



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

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

SHEILA Y. OLIVER
Lt. Governor

MAURICE A. GRIFFIN
Acting Director

April 25, 2018

Via Electronic Mail [allcountypaving@optiumum.net] and USPS Regular Mail

David Stevens
All County Paving
48 Garden Ct.
Succasunna, NJ 07876

Re: I/M/O Bid Solicitation #: 18DPP00205 All County Paving
Protest of Notice of Proposal Rejection
Bid Solicitation Title: T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Stevens:

This letter is in response to your emails of April 23, 2018, on behalf of All County Paving (hereinafter "All County"), to the Division of Purchase and Property's (hereinafter "Division") Hearing Unit. In that email, All County states it never received notice of Bid Solicitation {Request for Proposal} (hereinafter "Bid Solicitation") #18DPP00205 – T0777 Snow Plowing and Spreading Services, and requests that its un-submitted Quote {Proposal} (hereinafter "Quote")¹ be accepted for consideration for the subject solicitation.

In consideration of All County's protest, I have reviewed the record of this procurement, including the Bid Solicitation, All County's 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

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.

<i>NJSTART</i> 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

an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

By way of background, on January 30, 2018, the Division's Procurement Bureau (hereinafter "Bureau") issued the Bid Solicitation on behalf of the State of New Jersey, Department of Transportation, Bureau of Operations (hereinafter "NJDOT"), to solicit Quotes to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of the NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. The Bid Solicitation sought Quotes for "approximately 303 Snow Sections, with each section requiring a specific amount of equipment to perform snow plowing and spreading services." Bid Solicitation § 1.2 *Background*. It is State's intent to award one or multiple Statewide Blanket P.O.s {Contracts} (hereinafter "Blanket P.O.") to the Vendor {Bidder} "submitting the lowest hourly rate for each Snow Section, and meeting, at a minimum, the criteria for experience and equipment as set forth in [the] Bid Solicitation." Bid Solicitation § 1.1 *Purpose and Intent*.

On February 28, 2018, the Bureau posted Bid Amendment {Addendum} (hereinafter "Addendum") #1, responding to the questions posted by potential Vendors {Bidders}, posting a revised Bid Solicitation, and a revised State-supplied price schedule. The Bid Solicitation and Addendum advised all Quotes were due March 16, 2018, by 2:00 p.m.

On March 16, 2018, the Proposal Review Unit opened 136 Quotes received via *NJSTART* and 41 Quotes received in hardcopy by the submission deadline of 2:00 p.m. A review of the Quotes submitted by the submission deadline reveals the All County did not submit a Quote by the 2:00 p.m. deadline as required.

On April 23, 2018, after the Quote submission deadline, All County email the Hearing Unit:

My company, All County Paving, has been snow plowing from the 220 Hanover yard for the past 6 seasons. We sent in a bid in August 2017 for the snow plowing and spreading services bid; but the bids were then cancelled. I still have all of the forms filled out and ready since then. The company never received any emails about the bidding being opened again. Our plowing supervisor, Raymond Marshall, notified me, David Stevens (Owner of All County Paving) that's the bids had already gone out. If someone can please help me with a way to get in a bid for the snow plowing. The company depends on this greatly. Please do not penalize the company for an error or an oversight; whichever it may have been.

In a second identical email sent later the same day, All County attached the following documents:

- A picture of the Waivered Services Terms and Conditions, Rev. 7/31/07 signature page signed by All County and dated March 1, 2018,
- A completed Bid Solicitation Attachment 1 from prior Bid Solicitation 18DPP00161 and dated August 7, 2017,
- A completed Bid Solicitation Attachment 2 from prior Bid Solicitation 18DPP00161 and dated August 7, 2017,
- A Certification for Trucks/Equipment Registration from prior Bid Solicitation 18DPP00161 and dated August 7, 2017,
- A Driver Verification Form for prior Bid Solicitation 18DPP00161,
- A Bid Solicitation Attachment 6 Form – Experience of Bidder from prior Bid Solicitation 18DPP—161,
- Three photographs of vehicle registrations,
- Excerpts of the State-supplied Price Sheet/Schedule from prior Bid Solicitation 18DPP00161,
- An Offer and Acceptance page from prior Bid Solicitation 18DPP00161,

- The first page of a *Public Law 2005, Chapter 271, Vendor Certification and Political Contribution Disclosure Form*,
- The first page of a *Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions Form*,
- A *MacBride Principles Form* dated March 1, 2018,

The Division has accepted All County's emails as a protest challenging whether the Bid Solicitation was properly advertised.

First, All County asserts that it did not receive notice of the posting of the Bid Solicitation. The Division's advertising requirements are established by statute. N.J.S.A. 52:34-12(b) states that whenever advertising is required, "the advertisement for bids shall be in a newspaper or newspapers and other medium or media selected by the State Treasurer as will best give notice thereof to bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding[.]" The Division's regulations further state that all "[a]dvertisements shall be made a minimum of seven business days in advance of the announced deadline for receipt of proposals to encourage free and open competition." N.J.A.C. 17:12-2.1(a). The Division is also required to publish notices of bidding opportunities on its website. N.J.A.C. 17:12-2.1(c).

