



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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DR. DALE G. CALDWELL
Lt. Governor

AMY F. DAVIS, ESQ.
Acting Director

September 9, 2026

Via Electronic Mail Only to johnblewettinc@gmail.com

Michelle Blewett
John Blewett Inc.
246 Herbertsville Road
Howell, NJ 07731

Re: I/M/O Bid Solicitation #25DPP01189 John Blewett Inc.
Protest of Rejection of the Revised Notice of Intent to Award
T2634 – Scrap Metal Collection and Recycling/Disposal – Statewide

Dear Ms. Blewett:

This final agency decision is in response to your second protest application on behalf of John Blewett Inc. (“John Blewett”) received by the Division of Purchase and Property’s (“Division”) Hearing Unit on August 21, 2026 (“Second Protest”). In that application, John Blewett protests the Division’s Procurement Bureau (“Bureau”) August 18, 2026, Revised Notice of Intent to Award (“Revised NOI”) and Revised Recommendation Report dated July 21, 2026 (“Revised Rec Report”). In their Protest, John Blewett protests the finding by the Bureau that their Quote was non-responsive for failing to properly disclose their ownership structure. Additionally, John Blewett makes numerous arguments as to why the Bureau erred in awarding the contract to The Yaros Company, Inc. (“Yaros”).

By way of background, on August 26, 2025, the Bureau issued Bid Solicitation 25DPP01189 - T2634 – Scrap Metal Collection and Recycling/Disposal – Statewide (“Bid Solicitation”) on behalf of the State of New Jersey and its Cooperative Purchasing Program Participants. The purpose of the Bid Solicitation was to solicit Quotes for the recycling and disposal of light iron, steel, aluminum, copper, stainless steel, brass, lead, lead acid batteries, crushed steel drums, and other surplus scrap metal through a rebate program. Bid Solicitation Section 1.1, *Purpose and Intent*. It is the intent of the State to award Contracts to those responsible Bidders whose Quotes, conforming to the Bid Solicitation are most advantageous to the State of New Jersey, price and other factors considered. Id.

In accordance with Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders until 2:00 P.M. Eastern Time on September 15, 2025. One (1) Bid Amendment was issued for this Bid Solicitation, which provided revisions to Attachment two (2) of the Bid Solicitation, responses to questions received from potential Bidders, and extended the Quote Submission Due Date to October 21, 2025.

On October 21, 2025, the Division's Proposal Review Unit ("PRU") opened three (3) Quotes which were received by the submission deadline of 2:00pm Eastern Time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirement, the Division's PRU forwarded the three (3) Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation.

After receipt of the Quotes from the Division's PRU, the Bureau rejected John Blewett's Quote because John Blewett provided conflicting information regarding their ownership, and recommended that a contract be awarded to Need A Can as set forth in the Recommendation Report. On April 22, 2026, John Blewett submitted a Protest ("First Protest") of the rejection of their Quote and protested the Bureau's contract award to Need A Can. On April 29, 2026, the Division's Hearing Unit issued a Final Agency Decision ("Blewett FAD") which upheld the Division's non-responsive determination for John Blewett, and after conducting a *de novo* review of Need A Can's Quote based upon arguments contained in the First Protest, the Hearing Unit found that Need A Can's Quote was also non-responsive for failing to properly disclose their ownership prior to Quote opening.

As set forth in the Revised Recommendation Report dated July 21, 2026, the Bureau awarded 21 price lines from Need A Can to the new recommended awardee, Yaros. As the Division's original non-responsive determination for John Blewett was upheld in the Blewett FAD, John Blewett was not awarded any price lines in the Revised Recommendation Report

On August 21, 2026, John Blewett filed the Second Protest challenging the decision to award Yaros the price lines originally held by Need A Can as well as upholding the non-responsive determination for John Blewett. The Second Protest is broken up into different sections, which are outlined briefly here:

