



State of New Jersey

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

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January 30, 2026

Via Electronic Mail Only to dldisler@pbnlaw.com

David L. Disler, Esq.
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Morristown, NJ 07962-1997

Re: I/M/O Bid Solicitation #25DPP01122 ePlus Technology, inc.
Protest of Notice of Intent to Award
T1466 – Video Teleconferencing Equipment & Services

Dear Mr. Disler:

This final agency decision is in response to the protest application dated January 27, 2026 (“Protest”), submitted by your firm on behalf of ePlus Technology, inc. (“ePlus”) and received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that correspondence, ePlus protests the Notice of Intent to Award dated January 12, 2026, by the Division’s Procurement Bureau (“Bureau”) for Bid Solicitation #25DPP01122 – Video Teleconferencing Equipment & Services. Bid Solicitation. The record of this procurement reveals that the Quote submitted by ePlus was deemed non-responsive as set forth in the Recommendation Report dated January 9, 2026 (“Recommendation Report”) for submitting language as part of their Quote submission that their Quote was valid for sixty (60) days from the date of the submission. In their Protest, ePlus claims this language was erroneously included in their Quote and was a “clear clerical error”. Protest, page 1. ePlus “request[s] that the January 12, 2026, decision be reversed, and that ePlus be awarded the contract.” Protest, page 5.

By way of background, on March 7, 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 the purchase, installation and maintenance of premises-based equipment that can be used to build conference room and desktop Video Conferencing (VC) systems.” Bid Solicitation Sec. 1.1, *Purpose and Intent*. “It is the intent of the State of New Jersey (State) to award Contract(s) to those responsible Bidder(s) whose Quote(s), 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 March 18, 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. ePlus is not 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 March 25, 2025. A second Electronic Question and Answer period was available to all potential Bidders until 2:00 P.M. Eastern Time on August 29, 2025. A total of 187 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 June 26, 2025, the PRU opened seventeen (17) 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 January 12, 2026, the Bureau sent a Notice of Intent to Award and Recommendation Report to ePlus. On January 27, 2026, prior to the close of the protest period, ePlus submitted a Protest alleging that “the sole basis for rejection was the presence of standard boilerplate language in ePlus’s bid stating that pricing was ‘valid for 60 days,’ despite a multi-year contract term – language that was plainly inadvertent and a clear clerical error.” Protest, page 1.

With their protest, ePlus submitted a copy of their submitted Quote, and a copy of the NOI.

Although ePlus 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 ePlus. 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 ePlus 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 March 25, 2025. One hundred seventy-three (173) questions were received. One question was received regarding pricing (in bold) and the State clearly answered that all pricing must be held firm through issuance of contract.

Q: Original Text: Unless 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. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

Redline Text: In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any subsequent order placed during the contract period. If a Using Agency identifies a reduced price on product(s) on an undelivered purchase order, Contractor shall refund the difference in price upon request from the Using Agency.

Rationale: Contractor will publish a contract price list with SKU adds, removals and price decreases every month or two for the states review and approval. Due to the volume and frequency in which SKU pricing is updated Contractor cannot notify the state immediately every time there is a price decrease as it is not feasible.

A: The State does not accept this proposed modification. Terms and conditions on publicly bid procurements must be consistent for all potential Bidders, and cannot be based on a single vendor's terms.

[Bid Amendment #5.]

Despite this response, and the clear language in the Bid Solicitation and the State's Standard Terms and Conditions, ePlus included a statement on page 2 of its Quote, directly under the heading "**PROPOSAL VALIDITY PERIOD**" (emphasis in the original), that read "This proposal is valid for sixty (60) days from the date of submission (9/24/2025)." See page 2 below from ePlus's Technical Quote:



ePlus claims that the addition of the "Proposal Validity Period" in their Quote was a "clear clerical error", Protest, page 1, and that the reading of this language in ePlus's Quote "that ePlus intended its multi-year proposal to be valid for only 60 days – would be absurd. Thus, the boilerplate 60-day validity phrase is a patent clerical error that is facially inconsistent with the substance of the proposal." Protest, page 4. ePlus argues that "DPP therefore should disregard this waivable, harmless error". Protest, page 4.

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 ePlus contained a material deviation from the requirements of the Bid Solicitation rendering the Quote non-responsive. The question before me is

whether ePlus's modified term that its Quote was only valid for 60 days from the date of submission (9/24/2025) was a material deviation rendering the Quote non-responsive or if the modified term could have been waived. To be deemed non-responsive, ePlus'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 indicating that its pricing was only in place for 60 days, ePlus impermissibly reserves to itself the right to change or attempt to negotiate different pricing after the 60 day time period. In such situations the Courts have said the State is unable to make equal comparisons of the submitted Quote pricing with that supplied by other vendors.

