



State of New Jersey

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

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March 13, 2026

Via Electronic Mail Only to Kathryn.lewis@l3harris.com

Kathryn Lewis
L3Harris Technologies, Inc.
221 Jefferson Ridge Pkwy Lynchburg, VA 24501

Re: I/M/O Bid Solicitation #25DPP01092 L3Harris Technologies, Inc.
Protest of Notice of Intent to Award
T0109 – Radio Communications Equipment and Accessories

Dear Ms. Lewis:

This final agency decision is in response to your protest application delivered the online protest portal on behalf of L3Harris Technologies, Inc. (L3Harris) received by the Division of Purchase and Property's (Division) Hearing Unit on March 2, 2026 (Protest). L3Harris protests the Procurement Bureau's (Bureau) February 3, 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 March 2, 2026, prior to the close of the protest period, L3Harris submitted a Protest challenging the Division's determination that the Quote submitted by L3Harris was non-responsive. Specifically, L3Harris' claims that its Quote was substantially and materially responsive to Quote's specifications, and that any alleged defect in the Quote was a mere irregularity to be waived by the State. Regardless of its

first two claims, L3Harris argues that it should have been permitted to clarify its response in its Quote similar to the clarifications provided by other Bidders.

Although L3Harris 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 L3Harris. 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 L3Harris 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. Percentage Ranges and Additional Language on State-Supplied Price Sheet

L3Harris argues that it was wrongfully removed from consideration because it provided percentage discount ranges that L3Harris argues met the Bid Solicitation’s requirements, and because the additional language regarding “T&L to be quoted” is its standard pricing practice. As shown below, the Bureau correctly determined L3Harris was non-responsive and ineligible for award on both issues.

Here L3Harris’ Price Sheet submitted in response to the Bid Solicitation included the following with respect to the tab named “L3Harris”:

Bid Solicitation # 25DPP01092 State Supplied Price Sheet			
For each brand of each category a Bidder is a bidding, a tab of this State Supplied Price Sheet must be completed. This document must be included with Quote submission. For complete instructions on this State Supplied Price Sheet, please refer to Bid Solicitation Section 3.28.			
Bidder	L3Harris Technologies, Inc.		
Manufacturer/Brand:	L3Harris Technologies, Inc.		
Radio Equipment Category (Bid Solicitation Section 4.2.1)	Price Line / Category #	Discount %	
Radio Base Station Control Equipment & Accessories	1	Varies: 0% - 26%	
Portable Radio Equipment & Accessories	2	Varies: 0% - 26%	
Mobile Radio Equipment & Accessories	3	Varies: 0% - 26%	
Aircraft AM & FM Band Radio & Accessories	4	No Bid	
Marine AM & FM Band Radio & Accessories	5	No Bid	
Amateur Radio Communications Equipment & Accessories	6	No Bid	
Gateway Devices: Interoperability between dissimilar communications systems	7	Varies: 0% - 26%	
Antennas: Mobile, Portable and Base Station	8	Varies: 0% - 26%	
Microwave Equipment, Radio and Antenna & Accessories	9	No Bid	
Radio Communications Network	10	Varies: 0% - 26%	
Antenna Systems and Bi-Directional Amplifier Equipment	11	No Bid	
Short Range Point to Point/ Multipoint Communications Equipment	12	No Bid	
Test Equipment: All installed radio and communications equipment	13	No Bid	
Batteries and Chargers	14	Varies: 0% - 26%	
Consoles, including Equipment Racks and Operator Furniture	15	Varies: 0% - 26%	
Uninterruptable Power Supplies (UPS)	16	No Bid	
9-1-1 Telecommunications Equipment			
Call Answering Equipment	17	No Bid	
Instant Playback Recorder	18	No Bid	
Logging Recorder	19	No Bid	
Computer Aided Dispatch (CAD)	20	No Bid	
Record Management System (RMS)	21	No Bid	
Schedule A (Sub-Categories): Time and Material / Maintenance & Repair Services (Bid Solicitation Sections 4.5, 4.12, and 4.13)			

[L3Harris State-Supplied Price Sheet, TAB L3Harris.]