- Section I of the Second Protest titled "SIGNIFICANT PRICING DISPARITY" (emphasis in the original) states that John Blewett offered higher rebates than Yaros on all of the 21 price lines and that the Revised Recommendation Report "does not adequately explain why accepting substantially lower rebates is more advantageous to the State under a revenue-generating Contract." Second Protest, page 1. Attached was an example comparison.
- In Section II of the Second Protest, titled "JOHN BLEWETT INC.'S OWNERSHIP DISCLOSURE" (emphasis in the original) John Blewett "requests reconsideration of its non-responsive determination concerning the Ownership Disclosure Form and, specifically, further clarification from the Division as to why John Blewett Inc.'s Ownership Disclosure Form was determined to be incomplete. Second Protest, Page 2. John Blewett states "that that simply characterizing the form as 'incomplete' does not adequately explain what John Blewett Inc. was required to disclose, where that disclosure should have been made, or how the conditional questions on the form were intended to apply to the Blewett Family 2006 Trust" and that the clarification is substantial because "John Blewett Inc. was removed from consideration despite having submitted rebate percentages materially higher than Yaros on every one of the 21 Price Lines."
- Section III of the Second Protest is titled "YAROS'S ABILITY TO PERFORM THE STATEWIDE SCOPE OF WORK" (emphasis in the original). In this Section, John Blewett expresses doubt that Yaros has the ability to perform the statewide scope of this contract and suggests the Division verify Yaros can do the work. Second Protest, Pages 2-3.
- Finally, Section IV of the Second Protest, titled "JOHN BLEWETT INC. HAS ALREADY DEMONSTRATED ITS ABILITY TO PERFORM THIS SCOPE OF WORK" (emphasis in the original) details John Blewett's extensive history in the scrap industry as well as detailing the

historic work it has done with the State and its Agencies in the very recent past. Second Protest, Pages 3-4. John Blewett further restates its capabilities, fleet, and preparation for this contract. Second Protest, Page 4,

Although John Blewett 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 relevant statutes, regulations, case law, and the protest submitted by John Blewett. 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 John Blewett 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)).

The Division’s administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

(a) In order to be eligible for consideration for award of contract, the bidder’s proposal **shall** conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder’s proposal but that **must** be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), emphasis added.]

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State’s bidding process.

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*.]

It is clear that submitting an accurate ODF prior to Quote Opening was a requirement to be found responsive for this Bid Solicitation. In this case, John Blewett submitted an ODF prior to Quote Opening. However, they checked “No” to every type of ownership structure as shown below.

OWNERSHIP DISCLOSURE FORM
STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

VENDOR NAME: JOHN BLEWETT INC.

PURSUANT TO N.J.S.A. 52:25-24.2, ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE A STATEMENT OF OWNERSHIP.
Please answer all questions and complete the information requested.

	YES	NO
1. The vendor is a Non-Profit Entity ; and therefore, no disclosure is necessary.	☐	☒
2. The vendor is a Sole Proprietor ; and therefore, no other disclosure is necessary. A Sole Proprietor is a natural person who owns an unincorporated business by himself or herself. A limited liability company with a single member is not a Sole Proprietor.	☐	☒
3. The vendor is a corporation, partnership, or limited liability company .	☐	☒
4. If you answered YES to Question 3, do any individuals (including a single 100% owner), partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest; and therefore, disclosure is necessary.	☐	☒

In Section II of their protest, John Blewett states that “John Blewett Inc. is an S Corporation owned by the Blewett Family 2006 Trust”, Second Protest, page 2, but that “Section 3 was answered ‘No’ based on the company’s ownership structure”. Second Protest, page 2. John Blewett further states that “Section 3 was answered “No” based upon the company’s trust ownership structure” and that Section 4 and 5 are only required under an answer of “Yes” in Section 3. Second Protest page 2, and that “the form did not clearly provide a place or instruction explaining how a corporation owned through a trust was required to disclose that ownership structure.” Protest page 2. Further, John Blewett asks the Division the following questions:

