



State of New Jersey

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

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May 13, 2026

Via Electronic Mail Only to mark.hill@brightspeed.com

Mark Hill, Esq.
Brightspeed of New Jersey, Inc.
2012 Corporate Lane
Suite 108
Naperville, IL 60563

Re: I/M/O Bid Solicitation #26DPP01242 Brightspeed of New Jersey, Inc.
Protest of Notice of Intent to Award
T1297 – Voice Communications Network Services

Dear Mr. Hill:

This final agency decision is in response to the protest application dated April 24, 2026 (“Application”), and accompanying protest letter dated April 23, 2026 (“Letter”) which may collectively be referred to herein as “Protest”, submitted by Brightspeed of New Jersey, Inc. (“Brightspeed”) and received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that correspondence, Brightspeed protests the Notice of Intent to Award dated April 14, 2026, and attendant Recommendation Report dated April 13, 2026 (“Recommendation Report”). As set forth in the Recommendation Report, the Division’s Procurement Bureau (“Bureau”) found Brightspeed’s Quote non-responsive for the Bid Solicitation. The record of this procurement reveals that the Quote submitted by Brightspeed was deemed non-responsive as set forth in the Recommendation Report for including with its State Supplied Price Sheet (“SSPS”) language that the per hour rate for labor is for a minimum of two (2) hours. In their Protest, Brightspeed states that the inclusion of the two (2) hour minimum for labor rates is not a material change to the Bid Solicitation and did not conflict with the Scope of Work or the terms and conditions of the Bid Solicitation, nor with the State of New Jersey Standard Terms and Conditions (“SSTC’s”).

By way of background, on November 25, 2025, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the New Jersey Office of Information Technology (“OIT”). The purpose of the Bid Solicitation was to solicit “Quotes for voice communications services (services). Bidders may submit Quotes for one (or more) of the following services: Analog Business Line Service (see Section 4.1.1); Integrated Services Digital Network Primary Rate Interface (ISDN PRI) Trunks (see Section 4.1.2); Outbound Toll (see Section 4.1.3); and/or Toll (Inbound) Free (see Section 4.1.4). Bid Solicitation Sec. 1.1, *Purpose, and Intent and Background*. “It is the intent of the State of New Jersey (State) to award Contracts to those responsible Bidders whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. The State may award any or all price lines.” Id.

In accordance with Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders until 2:00 P.M. Eastern Time on December 19, 2025. A second Electronic Question and Answer period was available to all potential Bidders until 2:00 P.M. Eastern Time on February 3, 2026. A total of ninety (90) questions were received and answered across both periods. Three (3) Bid Amendments were issued for this Bid Solicitation, which provided revisions to the Quote Opening Date, the Bid Solicitation and responses to questions received from potential Bidders.

On March 5, 2026, the Proposal Review Unit ("PRU") opened nine (9) Quotes. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, all nine (9) Quotes were sent by the PRU to the Bureau for further evaluation.

On or about April 14, 2026, the Bureau sent a Notice of Intent to Award and Recommendation Report to Brightspeed. On April 24, 2026, prior to the close of the protest period, Brightspeed submitted a Protest alleging that the following:

