State of New Jersey

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August 7, 2018

Via Email [brian@cherryvalleytractor.com] and USPS Regular Mail

Brian C. Wright, President
Cherry Valley Tractor Sales
35 West Route 70
Marlton, NJ 08053

RE: Protest of Notice of Intent to Award
I/M/O Bid Solicitation #17DPP00138 Cherry Valley Tractor Sales
Bid Solicitation Title: T3084 Tractor, Agricultural/Landscape/Utility with Attachments

Dear Mr. Wright:

This letter is in response to your correspondence dated August 1, 2018, to the Division of Purchase and Property's ("Division") Hearing Unit on behalf of Cherry Valley Tractor Sales (Cherry Valley). In that letter Cherry Valley protests the July 30, 2018, Second Amended Notice of Intent to Award (Second Amended NOI) letter which set forth the Division's intent to award Master Blanket Purchase Orders (Blanket P.O.s)[1] for Bid Solicitation #17DPP00138: T3084 Tractor, Agricultural/Landscape/Utility with Attachments (Bid Solicitation). Cherry Valley requests that the Division throw out all Quotes received in response to the Bid Solicitation due to (1) the length of time it took for the Division to evaluate the Quotes received; and, (2) because of an error in the evaluation formula for Group 3 pricing.

[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

BACKGROUND

By way of background, the subject Bid Solicitation was issued on May 12, 2017, by the Division's Procurement Bureau (Bureau) on behalf of the New Jersey Department of Transportation (NJDOT), New Jersey Department of Corrections (NJDOC), New Jersey Department of Environmental Protection (NJDEP), State Using Agencies, and Cooperative Purchasing Program Participants. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for Tractors, Agricultural, Landscape, and Utility with Attachments. Ibid. The Bid Solicitation consisted of twenty-two (22) price lines organized into three (3) Groups as follows:

Group #	Description	Price Line Numbers in the Group
1	Tractor, Landscape/Utility, Minimum 99 HP Engine, 4WD	1 through 10
2	Tractor, Landscape/Utility, Minimum 125 HP Engine, 4WD	11 through 16
3	Tractor, Agricultural, Minimum 115 HP Engine, 4WD	17 through 22

Vendors {Bidders} were required to bid on all price line items in a Group to be a responsive Vendor {Bidder}. Ibid. Vendors {Bidders} could bid on one, two or all three Groups. Ibid. The intent of the Bid Solicitation is to award one (1) Blanket P.O. for each Group. Awards shall be made to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

In accordance with Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*, potential Vendors {Bidders} were permitted to submit questions regarding the Bid Solicitation through May 26, 2017. The Bureau answered the questions received through the posting of Bid Amendment #2 on June 23, 2017. No questions were received regarding the price sheet instructions set forth in Bid Solicitation Section 4.4.5 *Price Schedule/Sheet* or the evaluation criteria set forth in Bid Solicitation Section 6.6 *Evaluation Criteria.*

On July 11, 2017, six Quotes received by the submission deadline were opened and reviewed for administrative completeness by the Division's Proposal Review Unit. All Quotes were forwarded to the Bureau. Those Quotes were reviewed and evaluated pursuant to the criteria set forth in the Bid Solicitation Section 6.6 *Evaluation Criteria* which stated in part:

> The following criteria will be used to evaluate all Quotes {Proposals} that meet the requirements of this Bid Solicitation {RFP}. The criteria are not necessarily listed in order of importance:
>
> a) Group price index:
>
> Price index (PI) Group 1, a formulation that is based on unit bid price for price line 1 (BP), a sum of option Quote {Proposal} bid prices for price line 2 through 7 (TA), hourly rate bid on price line 10 (HR), Option Discount % (OD) bid on price line 8 and Warranty Discount (WD) bid on price line 9.