Next, L3Harris’ Price Sheet submitted in response to the Bid Solicitation included the following with respect to the tab named “Catalyst”:

Bid Solicitation # 25DPP01092 State Supplied Price Sheet			
For each brand of each category a Bidder is a bidding, a tab of this State Supplied Price Sheet must be completed. This document must be included with Quote submission. For complete instructions on this State Supplied Price Sheet, please refer to Bid Solicitation Section 3.28.			
Bidder	L3Harris Technologies, Inc.		
Manufacturer/Brand:	Catalyst		
Radio Equipment Category (Bid Solicitation Section 4.2.1)	Price Line / Category #	Discount %	
Radio Base Station Control Equipment & Accessories	1	0% - 10%	
Portable Radio Equipment & Accessories	2		
Mobile Radio Equipment & Accessories	3		
Aircraft AM & FM Band Radio & Accessories	4		
Marine AM & FM Band Radio & Accessories	5		
Amateur Radio Communications Equipment & Accessories	6		
Gateway Devices: Interoperability between dissimilar communications systems	7		
Antennas: Mobile, Portable and Base Station	8		
Microwave Equipment, Radio and Antenna & Accessories	9		
Radio Communications Network	10		
Antenna Systems and Bi-Directional Amplifier Equipment	11		
Short Range Point to Point/ Multipoint Communications Equipment	12		
Test Equipment: All installed radio and communications equipment	13		
Batteries and Chargers	14		
Consoles, including Equipment Racks and Operator Furniture	15		
Uninterruptable Power Supplies (UPS)	16		
9-1-1 Telecommunications Equipment			
Call Answering Equipment	17		
Instant Playback Recorder	18		
Logging Recorder	19		
Computer Aided Dispatch (CAD)	20		
Record Management System (RMS)	21		
Schedule A (Sub-Categories): Time and Material / Maintenance & Repair Services (Bid Solicitation Sections 4.5, 4.12, and			

[L3Harris State-Supplied Price Sheet, TAB Catalyst.]

Finally, L3Harris' Price Sheet submitted in response to the Bid Solicitation included the following with respect to the tab named "MCMTech":

Bid Solicitation # 25DPP01092 State Supplied Price Sheet			
For each brand of each category a Bidder is a bidding, a tab of this State Supplied Price Sheet must be completed. This document must be included with Quote submission. For complete instructions on this State Supplied Price Sheet, please refer to Bid Solicitation Section 3.28.			
Bidder	L3Harris Technologies, Inc.		
Manufacturer/Brand:	MCM-Tech		
Radio Equipment Category (Bid Solicitation Section 4.2.1)	Price Line / Category #	Discount %	
Radio Base Station Control Equipment & Accessories	1		
Portable Radio Equipment & Accessories	2		
Mobile Radio Equipment & Accessories	3		
Aircraft AM & FM Band Radio & Accessories	4		
Marine AM & FM Band Radio & Accessories	5		
Amateur Radio Communications Equipment & Accessories	6		
Gateway Devices: Interoperability between dissimilar communications systems	7		
Antennas: Mobile, Portable and Base Station	8		
Microwave Equipment, Radio and Antenna & Accessories	9		
Radio Communications Network	10	0% - 10%	
Antenna Systems and Bi-Directional Amplifier Equipment	11		
Short Range Point to Point/ Multipoint Communications Equipment	12		
Test Equipment: All installed radio and communications equipment	13		
Batteries and Chargers	14		
Consoles, including Equipment Racks and Operator Furniture	15		
Uninterruptable Power Supplies (UPS)	16		
9-1-1 Telecommunications Equipment			
Call Answering Equipment	17		
Instant Playback Recorder	18		
Logging Recorder	19		
Computer Aided Dispatch (CAD)	20		
Record Management System (RMS)	21		
Schedule A (Sub-Categories): Time and Material / Maintenance & Repair Services (Bid Solicitation Sections 4.5, 4.12, and			

[L3Harris State-Supplied Price Sheet, TAB MCMTech.]