- The State cited Brightspeed's Labor Rates pricing as including a material change to the Bid Solicitation. (See Exhibit 1.)
- The State's instructions in Section 3.24, Tab 6-Section 4.1.5 of the Bid Solicitation states that bidders shall provide their "firm-fixed hourly rate" for the Labor categories set forth in Section 4.1.5. Notably, the State's instructions invited bidders to "**submit additional terms as part of its Quote**" provided they do not conflict with:
 - the scope of work required in the Bid Solicitation;
 - the terms and conditions of the Bid Solicitation; or
 - the State of New Jersey Standard Terms and Conditions(collectively referred to herein as "Material Terms").
- Brightspeed asserts that (1) its Labor Rates set forth in Section 3.24, Tab 6-Section 4.1.5 Labor Rates of the Bid Solicitation, and (2) its additional proposed term of having a 2-hour minimum charge requirement, did not include a material change to the Bid Solicitation and did not conflict with any of the Material Terms. (See Exhibit 1 – Brightspeed's submission of the State-supplied Price Sheet referenced in Section 3.24, Tab 6-Section 4.1.5 Labor Rates of the Bid Solicitation.)
- Brightspeed complied with the State's instructions in Section 3.24 of the Bid Solicitation by (i) providing one set of firm-fixed hourly rates for the Labor categories set forth in the State-supplied Price Sheet; and (ii) taking the opportunity to propose an additional term that does not conflict with the Material Terms. (See Exhibit 1.)
 - Scope of Work: There are no restrictions contained in the Scope of Work prohibiting a 2-hour minimum charge requirement.
 - Terms and Conditions of Bid Solicitation: There are no restrictions contained in the Bid Solicitation's Terms and Conditions prohibiting a 2-hour minimum charge requirement.
 - State of New Jersey Standard Terms and Conditions: Section 3.11 of the Bid Solicitation (see Exhibit 1) states that "Bidder proposed terms or conditions that conflict with those contained in the State of New Jersey Standard Terms and Conditions *will render a Quote non-responsive.*" (*bold italics added.*) There are no restrictions contained in the State's Standard Terms and Conditions prohibiting Brightspeed's proposed 2-hour minimum charge requirement and consequently such added term does not conflict with such Terms and Conditions. Section 6.1 solely requires that the rates "not be subject to increase during the period of the contract." The proposed additional term does not change the character of the firm-fixed nature of the hourly rates across the contract period. Brightspeed's proposal has no indication (express or implied) that the Labor Rates would not remain **firm-fixed throughout the life of the contract.**

[Letter, pages 1-2].

With their Protest, Brightspeed submitted Exhibit 1 which contained the language from the Recommendation Report regarding the non-responsive determination for Brightspeed; a portion their

submitted SSPS; an excerpt of Bid Solicitation Section 3.11; as well as an excerpt from Section 6.1 from the State of New Jersey Combined Standard Terms and Conditions.

Although Brightspeed did not request an in-person presentation as permitted by N.J.A.C. 17:12-3.3(e), it should be noted that “[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director.” Further, “[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.” N.J.A.C. 17:12-3.3(d). I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the Bureau’s Recommendation Report, the relevant statutes, regulations, case law, and the protest submitted by Brightspeed. 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 Brightspeed on the written record, as such an in-person hearing is not warranted. I set forth herein the Division’s Final Agency Decision.

DISCUSSION

Pursuant to Bid Solicitation Section 3.24, *State-Supplied Price Sheet Instructions*, the SSPS stated that “Bidder[s] must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the ‘Attachments’ Tab.” Bid Solicitation Section 3.24, *State-Supplied Price Sheet Instructions*, Tab 6 – Section 4.1.5: Labor Rates states that “the Bidder must provide their firm-fixed hourly rate for the Labor Rates provided.” The Bureau determined that the Quote submitted by Brightspeed was non-responsive for failing to provide pricing for Tab 6 on the SSPS in the manner required by the Bid Solicitation and the SSPS, by adding a qualifier to their Quote on the SSPS stating that the hourly rate is “***per hour rate is for a minimum of 2 hours”.

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:

(c) Proposals shall be evaluated by the Division for compliance with the provisions of N.J.A.C. 17:12-2.2 and by the evaluation committee or the assigned division staff member for responsiveness to the material requirements of the RFP. A proposal that is not compliance with the provisions of N.J.A.C. 17:12-2.2 or responsive to the material requirements of the RFP shall not be eligible for further consideration for award of contract . . .

[N.J.A.C. 17:12-2.7(c).]

If the requirements of N.J.A.C. 17:12-2.7 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 subject procurement was comprised of the Bid Solicitation, other documents, mandatory forms, and information bidders were required to submit with their Quote which were specifically addressed in Bid Solicitation Section 3.0, *Quote Submission Requirements*.

Bid Solicitation Section 3.24, *State-Supplied Price Sheet Instructions*, Tab 6 – Section 4.1.5: Labor Rates states in pertinent part that

The Bidder **must** provide their firm-fixed hourly rate for the Labor rates provided.

[Emphasis added.]

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*.]

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 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).

