



State of New Jersey

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

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March 19, 2026

Via Electronic Mail Only to alisha@kovacorp.com

Alisha Bradley
Kova Corp
102 East Bay Ave/Ste J
Manahawkin, NJ 08050

Re: I/M/O Bid Solicitation #25DPP01092 KOVA, Corp.
Protest of Notice of Intent to Award
T0109 – Radio Communications Equipment and Accessories

Dear Ms. Bradley:

This final agency decision is in response to your protest application delivered the online protest portal on behalf of KOVA, Corp. (KOVA) received by the Division of Purchase and Property's (Division) Hearing Unit on February 27, 2026 (Protest). KOVA protests the Procurement Bureau's (Bureau) February 13, 2026, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #25DPP01092 – T0109 Radio Communications Equipment and Accessories (Bid Solicitation).

By way of background, on April 21, 2025, the Bureau issued the Bid Solicitation on behalf of the Office of Information Technology (OIT). The purpose of the Bid Solicitation was to solicit Quotes for the purchase and installation of new radio communication equipment and systems, as well as additions to, upgrades of, and maintenance and support of existing radio communication equipment and systems. Bid Solicitation Sec. 1.1, *Purpose and Intent*. Bid Solicitation Section 1.2, *Background*, cautioned Bidders that this Bid Solicitation addressed the State's current requirements.

In accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on May 5, 2025, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. Representatives from sixteen (16) potential bidding entities attended according to the Pre-Quote Conference sign-in.

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 12, 2025. Four (4) Bid Amendments were issued for this Bid Solicitation, which provided revisions to the Bid Solicitation and responses to questions received from potential Bidders:

Bid Amendment	Date Issued	Contents
1	6/19/2025	Stated that answers to the Electronic Question and Answer Period will be posted in a subsequent Bid Amendment.
2	6/30/2025	The Quote Submission Due Date extended from July 10, 2025, to August 26, 2025.
3	7/23/2025	- Answers to the first round of Electronic Question and Answer Period; - Revised the Bid Solicitation posted to NJSTART; - Revised the State-Supplied Price Sheet posted to NJSTART; and - Second Electronic Question and Answer period opened until July 30, 2025.
4	8/7/2025	Answers to the second round of Electronic Question and Answer Period.

On August 26, 2025, the Division's Proposal Review Unit (PRU) opened thirty-six (36) Quotes. The thirty-six (36) Quotes were deemed administratively complete by the PRU and released to the Bureau for further review and evaluation.

1. 22nd Century Technologies Inc (22nd Century) 2. Atlantic Communications Electronics Inc 3. Aviat U.S. Inc (Networks) 4. BK Technologies, Inc. 5. Bluum USA, Inc. 6. Business Information Systems (BIS) 7. C Squared Systems 8. Communications Specialists Inc 9. E/M Wave Inc. 10. Eastern Communications LTD 11. EF Johnson Co 12. Electronic Service Solutions Inc 13. Gold Type Business Machines Inc 14. Goosetown Enterprises Inc. 15. Impact Power Technologies LLC 16. Interaction Insight Corporation 17. Kenwood USA Corp. 18. Kova Corp	19. L3Harris Technologies 20. Let's Think Wireless LLC 21. Motorola Solutions 22. New Jersey Business Systems Inc. 23. Northeast Communications Inc. 24. Online Communications LLC 25. Philip M. Casciano Associates Inc. 26. PierCon Solutions LLC 27. Procomm Systems Inc 28. R.F. Design & Integration Inc 29. Scientel Solutions 30. Tactical Public Safety LLC 31. V-Comm L.L.C. 32. Verizon Wireless 33. WaveStar Solutions 34. Wireless Electronics 35. Xybix Systems Inc 36. Zetron Inc
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As part of the responsiveness review, the Bureau determined that the Quotes submitted by Bk Technologies, C Squared Systems, and Zetron, required a Request for Clarification, in accordance with Bid Solicitation Section 8.4, *Clarification of Quote*, for the Bureau to determine whether or not the Quotes were responsive to mandatory material requirements of the Bid Solicitation as outlined on Pages 14, 15, 17, and 25 in the Recommendation Report dated February 6, 2026 (Recommendation Report). For the reasons more fully explained on those pages in the Recommendation Report, the Bureau determined whether each Bidder's clarification response sufficiently addressed the matter in question, and whether the Bidders met the requirements of the Bid Solicitation.

