



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET

P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>

Telephone (609) 292-4886 / Facsimile (609) 984-2575

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

September 5, 2018

Via Electronic Mail [smalltrucking@ymail.com] and USPS Regular Mail

Jorge Cruz
Small Trucking 22, LLC
351 Mountainview Terrace
Dunellen, NJ 08812

Re: I/M/O Bid Solicitation #18DPP00205 Small Trucking 22, LLC
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Mr. Cruz:

This letter is in response to your correspondence of August 30, 2018, on behalf of Small Trucking 22, LLC (Small Trucking) to the Division of Purchase and Property's Hearing (Division) Unit. In that correspondence Small Trucking 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 to several Vendors {Bidders} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation). Specifically, Small Trucking states:

It has been my understanding that New Jersey is an [EEO]; however, it does not appear to reflect an Equal Opportunity, when not only has my previous section of 12 years been assigned to one Bidder but also most of the surrounding area(s).

¹ For consistency, this 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

In view of this I am once again I am writing to protest the disposition of my Bid submitted for consideration for Snow Plowing and Spreading Services for 2018. This is my second communication in response to your reply received on 8/29/18.

Please note that this is the first year that all submissions were required online as opposed to mailing in the completed forms received via e-mail. As previously advised there were difficulties in opening the file attachment (s) on your site, in order to complete and submit my Bid which may have delayed your receipt.

As stated above, I have been servicing the same snow selection area for twelve years and would like my Bid Solicitation to be reconsidered for my original requested area 5313264.

In consideration of Small Trucking's August 30, 2018 letter, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, the relevant statutes, regulations, and case law. That review of the record of this procurement reveals that 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}. 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 Quote submitted by Small Trucking was rejected for failing to include the *Ownership Disclosure Form*, a statutorily mandated form.

On April 19, 2018, in response to the Notice of Proposal Rejection, Small Trucking submitted a protest to the Division stating:

I was pleased to receive a response for my proposal. I am writing to advise I am re-submitting my proposal with the missing items listed in my Notice Of Proposal Rejection
Missing item number 5 of Ownership Proposal Form attached to this letter .

I strongly apologize for submitting a proposal without this document; however, unfortunately the form was inactive in the Vendor's checklist. I was able to access the Ownership Disclosure Form through the Division Of Purchase and Property Forms we link on the state website and not through the Vendors Procurement Program Checklist

I kindly ask for my proposal to be reviewed again.

On April 25, 2018 the Division issued a Final Agency Decision with respect to the protest submitted by Small Trucking. In part that decision stated:

If the requirements of N.J.S.A. 52:25-24.2 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These statutes and regulations mandate stringent enforcement to maintain the equal footing of all Vendors

{Bidders} and to ensure the integrity of the State's bidding process. The *NJSTART* system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.

Here, unfortunately, Small Trucking submitted a Quote without the *Ownership Disclosure Form* attached and the Division is prohibited from accepting them after the Quote submission deadline. Notwithstanding Small Trucking's interest in competing for this procurement, to allow Small Trucking to submit the completed and signed *Ownership Disclosure Form* after bid opening would violate the Legislative requirements outlined in N.J.S.A. 52:25-24.2, requirements that the Division is not authorized to waive.

[April 25, 2018, Final Agency Decision.]

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.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phases one, two and three was completed, 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, Small Trucking submitted a letter to the Division stating "I am once again I am writing to protest the disposition of my Bid submitted for consideration for Snow Plowing and Spreading Services for 2018." Unfortunately, the time within which Small Trucking could have sought

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.

reconsideration or appealed the Division's April 25, 2018 Final Agency Decision has passed. The Division's governing regulations state in part that "final agency determinations by the Director on matters of protest are appealable to the Appellate Division of the Superior Court of New Jersey." N.J.A.C. 17:12-3.1. Further, "appeals from final decisions or actions of state administrative agencies or officers...shall be taken within 45 days from the date of service of the decision or notice of the action taken." New Jersey Court Rule 2.4-1(b). As such, Small Trucking should have submitted its appeal of the Division's April 25, 2018, Final Agency Decision by June 11, 2018.

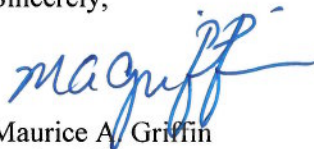
Nevertheless, even if the Division were to take Small Trucking's August 30, 2018, letter as a reconsideration, there is no new information presented which would change the decision outlined in the April 25, 2018, Final Agency Decision.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation. Accordingly, I sustain the Proposal Review Unit's Notice of Proposal Rejection and the August 24, 2018 Notice of Intent to Award.

With respect to Small Trucking's allegation that recommendations for award do "not appear to reflect an Equal Opportunity, [as] not only has my previous section of 12 years been assigned to one Bidder but also most of the surrounding area(s)," I note that Small Trucking appears to misunderstand the meaning and purpose of New Jersey Equal Employment Opportunity (EEO) laws. New Jersey's EEO laws do not require that contracts be spread across all eligible Vendors {Bidders}. Rather, the New Jersey's law against discrimination requires that Vendor {Contractor} shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression. N.J.S.A. 10:5-31 et seq. The State's Standard Terms and Conditions advise all Vendors {Bidders} of their obligation to comply with the law, and as such the Division has complied with its statutory obligations.

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. I also invite you to visit the **NJSTART** Vendor Support Page and review the Division's Quick Reference Guide entitled "How to Review a Submitted Quote" which provides information and instructions on how to review your company's submitted Quote. 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