



State of New Jersey

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

Via Electronic Mail [joelawfirm@yahoo.com] and USPS Regular Mail

Joseph O. Consiglio, Esq.
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2273 Hwy. #33, Suite 207
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Re: I/M/O Bid Solicitation #18DPP00205 H. Liedtka Co., Inc.
T0777 Snow Plowing and Spreading Services
Request for Reconsideration

Dear Mr. Consiglio:

This letter is in response to your correspondence of September 10, 2018, on behalf of H. Liedtka Co., Inc. (Liedtka) to the Division of Purchase and Property (Division). In that correspondence Liedtka requests reconsideration of the September 5, 2018 Final Agency Decision titled I/M/O Bid Solicitation #18DPP00205 H. Liedtka Co., Inc. (hereinafter, "IMO H. Liedtka Co."), which the Division issued in response to Liedtka'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)¹ to several Vendors {Bidders} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation).

In IMO H. Liedtka Co., the Division addressed Liedtka's protest of the intended award of price line 337, which called for four Class R trucks. The Bureau recommended the award to Ivyland Construction

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

Co. Inc. (Ivyland) which offered four Class R trucks with tailgate mounted equipment over Liedtka which offered four Class R V Box style trucks. IMO H. Liedtka Co., at 5-6. On August 30 and 31, 2018, the Division received Liedtka's protest challenging the intended Blanket P.O. awards. Liedtka argued its pricing was lower, that it proposed all required equipment, and that Liedtka "had the applicable equipment and they are supremely qualified based upon their many years of experience performing this exact job."

After review, the Division upheld the award of price line 337 to Ivyland. IMO H. Liedtka Co., at 9. In summary, the Division concluded in relevant part:

In other words, class R trucks with tailgate mounted equipment would be awarded lines before class R trucks with V Box equipment, and class R V Box trucks would be awarded lines before class R mid-body style trucks. See 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).

Here, as noted above, the Bureau received two Quotes on price line 337 from Vendors {Bidders} that included all four required class R trucks that the line required: one from Liedtka and the other from Ivyland. But, each Vendor {Bidder} proposed different equipment. Liedtka proposed four V Box trucks while Ivyland proposed four tailgate mounted trucks. Accordingly, the Bureau correctly applied the preference methodology from Bid Solicitation section 6.7.1 and recommended Ivyland as the intended awardee for price line 337 because Ivyland proposed all required class R trucks for the Snow Section with tailgate mounted equipment, which would receive a higher ranking than all required class R trucks with V Box equipment. See 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 Ivyland Quoted an hourly rate of \$279 per hour while Liedtka Quoted a rate of \$225, the order of award preference set forth in Bid Solicitation section 6.7.1 dictates Ivyland be the intended awardee for class R trucks on price line 337.

In submitting its request for reconsideration, Liedtka argues "the State's interpretation of the pertinent provisions is contrary to their plain meaning." Liedtka Reconsideration Request, at 1. Liedtka notes that Bid Solicitation section 3.15.1 *Spreader Truck Requirements* mentions tailgate, mid-body and V Box equipment but does not indicate a preference for any particular design. Liedtka Reconsideration Request, at 1. Citing Bid Solicitation section 6.7.1 *Vendor's {Bidder's} Price Schedule* Liedtka argues "nowhere in this provision does it state tailgate spreaders will be given preference over V Box spreaders" and concludes that "the controlling factor is the language in the bidding specifications which put all potential bidders on notice of the State's requirements . . . [and] nowhere in the sections cited [sic] by the State does it indicate a preference would be given to tailgate spreaders." Liedtka Reconsideration Request, at 2-3. Liedtka requests the State reconsider its position and award price line 337 to Liedtka "based upon the fact that it is the lowest monetary bidder, is supremely qualified based upon its prior experience and has all the required equipment set forth in the bid specifications." Liedtka Reconsideration Request, at 3.

In consideration of Liedtka's reconsideration request, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, Liedtka's protests and reconsideration request, the relevant statutes, regulations, and case law. The record reflects Liedtka's reconsideration request presents no new or additional information that was not considered in IMO H. Liedtka Co. See 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) (explaining reconsideration should only be utilized where new information not available on the first application must be considered in the interest of justice, or where "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"). Accordingly, for the reasons set forth in IMO H. Liedtka Co., I find no reason to disturb the Bureau's recommendation or the August 24, 2018 Notice of Intent to Award. I add the following comments regarding Liedtka's reconsideration request.

Liedtka’s contention that the Bid Solicitation provides no equipment preference for tailgate mounted equipment overlooks Bid Amendments issued in the course of the procurement. On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}.² In relevant part, Question 6 read as follows:

#	RFP Section Reference	Question (Bolded) and Answer
6	Mid-body Spreading Equipment	<p>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?</p> <p>The NJDOT does not use mid-body trucks</p> <p>2. How would we fill out Attachment 1 T0777 to indicate trucks that have a conveyor system without a V-shaped body?</p> <p>Attachment #1 – Vendor {Bidder} Equipment Form, has been revised to include mid-body trucks.</p> <p>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?</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:

² Pursuant to Bid Solicitation section 1.4.1 *Bid Amendments {Addenda}: Revisions to this Bid Solicitation {RFP}*, the Bid Amendment is “part of this Bid Solicitation {RFP} and part of any Blanket P.O. {Contract} awarded as a result of this Bid Solicitation {RFP}.” Further, while Bid Amendments would be posted on **NJSTART** and Vendors {Bidders} on the bid holder list would be automatically notified, “[i]t is the sole responsibility of the Vendor {Bidder} to be knowledgeable of all Bid Amendments {Addenda} related to this procurement.” Bid Solicitation § 1.4.1 *Bid Amendments {Addenda}: Revisions to this Bid Solicitation {RFP}*.

Spreading Services:

- 1st – Vendors {Bidders} supplying all required Class ~~P-R~~ trucks with an on board wetting system;
- 2nd – Vendors {Bidders} supplying all required Class ~~P-R~~ trucks;
- 3rd – Vendors {Bidders} supplying all required Class ~~R-Q~~ trucks with an on board wetting system;
- 4th – Vendors {Bidders} supplying all required Class ~~R-Q~~ trucks;
- 5th – Vendors {Bidders} supplying all required Class ~~Q-P~~ trucks with an on board wetting system;
- 6th – Vendors {Bidders} supplying all required Class ~~Q-P~~ trucks; ~~and~~
- 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 ~~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.

Therefore, 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. There would be no reason to amend the Bid Solicitation to specifically call out rankings 8, 9, and 10 for V Box and mid-body trucks if the Using Agency wanted these types of Quotes to be ranked the same as Categories 1 through 6.

Liedtka correctly notes that the phrase 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 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 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.

Again, Liedtka correctly notes that Bid Solicitation section 3.15.1 *Spreader Truck Requirements* does not work to establish a preference for tailgate mounted spreading equipment. That section, including Bid Solicitation section 3.15 *Equipment* in general, simply addressed the functional requirements that each truck must satisfy regardless of the type of equipment being offered. Rather, as described above, Bid Solicitation section 6.17.1 *Vendor's {Bidder's} Price Schedule* is what established the equipment preference.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation or the decision rendered in IMO H. Liedtka Co. This is my final agency decision with respect to the reconsideration request submitted by Liedtka.

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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: REG

c: P. Michaels
L. Spildener
M. Groninger