



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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April 21, 2026

Via Electronic Mail Only to dana.pashkoff@faegredrinker.com

Dana B. Pashkoff, Esq.
Faegre Drinker Biddle & Reath LLP
1500 K Street, Suite 1100
Washington, DC 20005

Re: I/M/O Bid Solicitation #25DPP01066 Voya Retirement Annuity and Insurance Company
Protest of Notice of Intent to Award
T1400 – Alternate Benefit Program Service Providers

Dear Ms. Pashkoff:

This final agency decision is in response to the protest application dated April 14, 2026 (“Protest”), submitted by your firm on behalf of Voya Retirement Annuity and Insurance Company (“Voya”) and received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that correspondence, Voya protests the Notice of Intent to Award dated April 8, 2026, by the Division’s Procurement Bureau (“Bureau”) for Bid Solicitation #25DPP01066 – Alternate Benefit Program Service Providers. Bid Solicitation. The record of this procurement reveals that the Quote submitted by Voya was deemed non-responsive as set forth in the Recommendation Report dated April 1, 2026 (“Recommendation Report”) for submitting language as part of their Quote submission that modified the insurance requirements by reserving the right to itself a right of review and negotiation. In their Protest, Voya claims it only “made one minor change to Section 4.2(c) of the SSTCs,” requesting that the Director consult with Voya prior to making a change to the workers’ compensation requirement. Protest, page 3. Voya “requests that the Division sustain this protest, evaluate its Quote, and make a Contract award consistent with the terms of the Bid Solicitation.” Protest, page 1.

By way of background, on May 23, 2025, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the Department of Treasury, Division of Pensions and Benefits (DPB). The purpose of the Bid Solicitation was to solicit “Quotes from investment and service providers for annuity programs for the Alternate Benefit Program (ABP) and Additional Contributions Tax-Sheltered (ACTS) Program. Services include, but are not limited to, education services for Participants, communications, recordkeeping, and administration for the ABP and ACTS Programs.” Bid Solicitation Sec. 1.1, *Purpose, and Intent and Background*. “It is the intent of the State of New Jersey (State) to award three (3) or more 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 2.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on June 4, 2025, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. Representatives from several firms were in attendance. Voya is listed as having attended the Optional Pre-Quote Conference.

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 June 13, 2025. A total of 69 questions were received and answered across both periods. Six (6) 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 October 22, 2025, the PRU opened six (6) Quotes. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, all Quotes were sent to the Bureau for further evaluation.

On or about April 8, 2026, the Bureau sent a Notice of Intent to Award and Recommendation Report to Voya. On April 14, 2026, prior to the close of the protest period, Voya submitted a Protest alleging that it only “made one minor change to Section 4.2(c) of the SSTCs,” requesting that the Director consult with Voya prior to making a change to the workers’ compensation requirement. Protest, page 3.” Protest, page 3.

With their protest, Voya submitted a copy of the NOI, Bid Solicitation, State’s Standard Terms and Conditions, Bid Amendment #6, and its Quote.

Although Voya 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 Reports, the relevant statutes, regulations, case law, and the protest submitted by Voya. 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 Voya 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)).

Bid Solicitation Section 1.1, *Purpose, and Intent and Background*, advises bidders that “The State of New Jersey Standard Terms and Conditions (SSTCs) included with this Bid Solicitation will apply to all Contracts made with the State. These terms are in addition to the terms and conditions set forth in this Bid

Solicitation and should be read in conjunction with them unless the Bid Solicitation specifically indicates otherwise.” The State of New Jersey Standard Terms and Conditions (“SSTC”) were provided as Attachment 1 of the Bid Solicitation. Bid Solicitation Section 2.2, *Exceptions to the State of New Jersey Standard Terms and Conditions*, informs bidders that “Questions regarding the State of New Jersey Standard Terms and Conditions and exceptions to mandatory requirements MUST be posed during the Electronic Question and Answer period and shall contain the Bidder’s suggested changes and the reason(s) for the suggested change(s).” (Emphasis in the original). Bid Solicitation Section 3.11, *Bidder Additional Terms Submitted with the Quote* further advises Bidders:

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](#).

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.

