



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 fturner@mccarter.com

Franklin C. Turner, Esq.
McCarter & English
1301 K Street, NW
Suite 1000 West
Washington, DC 20005

Re: I/M/O Bid Solicitation #26DPP01242 Comcast Cable Communications Management LLC.
Protest of Notice of Intent to Award
T1297 – Voice Communications Network Services

Dear Mr. Turner:

This final agency decision is in response to the protest application dated April 27, 2026 (“Application”), and accompanying protest letter dated April 27, 2026 (“Letter”) which may collectively be referred to herein as “Protest”, submitted by Comcast Cable Communications Management LLC (“Comcast”) and received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that correspondence, Comcast 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 Comcast’s Quote non-responsive to the Bid Solicitation. The record of this procurement reveals that the Quote submitted by Comcast was deemed non-responsive for including with its Quote, attachments 04 through 07 containing conflicting terms rendering the Quote non-responsive. In its Protest, Comcast also requests a Stay of the contract award pursuant to N.J.A.C. 17:12-3.3(c). Since that section establishes that the award is stayed pending the Director’s decision on the merits of the contract, the stay is granted until the issuance of this Final Agency Decision (“FAD”).

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 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 all Bidders including Comcast. On April 27, 2026, prior to the close of the protest period, Comcast submitted a Protest asserting following:

This Protest asserts three independent bases for setting aside the Agency’s determination finding Comcast’s proposal to be non-responsive, which, individually and collectively, provide a basis for sustaining the Protest.

- First, the State did not make the requisite finding that Comcast’s PSAs conflicted with the State’s Standard Terms and Conditions. To the contrary, Comcast’s PSAs were drafted in a manner that does not conflict with such provisions.
- Second, even if there were a conflict, Comcast’s proposal expressly stated that Comcast would remove and cure any conflict. The Agency, unfortunately, simply ignored or did not consider this aspect of Comcast’s proposal.
- Third, the Agency used purported Section 3.11 non-compliance as a gatekeeping mechanism to exclude Comcast from the competition without any effort to seek the most advantageous contracts to the State, an action that is plainly contrary to New Jersey law and which improperly restricts competition to the disadvantage of New Jersey taxpayers. *See* N.J.S.A. 52:34-12(a).

Based on the foregoing, and as discussed in greater detail below, Comcast respectfully requests that the Agency sustain this Protest, rescind the NOIA, re-evaluate proposals consistently and in accordance with the Solicitation, engage in negotiations with offerors as contemplated by the terms in the Solicitation, and make a new source selection decision.

[*Comcast Protest*, Page 2. (emphasis in original).]

With their Protest, Comcast submitted Bid Solicitation documents as well as attachments 04-07 which contain the conflicting language referenced in the Recommendation Report resulting in the Division’s non-responsive determination.

Although Comcast 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 Comcast. 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 Comcast 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)). Consistent with this purpose, the New Jersey procurement law provides that "any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do." N.J.S.A. 52:34-12(a).

Here, the State determined that the Quote submitted by Comcast contained a material deviation from the requirements of the Bid Solicitation rendering the Quote non-responsive. To be deemed non-responsive, the Quote must 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. In determining whether a material deviation exists, it is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957).

In Meadowbrook Carting, *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, Judge Pressler 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. 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. 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." River Vale, *supra*, 127 N.J. Super. at 222.

Although the State has broad discretion to select among qualified and responsive Bidders in public contracting matters, the discretion afforded to the Director, "is not limitless." See, In re Request for Proposals #17DPP00144, 454 N.J. Super. 527, 559 (App Div. 2018). "In line with the policy goal of thwarting favoritism, improvidence, extravagance, and corruption, the Division may not award a contract

to a bidder whose proposal deviates materially from the [RFQ's] requirements.” *Ibid.*, quoting, *Barrick v. State*, 218 N.J. 247, 258-59 (2014)). For that reason, the Division’s governing regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State’s bidding process. Notably, “a proposal that is not...responsive to the material requirements of the [RFQ] shall not be eligible for further consideration for award of contract, and the bidder offering said proposal shall receive notice of the rejection of its proposal.” N.J.A.C. 17:12-2.7(c).

Here, Bid Solicitation Section 3.11, *Bidder Additional Terms Submitted with the Quote*, stated as follows:

A Bidder may submit additional terms as part of its Quote. Additional terms are Bidder-proposed terms or conditions that do not conflict with the scope of work required in this Bid Solicitation, the terms and conditions of this Bid Solicitation, or the State of New Jersey Standard Terms and Conditions. Bidder proposed terms or conditions that conflict with those contained in the State of New Jersey Standard Terms and Conditions will render a Quote non-responsive. It is incumbent upon the Bidder to identify and remove its conflicting proposed terms and conditions prior to Quote submission.

Quotes including Bidder proposed additional terms may be accepted, rejected, or negotiated, in whole or in part, at the State’s sole discretion.

If Bidder intends to propose terms and conditions that conflict with the State of New Jersey Standard Terms and Conditions, those Bidder proposed terms and conditions shall only be considered if submitted and agreed to pursuant to the electronic question and answer procedure. Bidders shall not submit exceptions or modifications as part of the Quote or on the “Terms and Conditions” Tab through [NJSTART](#).

As outlined above, and in accordance with Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, the state allowed two (2) rounds of Question and Answers which answers were posted to [NJSTART](#). Many questions requested or proposed modifications to the terms and conditions including modifications to the State’s Limitation of Liability language. In addition, one question expressly requested that the State notify Bidder’s of Quote discrepancy so that the parties could negotiate rather than being deemed non-responsive which the Division expressly rejected:

44	8.10 Quote Discrepancies	Q: Will the State agree to notify the contractor of any discrepancies and provide an opportunity to clarify or correct prior to deeming a quote non-responsive? A: The State does not accept this proposed modification. Please refer to Bid Solicitation Section 3.2 Bidder Responsibility: The Bidder assumes sole responsibility for the complete effort required in submitting a Quote in response to this Bid Solicitation. No special consideration will be given after Quotes are opened because of a Bidder’s failure to be knowledgeable as to all of the requirements of this Bid Solicitation. The State assumes no responsibility and bears no liability for costs incurred by a Bidder in the preparation and submittal of a Quote in response to this Bid Solicitation or any pre-contract award costs incurred.
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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).

In Comcast's Quote attachments numbered 04 through 07, they included multiple provisions which conflict with the State Standard Terms and Conditions including changes to Indemnification, Limitation of Liability and Contract Termination.

8.8 LIMITATION OF LIABILITY AND INDEMNIFICATION.

CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER COMCAST NOR ANY COMCAST ASSOCIATED PARTY WILL BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. CUSTOMER AGREES TO DEFEND, INDEMNIFY,

[COMCAST ATTACHMENT - COMCAST ENTERPRISE SERVICES PRODUCT-SPECIFIC ATTACHMENT TRUNK SERVICES. Cf. Attachment language with SSTC Section 4.1.G establishing that the "State of New Jersey will not indemnify, defend, pay or reimburse for claims on behalf of contractor."]

* * *

Other Limitations

The remedies set forth in this Service Level Agreement shall be Customer's sole and exclusive remedies for any Service Interruption, outage, unavailability, delay, or other degradation, or any Comcast failure to meet the objectives of the Services.

[COMCAST ATTACHMENT - COMCAST ENTERPRISE SERVICES PRODUCT-SPECIFIC ATTACHMENT TRUNK SERVICES. Cf. Attachment language with SSTC Section 5.12.D establishing that the State of New Jersey is authorized to obtain goods and services, with the difference in cost paid by the contractor, if the contractor fails to deliver goods and services as established under the contract. See also SSTC Section 4.1.B.]

* * *

**ARTICLE 13 ADDITIONAL TERMS APPLICABLE TO
COMCAST ADD-ON FOR MICROSOFT TEAMS**

Comcast may immediately suspend Customer's access to the Comcast Business Connector Portal in its sole discretion,

Notwithstanding anything else in the General Terms and Conditions or this PSA to the contrary, Customer acknowledges and agrees that: (v) Comcast has no obligations or liability arising from or relating to the Comcast Business Connector Portal; (x) Comcast may increase Services fees to take into account any increase in the fees charged by Comcast's third-party provider for the Comcast Business Connector Portal;

[COMCAST ATTACHMENT - COMCAST ENTERPRISE SERVICES PRODUCT-SPECIFIC ATTACHMENT UCAAS SESSIONS SERVICE. Cf. Attachment language with SSTC Section 6.1 establishing that "[u]nless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract."]

