



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

November 21, 2025

Via Electronic Mail Only to Jennifer.sexton@terex.com

Jennifer Sexton
Terex Utilities
3140 15th Ave SE
Watertown, SD 57201

Re: I/M/O Bid Solicitation #25DPP01161 Terex Utilities
Protest of Notice of Intent to Award
T3133 Large Bucket Truck, 37,000 LB. GVWR Cab & Chassis with Utility Body & Access. REBID

Dear Ms. Sexton:

This final agency decision is in response to the protest application dated November 12, 2025 ("Protest Application") and accompanying protest letter dated November 12, 2025 ("Protest Letter"), which may be hereinafter collectively referred to as "Protest", submitted by Terex Utilities ("Terex") and received by the Division of Purchase and Property's ("Division") Hearing Unit. In that correspondence, Terex protests the Notice of Intent to Award dated October 28, 2025, by the Division's Procurement Bureau ("Bureau") for Bid Solicitation #25DPP01161 – T3133 Large Bucket Truck, 37,000 LB. GVWR Cab & Chassis with Utility Body & Access. REBID Statewide ("Bid Solicitation"). The record of this procurement reveals that the Quote submitted by Terex was deemed non-responsive as set forth in the Recommendation Report dated October 23, 2025 ("Recommendation Report") for submitting a document as part of their Quote titled "Terex Utilities – QU35761- Division of Purchase Property NJ Optima HRX55" ("Terex HRX55 Doc") with their Quote which included terms and conditions that conflicted with the State Standard Terms and Conditions. Terex was also found non-responsive for stating in Terex HRX55 Doc, among other things, that "Prices are subject to change until shipment."; "shipping, handling and lead times are estimates and subject to change"; "final price to be confirmed prior to time of invoice"; and "Quote withdrawn after 60 days" as these statements conflict with several sections of Bid Solicitation requirements. In their correspondence, Terex argued that their Quote is fully compliant and that there are "misunderstandings that do not accurately reflect our compliance with the requirements stated in the request for proposal." Protest Application, pages 1-2.

By way of background, on May 21, 2025, the Division's Procurement Bureau ("Bureau") issued the Revised Bid Solicitation on behalf of the Using Agencies. The purpose of the Bid Solicitation was to solicit "Quotes for a Large Bucket Truck, 37, 000 LB. GVWR Heavy Duty Truck Cab and Chassis, With Utility Body, Aerial Lift and Accessories." 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 is most advantageous to the State, price and other factors considered. The State may award any or all price lines." Id.

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 May 2, 2025. Two (2) Bid Amendments were issued for this Bid Solicitation, which provided revisions to the Quote Opening Date, the Bid Solicitation and responses to questions received from potential Bidders.

On June 26, 2025, the PRU opened five (5) Quotes, one of which was a no bid, 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 Gabrielli Kenworth's Quote was non-responsive for failing to submit an Ownership Disclosure Form, as required in Bid Solicitation Section 3.13.2. The remaining 3 Quotes were sent to the Bureau for further evaluation.

On or about October 28, 2025, the Bureau sent a Notice of Intent to Award and Recommendation Report to Terex. On November 12, 2025, prior to the close of the protest period, Terex submitted a Protest alleging that their Quote was fully compliant, there was a "misunderstanding of T&C – would appreciate an opportunity to clarify these points, and given the current economic climate and volatility in material costs, it is essential to discuss price adjustments. This ensures adaptability in our pricing, reflecting market realities beyond our control." Protest Application, page 2. Terex reiterates these claims in their Protest Letter stating they would like to "engage in a constructive dialogue to clarify any concerns. Protest Letter, page 1. Terex further states the following:

Our bid fully complies with all requirements outlined in your request for proposal, and we are confident it represents the most responsive bid. Due to market fluctuations and current economic conditions, we propose that price adjustments be permitted for changes in the contractor's cost of materials, not to exceed the increase in the Producer Price index. This approach ensures fairness for all parties involved.

Protest Letter, page 1.

Although Terex did not request 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 Reports, the relevant statutes, regulations, case law, and the protest submitted by Terex. 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 Terex 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)).

Bid Solicitation Section 1.1, *Purpose, and Intent and Background* advises bidders that “The State of New Jersey Standard Terms and Conditions (SSTCs) included with this Bid Solicitation will apply to all Contracts made with the State. These terms are in addition to the terms and conditions set forth in this Bid Solicitation and should be read in conjunction with them unless the Bid Solicitation specifically indicates otherwise.” The State of New Jersey Standard Terms and Conditions (“SSTC”) were provided as Attachment 1 of the Bid Solicitation. Bid Solicitation Section 2.2, *Exceptions to the State of New Jersey Standard Terms and Conditions*, informs bidders that “Questions regarding the State of New Jersey Standard Terms and Conditions and exceptions to mandatory requirements MUST be posed during the Electronic Question and Answer period and shall contain the Bidder’s suggested changes and the reason(s) for the suggested change(s).” (Emphasis in the original). Bid Solicitation Section 3.11, *Bidder Additional Terms Submitted with the Quote* further advises Bidders:

A Bidder may submit additional terms as part of its Quote. Additional terms are Bidder-proposed terms or conditions that do not conflict with the scope of work required in this Bid Solicitation, the terms and conditions of this Bid Solicitation, or the State of New Jersey Standard Terms and Conditions. Bidder proposed terms or conditions that conflict with those contained in the State of New Jersey Standard Terms and Conditions will render a Quote non-responsive. It is incumbent upon the Bidder to identify and remove its conflicting proposed terms and conditions prior to Quote submission.

