



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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September 21, 2018

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

Gina M. Mancini  
Prieto Enterprises LLC  
255 S. Inman Ave.  
Avenel NJ 07001

Re: I/M/O Bid Solicitation #18DPP00205 Prieto Enterprises LLC  
T0777 Snow Plowing and Spreading Services  
Request for Reconsideration

Dear Ms. Mancini:

This letter is in response to your correspondence of September 7, 2018, on behalf of Prieto Enterprises LLC (Prieto Enterprises) to the Division of Purchase and Property (Division). In that correspondence Prieto Enterprises requests reconsideration of the September 5, 2018 Final Agency Decision titled I/M/O Bid Solicitation #18DPP00205 Majestic Leasing LLC (hereinafter, "IMO Majestic Leasing"), which the Division issued in response to Majestic Leasing LLC's protest of the 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)<sup>1</sup> to several Vendors {Bidders} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation).

In IMO Majestic Leasing, the Division rescinded the intended award of price line 333 from Prieto Enterprises and re-awarded the price line to Majestic Leasing after concluding the Bureau incorrectly

<sup>1</sup> 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.

<u>NJSTART</u> 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

applied an equipment preference methodology set forth in the Bid Solicitation. In its request for reconsideration, Prieto Enterprises explains it upgraded its spreading equipment in anticipation of receiving the award of price line 333, and now possesses all tailgate mounted equipment. Second, Prieto Enterprises asserts the Bid Solicitation did not establish a preference for tailgate mounted equipment, and nonetheless, asserts it has all required experience, number of trucks, equipment, and a lower price.

**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 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}. In relevant part, Question 6 was as follows:

#	RFP Section Reference	Question (Bolded) and Answer
6	Mid-body Spreading Equipment	<p><b>1. On the Attachment 1 T0777 Snow Plowing and Spreading Services, two types of spreading equipment are listed: Tailgate Mounted or V Box. Section 3.15.1 Spreader Truck Requirements, on page 30 of the Bid Solicitation / Request for Proposal lists 3 types of spreaders: Tailgate, mid-body, or ?V? Box. Are mid-body trucks the type of trucks that the state uses on their tandems - conveyor systems without a v-shaped box?</b></p> <p>The NJDOT does not use mid-body trucks</p> <p><b>2. How would we fill out Attachment 1 T0777 to indicate trucks that have a conveyor system without a V-shaped body?</b></p> <p>Attachment #1 – Vendor {Bidder} Equipment Form, has been revised to include mid-body trucks.</p> <p><b>3. Assuming all trucks have an on board wetting system, is a preference given to Tailgate mounted spreading equipment, ?V? box equipment, or mid-body equipment? If so, what is the order of preference from most preferred to least?</b></p> <p>Please refer to Section 1.1 and 6.7.1 of the Revised Bid Solicitation {RFP} which have been modified to include mid-body style trucks and revise the order of award.</p>

Accompanying Bid Amendment #1, was a revised Bid Solicitation with tracked changes reflecting changes and edits made to the Bid Solicitation. In response to Question 6, the Bid Solicitation section 6.7.1 *Vendor’s {Bidder’s} Price Schedule*, was amended as follows:

**Spreading Services:**

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

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

In other words, reading Bid Amendment #1, Question 6, in the context of revised Bid Solicitation section 6.7.1 *Vendor's {Bidder's} Price Schedule*, the Bid Solicitation advised all Vendors {Bidders} that there was a preference for tailgate mounted equipment over V Box equipment, and a preference for V Box equipment over mid-body style equipment. Effectively, the trucks set forth in category 1 through 6 above assume tailgate mounted equipment, and any V Box or mid-body style equipment would be ranked lower.

On March 16, 2018, the Division's Proposal Review Unit opened Quotes from 164 Vendors {Bidders} received through the State's **NJSTART** eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Quotes from thirty-two Vendors {Bidders} 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.

