



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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June 11, 2018

Via Electronic Mail [sfabietti@grucciopepper.com] and USPS Regular Mail

A. Steven Fabietti
Law Offices of Gruccio, Pepper, De Santo & Ruth, P.A.
P.O. Box 1501
Vineland, NJ 08362-1501

Re: I/M/O Bid Solicitation #: 17DPP00087 Riggins, Inc.
Specification Protest
Bid Solicitation Title: T0083 – Unleaded Automotive Gasoline

Dear Mr. Fabietti:

This letter is in response to your correspondence dated March 29, 2018, on behalf of Riggins, Inc. (“Riggins”), which was received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that letter, Riggins protests the State’s intent to award contracts, as well a number of specifications within Bid Solicitation {Request for Proposal} #17DPP00087: T0083 Unleaded Automotive Gasoline (“Bid Solicitation”).¹

Riggins asserts that the Bid Solicitation should be re-bid in its entirety because (1) pricing submitted by the Vendors {Bidders} in 2017 is no longer valid or competitive, causing larger Vendors {Bidders} to withdraw their Quotes and leaving only smaller, less-equipped Vendors {Bidders}, (2) the Bid Solicitation’s pricing index based on the average of Newark’s high and low price was deficient, and (3) because it is unclear that the State complied with “appropriate procedure, as the bid results were released

¹ For consistency, this final agency decision uses terminology employed by the State of New Jersey’s **NJSTART** eProcurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory, and/or legacy term.

NJSTART Term	Statutory, Regulatory, and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

only to a select group of bidders, not all bidders.” Riggins protest, p. 1-2. Supporting its challenge to the pricing index, Riggins states a new Bid Solicitation should “take into account the following:”

- A true average of rack prices should be utilized instead of an average of only the high and low racks. The current formula skews prices for the State and subjects it to large price fluctuations.
- Both a southern and northern rack average for respective counties should be utilized in the new bid. The current index in Newark prejudices southern counties from cost savings they may realize by using pricing in closer proximity to their locations. It is not at all cost effective to transport product from Northern terminals in Linden, Newark and Sewaren to southern counties. Counties in South Jersey should be priced off OPIS Phila. Average (all suppliers) and North Jersey counties should be priced off OPIS Newark Average (all suppliers). These indexes are more indicative of the true cost of supply.
- There is historical precedent for the State changing the index used for its procurement of fuel.

First, Riggins’s protest states that it is a “formal protest to the award of contracts[.]” Riggins protest, p. 1. However, while the Procurement Bureau (“Bureau”) issued a Notice of Intent to Award (“NOI”) on March 8, 2018, notifying all Vendors {Bidders} that the Director intended to award Master Blanket Purchase Orders {Contracts} (“Blanket P.O.s”), the Bureau withdrew that NOI on March 12, 2018 to address administrative errors in the NOI. The Bureau has not issued a revised NOI announcing an intent to make awards of Blanket P.O.s. Therefore, to the extent that Riggins’s protest challenges future award decisions, such points are not addressed in this final agency decision because these arguments are moot until such time as the Bureau issues a revised NOI or notice cancelling the Bid Solicitation.

Second, Riggins’s challenges to the Bid Solicitation’s specifications are out of time. The Division’s regulations regarding protests to specifications have specific timing requirements, only permitting such protests to be submitted between the posting of answers to the questions posed by potential bidders and the Quote opening date:

The written protest [challenging a specification] shall be submitted to the Director only after the Division has formally responded to questions posed during the RFP-established question and answer period and in sufficient time to permit a review of the merits of the protest and to take appropriate action as may be necessary, prior to the scheduled deadline for proposal submission.

...

3. In order to provide sufficient time for full assessment of the issue(s) of the challenge and, if merited, to effect changes to the RFP and public notice of such changes, the Director may disregard any protest of specifications filed fewer than seven business days prior to the scheduled deadline for proposal submission.

[N.J.A.C. 17:12-3.2(b).]

Riggins submitted this challenge to the Bid Solicitation’s specifications well after the scheduled deadline for such a challenge. Quotes were due and submitted on June 14, 2017; therefore, any challenge to the specifications should have been submitted no later than June 5, 2017. Riggins’ protest is well beyond

the seven business days prior to the scheduled Quote submission due date, having been filed more than nine months later. Therefore, Riggins's specification challenges are untimely under the Division's regulations.

In light of these findings, the protest regarding the specifications of Bid Solicitation #17DPP00087 is denied. This is my final agency decision. Riggins may assert any timely arguments it may have if and when the Bureau issues a revised NOI or notice cancelling the Bid Solicitation.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with [NJSTART](#), the State of New Jersey's eProcurement portal.

Sincerely,


Maurice A. Griffin
Acting Director

MAG:REG

c: J. Kerchner
K. Thomas
G. Gerstenacker
D. Holt