



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 5, 2018

Via Electronic Mail [ghtrucking21@gmail.com] and USPS Regular Mail

George Hildebrant
GH Trucking
83 Good Springs Road
Asbury, NJ 08802

Re: I/M/O Bid Solicitation #18DPP00205 GH Trucking
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Mr. Hildebrant:

This letter is in response to your correspondence of August 30, 2018, on behalf of GH Trucking (GHT) to the Division of Purchase and Property's Hearing (Division) Unit. In that correspondence GHT protests the August 24, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) indicating an intent to award a Master Blanket Purchase Orders (Blanket P.O.s)¹ for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation).

BACKGROUND

By way of background, on January 30, 2018, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates and highways under the

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

jurisdiction of NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Blanket P.O.s to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On March 16, 2018, the Division's Proposal Review Unit opened 164 Quotes received through the State's *NJSTART* eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Thirty-two Quotes were automatically rejected by the Proposal Review Unit for failure to conform to the mandatory administrative requirements for Quote submission.

The remaining Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria* which states:

The following evaluation criteria categories, not necessarily listed in order of significance, may be used to evaluate Quotes {Proposals} received in response to this Bid Solicitation {RFP}. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

- A. Experience of firm (Attachment #2): The Vendor's {Bidder's} documented experience in successfully completing Blanket P.O. {Contracts} of a similar size and scope in relation to the work required by this Bid Solicitation {RFP};
- B. Vendor Equipment (Attachment #1): The quantity and type of Vendor {Bidder} trucks and ability to provide equipment; and
- C. Price: The Vendor's {Bidder's} hourly rate. See Section 6.7.1 below.

With respect to the evaluation of the Vendors' {Bidders'} Quote pricing, Bid Solicitation Section 6.7.1 *Vendor's {Bidder's} Price Schedule* states:

The Bureau will utilize a weighted price model. The price model will be date-stamped and entered into the record before Quote {Proposal} opening.

One (1) or multiple awards will be made to the Vendor {Bidder} submitting the lowest hourly rate for each Snow Section and meeting, at a minimum, the criteria for experience and equipment set forth in this Bid Solicitation {RFP}, in the following order:

Snow Plowing and Hauling Services:

- 1st – Vendors {Bidders} supplying all required Class A trucks with equipment;
- 2nd – Vendors {Bidders} supplying all required Class A trucks without equipment;
- 3rd – Vendors {Bidders} supplying all required Class B trucks with equipment;
- 4th – Vendors {Bidders} supplying all required Class B trucks without equipment;

- 5th – Vendors {Bidders} supplying fewer than the required number of Class A trucks with equipment; and
- 6th – Vendors {Bidders} supplying fewer than the required number of Class B trucks without equipment.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class A trucks with Vendor {Bidder} owned equipment, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class A trucks without equipment.

Spreading Services:

- 1st – Vendors {Bidders} supplying all required Class R trucks with an on board wetting system;
- 2nd – Vendors {Bidders} supplying all required Class R trucks;
- 3rd – Vendors {Bidders} supplying all required Class Q trucks with an on board wetting system;
- 4th – Vendors {Bidders} supplying all required Class Q trucks;
- 5th – Vendors {Bidders} supplying all required Class P trucks with an on board wetting system;
- 6th – Vendors {Bidders} supplying all required Class P trucks;
- 7th – Vendors {Bidders} supplying V Box trucks with an on board wetting system;
- 8th – Vendors {Bidders} supplying V Box trucks;
- 9th – Vendors {Bidders} supplying mid-body style trucks with an on board wetting system; and
- 10th – Vendors {Bidders} supplying mid-body style trucks.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class R trucks, with an on board wetting system, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class R trucks without an on board wetting system.

The evaluation of Quotes received and submission of Quote pricing was conducted in three phases as set forth in Bid Solicitation Section 1.1 *Purpose and Intent* which states:

Award of this Bid Solicitation {RFP} will be conducted in three (3) consecutive phases, as described further below. All phases will continue until all Snow Sections have been awarded. Pricing shall not be released until completion of all phases and the final Notice of Intent to Award has been issued.

This procurement will be bid in three consecutive phases, numbered One, Two and Three. The first Phase will be Phase One (1). In Phase One (1), the State will attempt to award all Snow Sections. To the extent that any Snow Sections remain un-awarded following Phase One (1), the State will request that all Vendors {Bidders} who submitted a Quote {Proposal} to this Bid Solicitation {RFP} for Phase One (1) submit a Phase Two (s) price sheet addressing any Snow Sections that remain un-awarded that the

Vendor {Bidder} is interested in. The State will attempt to award all remaining Snow Sections in Phase Two (2) based on the Phase Two price sheets received. In the event that any Snow Sections remain un-awarded after Phase Two (2) is completed, the State will request that all Vendors {Bidders} submit a Phase Three (3) price sheet, addressing any Snow Sections that remain un-awarded, that the Vendor {Bidder} is interested in.