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 One was completed, the Bureau issued a preliminary notice. That preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One submitted Quotes. Thereafter, the Bureau commenced Phase Two to solicit Quotes pricing for those snow plowing and spreading sections for which no responsive Quotes had been received. On June 11, 2018, requests for Phase Two pricing were sent to all Vendors {Bidders} who submitted Quotes which were deemed initially responsive. Phase Two Quote submission pricing was 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 Two was completed, the Bureau issued a second preliminary notice. That second preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One and Phase Two submitted Quotes. Thereafter, the Bureau commenced Phase Three to solicit Quote pricing for those snow plowing and spreading sections for which no responsive Quotes had been received in either Phase One or Phase Two. Requests for Phase Three pricing were sent to all responsive Vendors {Bidders} on June 26, 2018 with a Phase Three Quote 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 Three was completed, the Bureau issued a third preliminary notice. That third preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One, Phase Two and Phase Three submitted Quotes.

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.<sup>2</sup> 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 24, 2018, the Division received a protest from Majestic Leasing LLC challenging the intended Blanket P.O. awards on price line 333. Price line 333 called for six Class R trucks. Majestic Leasing's Quote reflected it proposed six Class R trucks, two with tailgate mounted equipment and four with V Box equipment. IMO Majestic Leasing, at 4-5. In contrast, Prieto Enterprises' Quote reflected it proposed six Class R trucks, all with V Box equipment. IMO Majestic Leasing, at 5-6. The Bureau ultimately recommended an award of price line 333 to Prieto Enterprises.<sup>3</sup> IMO Majestic Leasing, at 7. In reviewing Majestic Leasing's protest, the Division concluded:

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<sup>2</sup> 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.

<sup>3</sup> As discussed in IMO Majestic Leasing, at 6, the Phase One preliminary notice stated that Majestic Leasing and Prieto Enterprises would split the award of price line 333. However, after further evaluation, the Bureau ultimately recommended the price line be awarded in whole to Prieto Enterprises because it offered six Class R V Box trucks. IMO Majestic Leasing, at 7. As noted in IMO Majestic Leasing, at n.5, the Phase One preliminary notice was also incorrect.

Here, as noted above, the Bureau received two Quotes on price line 333 from Vendors {Bidders} that included all six class R trucks that the line required; one from Majestic Leasing and the other from Prieto Enterprises. But, each Vendor {Bidder} proposed different equipment. Majestic Leasing proposed two tailgate mounted trucks and four V Box trucks, while Prieto Enterprises proposed six V Box trucks. Accordingly, the Bureau erroneously applied the preference methodology from Bid Solicitation section 6.7.1 and recommended Prieto Enterprises as the intended awardee for price line 333.

While Prieto Enterprises proposed all required class R trucks for the Snow Section with V Box equipment, Majestic Leasing should have received the award of price line 333 because it provided two tailgate mounted class R trucks and four V Box class R trucks, which should have received a higher ranking than a Quote providing all of the required class R trucks with V Box equipment. See Bid Solicitation § 6.7.1 *Vendor's {Bidder's} Price Schedule* (ranking "Vendors {Bidders} supplying V Box trucks" over "Vendors {Bidders} supplying mid-body style trucks"); Bid Amendment No. 1, Question 6 (modifying Bid Solicitation sections 1.1 and 6.7.1 to reflect award preference based on type of equipment). Even though Majestic Leasing Quoted an hourly rate of \$195 per hour while Prieto Enterprises Quoted a rate of \$175, the order of award preference set forth in Bid Solicitation section 6.7.1 dictates Majestic Leasing be the sole intended awardee for price line 333.<sup>7</sup>

[IMO Majestic Leasing, at 9.]

