



State of New Jersey

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

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October 1, 2019

Via Electronic Mail [ahaines@hainestowing.com] and USPS Regular Mail

Joseph R. Haines, Jr.
Haines Towing, Inc.
240 US Highway 130
Bordentown, NJ 08505

Re: I/M/O Bid Solicitation #19DPP00334 Haines Towing, Inc.
T2171 – Vehicle Towing and Roadside Services
Protest of Notice of Intent to Award

Dear Mr. Haines:

This letter is in response to your correspondence of August 22, 2019, on behalf of Haines Towing, Inc. (Haines) to the Division of Purchase and Property's (Division) Hearing Unit requesting that the State re-bid the unfulfilled price lines or cancel Bid Solicitation #19DPP00334 T2171 – Vehicle Towing and Roadside Services (Bid Solicitation). In support of the request, Haines states in part that there was systemic problem with the State's certification process of Small Business Enterprises. The record of this procurement reveals that the Division's Procurement Bureau (Bureau) deemed Haines' Quote non-responsive to the requirements of the Bid Solicitation because it was not certified as a Small Business Enterprise as of the Quote opening date.

By way of background, on January 18, 2019, the Bureau issued the Bid Solicitation on behalf of the Bureau of Transportation Services, Division of Administration, Department of the Treasury (Transportation), to solicit Quotes from qualified Vendors {Bidders} to provide vehicle towing and roadside repair services. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award up to five Blanket P.O.s in each county to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. *Ibid*. On February 28, 2019, the Bureau issued Bid Amendment #1 extending the Quote submission deadline to April 3, 2019. On March 25, 2019, the Bureau issued Bid Amendment #2 responding to the questions received from potential Vendors {Bidders} and extending the Quote submission deadline to April 11, 2019.

On April 11, 2019, the Division's Proposal Review Unit opened 34 Quotes received by the submission deadline of 2:00 pm eastern time. On July 30, 2019, after completing its review and evaluation of the Quotes received, the Bureau completed a recommendation report which recommended Blanket P.O. awards be made to sixteen Vendors {Bidders} whose submitted Quotes were most advantageous to the State, price and other factors considered. On August 9, 2019, the Bureau issued a Notice of Intent to Award Letter (NOI) advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s to the following Vendors {Bidders}:

A&B Auto Repair	Jack's Auto Service
A-1 Towing	John's Main Auto Body
Bergen Brookside Towing	Johnson Specialized Transportation
City Wide Towing	Nick's Towing Service
Donald Rzepka (a/l Al's Auto Body)	P.P.T.D. LLC
GJ Auto Repair & Service	Puleio's Service Center
Glendola Service Center	SHT Corporation
Hy-Way Towing & Collision	TruckMasters Inc.

On August 22, 2019, Haines submitted a protest to the Division's Hearing Unit. In support of its protest and its request that the Division cancel and re-bid this Bid Solicitation, Haines states the following: (1) that it did not receive notice of the requirement that it submit its annual verification; (2) that it was unable to complete the process on-line in August and was told to submit a paper application; and, (3) that there must have been a systemic problem with the certification system as "nearly half of the 34 applicants" were disqualified. See, Haines' protest letter p. 2.

In consideration of Haines' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the protest, the relevant statutes, regulations, and case law. This review 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 Haines. I set forth herein my final agency decision.

In 1983 the New Jersey Legislature enacted the "Set-Aside Act for Small-Businesses, Female Businesses and Minority Businesses." See, N.J.S.A. 52:32-17 et seq. The law required that the Division, when setting contracts aside for award to Small Business Enterprises advise the bidding community of the same and reject all Quotes from those businesses that are not certified as of the Quote opening date. See, N.J.S.A. 52:32-25. The regulations promulgated by the Department of the Treasury regarding Small Business Set-Asides similarly states "[i]f a business is to be eligible to bid on a specific set-aside contract or participate in the subcontracting target programs for purposes of this chapter, it must be registered as a small or veteran-owned business by [Division of Revenue and Enterprise Services (DORES)] on or before the date the bid or proposal is due at the State contracting agency." See, N.J.A.C. 17:13-3.2. A review of the subject Bid Solicitation reveals that all Vendors {Bidders} were put on notice that awards would be confined to those businesses certified as Small Business Enterprise as of the Quote opening date. Specifically, the Bid Solicitation stated that:

Pursuant to the provisions of N.J.S.A. 52:32-17 and N.J.A.C. 17:13 this is a full Set-Aside Blanket P.O. for Category I, II, & III for Small Businesses. The Vendor {Bidder} must¹ be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened. Evidence that the Vendor {Bidder} has registered as a small business should be submitted with the Quote. Vendors {Bidders} should verify its Small, Minority, Veteran, and Women Owned Business Certification status on the "Maintain Terms and Categories" Tab within its profile in *NJSTART*. In the event of an issue with a Vendor's

¹ "Must – Denotes that which is a mandatory requirement." See, Bid Solicitation Section 2.2 *General Definitions*.

{Bidder's} Small, Minority, Veteran, and Women Owned Business Certification status, **NJSTART** provides a link to take corrective action.

Inasmuch as this is a full or partial set-aside Blanket P.O., the Vendor {Bidder} should provide, as part of its response to this Bid Solicitation, proof of its current registration as a qualifying small business with the New Jersey Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit. Application and registration requirements are presented on the web at <http://www.nj.gov/njbusiness/contracting/> or by contacting that agency as indicated below during business hours.

New Jersey Department of the Treasury
Division of Revenue and Enterprise Services
Small Business Registration and M/WBE Certification Services Unit
33 West State Street – Fifth Floor
PO Box 026
Trenton, NJ 08625-0026
Telephone: 609-292-2146
Fax #: 609-292-8764

**** IF THE VENDOR {BIDDER} IS AN INCUMBENT VENDOR {CONTRACTOR} AND/OR HAS PREVIOUSLY REGISTERED OR BEEN CERTIFIED UNDER THE FORMER SBE/MBE/WBE PROGRAM, THE VENDOR {BIDDER} SHOULD ENSURE IT IS REGISTERED ON THE DAY OF QUOTE RECEIPT WITH THE DIVISION OF REVENUE AND ENTERPRISE SERVICES, SMALL BUSINESS REGISTRATION AND M/WBE CERTIFICATION SERVICES UNIT TO BE ELIGIBLE FOR AWARD.**

IN ORDER TO EXPEDITE THE SMALL BUSINESS REGISTRATION PROCESS FOR THIS PROCUREMENT, THE VENDOR {BIDDER} MAY FAX A COPY OF BID SOLICITATION PAGE ONE (1) REFLECTING THE QUOTE SUBMISSION DATE ALONG WITH THE COMPLETED SMALL BUSINESS REGISTRATION FORM TO THE NEW JERSEY DIVISION OF REVENUE AND ENTERPRISE SERVICES, SMALL BUSINESS REGISTRATION AND M/WBE CERTIFICATION SERVICES UNIT TO THE FAX NUMBER ABOVE.

[Bid Solicitation Section § 4.4.1.4.1 *Small Business Set-Aside Blanket P.O.* Emphasis added.]

Further, the Bid Solicitation notified Vendors Bidders that they could verify their certification status in **NJSTART**. Specifically, Bid Solicitation Section 4.4.1.4 *Small Business Registration For Set-Aside Blanket P.O.*

Vendors {Bidders} should verify its Small, Minority, Veteran, and Women Owned Business Certification status on the “Maintain Terms and Categories” Tab within its profile in **NJSTART**. In the event of an issue with a Vendor’s {Bidder’s} Small, Minority, Veteran, and Women Owned

Business Certification status, *NJSTART* provides a link to take corrective action.

Moreover, in response to a question posed by a potential Vendor {Bidder}, in Bid Amendment #2, the Bureau confirmed the requirement that a Vendor {Bidder} must be registered as Small Business Enterprise by the Quote opening date.