Unlike requirements that can "be relinquished without there being any possible frustration of the policies underlying competitive bidding," **waiving a price term is plainly "capable of becoming a vehicle for corruption or favoritism, or . . . of encouraging improvidence or extravagance, or likely to affect the amount of any bid or to influence any**

potential bidder to refrain from bidding, or . . . of **affecting the ability of the contracting unit to make bid comparisons,**” and is thus generally regarded as “the kind of condition[] which may not under any circumstances be waived.” Terminal Constr. Corp. v. Atl. Cty. Sewerage Auth., 67 N.J. 403, 412, 341 A.2d 327 (1975).

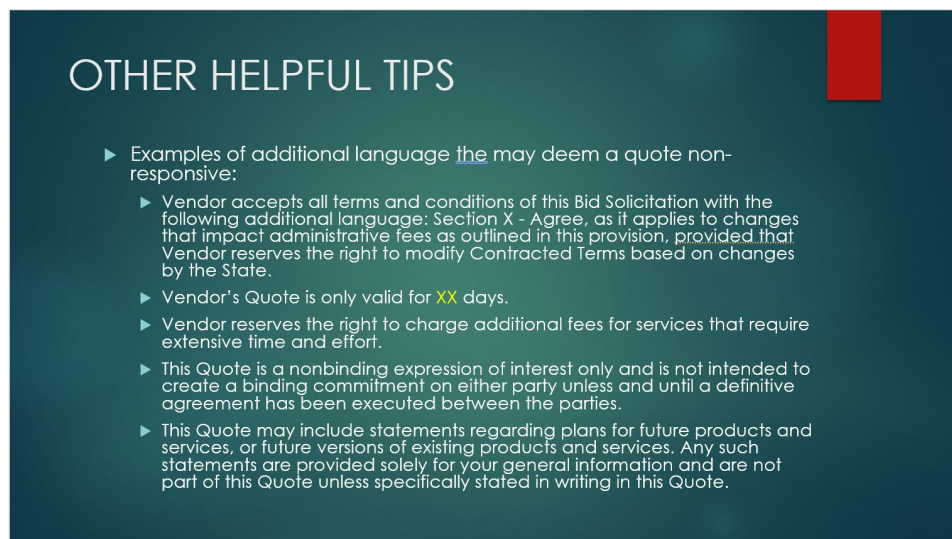
In re Request for Proposals ##17DPP00144, 454 N.J. Super. 527, 564-565
[emphasis added]

By inserting this language with its Quote, ePlus impermissibly reserves to itself rights that are not available to all Bidders, thus unleveling the playing field.

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 this issue 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 #8.]

The Division expressly advises and warns Bidders not to include language that their Quote is only valid for a certain number of days. 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.

ePlus's claim that their own language that limited the length of their proposal could only be interpreted as a clerical error since this was a multi-year contract misses the point. ePlus's interpretation is that they could not possibly mean that their pricing was only valid for sixty (60) days since this contract was for a three (3) year base term, so the contract would clearly be over years past the sixty (60) days. ePlus completely disregards another interpretation of their statement – namely, that their pricing was only valid for sixty (60) days. Should the evaluation and award of this contract take longer than sixty (60) days, ePlus could then advise the State that they have different pricing since the submitted pricing in their Quote was only “valid for sixty (6) days from the date of submission” Quote, page 2.

Reserving the right to further negotiate the contract terms with the State, as ePlus has, is a non-waivable deviation under River Vale. Requesting the State ignore ePlus'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.

ePlus's protestation that “any suggestion that ePlus 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 ePlus for special consideration. A bidder cannot pick and choose which sections of their Quote the State should consider. If ePlus 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? ePlus was responsible for ensuring their Quote conform to the specifications of the Bid Solicitation, including all sections therein. ePlus 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, ePlus included. Moreover, the time to raise concerns was during the electronic question and answer period mentioned above.

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 ePlus's Quote to proceed to award in light of their failure to adhere to the requirements of the Bid Solicitation would place ePlus in a superior position among bidders under this Bid Solicitation.

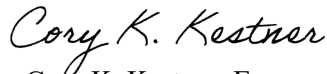
CONCLUSION

Based upon the findings set forth above, I find no reason to disturb the determination that the Quote submitted by ePlus was non-responsive to the requirements of the Bid Solicitation. Accordingly, I sustain the January 12, 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.
Acting Chief Hearing Officer

CKK: CMD

c. M. Dunn
J. Pastuzyn
C. Quin