1. Exactly what information the Division determined was missing or incomplete;
2. Which specific question or instruction on the Ownership Disclosure Form required John Blewett Inc. to provide that information;
3. How John Blewett Inc. should have completed Questions 3 and 4 given that the corporation is owned by the Blewett Family 2006 Trust;
4. Where on the form the Blewett Family 2006 Trust was required to be identified;

5. Whether the Division determined that any individual, trustee, beneficiary or other person was required to be identified as holding a 10% or greater ownership interest and, if so, the basis for that determination; and
6. Why the matter could not have been addressed through clarification where doing so would not change Blewett's pricing, ownership structure, substantive Quote or competitive position.

[Second Protest, Page 2.]

Here, John Blewett's focus on the ownership of John Blewett again misses the point. Question 3 of the ODF asks if "The vendor is a **corporation, partnership, or limited liability company**" (emphasis in the original). John Blewett checked "No" although in their Second Protest, they state that "John Blewett Inc. is an S Corporation owned by the Blewett Family 2006 Trust." Second Protest, Page 2. Later, John Blewett Inc. is described as "a corporation owned through a trust." Second Protest, Page 2. John Blewett's ODF completely fails to disclose what type of entity they are as every type of business structure is checked "No". Regardless of who owns John Blewett Inc., it is by its own admission to being an S corporation, and Question 3 should have been answered in the affirmative for its disclosure to be accurate and accepted. If no entity or individual owns more than 10% of this S Corporation, then further disclosure in Question 4 is not required. If the Blewett Family 2006 Trust meets these criteria, it should have been disclosed in Section 4 of the ODF.

Regarding Question 6, allowing Blewett the opportunity to correct their ODF would result in an impermissible modification to their submitted Quote which would also have rendered their Quote non-responsive. 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. It's clear that the Division and the Hearing Unit cannot seek an impermissible clarification because the information provided would have changed the information provided with the Quote, as well as requiring additional information not provided with the Quote that was required to be supplied at the time of Quote opening under the statutory law and the Division's regulations.

John Blewett's remaining arguments pertain to the award for Yaros and John Blewett's claims that Yaros's rebated were substantially lower than John Blewett's and whether Yaros has the capability to serve the statewide scope of work, including a list of items John Blewett suggests the State verify. Second Protest, Pages 1-3. John Blewett also included within their Protest information about their capabilities and how they would be a better choice for this Contract. Second Protest, Pages 3-4. As such, John Blewett "requests reconsideration of its responsiveness and a complete review of the pricing, operational capability, facilities and licensing supporting the revised intended award before the Contract is finalized." Second Protest, Page 4.

John Blewett states that Yaros is an unproven option to provide scrap metal services to the State, and that it remains the better option. In this case, there is no option of "selecting another bidder" as Yaros was the only responsive bidder. As set forth on page 6 of the Recommendation Report, the Bureau found Yaros' Quote to be in the range of "Good", and the information submitted by Yaros in their Technical Quote was sufficient. As stated on page 6 of the Recommendation Report, "the Bureau is satisfied with Yaros Company's ability to successfully complete the Scope of Work based upon its Technical Quote."

Once awarded, the Bid Solicitation lays out the requirements Yaros must meet in performing the Contract, and the using agencies and Yaros will now work together to ensure that the Contract is performed as bid.

John Blewett argued in their First Protest, and again in this Protest, that Yaros' pricing submission contains a disparity that makes the contract not advantageous to the State. Second Protest, page 1. As stated on page 3 of the Amended Rec Report, the Division's Pricing Analyst reviewed Yaros' submitted pricing and found it was "reasonable for award". Furthermore, it is not for the Bureau to speculate on the reasoning behind a Bidder's submitted pricing. Yaros was the only responsive bidder for this Bid Solicitation and was found by the Bureau after analysis to also be a responsible bidder.

