



State of New Jersey

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

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February 21, 2024

Via Electronic Mail mwright@hertrichfleet.com only

Michael Wright
Government Sales Manager
Hertrich Fleet Services, Inc.
1427 Bay Rd
Milford, DE 19963

Re: I/M/O Bid Solicitation # 24DDPP00954 – Hertrich Fleet Services Inc.
Protest of Proposal Rejection
T2099 Vehicles, Trucks, Pickup, Class 1, with Various Drivetrains and Gasoline Engines,
Hybrid Engines, and Electric Engines - Statewide

Dear Mr. Wright:

This final agency decision is in response to the e-mail correspondence submitted by Hertrich Fleet Services Inc. (Hertrich), and received by the Division of Purchase and Property's (Division) Hearing Unit on February 1, 2024. In this correspondence, deemed a Protest by the Division pursuant to N.J.A.C. 17:12-3.1, Hertrich protests the rejection of its Quote by the Proposal Review Unit for failure to submit an Ownership Disclosure Form. Hertrich alleges that it was unable to upload its Form(s) because of "some sort of unforeseen glitch in NJSTART" and requests that the Division accept the Ownership Disclosure Form submitted with its Protest.

By way of background, on December 22, 2023, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of New Jersey Department of the Treasury, Bureau of Transportation Services, other State Using Agencies and the Cooperative Purchasing Participants. The purpose of the Bid Solicitation was to solicit "Quotes for 2024 model year or later Class 1 pickup trucks with various drivetrains and gasoline engines, hybrid engines, and electric engines." Bid Solicitation §1.1 *Purpose and Intent*. It is the intent of the State to award Contracts to those responsible Bidders whose Quotes, conforming to the Bid Solicitation are most advantageous to the State of New Jersey, price and other factors considered.

On January 23, 2024, the Division's Proposal Review Unit opened seven (7) Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded six (6) Quotes to the Bureau for further review and

evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*. The Quote from Hertrich was the only Quote rejected at the Proposal Review stage as having failed to submit the Ownership Disclosure Form or certification which is a mandatory requirement.

In consideration of Hertrich's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, 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.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a proposal to be accepted. The Division's governing regulations provide in relevant part that "In order to be eligible for consideration for award of contract, the bidder's proposal shall...be submitted on or before the due date and time and at the place specified in the RFP." N.J.A.C. 17:12-2.2(a). If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These regulations are strictly enforced to maintain a level playing field for all Bidders and to ensure the integrity of the State's bidding process.

In addition, the Bid Solicitation expressly advises bidders of the requirements for proper submission:

3.1 QUOTE SUBMISSION

In order to be considered for award, the Quote must be received by the Division's Proposal Review Unit, Quote electronically through **NJSTART**, by the required date and time.

The date and time of the Quote opening are indicated on the Bid Solicitation cover sheet and on the "Summary" Tab of the Bid Solicitation webpage within **NJSTART**. If the Quote opening deadline has been revised, the new Quote opening deadline shall be shown on the posted Bid Amendment and on the "Summary" Tab of the Bid Solicitation webpage within **NJSTART**. Quotes not received prior to the Quote opening deadline shall be rejected.

[Emphasis added.]

The Bid Solicitation also advises Bidders to consult with the Division's Quick Reference Guides and supporting material in preparing Quotes for submission:

1. INTRODUCTION AND SUMMARY OF THE BID SOLICITATION

Bidders are strongly encouraged to visit the NJSTART Vendor Support Page, which contains Quick Reference Guides (QRGs), supporting videos, a glossary of **NJSTART** terms, and helpdesk contact information. Bidders should utilize the QRGs before attempting to submit a Quote through **NJSTART**. **It is the Bidder's**

responsibility to ensure that the Quote and attachments have been properly submitted. Inquiries concerning the use of *NJSTART* may be directed to njstart@treas.nj.gov. The Division will not respond to substantive questions related to the Bid Solicitation or any other Contract via this email address.

[Emphasis added.]

Not only does this section encourage Bidders to review the Quick Reference Guides provided by the Division, but it includes a hyperlink to the NJSTART portal containing all of the Quick Reference Guides and videos. The Quick Reference Guide “Creating a Quote” provides step by step instructions including instructions for uploading forms (Section 3.5.5 Attaching a File or Form to Your Quote).