On September 7, 2018, Prieto Enterprises submitted a request for reconsideration of IMO Majestic Leasing. Prieto Enterprises wrote as follows:

On 8/24/18, we were notified by email that a portion of our **final** awards were six (6) Class R trucks for spreading services for line 333. This is after a partial award was sent on 6/4/18 with us sharing the route with Majestic Leasing which of course we had no issue with. But based on the final award (that was different from the preliminary), we made a company decision to upgrade some of our equipment from V box to electronic tailgate mounted spreaders. We placed an order on 8/27/18 for 11 new electronic tailgate mounted spreaders valued at \$3565 per piece. Since we have many years of experience with State winter operations, we made this decision to ensure that our drivers are able to offload more efficiently to ensure your other vendors have the ability to do so, too. Although we realize it is not guaranteed, this decision was based on the assumption that we would have steady income from our State winter contract for the six (6) referenced above, as outlined in the final award. We, like Majestic Leasing are a small business, so we understand the importance of steady cash flow to pay rent, support children, fulfill a desire to provide work for our employees, etc., so we only render a decision to spend a large amount of money when we know it will not hurt the company. At this point, we have not had a conversation with anyone from Crew 333 regarding equipment but were prepared to give notification of the upgrade when we did. I have attached the invoice and photos of the equipment that was delivered to us on 8/28/18.

Additionally, in your final decision you say Majestic Leasing "should have a higher ranking than a Quote providing all of the required class R trucks with V box equipment" but at no time in the 1<sup>st</sup> -10<sup>th</sup> criteria items for Spreading Services is tailgate mounted spreading even mentioned. I see you underlined the 1<sup>st</sup> -supplying all required Class R trucks and 8<sup>th</sup> - supplying V box trucks but again tailgate mounted is not mentioned. I realize Majestic Leasing has some V box and some tailgate mounted but we have more than enough equipment and could provide whichever is preferred on this particular section.

With all of this in mind, we would hope you understand, we have the **experience**, we are offering the **number of trucks required**, we are offering a **lower price**, and we have the **equipment needed**.

Accompanying the protest letter, Prieto Enterprises included photographs of the new equipment and a copy of the invoice from its supplier.

In consideration of Prieto Enterprises' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, Prieto Enterprises' 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

Preliminarily, it is noted that a request for reconsideration

‘ . . . should be utilized only for those cases which fall into that narrow corridor in which either 1) the [tribunal] has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [tribunal] either did not consider, or failed to appreciate the significance of probative, competent evidence . . . .

Alternatively, if a litigant wishes to bring new or additional information to the [tribunal's] attention which it could not have provided on the first application, the [tribunal] should, in the interest of justice (and in the exercise of sound discretion), consider the evidence. Nevertheless, motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour. Thus, the [tribunal] must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration.’

[Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996), quoting D’Atria v. D’Atria, N.J. Super. 392, 401-02 (Ch. Div. 1990).]

While Prieto Enterprises' protest is properly framed as a request for reconsideration of the decision rendered in IMO Majestic Leasing, the re-award of price lines made in that final agency decision serves as the basis of Prieto Enterprises' protest. Accordingly, the merits of Prieto Enterprises' protest points are addressed below.

First, Prieto Enterprises explained it procured eleven new electronic tailgate mounted spreaders on August 27, 2018, after it was notified of the “final awards” and “based on the assumption that we would have steady income from our State winter contract for the six (6) [trucks on price line 333] referenced above, as outlined in the [August 24, 2018 NOI].” Prieto Enterprises then implies that it can provide tailgate mounted equipment instead of the V Box equipment detailed in its Quote if it were to receive the award of price line 333.

Contrary to Prieto Enterprises' assertion, the Bureau's August 24, 2018 NOI did not advise that the intended awards were “final.” Bid Solicitation section 1.1 *Purpose and Intent* advised all Vendors {Bidders} that the procurement would be conducted in three phases, with preliminary notices being issued after each phase. On August 24, 2018, the Bureau issued an NOI advising all Vendors {Bidders}, including Prieto Enterprises, of the “complete list of intended awardees and associated price lines.” (Emphasis added). The NOI stated it was “the intent of the Director of the Division of Purchase and Property (Division) to make a Master Blanket Purchase Order (Blanket P.O.) award to the following Vendors {Bidders} in accordance with the Quotes submitted in response to the above referenced Bid Solicitation”

but in accordance with the Division's administrative regulations, N.J.A.C. 17:12-3.3, the protest period ends on August 31, 2018. Therefore, contrary to Prieto Enterprises' assertion, the Bureau never advised that any proposed awards were "final." Rather, the Bureau advised of the "intent to award" Prieto Enterprises price line 333 which was still subject to change during the protest period required by law. It is only after the conclusion of the protest period and receipt of the *NJSTART*-generated notice of award that the award of any price lines becomes final.