In In re Failure to Award to the Lowest Responsible Bidder RFP 09-X-20513 Contract T0002 for Provision of Bottled Water Servs., No. A-2747-08T2, 2010 N.J. Super. Unpub. LEXIS 1641 (Super. Ct. App. Div. July 2, 2010), the Division made an award to one of the parties that was protested as being non-responsive by the other responsive bidder. The Director agreed and issued a notice canceling the bid to issue a new one. The remaining responsive bidder protested by stating that the contract should be reawarded to them as the remaining responsive bidder. The court disagreed and stated that

We have specifically addressed the standard-of-proof question in a situation, such as exists here, where the contracting authority has rejected all bids after opening and publicizing them. In that circumstance, we have held that "once the bids have . . . been opened and each bidder's competitive position has been exposed, rejection of all bids should only occur for cogent or compelling reasons."

We are aware that these particular cases arose under the Local Public Contracts Law, N.J.S.A. 40A:11-1 to -51 and not under the State bidding laws, N.J.S.A. 52:34-6 to -25. However, we discern no reason why the same principle should not apply under the circumstances. In Bodies by Lembo, *supra*, we noted the "cogent rationale for allowing a contracting entity to rebid a project only when it acts in good faith and for a very good reason[.]" as follows:

"Rebidding a contract is fraught with certain dangers. While it is true that in some instances rebidding will benefit the public through achieving a lower price, the converse result of a higher contract price is also a factor to be considered. This is because the low bidder who may have given his best possible price may drop out of the bidding or other bidders by reason of insight gained through revelation of the competition's bidding strategy may see the weaknesses in their own bids. One cannot presume that rebidding will . . . bring a lower price."

[In re Failure to Award RFP 09-X-20513 Contract T0002, *supra*, 2010 N.J. Super. Unpub. LEXIS 1641 at 7-8 (internal cites removed).]

As noted above, and in the multiple protests filed by the awarded and unawarded parties, there remains one awarded, responsive and responsible bidder. That bidder, Yaros, provided pricing that has been deemed reasonable by the Division's Pricing Analyst. Were the Division to rebid the procurement, there is no way to predict which firms would bid on the new bid solicitation, what their submitted pricing would be, nor which bidders would be responsive. These services are needed by numerous State Agencies, and the delay in not awarding to a qualified bidder because there is a possibility that the State "might"

receive a better rebate at some point in the future is not sufficient justification to rebid this procurement. The Court in In re Failure to Award, supra, found that financial reasons alone, without a material flaw in the bid solicitation does not reach the cogent and compelling reasons required for cancellation and rebid of a contract where there is a responsive bidder whose bid does not exceed the estimate. Because Yaros submitted a conforming Quote with reasonable pricing, there are no cogent reasons in this matter to support canceling the procurement with an eye toward a new bid.

Additionally, John Blewett argues that award to Yaros fails to meet the statutory requirement that an award shall be made to “that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered”. N.J.S.A. 52:34-12a(g). A key point in this portion of the statute is that only bidders whose bid conformed to requirements of the Bid Solicitation can be considered for award. For the reasons set forth in the John Blewett FAD, John Blewett was non-responsive to the requirements of the Bid Solicitation, and therefore ineligible for consideration for award regardless of their pricing. Here, both Need A Can and John Blewett were found to be non-responsive to mandatory elements of the Bid Solicitation leaving Yaros as the only responsible and responsive bidder with reasonable pricing, and making an award to Yaros will be most advantageous to the States.

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). As John Blewett’s Quote was not responsive to the material requirements of the Bid Solicitation, it is ineligible for evaluation and award.

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 John Blewett’s Quote to proceed in light of its failure to adhere to the requirements of the Bid Solicitation would place both John Blewett and Need A Can in a superior position among bidders under this Bid Solicitation.

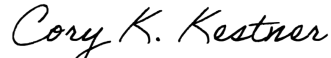
CONCLUSION

In light of the findings set forth above, I sustain the Bureau’s Revised NOI dated August 18, 2026.

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,

A handwritten signature in black ink that reads "Cory K. Kestner". The signature is written in a cursive, flowing style.

