



State of New Jersey

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April 27, 2026

Via Electronic Mail at slederman@riker.com

Stuart M. Lederman, Esq.
Riker Danzig, LLP
7 Giralda Farms,
Suite 250
Madison, NJ 07940-1051

Re: I/M/O Bid Solicitation #24DPP01041 ICF Incorporated, LLC
Protest of Notice of Intent to Award
T3103 Program Administrator – Resilience Planning Projects

Dear Mr. Lederman:

This final agency decision is in response to your protest letter dated April 23, 2026 (Protest), regarding Bid Solicitation #24DPP01041 - T3103 Program Administrator – Resilience Planning Projects (Bid Solicitation), to the Division of Purchase and Property (Division) on behalf of ICF Incorporated, LLC (ICF). In that letter, ICF argues that ICF's bid should not have been rejected for including additional language that "ICF's proposal remains valid for a period of 120 days after the bid solicitation-specified date of submission of August 29, 2025. ICF retains the right to review its submission and extend its offer or revise its proposal based on the most current information known at the end of the 120-day period." Protest, Page 4. Specifically, ICF requests that its Quote either be found fully responsive to the Bid Solicitation's requirements, or that the additional language be deemed a minor irregularity and waivable. Protest, Page 7.

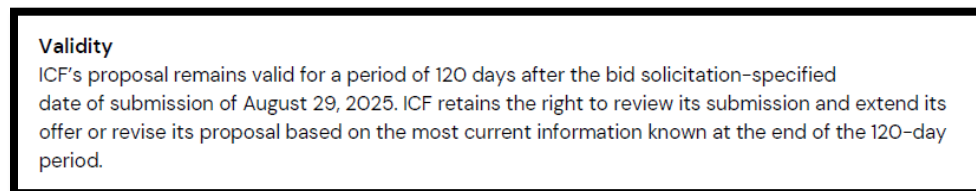
By way of background, the subject Bid Solicitation was issued by the Division's Procurement Bureau (Bureau) on behalf of the New Jersey Department of Environmental Protection (NJDEP) to solicit Quotes from qualified Bidders possessing the experience, expertise and creativity to lead and provide technical assistance for New Jersey Resilience Planning Projects. Bid Solicitation Section 1.1, *Purpose and Intent*. In accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an Optional Pre-Quote Conference was held on June 12, 2025. Bidders' electronic questions were due to the Bureau by June 19, 2025. The Quote Submission due date was extended on three occasions: July 11, July 17, and August 6, 2025. The Bureau received sixty-six (66) Bidder questions for this procurement. The Bureau posted Bid Amendments #1 and 2, with answers to the questions received from potential Bidders, on August 15 and August 26, 2025, respectively. The Revised Bid Solicitation and Revised State-Supplied Price Sheet were also made available on August 15, 2026.

On September 30, 2025, the Division's Proposal Review Unit opened thirteen (13) 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, all thirteen Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that five of the bidders, including ICF, were non-responsive to the mandatory requirements of the Bid Solicitation, and thus ineligible for further evaluation and consideration for award. See Page 4, Recommendation Report dated April 8, 2026 (Recommendation Report).

ICF's submitted Quote was deemed non-responsive for including a State-Supplied Price Sheet Narrative which included a "Validity" clause. See Page 4-5, Recommendation Report dated April 8, 2026. Bid Solicitation Section 3.27, *State-Supplied Price Sheet Instructions*, states (emphasis added in bold): "Each Bidder is required to **hold its pricing firm through the issuance and performance of the Contract.**" In its price sheet narrative, contrary to Bid Solicitation Section 3.27, *State Price Sheet Instructions*, as shown on the screenshot below, ICF included language contrary to the Bid Solicitation's basic instructions:



Thereafter, the remaining responsive Quotes were reviewed and evaluated in accordance with Bid Solicitation Section 8.9, *Evaluation Criteria*.