> Price index (PI) Group 2, a formulation that is based on unit bid price for price line 11 (BP), a sum of option Quote {Proposal} bid prices for price line 12 through 14 (TA), hourly rate bid on price line 17 (HR), Option Discount % (OD) bid on price line 16 and Warranty Discount (WD) bid on price line 15.
>
> Price index (PI) Group 3, a formulation that is based on unit bid price for price line 17 (BP), a sum of option Quote {Proposal} bid prices for price line 18 through 20 (TA), hourly rate bid on price line 23 (HR), Option Discount % (OD) bid on price line 22 and Warranty Discount (WD) bid on price line 21.
>
> Price index is calculated as follows:
>
> PI = [(BP + (TA) + (20*HR)))] + [((BP * .20) * (1-OD))) + ((BP * .035) * (1-WD))]
>
> PI= [Unit Cost + Options + Projected Labor] + [Projected Discounted Value of Options + Projected Discounted Value of Warranty]
>
> . . .
>
> b) Experience of the Vendor {Bidder}
>
> c) The Vendor's {Bidder's} documented past performance under similar Blanket P.O.s {Contracts}, including but not limited to, the Division's Vendor {Contractor} performance database.

Cherry Valley submitted Quotes for all three Groups. For Group 1, Cherry Valley proposed a tractor with two different transmission configurations;[2] for Group 2, Cherry Valley proposed two different tractor models;[3] and for Group 3, Cherry Valley proposed two different tractor models.[4]

On June 20, 2018, the Bureau issued a Notice of Intent to Award (NOI) advising all Vendors {Bidders} that it was the Division's intent to award Blanket P.O.s as follows:

Group	Vendor Bidder	Brand / Model
Group 1	Power Place, Inc.	2017 John Deere 5100E
Group 2	Deere & Company	2017 John Deere 6135E
Group 3	Deere & Company	2017 John Deere 6120M

Cherry Valley was not listed as an intended awardee for any Group. The Bureau's June 20, 2018, Recommendation Report stated that for Group 1 Cherry Valley was not in contention for an award because of pricing. For Group 2, Cherry Valley's proposed New Holland TS6.130 tractor was not responsive to the specifications because the tractor is not capable of being steered in the event of engine failure as required by Bid Solicitation Section 3.4.11.7 *Drive System*. Cherry Valley's alternate proposal for Group 2, the New

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[2] For Group 1 Cherry Valley proposed the New Holland T4.100 with a 12x12 Mechanical Shuttle Transmission and the New Holland T4.100 with a 12x12 Hydraulic Shuttle Transmission tractors.
[3] For Group 2 Cherry Valley proposed the New Holland TS6.130 and the New Holland T6.155 tractors.
[4] For Group 3 Cherry Valley proposed the New Holland TS6.120 and the New Holland T6.145 tractors.

Holland T6.155 tractor was not in contention for an award due to price. For Group 3, Cherry Valley's proposed tractor, the New Holland TS6.120, was not responsive to the specifications because the tractor proposed is not capable of being steered in the event of engine failure as required by Bid Solicitation Section 3.4.17.7 *Drive System*. Additionally, the proposed tractor did not meet the minimum wheel based requirement of 101 inches set forth in Bid Solicitation Section 3.4.17.1 *Dimension and Capacity*. Cherry Valley's alternate proposal for Group 3, the New Holland T6.145, was not in contention for an award due to price.

On June 26, 2018, the Division's Hearing Unit received Cherry Valley's protest in response to the June 20, 2018, NOI. In that protest, Cherry Valley requested that all Quotes be thrown out: (1) because of the length of time that it took for the Division to make the awards; and, (2) because of the incorrect formula listed under the evaluation criteria for Group 3.

While that protest was pending, the Bureau uncovered a mathematical error, not in the formula used for the evaluation, but in the calculation of each Vendor's {Bidder's} price index. Specifically, the estimated value of the options (20%) and the estimated value of the warranty (3.5%) were not included in the price index calculation as required by the price index formula. Bid Solicitation Section 6.6 *Evaluation Criteria*. Accordingly, on July 13, 2018, the Bureau wrote to all Vendors {Bidders} advising that the June 20, 2018, NOI was rescinded and that a new NOI would be forthcoming. By way of email on the same date, the Hearing Unit advised Cherry Valley that because the Bureau had rescinded the June 20, 2018 NOI, its June 26, 2018 protest was moot; therefore, the Hearing Unit would not be issuing a Final Agency Decision with respect to that protest.

On July 13, 2018, the Bureau issued an Amended NOI. That NOI advised all Vendors {Bidders} that it was the Division's intent to award Blanket P.O.s as follows:

Group	Vendor Bidder	Brand / Model
Group 1	Power Place, Inc.	2017 John Deere 5100E
Group 2	Deere & Company	2017 John Deere 6135E
Group 3	Cherry Valley Tractor	2017 New Holland T6.145

The Bureau's July 13, 2018, Recommendation Report states that for Group 3, an award was recommended to Cherry Valley for the 2017 New Holland T6.145 tractor. Among those responsive Quotes for Group 3, Cherry Valley's tractor presented the lowest proposed Quote price after the calculation of the price index. Deere & Company's proposed tractor for Group 3 was not in contention for an award due to price.

After reviewing the Recommendation Report and supporting documentation, the Bureau realized that it had made a calculation error. Specifically, in calculating the price index for each Vendor Bidder, the Bureau transposed the option discount and the warranty discount submitted by each Vendor {Bidder}. Therefore, the price index was not properly calculated. Accordingly, on July 18, 2018, the Bureau wrote to all Vendors {Bidders} advising that the July 13, 2018, Amended NOI was rescinded and that a new NOI would be forthcoming.

On July 30, 2018, the Bureau issued a Second Amended NOI which advised all Vendors {Bidders} that it was the Division's intent to award Blanket P.O.s as follows:

Group	Vendor Bidder	Brand / Model
Group 1	Power Place, Inc.	2017 John Deere 5100E
Group 2	Deere & Company	2017 John Deere 6135E
Group 3	Deere & Company	2017 John Deere 6120M

The Bureau's July 30, 2018, Recommendation Report stated that for Group 3, an award was recommended to Deere & Company for the 2017 John Deere 6120M tractor. Among those responsive Quotes for Group 3, Deere & Company's tractor presented the lowest proposed Quote price after the calculation of the price index. Cherry Valley's proposed tractor for Group 3, the New Holland T6.145, was not in contention for an award due to price.

On August 1, 2018, the Division received Cherry Valley's protest in response to the July 30, 2018, Second Amended NOI.[5] Cherry Valley incorporated its prior protest letter requesting that all Quotes be thrown out: (1) because of the length of time that it took for the Division to make the awards; and, (2) because of the incorrect formula listed under the evaluation criteria.

In consideration of Cherry Valley's August 1, 2018, protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, Cherry Valley's protest, the relevant statutes, regulations, and case law. This review of the record 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. I set forth herein the Division's Final Agency Decision.

DISCUSSION

As noted above, Cherry Valley requests that all Quotes be thrown out because of the length of time that it took for the Division to make the awards.

New Jersey statutory and regulatory laws governing public procurement require that an "award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered." N.J.S.A. 52:34-12(a); N.J.A.C. 17:12-2.7(g).

Here, the Bid Solicitation was issued on May 12, 2017, six Quotes were received on July 11, 2017. On April 3, 2018, the Bureau requested Best and Final Offers from the Vendors {Bidders}. Thereafter, the Bureau requested clarification from a number of Vendors {Bidders}, evaluated the Quotes, submitted intended awardee financials to the Division's economic analyst for analysis and verified the intended awardee's records of past performance. As noted above, several factors led to the NOI being rescinded and then reissued. The time between the submission of Quotes and the issuance of the July 30, 2018, Second Amended NOI has not prejudiced any Vendor {Bidder}, as all Vendors {Bidders} were on an even playing field at the time of Quote submission. With respect to the Quote pricing, all Vendors {Bidders} were aware that prices quoted were to remain firm to through the issuance of the contract. The State of New Jersey Standard Terms and Conditions Section 6.1 *Price Fluctuation During Contract* states in part 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." Further, any Vendor {Bidder}, prior to the award of the Blanket P.O.s could ask to withdraw its Quote pursuant to Bid Solicitation Section 1.4.7.2 *Quote {Proposal} Withdrawal After Quote Opening, But Prior to Blanket P.O. {Contract} Award.* In fact, the Bureau granted a Vendor's {Bidder's} request to withdraw its Quote because it could not hold its Quote pricing. Cherry Valley did not make a request to the Bureau to withdraw its Quote, and no other Vendor {Bidder} has advised the Bureau that it is unable to hold it Quote pricing.

[5] In the August 1, 2018 protest, Cherry Valley requested an explanation regarding "why Cherry Valley was intended to be awarded and now that was removed." An explanation regarding the facts that led to the rescinding of the intended award to Cherry Valley is detailed above.

In further support of its request and that all Quotes be thrown out, Cherry Valley alleges that the price index formula listed in the evaluation criteria is incorrect as it contained a typographical error.

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).

Accordingly, to protect again "favoritism, improvidence, extravagance and corruption" Bid Solicitation Section 6.6 *Evaluation Criteria* set forth the evaluation criteria to be utilized in evaluating the Quotes received:

> The following criteria will be used to evaluate all Quotes {Proposals} that meet the requirements of this Bid Solicitation {RFP}. The criteria are not necessarily listed in order of importance:
>
> a) Group price index;
>
> . . .
>
> Price index (PI) Group 3, a formulation that is based on unit bid price for price line 17 (BP), a sum of option Quote {Proposal} bid prices for price line 18 through 20 (TA), hourly rate bid on price line 23 (HR), Option Discount % (OD) bid on price line 22 and Warranty Discount (WD) bid on price line 21.
>
> Price index is calculated as follows:
>
> PI = [(BP + (TA) + (20*HR)))] + [((BP * .20) * (1-OD))) + ((BP * .035) * (1-WD))]
>
> PI= [Unit Cost + Options + Projected Labor] + [Projected Discounted Value of Options + Projected Discounted Value of Warranty]
>
> . . .
>
> b) Experience of the Vendor {Bidder};
> c) The Vendor's {Bidder's} documented past performance under similar Blanket P.O.s {Contracts}, including but not limited to, the Division's Vendor {Contractor} performance database.
>
> [Emphasis added.]

In the protest, with respect to the formula used to evaluate Group 3, Cherry Valley states:

> Group 3 describes to add your hourly rate on price line 23. There [are] not 23 price lines on the price sheets. The hourly rate is price line 22, which is noted in the bid to be your option discount off list price. The option discount is actually price line 20. So if you follow the second line which is a sum of your options on quote, price line 18 through 20 to come up with your (TA). The option discount is on price line 20 which you were to calculate in the sum to come up with your (TA) but then the bid formula states to take it off later in the formula with the warranty discount. The State is unable to correctly evaluate the bid as this paragraph does not give you the correct [chain] of commands.
>
> [Cherry Valley's August 1, 2018 protest letter, p. 3]

In summary, Cherry Valley alleges that the price index formula employed by the Bureau in reviewing the Quote pricing contained a typographical error in the price line numbers used in the narrative description of price index formula's component items.

The Hearing Unit's independent review of the narrative description of price index formula confirms Cherry Valley's statement. There is a typographical error in the referenced price line numbers in the narrative description of price index formula. That being said, the price index formula included in the Bid Solicitation is correct and was uniformly applied to the Quote pricing submitted by all Vendors Bidders.

Further, from a review of the information contained in the Bid Solicitation and the price sheet, a Vendor {Bidder} could easily discern the component price lines to be used in the price index formula. Bid Solicitation Section 4.4.5.2 *Price Sheet/Schedule Attachment Instructions* states as follows:

> ***There are twenty two (22) price lines which are itemized in three (3) Groups as follows:***
>
> . . .

Price Lines	**Group 3 Description**
17	Tractor, Agricultural, Minimum 115 HP, 4WD
18	One Additional Set of Parts, Service and O&M Manuals
19	Technical Support
20	Manufacturer's Attachments and Options
21	Manufacturer's Extended Warranty
22	Hourly Rate For Dealer Installation

Moreover, a review of the State-supplied price sheet reveals that there was no price line 23; rather, Group 3 is comprised of price lines 17 – 22 as noted in the Bid Solicitation. Additionally, each of the Group 3 price lines includes the following descriptors on the price sheet:

- Price Line 17 – Group 3 Agricultural Tractor, Minimum 1125 Hp. Engine, 4WD, As Specified in Section 3.4.17 of the Bid Solicitation {RFP}
- Price Line 18 – Group 3 One Additional Set of Parts, Service and O&M Manuals, As Specified in Section 3.4.18 of the Bid Solicitation {RFP}

- Price Line 19 – Group 3 Technical Support - Operators and Mechanics Training, As Specified in Section 3.4.19 of the Bid Solicitation {RFP}
- Price Line 20 – Group 3 Manufacturer's Attachments and Options, As Specified in Section 3.4.208 of the Bid Solicitation {RFP}
- Price Line 21 – Group 3 Manufacturer's Extended Warranty, As Specified in Section 3.4.21 of the Bid Solicitation {RFP}
- Price Line 22 – Group 3 Hourly Rate for Dealer Installation, As Specified in Section 3.4.22 of the Bid Solicitation {RFP}

Taken together, the price lines to be used in the price index formula can easily be discerned and are as follows:

- BP: Price Line 17 – Agricultural Tractor
- TA: Price Line 18 – Additional set of Parts, Service and O&M Manuals
- TA: Price Line 19 – Technical Support - Operators and Mechanics Training
- OD: Price Line 20 – Manufacturer's Attachments and Options
- WD: Price Line 21 – Manufacturer's Extended Warranty
- HR: Price Line 22 – Hourly Rate for Dealer Installation

Despite the fact that there is typographical error in the narrative description of price index formula's component items, the formula itself, which was also included in the Bid Solicitation, did not contain an error, nor has Cherry Valley alleged any error or deficiency with the price index evaluation formula.

In connection with its review of this protest, the Hearing Unit undertook an independent evaluation of the Quote pricing and the price index calculation for those responsive Quotes submitted for Group 3. In response to the Bid Solicitation, four Vendors {Bidders} submitted a Quote for Group 3 as follows:

Vendor {Bidder} Name	**Group 3 Tractor Make/Model/Model Year**
Cherry Valley Tractor Sales	2017 New Holland TS6.120
Cherry Valley Tractor Sales	2017 New Holland T6.145
Deere & Company	2017 John Deere 6120M
Farm Rite, Inc.	2017 Case IH Maxxum 115
Storr Tractor Company	2017 Case IH Farmall 130A

On March 20, 2018, Storr Tractor Company withdrew its Quote in the entirety as permitted by Bid Solicitation Section 1.4.7.2 *Quote {Proposal} Withdrawal After Quote Opening, Bur Prior to Blanket P.O. {Contract} Award.* As noted in the Bureau's July 30, 2018 Recommendation Report, Cherry Valley's proposed tractor, the New Holland TS6.120, was not responsive to the specifications because the tractor proposed is not capable of being steered in the event of engine failure as required by Bid Solicitation Section 3.4.17.7 *Drive System.* Additionally, the proposed tractor did not meet the minimum wheel based requirement of 101 inches set forth in Bid Solicitation Section 3.4.17.1 *Dimension and Capacity.* Further, Farm Rite, Inc.'s proposed tractor, the 2017 Case IH Maxxum 115, was not responsive to the specifications because the tractor proposed is not capable of being steered in the event of engine failure as required by Bid Solicitation Section 3.4.17.7 *Drive System.* Two responsive Quotes remained for Group 3.

Vendor {Bidder} Name	**Group 3 Tractor Make/Model/Model Year**
Cherry Valley Tractor Sales	2017 New Holland T6.145
Deere & Company	2017 John Deere 6120M

The Hearing Unit's independent evaluation of the Quote pricing and the price index calculation using the price index formula set forth in Bid Solicitation Section 6.6 *Evaluation Criteria* for these two tractors results in the following:

Vendor {Bidder} Name	Group 3 - Tractor Make/Model/Model Year	Price Index[6]
Cherry Valley Tractor Sales	2017 New Holland T6.145	$81,183.98
Deere & Company	2017 John Deere 6120M	$80,051.77

The Hearing Unit's independent evaluation confirms the Bureau's recommendation that a Blanket P.O. be awarded to Deere & Company for Group 3.

CONCLUSION

Despite the fact that there were earlier calculation errors, the Bureau itself recognized error, informed all Vendors {Bidders}, took the necessary steps to correct the error, and then issued a new notice of Intent to Award to all Vendors {Bidders} consistent with the requirements of the Bid Solicitation. I have no doubt that the Bureau fairly applied the evaluation criteria to all of the responsive Quotes for Group 3. As such I find that there was no favoritism, improvidence, corruption or unfettered competition in the Bureau's review of the submitted Quotes.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation. Accordingly, I sustain the July 30, 2018 NOI. This is my final agency decision with respect to the protest submitted by Cherry Valley.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with ***NJSTART*** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
D. Warren

[6] PI = [(BP + (TA) + (20*HR))] + [((BP * .20) * (1-OD)) + ((BP * .035) * (1-WD))]