Brightspeed failed to provide acceptable pricing, without the addition of a qualifier for the Labor Rates on Tab 6 of the SSPS as required by the Bid Solicitation. In their Protest, Brightspeed argues that they provided a firm-fixed hourly rate for the Labor categories as required pursuant to the Bid Solicitation and that the addition of the qualifier that the “***per hour rate is for a minimum of 2 hours” is allowed under the Bid Solicitation as it is a proposed change which is neither a material change nor does it conflict with: the scope of work in the Bid Solicitation; the terms and conditions of the Bid Solicitation; or the State of New Jersey Combined Standard Terms and Conditions.

On page 2 of their Letter, Brightspeed argues

- Brightspeed complied with the State's instructions in Section 3.24 of the Bid Solicitation by (i) providing one set of firm-fixed hourly rates for the Labor categories set forth in the State-supplied Price Sheet; and (ii) taking the opportunity to propose an additional term that does not conflict with the Material Terms. (See Exhibit 1.)
 - Scope of Work: There are no restrictions contained in the Scope of Work prohibiting a 2-hour minimum charge requirement.
 - Terms and Conditions of Bid Solicitation: There are no restrictions contained in the Bid Solicitation's Terms and Conditions prohibiting a 2-hour minimum charge requirement.
 - State of New Jersey Standard Terms and Conditions: Section 3.11 of the Bid Solicitation (see Exhibit 1) states that "Bidder proposed terms or conditions that conflict with those contained in the State of New Jersey Standard Terms and Conditions *will render a Quote non-responsive.*" (*bold italics added.*) There are no restrictions contained in the State's Standard Terms and Conditions prohibiting Brightspeed's proposed 2-hour minimum charge requirement and consequently such added term does not conflict with such Terms and Conditions. Section 6.1 solely requires that the rates "not be subject to increase during the period of the contract." The proposed additional term does not change the character of the firm-fixed nature of the hourly rates across the contract period. Brightspeed's proposal has no indication (express or implied) that the Labor Rates would not remain **firm-fixed throughout the life of the contract.**

Brightspeed argues that because there are "no restrictions contained [in either the Scope of Work or the Bid Solicitations' Terms and Conditions] prohibiting a 2-hour minimum charge requirement", Letter, page 2, they should be allowed to insert the minimum 2-hour qualifier to their bid. Brightspeed further states that "[t]here are no restrictions contained in the State's Standard Terms and Conditions prohibiting Brightspeed's proposed 2-hour minimum charge requirement and consequently such added term does not conflict with such Terms and Conditions." Letter, page 2. Brightspeed's position can therefore be summed up that unless something is explicitly excluded in either the Scope of Work, the Bid Solicitation Terms and Conditions, or the State of New Jersey Combined Standard Terms and Conditions, a bidder can insert whatever they want in their Quote and/or pricing. Here Brightspeed proposes requiring the State to pay for at least 2-hours of labor, for Brightspeed to provide service, regardless of how long the task might take. In the alternative, would another bidder then be allowed to require a 5-hour minimum for labor, or perhaps a 25-hour minimum for labor? None of those minimums are explicitly prohibited in any of the documents referenced by Brightspeed, and would be required to be allowed by the State under Brightspeed's reasoning. There is no possible way that the State could anticipate every possible exception or qualifier that bidders might add into their quote for any of the dozens and dozens of contracts that the State advertises each year in the public bidding process. Were the State to try to anticipate every exception or qualifier for each contract, bid solicitations could be hundreds if not thousands of pages long, unnecessarily complicating the bidding process for bidders and the State alike.

The addition of the 2-hour minimum on Tab 6 of Brightspeed's SSPS creates ambiguity in their pricing and makes it impossible for the State to properly evaluate Brightspeed's pricing. Tab 6 of Brightspeed's SSPS is provided below. Are the amounts listed on their SSPS per hour or are they reflective of the 2-hour minimum? For example, is Brightspeed's labor rate for the Project Manager title \$100 per hour after the first two hours? Or is the stated \$100 rate reflective of the 2-hour minimum so the rate after the first two hours is really \$50 per hour?