After completing its review and evaluation of the Quotes, the Bureau submitted its Recommendation Report recommending awards for the eight (8) remaining Bidders. Accordingly, on April 10, 2026, the Bureau issued the NOI advising the Bidders that it was the State's intent to award Blanket P.O.s consistent with the Recommendation Report.

On April 20, 2026, ICF wrote to the Division's Hearing Unit protesting the Bureau's determination that ICF was non-responsive for its added language limiting the validity of its proposal to 120 days. In support of its protest point, ICF states in pertinent part:

In submitting its quote, however, ICF signed the Offer and Acceptance Page and, by the language of the Offer and Acceptance Page, agreed to be bound by the terms, conditions and specifications of the Bid Solicitation. ICF used the Price Sheet documenting its all-inclusive hourly rate for each line item for year of the contract as required by the Bid Solicitation and was bound to hold these prices firm during the issuance and performance of the contract. At no point before or after quote opening did ICF change or seek to change its pricing or withdraw its quote in accordance with the Bid Solicitation.

The Division did not seek to clarify ICF's quote at any time during its review and evaluation of the quotes received in response to the Bid Solicitation and did not notify ICF that it viewed its quote as non-responsive prior to the issuance of the Notice of Intent to Award.

[Protest, Pages 4-5.]

Although ICF 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 Report, the relevant statutes, regulations, case law, and the protest submitted by ICF. 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 ICF 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*.]

Potential Bidders were permitted to submit questions regarding the Bid Solicitation’s terms and conditions by March 25, 2025. Sixty-six (66) questions were received. Six questions were received regarding pricing and the State-Supplied Price Sheet instructions. No questions were received regarding the clear mandate that pricing must be held through firm through issuance and performance of the contract.

Despite failing to take the opportunity to ask if such language was permissible during the question and answer process, and the clear language in the Bid Solicitation and the State’s Standard Terms and Conditions, ICF included a statement on page 2 of its price sheet narrative, directly under the heading “**Validity**” (emphasis in the original), that read “ICF’s proposal remains valid for a period of 120 days after the bid solicitation-specified date of submission of August 29, 2025. ICF retains the right to review its submission and extend its offer or revise its proposal based on the most current information known at the end of the 120-day period.” See page 2 below from ICF’s price sheet narrative:



Section 3 – State Supplied Price Sheet

Please find the state-supplied price sheet as a separate attachment.

Introduction

ICF has prepared this proposal submission in accordance with the terms and conditions of Bid Solicitation #24DPP01041 as well as ICF's disclosed accounting practices.

Period of Performance

ICF's proposal is based on a period of performance of four (4) years. We understand the contract may be extended up to two (2) additional years.

Validity

ICF's proposal remains valid for a period of 120 days after the bid solicitation-specified date of submission of August 29, 2025. ICF retains the right to review its submission and extend its offer or revise its proposal based on the most current information known at the end of the 120-day period.

Invoicing and Payment

ICF will invoice monthly based upon hours worked. Payment is due within 30 days from receipt of ICF's invoice.

Price Assumptions

ICF's proposal is predicated on the additional assumptions and clarifications listed below. These items are intended to help the State of New Jersey understand how ICF's solution, timing, resources, roles, and responsibilities formed the parameters of our estimates.

Although these assumptions and clarifications frame our proposal response, it is ICF's practice to partner with our customers and resolve issues promptly and in manner that is beneficial to both parties. We welcome the opportunity to work with the State of New Jersey to address any questions or concerns that may arise before, during, or after the delivery of our proposed service.

- ICF assumes this proposal shall be incorporated by reference into the contract resultant from this bid.

ICF claims that its Quote was fully-responsive because it included the State's Offer and Acceptance Page because it contains language that the bidder agrees to the State's terms. Protest, page 5. In the alternative, ICF claims the contrary term is merely a "minor irregularity or ambiguity" that should be waived. Protest Pages 4-5. Both requests fail logically and legally, and the Bureau correctly removed ICF from consideration for its non-responsive Quote.

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 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).