The record shows that the Division complied with the advertising requirements for this Bid Solicitation. Notice of the subject Bid Solicitation was publicly advertised on the Division's *NJSTART* eProcurement site, and as shown below, notice was also published in The Star-Ledger on January 30, 2018 as required by the applicable regulation. N.J.A.C. 17:12-2.1(a) and (c).

NOTICE OF NJSTART BID SOLICITATION	
NOTICE IS HEREBY GIVEN THAT SEALED QUOTES (PROPOSALS) WILL BE RECEIVED IN THE PROCUREMENT BUREAU RECEPTION ROOM, 9TH FLOOR, 33 WEST STATE STREET, P.O. BOX 230, TRENTON, N.J., 08625- 0230, UNTIL 2:00 P.M. ON MARCH 16, 2018 AND WILL BE PUBLICLY OPENED AND ANNOUNCED FOR THE FOLLOWING NJSTART PRO- CUREMENT PROGRAM SOLICITA- TION:	
18DPP00205 (T-0777) - Snow Plow- ing and Spreading Services - NJDOT	
VENDORS (BIDDERS) ARE ALSO RE- QUIRED TO COMPLY WITH THE STANDARD TERMS AND CONDI- TIONS CONTAINED IN THE BID SO- LICITATION (RFP).	
INFORMATION ON THE NJSTART PROCUREMENT PROGRAM AND BID SOLICITATION (RFP) DOCUMENTS ARE AVAILABLE AT: www.njstart.gov AND ON THE DIVISION'S WEBSITE AT: www.state.nj.us/treasury/purchase	
STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF PURCHASE AND PROPERTY 1/30/2018	\$60.45

Further, the Division's regulations set forth electronic procurement notification requirements at N.J.A.C. 17:12-2.1 which states in pertinent part:

- (d) As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking

information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service known as the e-RFP Notification Service. Vendors and other interested parties can register to receive direct e-mail notices pertaining to the Division's procurements for goods or services based upon specific commodity classes or codes. As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for e-RFP Notification Service registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division

In keeping with regulation, all Vendors {Bidders} who were registered with *NJSTART* for *NIGP Commodity Code 968-72/Snow and Ice Removal Services*, the sole class code associated with this procurement, received electronic notification of the procurement.² The responsibility of registration and the selection of commodity codes necessarily rests solely with the potential Vendor {Bidder} who will only receive an electronic notification for procurements associated with those commodity codes for which it is registered. A review of All County's selected NIGP codes reveals that it is registered for a single NIGP code, the same code associated with this procurement:

Vendor Profile - All County Paving			
Organization Information	Users	Address	Commodity Codes and Services
			Regions
			Terms & Categories
			Attachments
			Vendor Performance
Commodity Codes and Services Information			
Active	Code	Description	Date Added
✓	968-72	Snow and Ice Removal Services	11/13/2014

Accordingly, as the Bid Solicitation was issued using the same commodity code for which All County was registered, the *NJSTART* system confirms All County was sent electronic notification of the Bid Solicitation and Bid Amendment #1 to the email address on file in the *NJSTART* vendor portal, as shown:

<input type="checkbox"/>	<input type="checkbox"/>	V00004466	All County Paving	Bid Making Address	Add New Address	Email	Bid Available	No	Print
				General Mailing Address: David Stevens 48 Garden Court Succasunna...			Enkaled to: allcounty paving@optimum.net at 01/30/2018 09:22:12 AM Bid Amendment		
				48 Garden Court Succasunna, NJ 07976 US			Enkaled to: allcounty paving@optimum.net at 02/28/2018 09:34:52 AM		

Second, notwithstanding the fact that it acknowledged it missed the Quote submission due date, All County requests the Division accept its non-submitted Quote for consideration in response to the Bid Solicitation. The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. In relevant part, the

² The current Bid Solicitation was a reprocurement and combination of two separate contracts, T-0777 Snow Plowing & Hauling Services Statewide for the N.J.D.O.T. (previously procured under RFP 13-X-22591, 13-X-22747 (Rebid for Open Snow Sections), and 13-X-22837 (Rebid #2 for Open Snow Sections)) and T-1415 Spreading Services for Deicing Chemicals and Abrasives (previously procured under RFP numbers 13-X-22592, 13-X-22748 (Rebid for Open Snow Sections) and 13-X-22838 (Rebid #2 for Open Snow Sections)). It is noted that both pre-existing contracts were procured using NIGP code 968-72, the same NIGP code as the current Bid Solicitation.

regulations state: “[i]n order to be eligible for consideration for award of contract, the bidder's proposal shall ... [b]e 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)(2) (emphasis added). If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These regulations are stringently enforced to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State’s bidding process. Under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, the Division cannot accept a late Quote from All County or any other Vendor {Bidder}. Such acceptance would un-level the Vendor’s {Bidder’s} playing field as the Division received Quotes from other Vendors {Bidders} by the submission deadline. In fact, the Division received 177 Quotes by the submission deadline.

Despite All County’s desire to submit a Quote for the subject solicitation, under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, the Division cannot accept All County’s Quote as timely submitted. In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision.

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise and experience in the field. Thank you for registering your company with *NJSTART* at www.njstart.gov, the State of New Jersey’s new eProcurement system. I look forward to your company’s continuing interest in doing business with the State of New Jersey.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: REG

c: P. Michaels
L. Spildener
M. Groninger