The inclusion of a range of percentages in the State-Supplied Price Sheet submitted by L3Harris clearly and expressly conflicts with the language in the Bid Solicitation. Specifically, Bid Solicitation Section 3.28, *State-Supplied Price Sheet Instructions*, states:

The Bidder shall provide the **discount percent (%)** to be applied to the manufacturer/brand equipment price catalog.

[Emphasis added.]

This language requires a singular discount percentage, and failing to mention or permit a range of percentages, works in tandem with the language in Bid Solicitation Section 8.9.1, *Price Evaluation*, which informs potential bidders and the public that:

For evaluation purposes, Bidders will be ranked within each category they bid on from highest to lowest according to **the discount percentage off** on the State-Supplied Price Sheet accompanying this Bid Solicitation. In the event the Bidder bids multiple brands within a category, the **highest discount** will prevail and be used for ranking purposes of that category.

[Emphasis added.]

Additionally, when the State desired discounts based on some specific criteria, such as the volume discounts outlined in Bid Solicitation Section 3.28, *State-Supplied Price Sheet Instructions, Schedule C*, the State used clear language outlining how the discounts would be provided:

Bidders **should** list volume discounts for the specified revenue ranges in the designated yellow cells.

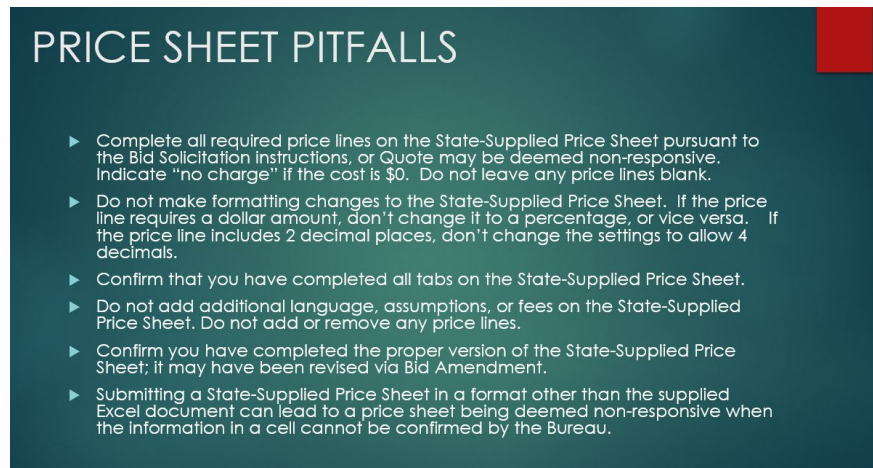
[Emphasis in original.]

Potential Bidders were permitted to submit questions regarding the terms and conditions of the Request for Quotes by May 12, 2025. Potential Bidders were provided a second opportunity to submit questions by July 30, 2025, related to substantive changes from the first question and answer period. Sixty-one (61) questions were received. Several questions were received regarding dated price catalogs, later updating pricing after award, and partial bids for specific categories. No questions were submitted related to whether a bidder could provide a percentage range based on product line or third-party suppliers, or provide hourly pricing at some future date.

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:



PRICE SHEET PITFALLS

- ▶ Complete all required price lines on the State-Supplied Price Sheet pursuant to the Bid Solicitation instructions, or Quote may be deemed non-responsive. Indicate "no charge" if the cost is \$0. Do not leave any price lines blank.
- ▶ Do not make formatting changes to the State-Supplied Price Sheet. If the price line requires a dollar amount, don't change it to a percentage, or vice versa. If the price line includes 2 decimal places, don't change the settings to allow 4 decimals.
- ▶ Confirm that you have completed all tabs on the State-Supplied Price Sheet.
- ▶ Do not add additional language, assumptions, or fees on the State-Supplied Price Sheet. Do not add or remove any price lines.
- ▶ Confirm you have completed the proper version of the State-Supplied Price Sheet; it may have been revised via Bid Amendment.
- ▶ Submitting a State-Supplied Price Sheet in a format other than the supplied Excel document can lead to a price sheet being deemed non-responsive when the information in a cell cannot be confirmed by the Bureau.

[Pre-Quote Conference – Slide Deck page #6]

The Division expressly advises and warns Bidders not to “add additional language, assumptions, or fees on the Price Sheet.” The Division includes this language knowing how the courts have addressed this issue in the past and to help Bidder’s avoid repeating the same mistakes.

Here, L3Harris’ failure to include a single, firm fixed percentage rate as well as an hourly rate on Schedule A are material deviations from the requirements of the Bid Solicitation. First, the deviation deprives the State from the assurance that the contract will be performed according to the specified requirements because the Bidders cannot be accurately evaluated with contracts awarded based on a ceiling established by a single percentage rate and hourly rate. Second, accepting L3Harris’ discount ranges and offer to provide hourly rates in the future adversely affects competitive bidding because other Bidders submitted pricing that was not reliant on additional assumptions related to product lines or third-party suppliers or future rates. Similarly, L3Harris reserved to itself the ability to modify pricing for the respective price lines based a sliding scale “ceiling”, while other Bidders would be required to only provide pricing based on its single percentage rate. Therefore, the Bureau correctly deemed L3Harris’ Quote as non-responsive to the requirements of the Bid Solicitation.

L3Harris agrees that the Bid Solicitation requires “bidders to provide a discount percent for a quoted brand”, and argues that its response was “accurate because [L3Harris] does not offer a ‘set’ discount for all items in its price catalog”. L3Harris Protest, pg. 2. As shown above, the Bid Solicitation did not discuss discount ranges for Price Lines 1-21, and the language focusing on a singular mark-up percentage fit squarely with the Division’s intent to evaluate all Bidders based on the percentage submitted for each Price Line. The submission of ranges based on any assumed fact runs contrary to the Bid Solicitation’s requirements, and also places Bidders on unequal footing during the evaluation process as there is no analysis of different percentage ranges for different products or whether a third-party is involved during the bidding and evaluation process. Finally, as shown in the Recommendation Report, no other Bidders submitted ranges on their State-Supplied Price Sheets. This means that thirty-five of the thirty-six Bidders followed the Bid Solicitation’s instructions, and L3Harris now requests that an exception be made for it despite not following the Bid Solicitation’s instructions that were followed by the other Bidders.

L3Harris also alleges that two other Bidders were awarded contracts despite adding similar language regarding hourly pricing rates. An independent review of the two Bidders State-Supplied Price Sheets, C Squared Systems and Zetron Inc., as well as the language in Bid Solicitation Section 3.28, State-Supplied Price Sheet Instructions, for Schedule B and Schedule C, shows that bidders were required to submit an hourly rate in the designated yellow cells on the State-Supplied Price Sheet, and that all three failed to do so because they instead provided language that the rate would be determined at a future date. In its State-Supplied Price Sheet, C Squared Systems entered “Quote Only” in Schedule B for “Extended Engagement (> 30 days)” instead of entering an hourly rate as required. Zetron Inc.’s State-Supplied Price Sheet included the phrase “CALL FOR QUOTE.” The responses on each bidders’ State-Supplied Price Sheet are inconsistent with the terms of Bid Solicitation Section 3.28 requiring an hourly rate on the State-Supplied Price Sheet.

A further review of the record shows that clarification letters were erroneously sent to C Squared Systems and Zetron Inc. Clarifications¹ 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 on each State-Supplied Price Sheet was clearly contrary to the Bid Solicitation’s requirements to provide an hourly rate. 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.

Because the Hearing Unit conducts a de novo review of the full record, this review will be considered the full review of the record relating to the NOI letters issued to C Squared Systems and Zetron Inc. as if protests were filed on their behalf. As shown above, based on the facts outlined in the Recommendation Report, and the Hearing Unit’s independent review, it’s clear that the Bureau sought impermissible clarifications, and the awards to C Squared Systems and Zetron, Inc. must be rescinded.²

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

¹ Multiple Requests for Information (RFI) were misdesignated using the term “clarification”. These RFIs asked for price catalogs and general forms not utilized for a bidder’s evaluation. As such, only the two clarifications discussed herein for C Squared Systems and Zetron are at issue.

² This FAD only impacts the award of this Contract to C Squared Systems and Zetron Inc. for use by the State’s Executive Branch Agencies. These companies may contract under the Local Public Contracts Law (LCPL), with any county, borough, city, municipality, town, township, special purpose district, or other political subdivision of the State, or under N.J.S.A. 52:25-16.2 for volunteer fire departments, volunteer first aid squads and rescue squads (collectively the “Locals”), because the Locals have independent procurement authority to enter into contracts that suit their specific needs. The State’s contracts are made available for the Locals’ convenience, but they are not binding on those public bodies the way they are on Executive Branch agencies. Similarly, there is nothing prohibiting L3Harris, C Squared Systems, or Zetron Inc. from providing their goods and services at the same prices or better to the Locals than they would on this State contract.

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).

L3Harris also points to language regarding the number of brands bid as a reason for being removed from consideration of an award. L3Harris misconstrues the language which simply states that L3Harris was non-responsive for the three brands that it bid, and was therefore ineligible for any award. Had L3Harris bid properly for other brands, it would have remained eligible for award as happened with some other bidders. Thus, L3Harris was not removed from consideration for award due to the number of brands bid on its State-Supplied Price Sheet.

B. Stay of Award

Because a request for a stay is an extraordinary remedy, the party who seeks a stay “must satisfy a ‘particularly heavy’ burden.” Gauman v. Velez, 421 N.J. Super. 239, 247 (App. Div. 2011) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006)). In exercising discretion to grant a request for stay, an agency must be guided by the four fundamental principles set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). First, a stay should be granted only “when necessary to prevent irreparable harm.” Id. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Second, “temporary relief should be withheld when the legal right underlying plaintiff’s claim is unsettled.” Id. at 133 (citing Citizens Coach, 29 N.J. Eq. at 304-05). Third, the “plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits.” Ibid. (quoting Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)). The fourth and final consideration “is the relative hardship to the parties in granting or denying the relief.” Id. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

New Jersey courts have consistently held that a movant must clearly and convincingly demonstrate the right to a stay. Waste Mgmt. of N.J., Inc. v. Union County Utilities Auth., 399 N.J. Super. 508, 520 (App. Div. 2008). As discussed in detail below, in reviewing each of the Crowe factors with respect to this request, L3Harris has not demonstrated that it is entitled to a stay.

With respect to each of the Crowe factors, I find as follows:

1. L3Harris will not suffer irreparable harm if the stay is denied.

L3Harris will not suffer irreparable harm if the stay of the Contract award is denied. L3Harris offers no argument in support of its request.

When considering a stay request, “harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Crowe, supra, 90 N.J. at 132-33. While monetary damages are never available for the failure to award a public contract, not every request for stay that concerns a public contract award is granted. See, e.g., In re Challenge of Contract Award Solicitation No. 13-X-22694 Lottery Growth Mgmt. Servs., 436 N.J. Super. 350, 358 (App. Div. 2014) (denying stay of award of contract). This is one of the pillars underlying the public bidding laws. Moreover, the fact that L3Harris may have previously provided services to the State does not entitle it to a contract in perpetuity. In re Motor Vehicle Comm’n Surcharge Sys. Accounting and Billing Servs., No. A-3136-16, at *13 (App. Div. Feb. 8, 2018). No bidder is entitled to award of a public contract. Comm’l Cleaning Corp. v. Sullivan, 47 N.J. 539, 546 (1966).

With respect to any potential argument that L3Harris could claim regarding transition costs and loss of work, transition from one contract to another is inherent in the public procurement process, and is a

part of every contract awarded by the State. Additionally, there is no “loss of work” for any awarded vendor because they are well-informed in the Bid Solicitation that an award only makes them eligible to participate in the Contract for the opportunity to be assigned work.

Finally, even if L3Harris could arguably suffer monetary harm from not being awarded a Contract pursuant to this Bid Solicitation, this is a risk that a company routinely accepts when it participates in a public bidding process. Thus, L3Harris has not demonstrated by clear and convincing evidence that it will suffer irreparable harm if the Contract award is not stayed.

2. L3Harris has the legal right to request a stay of the protest period.

The Division acknowledges that it is well settled that a bidder claiming to be entitled to an award of a contract has standing to challenge the award of the contract to another. M.A. Stephen Construction Co., Inc. v. Borough of Rumson, 125 N.J. Super. 67, 74 (App. Div. 1973).

3. L3Harris has not demonstrated a reasonable probability of success on the merits.

L3Harris has made no assertion, much less demonstrated, that it will prevail on appeal.

The purpose of the public bidding process is to “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)). 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). Importantly, in general, “courts will not interfere with a Final Agency Determination which pertains to contract awards or rejecting a bid or bidders unless there is a finding of ‘bad faith, corruption, fraud[,] or gross abuse of discretion.’” In re Jasper Seating Co., 406 N.J. Super. 213, 222, (App. Div. 2009). The Appellate Division had repeatedly noted:

Our jurisprudence recognizes that the Legislature purposefully conferred broad discretion on the Director of the [DPP] to determine ‘which bid will be most advantageous to the State. In re Jasper Seating Co., 406 N.J. Super. 213, 222, 967 A.2d 350 (App. Div. 2009) (quoting Sullivan, *supra*, 47 N.J. at 548). “[T]he Director’s determinations ‘as to . . . bid conformity are to be tested by the ordinary standards governing administrative action.’” Ibid. (quoting In re On-Line Games Contract, 279 N.J. Super. 566, 593, 653 A.2d 1145 (App. Div. 1995) (stating that “[c]ourts can intervene only in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State policy”)). Despite this “elevated scrutiny, ‘judicial capacity to review administrative actions is severely limited.’” Id. at 223 (quoting George Harms Constr. Co. v. Tpk. Auth., 137 N.J. 8, 27, 644 A.2d 76 (1994)).

[In re Bid Solicitation #11-X-21175, Snow Removal & Salting Servs. Statewide, 2012 N.J. Super. Unpub. LEXIS 2760, *7-8.]

In evaluating a reasonable probability of success on the merits, the review is restricted to a determination of whether the Director’s decision to award the contract is founded on “bad faith, corruption, fraud or gross abuse of discretion.” Commercial Cleaning Corp. v. Sullivan, 47 N.J. 539, 549 (1966); In re Jasper Seating Co., 406 N.J. Super. 213, 222 (App. Div. 2009). “[A]n appellate court will not upset an

agency's ultimate determination unless the agency's decision is shown to have been "arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole." Barrick, supra 218 N.J. at 259 (citing In re Stallworth, 208 N.J. 182, 194 (2011).) In reviewing the probability of success on the merits, the inquiry is limited to: (1) whether the agency's action violated the legislative policies expressed or implied in the act governing the agency; (2) whether the evidence in the record substantially supports the findings on which the agency's actions were premised; and (3) "whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors." Barrick, supra, 218 N.J. at 260, citing, In re Carter, 191 N.J. 474, 482 (2007).

The Division's determinations with respect to each of L3Harris' Protest points was fully supported by the governing statutes, regulations and case law. L3Harris has not offered any new factual or legal support in its Stay Request that the Division acted in bad faith or exercised a gross abuse of discretion, such that the Division's decision is likely to be overturned on appeal. As such, L3Harris is unlikely to succeed on appeal.

a. The Bureau correctly determined that L3Harris' Quote was non-responsive based upon its submitted State-Supplied Price Sheet, and it did not show favoritism to other bidders.