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See Section 3.24 for instructions.					
Bid Solicitation Section Labor Rates (4.1.5)					
Description	Firm-Fixed Hourly Rate	Firm-Fixed Overtime Hourly Rate	Firm-Fixed Weekend Hourly Rate	Firm-Fixed Holiday Hourly Rate	
Labor - Project Manager	\$100.00	\$150.00	\$150.00	\$150.00	
Labor -Technical Engineer	\$350.00	\$525.00	\$525.00	\$525.00	
Labor - Installation Technician	\$350.00	\$525.00	\$525.00	\$525.00	
***per hour rate is for a minimum of 2 hours					

The submitted SSPS is subject to interpretation which makes a fair and accurate evaluation of Brightspeed's pricing for Tab 6 impossible and allowing Brightspeed's Quote to remain eligible for award would place Bidders on unequal footing during the evaluation process.

Brightspeed claims their "proposal has no indication (express or implied) that the Labor Rates would not remain **firm-fixed throughout the life of the contract**". Letter, page 2 (emphasis in the original). However Brightspeed's statement that there is a 2-hour minimum for Labor Rates does not hold the Labor Rate as a firm-fixed rate, since every hour of the rate is not the same, and therefore the rate fluctuates from the first two hours to hours 3 and beyond. A rate that is different depending on one or more external factors is by its definition not a fixed rate. The relevant definition of "fixed" from Merriam-Webster dictionary is "not subject to change or fluctuation". A Labor Rate that is different for some periods of time than others is not fixed. Brightspeed's submitted Labor Rate is different depending on the number of hours of labor is therefore not fixed. Based on Brightspeed's SSPS, an hour of labor for a Project Manager is either a. \$200 (the submitted rate of \$100 x 2 to account for the 2-hour minimum), or b. \$100 (assuming that Brightspeed listed the 2-hour minimum cost on their SSPS).

In either of the aforementioned examples, Brightspeed is dictating a conflicting term to the State that was not agreed to pursuant to Bid Solicitation Section 2.2, *Exceptions to the State of NJ Standard Terms and Conditions (SSTC)*, therefore is not permitted and renders Brightspeed's Quote non-responsive..

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).

When evaluating a Quote, if a deviation is found, the question is whether the deviation is material. It is firmly established in New Jersey that material deviations may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co., 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, the court declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity." In re Protest of Award of On-Line Games Prod. and Operation Servs. Contract, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, 127

N.J. Super. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, supra, 127 N.J. Super. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” On-Line Games, supra, 279 N.J. Super. at 595 (citing River Vale, supra, 127 N.J. Super. at 222).

Here, the State determined that the Quote submitted by Brightspeed contained a material deviation from the requirements of the Bid Solicitation rendering the Quote non-responsive. The question before me is whether Brightspeed’s modified pricing term was a material deviation rendering the Quote non-responsive or if the modified term could have been waived. To be deemed non-responsive, Brightspeed’s Quote would have had to materially deviate from the requirements of the Bid Solicitation such that the State would have no assurances that the Contract would be performed consistent with the requirements of the Bid Solicitation. As indicated above, the State could not be assured that the Contract would be performed consistent with the requirements of the Bid Solicitation because the State could not be certain what pricing Brightspeed was offering and could not fairly compare Brightspeed’s pricing against other bidders who did not include a minimum number of hours for labor.

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 Brightspeed’s Quote to proceed to award in light of their inclusion of a minimum two hour (2) fee for labor, regardless of the actual need of the State would place Brightspeed in a superior position among bidders under this Bid Solicitation.

Allowing Brightspeed to charge the State for two (2) hours of work if only one (1) hour of work was required would place Brightspeed in a superior position among other bidders who would only be paid for the one (1) hour of labor which the State cannot allow.

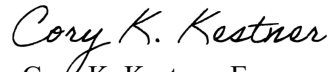
CONCLUSION

Based upon the findings set forth above, I find no reason to disturb the determination that the Quote submitted by Brightspeed was non-responsive to the requirements of the Bid Solicitation. Accordingly, I sustain the April 14, 2026, Notice of Intent to Award. This is my final agency decision.

Thank you for your company's continuing interest in doing business with the State of New Jersey, I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Cory K. Kestner, Esq.
Chief Hearing Officer

CKK: CMD

- c. M. Dunn
- B. Cegerenko
- A. Hartman