#	Bid Solicitation Section Reference	Question (Bolted) and Answer
7	Section 4.4.1.4.1 Small Business Set-Aside Blanket P.O.	<p>My firm has always been a small business. Is it really necessary for me to be registered in order to submit a bid?</p> <p>YES. The Vendor {Bidder} must be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened. Evidence that the Vendor {Bidder} has registered as a small business should be submitted with the Quote.</p> <p>Please refer to Section 4.4.1.4.1 for more information related to this Bid Solicitation's Small Business Set-Aside requirements.</p>

A review of the records maintained by DORES reveals that Haines was not certified as Small Business Enterprise on April 11, 2019, the Quote opening date. The records reveal that Haines received its initial certification as a Small Business Enterprise on or about December 7, 2004; however, that certification expired on December 6, 2005. Haines renewed its certification on December 12, 2005 (expired on December 11 2006); May 16, 2007 (expired on May 15, 2008); April 22, 2010 (expired on April 21, 2013); May 6, 2013 (revoked on August 3, 2014); May 12, 2015 (revoked on August 10, 2017); January 8, 2018 (revoked on April 8, 2019); and, then September 3, 2019.

With respect to the subject Bid Solicitation, Haines was certified as Small Business Enterprise on January 8, 2018. As required by the applicable regulations, Haines was required to submit its Small Business Enterprise Annual Verification Form on January 8, 2019. Specifically, the regulations provide in part:

(e) Annually the business shall submit, prior to the anniversary of the registration notice, a verification statement, in which it shall attest that there has been no change in the ownership, revenue eligibility, or control of the business at the State's website, <https://www.njportal.com/DOR/SBRegistry/>.

1. If the business fails to submit the annual verification statement by the anniversary date of the registration notice, the registration will lapse and the business will be deemed revoked from the State's small business database. If the business seeks to be registered after revocation, it will have to reapply and pay the\$ 167.00 application fee.

[N.J.A.C. 17:13-3.1]

In November 2018, DORES, the certifying entity, notified Haines that it was required to submit the Small Business Enterprise Annual Verification Form by January 8, 2019.

From: smwbe.notices@treas.state.nj.us
Sent: Friday, November 09, 2018 12:17 AM
To: Notices, SMWBE
Subject: Registration - Verification -- Ending Year -- 0 Application Id: 1064001 EMA=>
jhaines@hainestowing.com

11/09/2018

Dear Registered Small Business Owner:

We hope you have had a successful year. This notice is a reminder that your SBE Annual Verification Form is due on 01/08/2019.

Please complete the new online SBE Annual Verification Form, which is available at:
www.njportal.com/DOR/SBERegistry/

This form should be completed and submitted online to us not more than 60 days prior to the anniversary date of issue. There is no fee required to accompany this completed form.

If you fail to submit the annual verification form by 01/08/2019, your SBE registration will be revoked. The business will be removed from the database of state registered small businesses. After revocation, it will be necessary for your firm to reapply and pay the non-refundable \$100 application fee to obtain approved small business status.

Sincerely,

Small Business Registration and M/WBE/VOB/DVOB Certification Services Unit New Jersey Department of the Treasury
Division of Revenue and Enterprise Services
(609)292-2146

IMPORTANT NOTE: Please do not respond to this email. Responding to this email will result in a non-response status.

The email reminding Haines to submit its Small Business Enterprise Annual Verification Form was sent to the email address Haines had identified in its 2019 application for certification as a Small Business Enterprise:

New Registration - HAINES TOWING INC
Small Business Enterprise 11/8/18

Business Name
HAINES TOWING INC

Sent To State Oracle Database with Status
Approved

Trading As
Haines Towing Inc.

Business Type
Corporation

Inception Date
10/1/1976

Principal Address
240 ROUTE 130
BORDENTOWN, NJ 08505

Mailing Address
PO BOX 144
BORDENTOWN, NJ 08505

Contact
Mr. JOSEPH R HAINES, JR.
PRESIDENT
Phone: 6092980441
Fax: 6092919774
Email: jhaines@hainestowing.com
www.hainestowing.com

Haines did not submit its Small Business Enterprise Annual Verification Form; and therefore, its Small Business Enterprise certification was revoked.

On April 9, 2019, Haines uploaded the documents comprising its Quote in response to the subject Bid Solicitation.