Here, the State determined that the Quote submitted by ICF contained a material deviation from the requirements of the Bid Solicitation rendering the Quote non-responsive. The question before me is whether ICF's modified term that its Quote was only valid for 120 days from the date of a projected Quote opening date (8/29/2025) was a material deviation rendering the Quote non-responsive or if the modified term could have been waived. To be deemed non-responsive, ICF's Quote would have had to materially

deviate from the requirements of the Bid Solicitation such that the State would have no assurances that the Contract would be performed consistent with the requirements of the Bid Solicitation.

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, 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).

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).

By indicating that its pricing was only in place for 120 days, ICF impermissibly reserves to itself the right to change or attempt to negotiate different pricing after the 120 day time period. In such situations the Courts have said the State is unable to make equal comparisons of the submitted Quote pricing with that supplied by other vendors.

Unlike requirements that can “be relinquished without there being any possible frustration of the policies underlying competitive bidding,” **waiving a price term is plainly “capable of becoming a vehicle for corruption or favoritism, or . . . of encouraging improvidence or extravagance, or likely to affect the amount of any bid or to influence any potential bidder to refrain from bidding, or . . . of affecting the ability of the contracting unit to make bid comparisons,”** and is thus generally regarded as “the kind of condition[] which may not under any

circumstances be waived.” Terminal Constr. Corp. v. Atl. Cty. Sewerage Auth., 67 N.J. 403, 412, 341 A.2d 327 (1975).

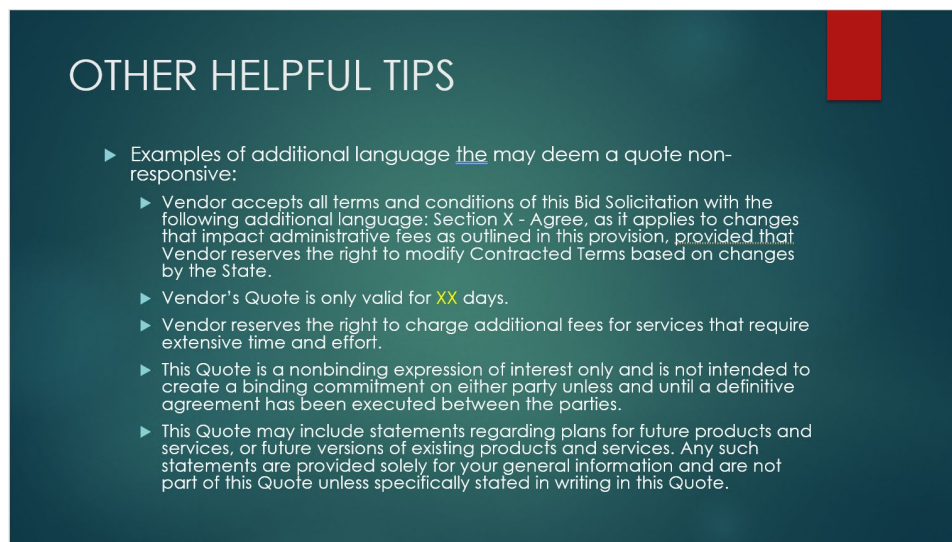
[In re Request for Proposals ##17DPP00144, 454 N.J. Super. 527, 564-565 (emphasis added).]

By inserting this language with its Quote, ICF impermissibly reserves to itself rights that are not available to all Bidders, thus unleveling the playing field.

Furthermore, it is noted that as part of the bid process the Division conducted an Optional Pre-Quote Conference pursuant to Bid Solicitation Section 2.5. The purpose and intent of the Pre-Quote Conference is set forth in that section:

The purpose of the Optional Pre-Quote Conference is to address procedural questions regarding the Bid Solicitation and Bidder Quote Submission Requirements only. No substantive questions regarding the Bid Solicitation Scope of Work will be accepted or answered during the pre-Quote conference. All questions are to be submitted during the Electronic Question and Answer Period.