The Bureau determined that the Quotes submitted by the Bidders in the following chart were non-responsive due to non-compliance with one or more mandatory elements of the Bid Solicitation. Recommendation Report at pgs. 17-22.

1. 22 nd Century Technologies Inc. 2. Atlantic Communications Electronics Inc.	7. Interaction Insight Corporation 8. Kova Corp
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3. Aviat U.S. Inc. (Networks)	9. L3Harris Technologies, Inc.
4. Business Information Systems, Inc. (BIS)	10. Verizon Wireless
5. E/M Wave Inc	11. Xybix Systems Inc.
6. Impact Power Technologies LLC	12. WaveStar Solutions

The Bureau found that the following Quotes met, and complied with, the mandatory requirements of the Bid Solicitation, and remained available to be evaluated and eligible for Contract award:

1. BK Technologies, Inc.	14. Northeast Communications Inc.
2. Bluum USA, Inc.	15. Online Communications LLC
3. C Squared Systems	16. Philip M. Casciano Associates, Inc.
4. Communications Specialists Inc	17. PierCon Solutions, LLC
5. Eastern Communications LTD	18. Procomm Systems Inc
6. E.F. Johnson Co	19. R.F. Design & Integration Inc
7. Electronic Service Solutions, Inc.	20. Scientel Solutions
8. Gold Type Business Machines Inc.	21. Tactical Public Safety LLC
9. Goosetown Enterprises Inc.	22. V-COMM L.L.C.
10. JVCKENWOOD USA Corp.	23. Wireless Electronics Inc.
11. Let's Think Wireless, LLC	24. Zetron, Inc
12. Motorola Solutions, Inc.	
13. New Jersey Business Systems Inc.	

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

The following criteria will be used to evaluate and score Quotes received in response to this Bid Solicitation:

- A. The Bidder's demonstration in the Quote that the Bidder understands and is able to complete the requirements of the Scope of Work as sought.

To evaluate pricing pursuant to Bid Solicitation Section 8.9.1, *Price Evaluation*, Bidders were ranked within each category they bid from highest to lowest according to the discount percentage off on the State-Supplied Price Sheet, and the highest discount prevailed for ranking purposes of a specific category in the event the Bidder bid multiple brands within a category. The Bureau considered all pricing from the Bidders in the Competitive Range to be reasonable and acceptable.

Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on February 13, 2026, the Bureau issued the Notice of Intent to Award (NOI) advising all Bidders that it was the State's intent to award a Contract for each Price Line/Category number as outlined in that letter and in the Recommendation Report.

On February 27, 2026, prior to the close of the protest period, KOVA submitted a Protest challenging the Division's determination that the Quote submitted by KOVA was non-responsive for not providing "responses that were clear or about cloud-based offerings." Specifically, KOVA's argues that it

revised the questionnaire responses to provide additional clarification. It shall be noted that our existing customer base that is comprised of customers that have purchased our logging recorders since 1999 prefer a premise based solution. If we were to offer cloud services then we would do so with mutually agreed-upon service, security, and capacity level expectations, with security roles and responsibilities for both the organization and the cloud provider clearly delineated and documented with controls in place to protect sensitive data.

[KOVA Protest Application, Page 2.]

Additionally, KOVA argues that removing it from the awarded pool of contractors will create a monopoly due to a lack of choice.

Although KOVA has 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 KOVA. 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 KOVA 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).

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).

A. Third-Party Security Questionnaire Requirement

The subject procurement was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 3.0, *Quote Submission Requirements*. With regard to the Third-Party Security Questionnaire, the Bid Solicitation stated in pertinent part:

The Bidder should complete and submit the State of New Jersey Security Due Diligence Third-Party Information Security Questionnaire (Questionnaire) with its Quote. If a Bidder does not submit the completed Questionnaire with the Quote, the Bidder must comply within seven (7) Business Days of the State’s request or the State may deem the Quote non-responsive.

