



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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June 25, 2018

Via Electronic Mail [jasonico13@yahoo.com] and USPS Regular Mail

Jose Lopes
Lopes Trucking
390 Spring Valley Road
Old Bridge, NJ 08857

Re: I/M/O Bid Solicitation #18DPP00205 Lopes Trucking
T0777 Snow Plowing and Spreading Services

Dear Mr. Lopes:

This letter is in response to your email of June 21, 2018, on behalf of Lopes Trucking (“Lopes”) to the Division of Purchase and Property requesting that the Division accept a late Quote in response to Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (“Bid Solicitation”).

By way of background, on January 30, 2018, the Division’s Procurement Bureau (“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 Master Blanket Purchase Orders (“Blanket P.O.s”)¹ to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

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 |

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 136 Quotes submitted through the State's *NJSTART* eProcurement system and 41 Quotes received in hardcopy format by the submission deadline of 2:00 pm eastern time.²

On June 21, 2018, after the Quote submission deadline, Lopes wrote the Bureau stating:

This is Jose Lopes at Lopes Trucking, I was never notified about the bidding process for this year's plowing contracts. I had two snow sections and I wanted to know if I still have them for next year. I did sign an extension until October of this year. Can you please clarify this situation? If those sections are available, can I still bid on them?
Thanks for your help regarding this.

Lopes' email was forwarded to the Division's Hearing Unit and accepted as protest.

In consideration of Lopes' protest, I have reviewed the record of this procurement, including the Bid Solicitation, 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. I set forth herein the Division's Final Agency Decision.

The Division's public procurement program reflects the New Jersey statutory and regulatory requirements that have been affirmed by New Jersey courts. A basic precept of the Division's governing statutes and regulations requires that Quotes must be submitted by the deadline specified in the public advertisement and website notice. The Division's regulations set forth procurement notification requirements at N.J.A.C. 17:12-2.1 Advertising which states in pertinent part:

- (a) Advertising is required when the contract amount is expected to exceed the public bidding threshold or is not subject to the relevant exceptions of N.J.S.A. 52:34-6, 9, or 10. Public notice of the bidding opportunity shall be placed on the Division's website and with other media, including newspapers, as required by law at N.J.S.A. 52:34-12 and determined by the State Treasurer to provide best notice thereof to bidders. Advertisements 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.
- (b) If, during the course of an advertised procurement pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such alterations shall be set forth in addenda to the RFP and shall be advertised a minimum of seven business days in advance of the announced deadline for receipt of proposals.

² Bid Solicitation § 2.2 *General Definitions* defines "Quote {Proposal} [as a] Vendor's {Bidder's} timely response to the Bid Solicitation {RFP} including, but not limited to, technical Quote {Proposal}, price Quote {Proposal}, and any licenses, forms, certifications, or other documentation required by the Bid Solicitation {RFP}." *Emphasis added.*

- (c) In addition to statutorily mandated public advertising, the Division shall also publish notices of bidding opportunities on the Division's website.

The record of this procurement shows that the procurement was conducted in full accordance with the Division's governing statutes and regulations and by its standard announcement procedures and practices. 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)

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| <p>NOTICE OF NJSTART BID SOLICITATION</p> <p>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:</p> <p>18DPP00205 (T-0777) - Snow Plow- ing and Spreading Services - NJDOT</p> <p>VENDORS (BIDDERS) ARE ALSO RE- QUIRED TO COMPLY WITH THE STANDARD TERMS AND CONDI- TIONS CONTAINED IN THE BID SO- LICITATION (RFPI).</p> <p>INFORMATION ON THE NJSTART PROCUREMENT PROGRAM AND BID SOLICITATION (RFPI) DOCUMENTS ARE AVAILABLE AT: www.njstart.gov AND ON THE DIVISION'S WEBSITE AT: www.state.nj.us/treasury/purchase</p> <p>STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF PURCHASE AND PROPERTY 1/30/2018 560.45</p> |
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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 [NJSTART]. 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 [NJSTART] 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. 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 Lopes' selected commodity codes reveals that it is registered for five commodity codes, all of which are related to backhoes and/or loaders; none of those codes was associated with the subject Bid Solicitation.



The screenshot shows a web interface for a vendor profile. The title is "Vendor Profile - Lopes Trucking". There are several tabs: "Organization Information", "Users", "Address", "Commodity Codes and Services" (which is selected), "Regions", "Terms & Categories", "Attachments", and "Vendor Performance". Below the tabs, there is a section titled "Commodity Codes and Services Information" containing a table with the following data:

| Active | Code | Description | Date Added |
|--------|--------|-----------------------------|------------|
| ✓ | 760-03 | Backhoes | 06/09/2015 |
| ✓ | 760-04 | Backhoe Loader/ Combination | 06/09/2015 |
| ✓ | 760-20 | Earth Movers/ Motorized | 06/09/2015 |
| ✓ | 760-47 | Loaders, Front End, Tires | 06/09/2015 |
| ✓ | 760-51 | Loaders, Pneumatic Tires | 06/09/2015 |

At the bottom of the table, there is a "Close Window" button and a copyright notice: "Copyright © 2018 Penscope Holdings, Inc. - All Rights Reserved".

Additionally, as noted above, this Bid Solicitation was publically advertised on January 30, 2018 with a Quote submission deadline of March 16, 2018. While the Bid Solicitation was open and available for review and submission of a Quote by any potential Vendor {Bidder}, regardless of the commodity for which it registered.

Further, while the subject Bid Solicitation was publically advertised and open for the receipt of Quotes, the Bureau sent a letter to Lopes requesting that it extend its current contract (Vendor Contract # 82376) for T0777 Snow Plowing and Hauling Services – NJDOT for a period of six months from May 1, 2018 through October 31, 2018. That letter specifically advised that the Vendor {Contractor} should

[b]e mindful that if this term contract is extended, reprocurement of this contract may occur during this extension period. If you have not already done so, you are encouraged to visit the Division of Purchase and Property's eProcurement system, NJSTART, at www.njstart.gov to view current bidding opportunities and to register as a Vendor Contractor in order to receive notices when a bidding opportunities are announced. Instructions on how to register for NJSTART, and how to select commodity codes, can be found in the Division of Purchase and Property's Quick Reference Guide entitled "Vendor Registration," which can be found at: <http://www.state.nj.us/treasury/purchase/njstart/pdf/ORG-Vendor-Registration.pdf>.

[March 6, 2018 letter to Lopes.³]

³ This extension letter was sent to the email address listed in Lopes' **NJSTART** profile, the same email address that Lopes used to submit the current protest email.

On or about March 6, 2018, Lopes responded to the Procurement Bureau agreeing to extend its current contract through October 31, 2018.

Although Lopes requests that it be permitted to participate in the procurement process, the administrative regulations that govern the Division's advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. The Division's governing regulations provide in relevant part: "[i]n order to be eligible for consideration for award of [Blanket P.O.], the bidder's [Quote] shall ... [b]e submitted on or before the due date and time and at the place specified in the [Bid Solicitation]." N.J.A.C. 17:12-2.2(a), *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 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 Lopes 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.

In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject Blanket P.O. This is my final agency decision. This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field.

Thank you for registering your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey's eProcurement system. I encourage you to log into [NJSTART](http://www.njstart.gov) to select any and all commodity codes for procurements you may be interested in submitting a Quote for. 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: RUD

c: P. Michaels
L. Spildener
M. Groninger