Cory K. Kestner
Chief Hearing Officer

CKK:NAA

c: C. Clarke
K. Aponte

***In re Failure to Award to the Lowest Responsible Bidder RFP 09-X-20513
Contract T0002 for Provision of Bottled Water Servs.***

Superior Court of New Jersey, Appellate Division

January 12, 2010, Argued; July 2, 2010, Decided

DOCKET NO. A-2747-08T2

Reporter

2010 N.J. Super. Unpub. LEXIS 1641 *; 2010 WL 2795369

IN THE MATTER OF THE FAILURE TO AWARD TO THE LOWEST RESPONSIBLE BIDDER RFP 09-X-20513
CONTRACT T0002 FOR PROVISION OF BOTTLED WATER SERVICES

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from the Division of Purchase and Property, Department of Treasury.

Counsel: Jeffrey M. Garrod argued the cause for appellant Nestle Waters North America, Inc. (Orloff, Lowenbach, Stifelman & Siegel, P.A., attorneys; Mr. Garrod and Matthew T. Aslanian, on the brief).

Cynthia Hackett, Deputy Attorney General, argued the cause for respondent State of New Jersey (Anne Milgram, Attorney General, attorney (Lewis A. Scheindlin, Assistant Attorney General, of counsel; Ms. Hackett, on the brief).

Judges: Before Judges Wefing, Messano and LeWinn.

Opinion

PER CURIAM

In 2005, the Director of the New Jersey Division of Purchase and Property awarded plaintiff, Nestle Waters North America, Inc. (Nestle), a contract to sell and deliver its Deer Park brand of bottled water to State agencies located in fifteen counties for the period from January 1, 2006 through December 31, 2008. In October 2008, the Division issued a Request for Proposals, No. RFP 09-X-20513, for a three-year contract to provide bottled water (five-gallon bottles, referred to as "demijohns," and dispensers) statewide. Only Nestle and its competitor, DS Waters of America, Inc. (DS Waters) submitted bids.

Nestle bid \$ 2.09 for delivery of each demijohn, [*2] no rental charge for unrefrigerated water coolers, and \$ 7.96 per month for each refrigerated water cooler. Nestle charged no deposit on the demijohns. Its bid was for fifteen of the State's twenty-one counties.

DS Waters also bid \$ 2.09 for delivery of each demijohn and no rental charge for non-refrigerated water coolers. However, it bid \$ 5.99 per month for refrigerated water coolers and included a \$ 6 deposit for each demijohn which was fully refundable upon return.

On December 5, 2008, the Director gave public notice of her intent to award the contract to DS Waters, and simultaneously made both bids public pursuant to *N.J.S.A. 52:34-12(a)*. Nestle filed a protest which asserted, in part, that DS Waters' bid was deficient for "fail[ing] to indicate the manufacturer, brand, model name and model number on all specified equipment for all counties[.]" and that pursuant to the RFP, the "[f]ailure to submit all information required will result in the bid being considered non[-]responsive."

In re Failure to Award to the Lowest Responsible Bidder RFP 09-X-20513 Contract T0002 for Provision of Bottled Water Servs.

The Director agreed with this assertion and, in a letter decision issued on December 24, 2008, rescinded the notice of intent to award the contract to DS Waters. The Director "instruct[ed] the [Division] [*3] to consider re-bidding [sic] the entire . . . contract with textual and format changes to the RFP to facilitate the bidders' understanding and accomplishment of the requirements for effective bidding."

In a letter to the Director on January 8, 2009, Nestle protested the decision to rebid the entire contract. It asserted that "the proper course of action is to award the contract to this company as the lowest qualified bidder which submitted a responsive bid which met all of the RFP's requirements."