This Questionnaire is designed to provide the State with an overview of the Bidder’s security and privacy controls to ensure that the Bidder will (1) meet the State of New Jersey’s objectives as outlined and documented in the Statewide Information Security Manual; and (2) comply with the State’s security requirements as outlined in Section 6 – Data Security Requirements – Contractor Responsibility. The State reserves the right to remove a Bidder from consideration of Contract award if the State determines that the Bidder’s Questionnaire failed to sufficiently convey that the Bidder’s security and privacy controls meet the State’s requirements.

The State has executed a Confidentiality/Non-Disclosure Agreement which is attached to the Questionnaire. The Bidder should countersign the Confidentiality/Non-Disclosure Agreement and include it with its submitted Questionnaire. If a Bidder does not submit the signed Confidentiality/Non-Disclosure Agreement with the Questionnaire, the Bidder must comply within seven (7) Business Days of the State’s request

or the State may deem the Quote non-responsive. No amendments to Confidentiality/Non-Disclosure Agreement are permitted.

To the extent permissible under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena, the completed Questionnaire and supplemental documentation provided by the Bidder will be kept confidential and not shared with the public or other Bidders.

NOTE: The State of New Jersey Security Due Diligence Third-Party Information Security Questionnaire (Questionnaire) is required only for Bidders bidding on Price Lines 18-21 (Section 4.2.2).

[Bid Solicitation Section 3.13.12, State of New Jersey Security Due Diligence Third-Party Information Security Questionnaire (*emphasis in original*).]

Here, Kova bid on Price Line 19, *Logging Recorder*, and submitted a completed Security Questionnaire as part of its Quote. That Security Questionnaire was found to not meet the State's information security standards, as determined by the Office of Homeland Security and Preparedness (OHSP). *Recommendation Report*, Page 19. As noted above, the sole purpose of the Security Questionnaire is to

[E]nsure that the Bidder will (1) meet the State of New Jersey's objectives as outlined and documented in the Statewide Information Security Manual; and (2) comply with the State's security requirements as outlined in Section 6 – Data Security Requirements – Contractor Responsibility. The State reserves the right to remove a Bidder from consideration of Contract award if the State determines that the Bidder's Questionnaire failed to sufficiently convey that the Bidder's security and privacy controls meet the State's requirements.

Thus, the information provided is not for evaluation purposes related to the Technical Quote scoring, but merely to meet the State's security standards. This "pass/fail" requirement is similar to other requirements that must merely be met by the time of award, and not by a statutory or court-mandated timeframe.

Permitting Kova another opportunity at review does not become "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 (1975). A bidder who fails to provide the required form, or to eventually meet the security requirements, would be non-responsive to the Bid Solicitation's requirements. However, as revealed by the revised Security Questionnaire attached to Kova's protest, there is additional information that is available for OHSP to review and potentially revise its determination.

Because the Hearing Unit conducts a de novo review of the full record, this review will be considered the full review of the record in the event that the OHSP determines that the revised Security Questionnaire meets the security standards for this Contract. However, should the OHSP determine again that Kova's revised Security Questionnaire still fails to meet the required security standards, the matter will be returned for a final resolution on the question of responsiveness.

B. Past Performance and Monopoly

As the matter is being remanded to the Bureau for action in accordance with this FAD, the statements related to past performance and a potential monopoly will be addressed by the Hearing Unit if the matter is returned following a future responsiveness determination.

CONCLUSION

Based upon the foregoing, I remand the matter to the Bureau. The Bureau shall send the revised Security Questionnaire to OHSP for a determination on whether the information provided meets the required security standards of the Bid Solicitation. If the OHSP finds the information provided to be satisfactory, then the Bureau will evaluate Kova's Quote in accordance with the Bid Solicitation's requirements. If the OHSP finds the information provided to be unsatisfactory, then the Bureau will return the matter to the Hearing Unit for a final determination on the February 27, 2026, protest. Jurisdiction is retained by the Hearing Unit until either action has been finally resolved.

Sincerely,



Cory K. Kestner
Chief Hearing Officer

c: M. Dunn
L. Molano