As part of this Pre-Quote Conference, and because the Division has been presented with this issue multiple times in the past, the following information is specifically included in the standard Pre-Quote Conference presentation which is available to all bidders on NJSTART, whether they attended the Pre-Quote Conference or not:

A presentation slide with a dark blue background and a red vertical bar on the right. The title "OTHER HELPFUL TIPS" is in white, bold, sans-serif font. Below the title is a bulleted list of examples of additional language that may be deemed non-responsive. The list items are preceded by blue right-pointing chevrons. The text is in white, sans-serif font.

OTHER HELPFUL TIPS

- ▶ Examples of additional language the may deem a quote non-responsive:
 - ▶ Vendor accepts all terms and conditions of this Bid Solicitation with the following additional language: Section X - Agree, as it applies to changes that impact administrative fees as outlined in this provision, provided that Vendor reserves the right to modify Contracted Terms based on changes by the State.
 - ▶ Vendor's Quote is only valid for **XX** days.
 - ▶ Vendor reserves the right to charge additional fees for services that require extensive time and effort.
 - ▶ This Quote is a nonbinding expression of interest only and is not intended to create a binding commitment on either party unless and until a definitive agreement has been executed between the parties.
 - ▶ This Quote may include statements regarding plans for future products and services, or future versions of existing products and services. Any such statements are provided solely for your general information and are not part of this Quote unless specifically stated in writing in this Quote.

[Pre-Quote Conference – Slide Deck Page #13.]

The Division expressly advises and warns Bidders not to include language that their Quote is only valid for a certain number of days. The Division includes this language knowing how the courts have addressed this issue in the past and to help Bidders avoid repeating the same mistakes.

Reserving the right to further negotiate the contract terms with the State, as ICF has, is a non-waivable deviation under River Vale. Requesting the State ignore ICF's own language contained in their Quote as suggested in their Protest 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.

ICF claims "the language included in ICF's pricing narrative was, at worst, a minor irregularity or ambiguity, if the Division had concerns regarding the validity of ICF's quote, it should have sought clarification. . . ." Protest, Page 7. Clarifications are permitted under Bid Solicitation Sec. 8.4, *Clarification of Quote*, only "to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies, material omissions, or [be] used to revise or modify a Quote." The language in ICF's price sheet narrative was clearly contrary to the Bid Solicitation's requirements is required to hold its pricing firm through the issuance and performance of the Contract. In I/M/O Protest of Award of On-Line Games Prod. & Operation Svs. Contract, Bid No. 95-X-20175, the Court held that a post-opening commitment to supply an essential missing element for a bid is not a clarification but rather is an "impermissible supplementation ... and flies in the face of our public bidding scheme." 279 N.J. Super. 566, 598 (App. Div. 1995). In contrast, clarification is permissible. "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 already there." Id. at 597.

Asking the State to permit a clarification that would change or remove the language submitted in ICF's Quote is the same as letting a bidder pick and choose which sections of their Quote the State should consider. If ICF wants the State to ignore or change the "120-day language", can the State then choose to ignore the non-responsive language contained in other Bidders' Quotes without consideration of the law? The obvious answer is no. ICF was responsible for ensuring their Quote conform to the specifications of the Bid Solicitation, including all sections therein. ICF was aware that failure to do so may result in their Quote being found non-responsive and ineligible for award. This is incumbent on every Bidder who seeks an Award with the State of New Jersey, ICF included. Moreover, the time to raise 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 ICF's Quote to proceed to award in light of their failure to adhere to the requirements of the Bid Solicitation would place ICF in a superior position among bidders under this Bid Solicitation.

CONCLUSION

Based upon the findings set forth above, I find no reason to disturb the determination that the Quote submitted by ICF was non-responsive to the requirements of the Bid Solicitation. Accordingly, I sustain the April 10, 2026, 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,

A handwritten signature in black ink that reads "Cory K. Kestner". The signature is written in a cursive style with a large, stylized 'C' and 'K'.

Cory K. Kestner
Chief Hearing Officer

c: R.Regan
W. Higgins
J. Lee