Under no circumstances shall any Vendor {Bidder}, when submitting a Phase Two (2) or Phase Three (3) price sheet after being requested to do so by the State, submit any supplemental or additional information regarding any other aspects of its previously-submitted bid. During Phase Two and Phase Three, the State will only consider the price sheets, and will not consider any additional or supplemental information or documents.

1. **Phase One (1)** – will apply to all Vendors {Bidders} that have submitted a responsive Quote {Proposal};
2. **Phase Two (2)** – will apply to all Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase One (1) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Two (2); and
3. **Phase Three (3)** – will apply to Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase Two (2) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Three (3).

In other words, only those Vendors {Bidders} whose original submitted Quotes were responsive to the requirements of the Bid Solicitation would be able to participate in, and submit pricing for Phase 2 and Phase 3.

In accordance with the procedure set forth in Bid Solicitation Section 1.1 *Purpose and Intent*, after the review and evaluation of all Quotes received in response to Bid Solicitation Phase 1 was completed, on June 5, 2018, the Bureau issued a preliminary notice. That preliminary notice advised the Vendors {Bidders} which snow plowing sections would be awarded based upon the Phase 1 submitted Quotes. The preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. Four Vendors {Bidders} withdraw a submitted Quotes for some or all of the snow plowing section originally submitted during Phase 1. Thereafter, the Bureau commenced Phase 2 to solicit Quote pricing for those snow plowing sections for which no responsive Quotes had been received. On June 11, 2018, requests for Phase 2 pricing were sent to all Vendors {Bidders} determined to be responsive prior to Phase 1. Phase 2 Quote pricing submission were due to the Bureau on June 18, 2018 at 2:00 p.m.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase 2 was completed, on June 25, 2018, the Bureau issued a second preliminary notice. That second preliminary

notice advised the Vendors {Bidders} which snow plowing sections would be awarded based upon the Phase 1 and Phase 2 submitted Quotes. The second preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. Thereafter, the Bureau commenced Phase 3 to solicit Quote pricing for those snow plowing sections for which no responsive Quotes had been received in either Phase 1 or Phase 2. Requests for Phase 3 pricing were sent to all responsive Vendors {Bidders} on June 26, 2018 with a Phase 3 Quote pricing submission due date of June 28, 2018 at 2:00 p.m.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase 3 was completed, on July 2, 2018, the Bureau issued a third preliminary notice. That third preliminary notice advised the Vendors {Bidders} which snow plowing sections would be awarded based upon the Phase 1, Phase 2 and Phase 3 submitted Quotes. The third preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted a Quote or a preliminarily awarded price line.

Thereafter, on August 22, 2018, the Bureau issued a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered.² On August 24, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O.s consistent with the Bureau's Recommendation Report.

On August 30, 2018, the Division received GHT's protest challenging the intended Blanket P.O. award of price line 188. In the protest, GHT alleges it was penalized for its honesty when it pointed out a price line discrepancy during Phase 1 of the procurement. GHT further states that it was "under the impression that experience would be a factor in determining section awards, but this is clearly not the case in this instance." GHT requests that the Division reverse its decision and award it price line 188.

In consideration of GHT's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, 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 referenced by GHT in its protest, during Phase 1 of this procurement, a typographical error led to a duplicate snow plow section being included on the price sheet. Specifically, price line 187 and 188 contained the same snow area description.

LINE NO	DESCRIPTION
187	SNOW PLOWING SERVICES - D.O.T. REGION: CENTRAL CREW 331 FLEMINGTON SUBREGION: C1 SNOW SECTION: 5331263 ROUTE 202, FROM PLEASANT RUN ROAD, READINGTON TOWNSHIP TO ROUTE 22, BRIDGEWATER (MP 17.11 TO MP 25.0) NUMBER OF TRUCKS REQUIRED: 6

² The list of Vendors {Contractors} who are recommended to receive Blanket P.O. awards are listed in the attachment to the Bureau's August 22, 2018 Recommendation Report.