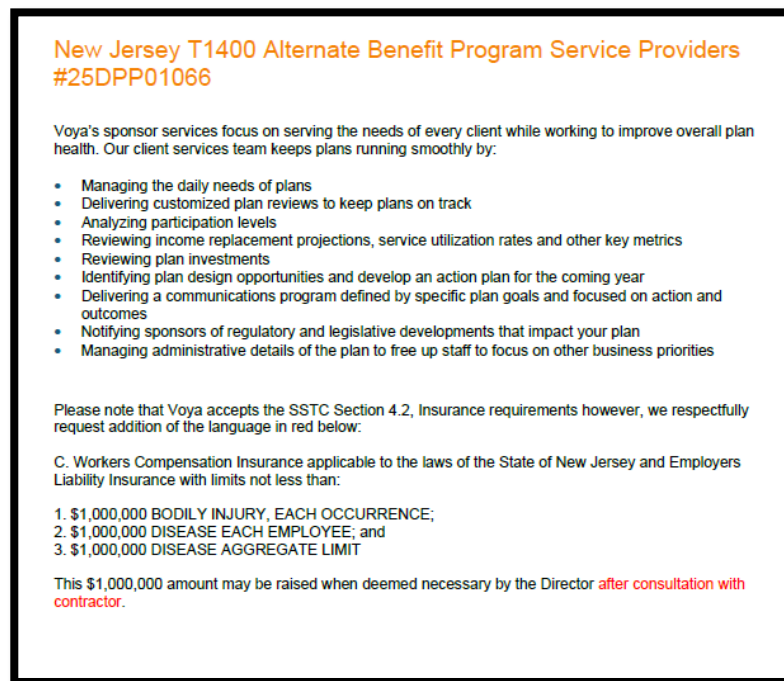
[Bid Solicitation Section 9, *GLOSSARY*.]

Potential Bidders were permitted to submit questions regarding the Bid Solicitation’s terms and conditions by June 13, 2025. Sixty-nine (69) questions were received. One question was received regarding SSTC Section 4.2, and the State clearly answered that it would not accept the change requested.

5	Attachment 1 – State of New Jersey Standard Terms and Conditions, Section 4.2 – Insurance	[BIDDER] purchases insurance at the enterprise level, as such, no one client can influence our limits or deductibles. [BIDDER] proposes striking the last sentence. C. Workers Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than: 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE; 2. \$1,000,000 DISEASE EACH EMPLOYEE; and 3. \$1,000,000 DISEASE AGGREGATE LIMIT - this \$1,000,000 amount may be raised when deemed necessary by the Director. The State does not accept the proposed modification to SSTC Section 4.2, <i>Insurance</i>. Terms and conditions on publicly bid procurements must be consistent for all potential Bidders and cannot be based on a single Bidder’s terms.
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[Bid Amendment #6.]

Voya states in its protest that it was the party who submitted the proposed question that was rejected by the State. Despite the State's rejection of the proposed change, and the clear language in the Bid Solicitation regarding proposed changes and the State's Standard Terms and Conditions, Voya included a statement on page 2 of its Quote, in bright red letters requesting the addition of language to SSTC Section 4.2. See page 2 below from Voya's Technical Quote:



Voya claims that the addition of this language is a minor change, and that it accepts the requirements of the SSTC Section 4.2. Protest, page 4. Voya also argues that it signed the required Offer and Acceptance form, and that the inserted language shouldn't even be considered an additional term because it was "meaningless language". Protest, page 4. Voya's actions and requesting to modify terms however indicate that it did not accept SSTC Section 4.2 because it requested a change, and that the insertion was not "meaningless language".

During the initial responsive review of a Quote, 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 complaint 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).

Here, the State determined that the Quote submitted by Voya contained a material deviation from the requirements of the Bid Solicitation rendering the Quote non-responsive. The question before me is whether Voya's language modifying the State's insurance terms was a material deviation rendering the Quote non-responsive or if the modified term could have been waived. To be deemed non-responsive, Voya'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.

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, 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).

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).

By inserting language modifying the State’s insurance requirements, Voya impermissibly reserves to itself the right to refuse insurance requirements during the term of the Contract. Not only is such a reservation an impermissible deviation from the Bid Solicitation’s requirements, but the Courts have said the State is unable to make equal comparisons of the submitted Quote pricing with that supplied by other vendors.

A bid submitted in response to an RFP is an offer that confers an option to contract upon the State. Kingston Bituminous Prods. Co. v. N.J. Tpk. Auth., 80 N.J. Super. 25, 36 (App.Div.1963) (citing 1 Williston on Contracts § 31, p. 82 (3d ed.1957)); Conduit & Found. Corp. v. City of Atl. City, 2 N.J. Super. 433, 438-39 (Ch. Div.1949) (citing Lupfer & Remick v. Bd. of Chosen Freeholders of the County of Atl., 87 N.J. Eq. 491, 497 (Ch.1917)). As long as the option remains unaccepted, it is a unilateral writing lacking the mutual elements of a contract; when it is accepted, an executory contract arises that is mutually binding upon the parties. Schlein v. Gairoard, 127 N.J.L. 358, 359 (E. & A.1941).

In order for a contract to form, however, there must be a “meeting of the minds,” as evidenced by each side’s express agreement to every term of the contract. Johnson & Johnson v. Charmley Drug Co., 11 N.J. 526, 538-39 (1953). “An expression of assent that modifies the substance of the tender, while it may be operative as a counter-offer, is yet not an acceptance and does not consummate a contract. In the very nature of the contract, acceptance must be absolute.” Id. at 538.