Quote 0002885 - Haines Towing Inc					
General	Items	Questions	Subcontractors	Terms & Conditions	Attachments(16)
Evaluations	Preference	Reminders	Summary		
Header Information					
Quote #:	0002885	Bid #:	19DPP00334	Status:	Submitted
Organization:	Division of Purchase and Property	Delivery Days:	0	Discount Percent:	0.0
Description:	T2171 - Vehicle Towing and Roadside Services	Alternate Bid:	No	Shipping Terms:	
Bid Flag:	Yes	Ship Via Terms:		Payment Term:	
Freight Terms:		Info Contact:		Quote Total:	30.00
Premised Date					
Comment:					
Date Last Updated:	04/09/2019 12:17:03 PM	User Last Updated:	Angie Haines Biner	User Created:	Angie Haines Biner
Print format:	Quote				
Vendor accepts the terms & conditions with no exceptions.					
Bid Acknowledgements:					

At the time that Haines uploaded its Quote documents, its Small Business Enterprise certification was revoked. At the time that Haines uploaded its Quote documents, its **NJSTART** Vendor Profile indicated that its Small Business Enterprise certification was revoked.

Category: Certification: Small Business Enterprise
Description: This Certification status is updated daily. If you have questions regarding Small Business eligibility, please see the following link:
Revoked or Expired
Notes:
EXPIRATION DATE 2021-01-08, REVOCATION DATE 2019-04-08

As advised in Bid Solicitation Section 4.4.1.4 *Small Business Registration For Set-Aside Blanket P.O.* and Bid Solicitation Section § 4.4.1.4.1 *Small Business Set-Aside Blanket P.O.*, had Haines reviewed the Terms and Categories Tab within its **NJSTART** Vendor Profile, it would have been aware that its Small Business Enterprise status was revoked. At that time, prior to the Quote opening of April 11, 2019, Haines could have taken steps to cure the revocation. Further, as noted above, Haines' Annual Verification Form was due on January 8, 2019. Had Haines become re-certified at any time between January 8, 2019, the Quote Advertising date, and April 11, 2019, the Quote opening date, (a period of more than three months), Haines may have been eligible for an award.

Subsequent to the issuance of the NOI, Haines states that it filed an application for re-certification as a Small Business Enterprise. However, when attempting to file the on-line application it encountered an error message and was compelled to file a paper application. Haines further alleges that it was told that the review of its application could be delayed due to the high volume of requests received. Haines' application for re-certification was ultimately received on August 28, 2019 and approved with an effective date of

September 3, 2019. Regardless of the length of time it took for Haines' application for re-certification to be approved, Haines' certification was too late for it to be eligible for a Blanket P.O. award for the subject Bid Solicitation as certification was required prior to Quote opening. See, N.J.S.A. 52:32-25 (stating "when a contract or portion thereof has been designated as a set-aside, invitations for bids shall be confined to businesses designated by the department as appropriate for the set-aside and bids from other bidders shall be rejected.") Unfortunately, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} be certified as a Small Business Enterprise as of the Quote opening date. Only the New Jersey Legislature can change a requirement it has mandated.

Finally, in its protest Haines alleges that there must have been systemic problem with the certification system as "nearly half of the 34 applicants" were disqualified. See, Haines' protest letter p. 2. A review of those Vendors {Bidders} who submitted Quotes in response to the Bid Solicitation reveals that of the 34 Quote received, eleven of the sixteen Vendors {Bidders} who are listed for award received the Small Business Enterprise certification between Quote advertising date (January 18, 2019) and the Quote opening date (April 11, 2019.) The remaining five Vendors {Bidders} who are listed for award were previously certified. Of those Vendors {Bidders} who are ineligible for a Blanket P.O. award, six have never applied for a Small Business Enterprise certification; seven were revoked/expired prior to the Quote opening date; two applied and received their Small Business Enterprise certifications after the NOI was issued; and, three were ineligible for other reasons.

Based on the findings set forth above. Haines is not eligible for a Blanket P.O. award as it was not certified as a Small Business Enterprise as of the Quote opening date. Accordingly, I must deny your request for eligibility to participate in the competition for the subject Blanket P.O. This is my final agency decision.

Thank you for your company's interest in doing business with the State of New Jersey and for registering your business 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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: A. Davis
R. Regan
E. Castaldo