Next, Prieto Enterprises' correctly recognizes that in order to receive an award of price line 333 over Majestic Leasing, it would have needed to have Quoted at least three Class R tailgate mounted trucks or propose the same equipment makeup as Majestic Leasing with lower pricing.<sup>4</sup> While Prieto Enterprises implies it would offer the preferred tailgate mounted spreading equipment in order to secure the award of price line 333, the Division is prohibited from allowing Prieto Enterprises to modify its Quote after the Quote submission deadline. The Division's regulations, case law, and Bid Solicitation section 6.4 *Clarification of Quote {Proposal}/State's Right to Request Further Information*, allow clarification or elaboration of a Quote, but prohibit Vendors {Bidders} from supplementing, revising, or modifying Quotes after the Quote submission deadline. N.J.A.C. 17:12-2.7(e); In re Protest of the Award of the On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175 (hereinafter "On-Line Games"), 279 N.J. Super. 566, 597 (App. Div. 1995) (stating "[I]n 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 is interdicted by the RFP").

Allowing Prieto Enterprises to change its Quote on price line 333 to reflect at least three Class R tailgate mounted trucks would represent a prohibited alteration, modification, or change to the originally submitted Quote. It would also secure Prieto Enterprises a material competitive advantage over all other Vendors {Bidders} who submitted sealed Quotes prior to the Quote submission deadline because adjusting the type of equipment could materially impact the evaluation and ranking on each price line. As explained in On-Line Games, supra, 279 N.J. Super. at 599, "[a]llowing [a Vendor {Bidder}] to respond to a significant RFP requirement *after* it knew what other bidders had proposed and *after* it knew how its price and product stacked up against the other offering is exactly what our bidding laws were intended to prevent." Accordingly, the Division is prohibited from allowing Prieto Enterprises to modify the equipment proposed in its original Quote for evaluation purposes, even where the offering would be preferred by the State or where the price is lower than the competition.<sup>5</sup>

Finally, Prieto Enterprises challenges the conclusion from IMO Majestic Leasing that tailgate mounted equipment is entitled to a preference over V Box equipment. Prieto Enterprises correctly notes that tailgate mounted equipment "is not mentioned" in Bid Solicitation section 6.7.1 *Vendor's {Bidder's} Price Schedule*. But, as noted above, Bid Solicitation section 6.7.1 *Vendor's {Bidder's} Price Schedule* must be read in context of Bid Amendment #1, Question 6, which expressly addressed the order of preference among tailgate mounted, V Box, and mid-body style spreading equipment. Admittedly, the language in Bid Solicitation section 6.7.1 *Vendor's {Bidder's} Price Schedule* could have been clearer. But

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<sup>4</sup> As noted above, Majestic Leasing Quoted six Class R trucks, two with tailgate mounted equipment and four with V Box equipment. IMO Majestic Leasing, at 5. As both Majestic Leasing and Prieto Enterprises Quotes the required number of Class R trucks for price line 333, the type of equipment becomes the determinative factor for the award of this price line.

<sup>5</sup> While the Division cannot allow the Quote to be modified after the Quote opening submission deadline, a Vendor {Contractor} holding a price line award may provide preferred equipment during the performance of the Blanket P.O. For example, Prieto Enterprises may deploy the tailgate mounted equipment during the performance of the other spreading price lines it was awarded, including price lines 332, 343, 347, and 357, but it cannot now rely on the tailgate mounted equipment to receive new price line awards.

I cannot conclude that the Bureau erred in applying this equipment preference, which is supported by the Bid Solicitation as amended by Bid Amendment #1 and fairly applied to the evaluation of all Quotes.

**CONCLUSION**

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation or the decision rendered in IMO Majestic Leasing. 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 Prieto Enterprises.

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](http://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.

Sincerely,

  
Maurice A. Griffin  
Acting Director

MAG: REG

c: P. Michaels  
L. Spildener  
M. Groninger