On January 12, 2009, the Director issued a final decision denying Nestle's protest, noting her statutory authority to reject "[a]ny or all bids . . . when the . . . Director . . . determines that it is in the public interest so to do[.]" under N.J.S.A. 52:34-12, and adding:

I determined that, in light of the . . . results of the . . . bidding effort and the scrutinized review of the RFP provisions and configuration, it was apparent that various aspects of the . . . RFP were in need of modification to achieve the level of clarity and consistency that is essential for effective head-to-head competition among bidders, which would, in turn, enhance the likelihood that more favorable pricing could [*4] be achieved. . . . [T]o allow the award of a contract for water and water dispensers in 15 counties to [Nestle] while I am firmly convinced that competition under a more sound RFP and contract will produce a better contract and more favorable pricing for the State would, of course, serve [Nestle's] best interests, but would not, in my judgment, serve the best interests of the State and its citizens. Also, [the] determination to re-bid the entire contract was in recognition of and buttressed by the State's ongoing efforts to identify and implement stringent austerity measures in light of the budgetary concerns that the State is addressing on a daily basis as it seeks every opportunity to eliminate or curtail expenditures. Thus, I remain convinced that the rebidding [of] all 21 segments of the contract, with improvements to the RFP that include the elimination of provisions and price lines for deposits [sic] charges for demijohns, will produce results that will serve the State's best interests.

Simultaneously with filing its notice of appeal from this decision, Nestle moved before the Division for a stay. The Director denied the stay request and, by order of March 9, 2009, we affirmed [*5] that denial. On that same date, the Division issued a second RFP for all twenty-one counties, leading Nestle to seek a stay of bidding "on the fifteen counties for which [it] submitted the lowest bid that was most advantageous to the State." On April 7, 2009, we issued an order staying bidding under the second RFP for those fifteen counties.

The second RFP deleted price lines for deposits and credits; refrigerated coolers were also eliminated as a bid item. The RFP also contained a notice that "[d]ue to the State's fiscal constraints, the use of this contract will be limited to those State Agency locations that do not have potable water" On April 8, 2009, however, the Division cancelled this RFP and noted that "a new RFP will be reposted shortly[] . . . [which] will encourage Using Agencies to voluntarily restrict the use of this contract."

On April 20, 2009, the Division issued a third RFP. This RFP encouraged the "Using Agencies" to "reduc[e] purchases by 50%" under the contract because of "fiscal constraints," and stated further that the State was "not obligated to order any maximum or minimum amount. Actual quantities will be determined as needed by the using agencies [sic]." [*6] In an addendum issued three days later, the RFP eliminated water coolers with hot taps from the price sheets.

On appeal, Nestle contends that the Director "disserved" the "public interest" by "failing to award [the] contract . . . to [it] after making all bids public." Nestle further asserts that the Director must demonstrate "a [c]ompelling [j]ustification" for its decision to rebid the contract. The Division counters that the Director's decision is subject to "the arbitrary and capricious standard," and should be upheld under that standard.

We concur with Nestle with respect to the pertinent standard of proof. We are, furthermore, satisfied that the Director failed to meet this standard and, therefore, we reverse.

Our role in reviewing decisions of administrative agencies

In re Failure to Award to the Lowest Responsible Bidder RFP 09-X-20513 Contract T0002 for Provision of Bottled Water Servs.

is restricted to four inquiries: (1) whether the agency's decision offends the State or Federal Constitution; (2) whether the agency's action violates express or implied legislative policies; (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion [*7] that could not reasonably have been made on a showing of the relevant factors.

[George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 27, 644 A.2d 76 (1994).]

We are here concerned primarily with the third factor, whether the Director's decision is supported by substantial evidence in the record. For the reasons that follow, we conclude it is not.

We have specifically addressed the standard-of-proof question in a situation, such as exists here, where the contracting authority has rejected all bids after opening and publicizing them. In that circumstance, we have held that "once the bids have . . . been opened and each bidder's competitive position has been exposed, rejection of all bids should only occur for cogent or compelling reasons." Bodies by Lembo v. Middlesex County, 286 N.J. Super. 298, 309, 669 A.2d 254 (App. Div. 1996) (quoting Marvec Constr. Corp. v. Twp. of Belleville, 254 N.J. Super. 282, 288, 603 A.2d 184 (Law Div. 1992) (quoting Cushman & Doyle, Construction Bidding Law § 1.7 at 9 (1990)) (internal quotation marks omitted). See also, PENPAC, Inc. v. Morris County Mun. Utils. Auth., 299 N.J. Super. 288, 296, 690 A.2d 1094 (App. Div.), certif. denied, 150 N.J. 28, 695 A.2d 670 (1997).

We are aware that these particular cases arose under the [*8] Local Public Contracts Law, N.J.S.A. 40A:11-1 to -51 and not under the State bidding laws, N.J.S.A. 52:34-6 to -25. However, we discern no reason why the same principle should not apply under the circumstances. In Bodies by Lembo, supra, we noted the "cogent rationale for allowing a contracting entity to rebid a project only when it acts in good faith and for a very good reason[.]" as follows:

"Rebidding a contract is fraught with certain dangers. While it is true that in some instances rebidding will benefit the public through achieving a lower price, the converse result of a higher contract price is also a factor to be considered. This is because the low bidder who may have given his best possible price may drop out of the bidding or other bidders by reason of insight gained through revelation of the competition's bidding strategy may see the weaknesses in their own bids. One cannot presume that rebidding will . . . bring a lower price."

[286 N.J. Super. at 307 (emphasis added) (quoting Marvec Constr. Corp., supra, 254 N.J. Super. at 291).]

Our review of the record leads us to conclude that the Director lacked cogent or compelling reasons to reject all bids and order rebidding of the [*9] RFP. In her December 24, 2008 letter, the Director agreed with Nestle's protest that DS Waters' failure to provide the manufacturer, brand, model name and number of the equipment it offered, constituted a "non-remedial flaw" rendering its bid "non-responsive" Nestle had asserted numerous grounds for invalidating the contract award to DS Waters, including DS Waters' failure to comply with other RFP requirements such as mandatory ownership disclosure requirements. Nonetheless, the only ground with which the Director agreed was the failure to provide mandatory manufacturer information regarding the proposed equipment. Notwithstanding this narrow basis for disqualifying DS Waters, the Director called for rebidding the entire contract "with textual and format changes to the RFP to facilitate the bidders' understanding and accomplishment of the requirements for effective bidding."

In her January 12, 2009 letter rejecting Nestle's challenge to the decision to rebid the entire contract, the Director for the first time cited financial considerations as a basis for that decision. The Director also noted that the "improvements to the RFP" would "include the elimination of provisions and [*10] price lines for deposits [sic] charges for demijohns," which would "produce results that will serve the State's best interests." These "improvements" are in no way related to the RFP requirement that a bidder provide certain manufacturer information regarding its proposed equipment, which, as noted, was the sole basis on which the Director rescinded the award to DS Waters.

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In short, we regard the Director's proffered reasons for rejecting Nestle's bid and rebidding the entire contract to be after-the-fact considerations that were in no way responsive to the "non-remedial flaw" in DS Waters' bid. Compare PENPAC, supra, 299 N.J. Super. at 297, in which the contracting authority's decision to reject all bids and rebid the contract after the bids had been opened and made public, was based on the authority's conclusion that "all the bids substantially exceeded . . . [its] estimated bid." We concluded that such a decision had been made "in good faith" and in conformance with the "principle[]" that "'cogent or compelling reasons'" must exist in such circumstances. Id. at 296-97 (quoting Marvec, supra, 254 N.J. Super. at 288).

In sum, we conclude that the lack of cogent or compelling reasons [*11] for her decision prevents the Director from demonstrating "substantial evidence to support the finding[s] on which" that decision is based. George Harms, supra, 137 N.J. at 27. Therefore, we are constrained to reverse the Director's decision of January 12, 2009, and remand with instructions to award the contract at issue to Nestle.

Reversed.

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