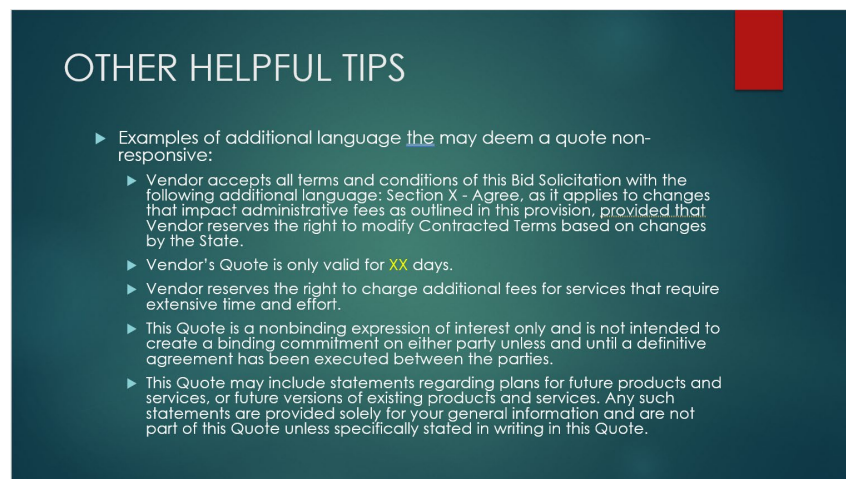
State v. Ernst & Young, L.L.P., 386 N.J. Super. 600, 612.

By inserting this language with its Quote, Voya impermissibly reserves to itself rights that are not available to all Bidders, thus unleveling the playing field, and failing to submit a response that can be accepted by the State.

Furthermore, it is noted that 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 similar issues multiple times in the past, the following information is specifically included in the standard Pre-Quote Conference presentation which is available to all bidders on NJSTART, whether they attended the Pre-Quote Conference or not:



OTHER HELPFUL TIPS

- ▶ Examples of additional language the may deem a quote non-responsive:
 - ▶ Vendor accepts all terms and conditions of this Bid Solicitation with the following additional language: Section X - Agree, as it applies to changes that impact administrative fees as outlined in this provision, provided that Vendor reserves the right to modify Contracted Terms based on changes by the State.
 - ▶ Vendor's Quote is only valid for XX days.
 - ▶ Vendor reserves the right to charge additional fees for services that require extensive time and effort.
 - ▶ This Quote is a nonbinding expression of interest only and is not intended to create a binding commitment on either party unless and until a definitive agreement has been executed between the parties.
 - ▶ This Quote may include statements regarding plans for future products and services, or future versions of existing products and services. Any such statements are provided solely for your general information and are not part of this Quote unless specifically stated in writing in this Quote.

[Pre-Quote Conference – Slide Deck Page #11.]

The Division expressly advises and warns Bidders not to include language that it accepts the terms but adds language modifying the terms or reserving rights that would not be available to other Bidders. The

Division includes this language knowing how the courts have addressed this issue in the past and to help Bidders avoid repeating the same mistakes.

Voya's claim that their own language merely creates an administrative step before administrative processing. Voya completely disregards the practical interpretation of their statement – namely, that their additional language provides an opportunity to refuse the Director's modification of the insurance term as the section's existing language permits.

Reserving the right to further negotiate the contract terms with the State, as Voya has, is a non-waivable deviation under River Vale. Requesting the State ignore Voya's own language contained in their Quote as suggested in their Protest after the Quote submission deadline would result in an impermissible supplementation of the Quote, which the Division cannot allow as doing so 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". Id.

Voya's protestation that "any suggestion that Voya intended to limit its three-year proposal to a mere 60-day validity period defies both logic and the clear context of its submission. Any such interpretation would be patently unreasonable, as it is evident from the entirety of the bid and the nature of the procurement, that the inclusion of the boilerplate 60-day language was an inadvertent clerical error", Protest, page 1, does not qualify Voya for special consideration. A bidder cannot pick and choose which sections of their Quote the State should consider. If Voya wants the State to ignore the "60-day language", can the State then choose to ignore the presumed boilerplate "Copyright and Trademarks" section that is included in that same page? Voya was responsible for ensuring their Quote conform to the specifications of the Bid Solicitation, including all sections therein. Voya was aware that failure to do so may result in their Quote being found non-responsive and ineligible for award. This is incumbent on every Bidder who seeks an Award with the State of New Jersey, Voya included. Moreover, the time to raise concerns was during the electronic question and answer period mentioned above.

Voya also alleges that it should have been permitted to submit a clarification of the term. Clarifications 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.

Here, there are no minor ambiguities, irregularities, informalities, or clerical errors permitting or requiring clarification. Voya inserted a clear reservation to itself that removed a right clearly reserved the the Director of DPP. Because there is nothing to explain, Voya's only option would be to remove the language which is an impermissible modification to Voya's Quote.

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 Voya’s Quote to proceed to award in light of their failure to adhere to the requirements of the Bid Solicitation would place Voya 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 Voya was non-responsive to the requirements of the Bid Solicitation. Accordingly, I sustain the April 8, 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

c. R. Regan
M. Maguire
J. Rodriguez