L3Harris states that Division's rejection of its Quote based upon the submitted State-Supplied Price Sheet was in error because (1) L3Harris completed the State-Supplied Price Sheet in accordance with the Bid Solicitation instructions; (2) any error on the part of L3Harris could be waived; and (3) the State permitted bidders with price sheet errors to be awarded contracts. L3Harris' arguments demonstrate its misunderstanding of New Jersey's procurement law.

In support of the Stay Request, L3Harris asserts that the Bureau incorrectly interpreted its own Bid Solicitation and State-Supplied Price Sheet instructions and added requirements; and therefore, it was inappropriate for the Bureau to determine that the contents of the State-Supplied Price Sheet cannot permit ranges.

There is no dispute that the State-Supplied Price Sheet is a mandatory bidding requirement. In order to be eligible for a contract award, the Bidder must submit a State-Supplied Price Sheet demonstrating its compliance with the Bid Solicitation's requirements, as required by N.J.S.A. 52:34-12(g), so that an award can be made to a bidder whose Quote is "conforming to the invitation for bids". Completing the State-Supplied Price Sheet correctly is a clear mandatory bidding requirement, and a Bidder's failure to comply with the requirements renders its Quote non-responsive and therefore ineligible for an award.

Because submitting the State-Supplied Price Sheet is a mandatory bidding requirement, L3Harris' claim that it should have been afforded an opportunity to "clarify" its form 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". While L3Harris claims that it simply wanted the opportunity to explain or clarify its State-Supplied Price Sheet, there is no explanation or clarification that would have permitted L3Harris to add or remove the ranges from its State-Supplied Price Sheet without an impermissible change to the contents of the submitted State-Supplied Price Sheet.

Despite L3Harris' efforts to blame its non-compliance with Bid Solicitation requirements on faulty instructions, the Bid Solicitation provided clear instructions, and thirty-five bidders correctly understood percentage ranges were not permitted and no other bidders submitted their State-Supplied Price Sheet with

percentage ranges. L3Harris' deviation deprives the State from the assurance that the contract will be performed according to the specified requirements because the Bidders cannot be accurately evaluated with contracts awarded based on a ceiling established by a single percentage rate, and accepting L3Harris' percentage range adversely affects competitive bidding because other Bidders submitted pricing that was not reliant on additional assumptions as outlined above. Because L3Harris reserved to itself the ability to submit pricing based on a percentage range and hourly rates provided at a future date, it puts itself in a superior position to other bidders, which is contrary to New Jersey's procurement law. As such, L3Harris' interpretation is contrary to New Jersey's well-established procurement law and there is no likelihood of success on appeal.

Therefore, the Bureau correctly deemed L3Harris' Quote non-responsive to the requirements of the Bid Solicitation. L3Harris was not treated unfairly relative to other bidders, and accordingly, L3Harris is not likely to succeed on this claim in an appeal.

4. The balance of the relative hardship weighs in favor of denying the Stay Request.

Lastly, L3Harris has not established that the balance of relative hardships weighs in favor of granting a stay. Importantly, L3Harris will not lose anything to which it is entitled if the already awarded Contract is allowed to commence as expected. L3Harris has at all times been aware of the end date for its current contract. That has not changed. Therefore, L3Harris had no expectation that its current contract would be extended.

Conversely, the public will benefit from the award of the contract to the awarded vendors based on a lawful procurement process. As such, the State's and the public's interest in moving forward with the awarded Contract in order to satisfy the public purposes of procurement outweighs all of L3Harris' legally cognizable interests.

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation that the Contract not be awarded with respect to L3Harris as outlined in the Recommendation Report. Additionally, the Bureau will issue letters rescinding the awards to C Squared Systems and Zetron Inc., and attach a copy of this Final Agency Decision. Accordingly, I sustain the remainder of the February 13, 2026, Notice of Intent to Award. This is my final agency decision.

Thank you for your company's 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
Chief Hearing Officer

c: M. Dunn
L. Molano