning signs”. Bid Solicitation Sec. 1.1, *Purpose and Intent*. “It is the intent of the State to award Contract(s) to those responsible Bidders whose Quotes, 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 fourteen (14) of the Recommendation Report dated June 30, 2025 ("Recommendation Report"), on October 11, 2024, the Division's Proposal Review Unit opened three (3) 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 all three (3) responsive Quotes contained mandatory Bid Solicitation forms and were released to the Bureau for further evaluation.

The three (3) Quotes that were released to the Bureau were evaluated pursuant to Bid Solicitation Section 8.9.1, *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 ranked Bidders from lowest to highest according to the Quote Unit prices on the State-Supplied Price Sheet. Tie Quotes were awarded using the methodology set forth in Bid Solicitation Section 8.6, *Tie Quote* and as further discussed on pages 16-18 of the Recommendation Report.

Although National 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 National. 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 National 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).

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 S&S and Eastern, 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 S&S and Eastern may share some resources does not in and of itself mean that these shared resources indicate that the two entities "are not independent bidders" as National alleges in their Protest. Protest, page 2. Based on the required documents provided with their Quotes, these two companies have offices near each other on the same street in the same town. 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. Pursuant to the Ownership Disclosure Form submitted, S&S and Eastern do not have the same ownership structure.
3. Each company has a different physical address, phone number, fax number, and email address.
4. Each company has a different New Jersey Business Registration Certificate with a unique identifier with different effective dates.
5. 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 S&S and Eastern 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.

Regarding National's argument that S&S "does not appear to be a legally registered business entity in the State of New Jersey", below is a screenshot of S&S' State of New Jersey Business Registration Certificate, effective as of September 21, 1995.

 STATE OF NEW JERSEY BUSINESS REGISTRATION CERTIFICATE	
Taxpayer Name:	S & S SIGNS AND SAFETY EQUIPMENT INC
Trade Name:	
Address:	1400 SULLIVAN STREET ELMIRA, NY 14901
Certificate Number:	0104493
Effective Date:	September 21, 1995
Date of Issuance:	August 01, 2025
For Office Use Only: 20250801141635404	

With respect to National's argument that they "discovered concerning pricing inconsistencies in S&S/Eastern's awarded line items" where certain items were bid at lower unit prices which National finds "illogical from a pricing and material standpoint" Protest, page 2, the Bureau's task is to ensure that all Bidders follow the proper bidding procedures and then evaluate each responsive bid in accordance with Section 8.9 of the Bid Solicitation. The pricing that a company submits is a business decision presumably made after thought and deliberation by that company. Pursuant to Bid Solicitation Section 3.36, *State-Supplied Price Sheet Instructions*, Bidders are required to hold their prices firm through the issuance of the Contract.

Finally, National states that the supplier they based their bid pricing on has formally withdrawn its pricing. National requests a vendor substitution approval. The protest procedure is not the appropriate vehicle to request a vendor substitution or withdrawal of any lines.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation that the Contracts be awarded as outlined in the Recommendation Report. Accordingly, I sustain the July 2, 2025, 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

Cory K. Kestner, Esq.
Acting Chief Hearing Officer

CKK: CMD

- c. K. Thomas
- C. Murphy
- T. Sharpley