The Ownership Disclosure information is required by statute to be submitted with the Bidder’s quote:

3.13.2 OWNERSHIP DISCLOSURE FORM

Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or limited liability company, the Bidder must disclose all 10% or greater owners by (a) completing and submitting the Ownership Disclosure Form **with the Quote**;

A Bidder’s failure to submit the information required by N.J.S.A. 52:25-24.2 will result in the rejection of the Quote as non-responsive and preclude the award of a Contract to said Bidder.

[Emphasis added.]

In its Protest email dated February 1, 2024, Hertrich states:

We received this notification yesterday for our bid submission sent 1/23/24. (Quote 00006733)

The Notice is stating that we did not include the Ownership Disclosure Form. I uploaded the Ownership Disclosure Form to our quote for this bid on 1/19/24 (“Hertrich Ownership Disclosure Form”, listed in our bid package attachments on NJSTART, copy attached).

Now for some strange reason, when you go into NJSTART and pull up our bid attachments and click on the “Hertrich Ownership Disclosure Form” attachment instead of displaying the correct form, it pulls up the “Hertrich Specification Compliance Certification” attachment which was also submitted.

This is obviously some sort of unforeseen glitch in NJSTART that caused this to happen and not something that was within our control.

A review of the Hertrich Quote on NJSTART reveals the following documents were uploaded by the Bidder:

Name	Description	Confidential	Order	Attached By	Attached Date
Hertrich Bidder Data Sheet.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich Confidentiality and Commitment to Defend Form.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich Disclosure of Investigations form.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich Disclosure of Investment Activities In Iran form.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich Macbride Principles Form.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich Offer and Acceptance.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich Ownership Disclosure Form.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich BRC-3.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich Cert of Emp Info Rpt.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
Hertrich Specification Compliance Certification-1.pdf		<input checked="" type="checkbox"/>	0	Michael Wright	01/19/2024
T2099 Hertrich 24DDPP00954 State Supplied Price Sheet 12.20.2023 (1).xlsx		<input checked="" type="checkbox"/>	0	Michael Wright	01/23/2024

When selecting and opening the Document titled “Hertrich Ownership Disclosure Form.pdf” the following document appears:

<p align="center"><u>Specification Conformance Certification</u></p> <p>Bid Solicitation Number: #24DDPP00954</p> <p>Bid Solicitation Title: Vehicles, Trucks, Pickup, Class 1, with Various Drivetrains and Gasoline Engines, Hybrid Engines, and Electric Engines - Statewide</p> <p>Instructions: Please review the information below, sign, date and submit this document with your Quote.</p> <p>To Whom It May Concern:</p> <p>I certify that all items offered in response to the Bid Solicitation referenced above conform to the requirements set forth in the Bid Solicitation</p> <p>I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I may be subject to criminal prosecution under the law, and it will constitute a material breach of my contract(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.</p> <p>Bidder Name (type name of firm): <u>Hertrich Fleet Services Inc.</u></p> <p>Authorized Representative (type name): <u>Frederick W Hertrich IV</u></p> <p>Authorized Representative Signature: _____</p> <p>Date: <u>1/23/24</u></p>
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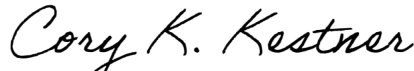
Although the Bidder indicates that it was experiencing technical difficulties submitting information via NJSTART, it is noted that six (6) other Vendors successfully uploaded Quotes and attachments on or before the Quote submission deadline. The Division cannot waive or relax the submission requirements for one Vendor at the expense of the other compliant Vendors. “Requiring adherence to material specifications maintains a level playing field for all bidders competing for a public contract.” Barrick v. State, 218 N.J. 247, 259 (2014).

In light of the findings set forth above, I must deny Hertrich’s request to be considered for eligibility to participate in the competition for this contract. This is my final agency decision. This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote.

Thank you for your company’s continuing interest in doing business with the State of New Jersey. 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.

This is the Division’s final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Cory K. Kestner
Chief Hearing Officer

CKK: DPK

c: K. Thomas
C. Murphy