Quotes including Bidder proposed additional terms may be accepted, rejected, or negotiated, in whole or in part, at the State’s sole discretion.

If Bidder intends to propose terms and conditions that conflict with the State of New Jersey Standard Terms and Conditions, those Bidder proposed terms and conditions shall only be considered if submitted and agreed to pursuant to the electronic question and answer procedure. Bidders shall not submit exceptions or modifications as part of the Quote or on the “Terms and Conditions” Tab through [NJSTART](#).

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*]

As stated in the Recommendation Report, Terex HRX55 Doc contained limitations on Terex’s liability in Section 11. *Limitation of Liability*, as well as an indemnification provision in Section 18. *Indemnification by Buyer*, both of which conflicted with the SSTC requirements found in SSTC Section 4.1 *Indemnification*. Additionally, Terex HRX55 Doc contained a provision in 24. *Jurisdiction* that conflicted with SSTC Section 5.13 *Applicable Law and Jurisdiction* and a clause in 6. *Cancellation* that conflicted with SSTC Section 5.7 *Termination of Contract*.

In Terex HRX55 Doc, Terex stated the following on page 1,

Prices are subject to change until shipment. Applicable taxes and any applicable surcharges to be added. Taxes, shipping, handling and lead times are estimates and subject to change. Quoted prices are based on total package and subject to change if all items not purchased. All prices quoted are in U.S. dollars unless otherwise specified. Payment by cash or certified check only. **Chassis price based off current pricing available at time of quote. Pricing is subject to change based on vehicle sourcing; final price to be confirmed prior to time of invoice.** Chassis payment is due within 30 days of chassis receipt at our facility. Quote withdrawn after 60 days.

This language by Terex is in direct conflict with Bid Solicitation Section 3.36, *State-Supplied Price Sheet Instructions*, which informs bidders (in two different locations within this Section) that “Each Bidder is required to hold its prices firm through issuance of the Contract.” Additionally, Step 4 in that same section states “For Price Lines 1, 3, 5, 7, 8, and 9: The Bidder shall insert a firm fixed price in US dollars in the field titled “Unit Price” on the State-Supplied Price sheet.” (Emphasis in the original). Also stated in the same Bid Solicitation section, “Any additional costs, including freight, must be included in the pricing offered on the State-Supplied Price Sheet.”

During the initial responsive review of a Quote, 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 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). Here, Terex did not adhere to the requirements of the Bid Solicitation. Terex submitted terms and conditions which conflicted with the SSTC, and included language regarding pricing which directly conflicted with Bid Solicitation Section 3.36.

When evaluating a Quote, if a deviation is found, the question is whether the deviation is material. 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., 138 N.J. 307, 315 (1994), 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, 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).

Submitting conflicting terms, stating that the Quote is only valid for sixty (60) days, and stating that prices are subject to change until shipment are all non-waivable deviations under River Vale. Allowing Terex to “clarify these points” as suggested on page 2 of their Protest Application or “engage in a constrictive dialogue to clarify any concerns” as was requested on page 1 of their Protest Letter after the Quote submission deadline would result in an impermissible supplementation of the Quote, which the Division cannot allow as doing so would be contrary to the Court’s holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In On-Line Games, the Appellate Division held that “in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP”. Id.

While there may very well be “volatility in material costs” and “market realities beyond [their] control” as Terex states on page 2 in their Protest Application, this is arguably the case for all bidders under this Bid Solicitation and for all business owners. Moreover, the time to raise these concerns was during the electronic question and answer period mentioned above.

New Jersey procurement law requires that “specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency. . . .” N.J.S.A. 52:34-12. This principle is based on the long-recognized “policy behind the competitive bidding statutes, i.e., assurance against favoritism, improvidence, extravagance and corruption in the bidding process.” Palamar Constr., Inc. v. Pennsauken, 196 N.J. Super. 241, 251 (App. Div. 1983) (citing Terminal Construction Co. v. Atlantic City Sewerage Auth., 67 N.J. 403, 410 (1975)). “These policies, in turn, are meant to ensure that all bidders are equally situated in their competition for the public contract.” Palamar, *supra*, 196 N.J. Super. at 251 (citing Hillside Twp. v. Sternin, 25 N.J. 317, 322 (1957)). “The conditions and specifications must apply equally to all prospective bidders. Otherwise, there is no common standard of competition.” Id. Allowing Terex’s Quote to proceed to award in light of their failure to adhere to the requirements of the Bid Solicitation would place Terex in a superior position among bidders under this Bid Solicitation.

Based upon the findings set forth above, I find no reason to disturb the determination that the Quote submitted by Terex was non-responsive to the requirements of the Bid Solicitation. Accordingly, I sustain the October 28, 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, Esq.
Acting Chief Hearing Officer

CKK: CMD

c. K. Thomas
B. Birchmeier
G. Longmuir