* * *

Service Level Agreement (SLA)

Comcast's liability, and Customer's sole remedy for Service Interruptions, and errors, omissions, interruptions, delays, outages, or defects in transmission or switching of any Service (individually or collectively, "**Liability**"), shall be limited to the amounts set forth in the chart below with the stated percentages to be applied against the MRC (as defined below) associated with the impacted portion of the Service set forth in the Sales Order ("**Availability Credit**").

[COMCAST ATTACHMENT - COMCAST ENTERPRISE SERVICES PRODUCT-SPECIFIC ATTACHMENT BUSINESS VOICE SERVICES. Cf. Attachment language with SSTC Section 5.12.D establishing that the State of New Jersey is authorized to obtain goods and services, with the difference in cost paid by the contractor, if the contractor fails to deliver goods and services as established under the contract.]

* * *

6.1 USE RESTRICTIONS

If Comcast determines, in its sole discretion, that Customer's use of the Service is excessive or in violation of the Agreement, Comcast reserves the right, among other things, to terminate or modify the Service immediately and without notice.

Other Limitations

The remedies set forth in this Service Level Agreement shall be Customer's sole and exclusive remedies for any Service Interruption, outage, unavailability, delay, or other degradation, or any Comcast failure to meet the objectives of the Services.

[COMCAST ATTACHMENT - COMCAST ENTERPRISE SERVICES PRODUCT-SPECIFIC ATTACHMENT BUSINESS VOICE SERVICES. Cf. Attachment language with SSTC Section 5.12.D establishing that the State of New Jersey is authorized to obtain goods and services, with the difference in cost paid by the contractor, if the contractor fails to deliver

goods and services as established under the contract. See also SSTC Section 4.1.B.]

In their Protest, Comcast argues alternatively that: 1) they expressly removed any conflicting terms from the attachments, and 2) that if the State believes the attachments contain conflicting terms, Comcast “will work with the State to update the PSA’s to remove any such conflict.” A Bidder stating agreement to all the terms and conditions of the Bid Solicitation while at the same time proposing terms that deviate from those same mandatory terms and conditions in the Bid Solicitation has the potential to deprive the State of the assurance that the contract will be performed according to its specified requirements as the State would not know which terms would apply and govern the work to be performed under the Contract. Further, the submission of non-conforming terms and/or allowing a Bidder to remove the non-conforming terms after Quote opening could adversely affect competitive bidding by placing the Bidder in a position of advantage over other Bidders in that a Bidder may presume that its alternate proposed terms will be accepted, and then if not, reserve for itself the right to withdraw a submitted Quote to the detriment of the State. See River Vale, supra, 127 N.J. Super. at 216.

In addition, Comcast argues that the State failed to negotiate the conflicting provisions with the Bidder pursuant to Bid Solicitation Section 8.11, *Negotiations*. This Bid Solicitation section states:

In accordance with N.J.S.A. 52:34-12(f) and N.J.A.C. 17:12-2.7, after evaluating Quotes, the Procurement Bureau may establish a competitive range and enter into negotiations with one (1) Bidder or multiple Bidders within this competitive range. The primary purpose of negotiations is to maximize the State’s ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one (1) Bidder or multiple Bidders. Negotiations will be structured by the Procurement Bureau to safeguard information and ensure that all Bidders are treated fairly.

This language is derived directly from, and is a reference to, the Division’s regulations:

3. In the event the evaluation committee or assigned Division staff member decides to conduct negotiations, the evaluation committee or assigned Division staff member shall notify each bidder whose proposal has been deemed to be in the competitive range of the intent to negotiate. The notice may identify, in general terms, the elements or factors upon which the State intends to base its negotiations or may be tailored to each individual bidder.

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

Comcast misconstrues the intent of the negotiation language in the Bid Solicitation. Negotiation under Bid Section 8.11 is at the option of the evaluation committee or Division staff. More importantly, such negotiations cannot occur until and unless the Quote is deemed responsive and is then determined to be in the competitive range.

Here Comcast seeks to negotiate terms and conditions after submission of the Quote or after award. Again, impermissibly reserving to itself the right to negotiate terms and conditions that are acceptable to Comcast or walk away from the Quote if they do not secure satisfactory terms. Such an approach is in direct contravention to the analysis in *River Vale*.

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 Black Box’s Quote to proceed to award in light of their failure to provide the information required pursuant to Bid Solicitation Section 3.25 would place Black Box in a superior position among bidders under this Bid Solicitation.

CONCLUSION

Based upon the findings set forth above, I find no reason to disturb the determination that the Quote submitted by Comcast 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: DPK

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