188	SNOW PLOWING SERVICES - D.O.T.
	REGION: CENTRAL CREW 331 FLEMINGTON
	SUBREGION: C1
	SNOW SECTION: 5331264
	ROUTE 202, FROM PLEASANT RUN ROAD, READINGTON TOWNSHIP TO ROUTE 22, BRIDGEWATER (MP 17.11 TO MP 25.0)
	NUMBER OF TRUCKS REQUIRED: 5

On June 5, 2018, the Bureau issued a preliminary notice which indicated that price line 188 would be awarded to GHT. Thereafter, on June 6, 2018, prior to the Bureau requesting that Phase 2 pricing, GHT advised the Bureau of the duplication in the snow plow area descriptions for price lines 187 and 188. In order to maintain a level playing field and not provide an advantage to any Vendor {Bidder} the Bureau required that the snow plow area description for price line 188 be amended and that the updated price line be included in Phase 2 request for pricing. Recommendation Report, p. 49.

The Bureau's Recommendation Report reveals that two (2) Vendors {Bidders}, GHT and Rodota Trucking and Excavating, LLC (Rodota), submitted pricing for price line 188 during Phase 2. With respect to experience, Bid Solicitation Section 3.2 *Vendor {Contractor} Requirements*, sets forth the minimum experience for the Vendors {Contractors} stating "the Vendor {Contractor} shall possess, at a minimum, two (2) years' experience performing snow plowing or spreading services on public roadways." Both GHT and Rodota submitted Attachment #2 – *Vendor {Bidder} Experience Form* indicating that each has over 20 years of experience in snow plowing. As such, both GHT and Rodota had the more than the minimum level of experience necessary to perform the services sought in this solicitation.

With respect to the evaluation and award of Blanket P.O.s, Bid Solicitation Section 6.7.1 *Vendor's {Bidder's} Price Schedule* states:

The Bureau will utilize a weighted price model. The price model will be date-stamped and entered into the record before Quote {Proposal} opening.

One (1) or multiple awards will be made to the Vendor {Bidder} submitting the lowest hourly rate for each Snow Section and meeting, at a minimum, the criteria for experience and equipment set forth in this Bid Solicitation {RFP}, in the following order:

Snow Plowing and Hauling Services:

- 1st – Vendors {Bidders} supplying all required Class A trucks with equipment;
- 2nd – Vendors {Bidders} supplying all required Class A trucks without equipment;
- 3rd – Vendors {Bidders} supplying all required Class B trucks with equipment;
- 4th – Vendors {Bidders} supplying all required Class B trucks without equipment;
- 5th – Vendors {Bidders} supplying fewer than the required number of Class A trucks with equipment; and
- 6th – Vendors {Bidders} supplying fewer than the required number of Class B trucks without equipment.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class A trucks with Vendor {Bidder} owned equipment, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class A trucks without equipment.

Here, Rodota submitted a Quote indicating that it would supply five (5) Class A Trucks to perform the services required if awarded a Blanket P.O. GHT on the other hand, submitted a Quote indicating that it would supply four (4) Class A Trucks and one (1) Class B Truck to perform the services required if awarded a Blanket P.O. Consistent with the evaluation criteria set forth in Bid Solicitation Section 6.7.1 *Vendor's {Bidder's} Price Schedule*, the Bureau's Recommendation Report states as follows with respect to the award of price line 188:

...although the Quote submitted by GHT is considered to be the lowest cost, Rodota is recommended for award as it offered the State five (5) Class A Trucks; whereas the Quote submitted by GHT offered the State four (4) Class A and one (1) Class B. In accordance with Section 6.7.1 Vendors {Bidders} supplying all required Class A Trucks will be awarded a Blanket P.O. before the Vendor {Bidder} supplying fewer than the required number of Class A trucks. Therefore, for the reason stated Rodota is recommended for award of this price line.

[Recommendation Report, p. 54.]

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) (emphasis added). 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.” Ibid.

In order to maintain a level playing field, to guard against favoritism, improvidence, extravagance and corruption, the Bureau required that the snow plow area description for price line 188 be amended and that the updated price line be included in Phase 2 request for pricing. The Bureau’s decision to amend the price line description and request pricing during Phase 2, was not to penalize GHT for its honesty; rather, it was to further the purpose of public bidding to “secure for the public the benefits of unfettered competition.” Meadowbrook, supra, 138 N.J. at 313. Further, the Bid Solicitation was clear – stating that awards would first be made to those Vendors {Bidders} offering the all Class A Trucks to perform the services required. Accordingly, the Bureau’s recommendation for award conforms to the requirements of the Bid Solicitation and the applicable law.

CONCLUSION

While I have no reason to dispute GHT's statement that it has an impeccable record, based upon the foregoing, I find no reason to disturb the Bureau's recommendation. Accordingly, I sustain the August 24, 2018 Notice of Intent to Award. This is my final agency decision with respect to the protest submitted by GHT.

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 eProcurement system. 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. Please monitor the New Jersey Department of Transportation's, the Division's and the **NJSTART** websites for future bidding opportunities for these services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger