



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

February 12, 2021

Via Electronic Mail Only RLeonard@beyerfleet.com

Ryan Leonard
Beyer Ford, LLC
170 Ridgedale Avenue
Morristown, NJ 07960

Re: IMO Bid Solicitation #19DPP00311 Beyer Ford, LLC
Protest of Notice of Intent to Award
T2007 Sport Utility Vehicles, Gasoline/Hybrid/Electric

Dear Mr. Leonard:

This final agency decision is in response to your email of January 27, 2021, on behalf of Beyer Ford, LLC (Beyer) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, Beyer protests the Notice of Intent to Award issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #19DPP00311 - T2007 Sport Utility Vehicles, Gasoline/Hybrid/Electric (Bid Solicitation).

By way of background, on June 24, 2020, the Bureau issued the Bid Solicitation on behalf of the Department of the Treasury, Bureau of Transportation Services, and various other State Agencies. Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for 2020 model year or later Sport Utility Vehicles and Crossovers, with Various Drivetrains, and Gasoline Engines, Hybrid and Plug-In Hybrid Engines, and Electric Engines. *Ibid*. It is the State's intent to award Master Blanket Purchase Orders (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*. Specifically, the State intends to make one statewide award for each make, model and drivetrain that meets the Bid Solicitation requirements for sections one (1) through twenty (20) identified on the State-supplied Price Sheet. Bid Solicitation 7.2 *Final Blanket P.O. Award*.

On August 27, 2020, the Division's Proposal Review Unit opened ten Quotes which were received by the submission deadline. Those Quotes were forwarded to the Bureau for review and evaluation consistent with the criteria of Bid Solicitation Section 6.6 *Evaluation of Quotes*. After completing the Quote evaluation, on January 13, 2021, the Bureau completed a Recommendation Report which recommend that the Blanket P.O. awards be made to nine Vendors {Bidders}. On January 22, 2021, the Bureau issued the Notice of Intent to Award (NOI) letter to all Vendors {Bidders} advising that it was the State's intent to award Blanket P.O.s consistent with the Recommendation Report.

On January 27, 2021, Beyer wrote to the Division questioning the Quotes submitted by several Vendors {Bidders} for 2020 model year vehicles and the Bureau's intended Blanket P.O. awards to some of those Vendors {Bidders}. Beyer additionally questions whether the Bureau would accept a price increase from the intended awardee for the 2021 model year roll over if requested shortly after award. As shown on the screenshot below, Beyer specifically raises concerns regarding the Ford vehicles proposed for sections 3, 4, 7, 8, 9, 10, 11, 12 and 15.

I see it is required of the vendors to report to you the passing of the manufacturers cutoff prior to award of the blanket PO. I am interested if they have done so.

It appears to me that the vehicles bid by these vendors on these lines, have already been cutoff, and I am unsure why they would not have bid the 2021 vehicle like Beyer did.

Section 3:
Chas S Winner, Ditschman, Gentillini, and Hertrich all bid 2020 Escape U0F which is cutoff

Section 4:
Chas S Winner, Ditschman, Gentillini, and Hertrich all bid 2020 Escape U9F which is cutoff

Section 7:
Chas S Winner, Ditschman, and Gentillini, all bid 2020 Expedition U1F which is cutoff

Section 8:
Chas S Winner, Ditschman, and Gentillini, all bid 2020 Expedition U1G which is cutoff

Section 9:
Chas S Winner, Ditschman, and Gentillini, all bid 2020 Expedition K1F which is cutoff

Section 10:
Chas S Winner, Ditschman, and Gentillini, all bid 2020 Expedition K1G which is cutoff

Section 11:
Chas S Winner, Gentillini, and Hertrich all bid 2020 Escape U0B which is cutoff

Section 12:
Chas S Winner, Gentillini, and Hertrich all bid 2020 Escape U9B which is cutoff

Section 15:
Chas S Winner, and Gentillini, all bid 2020 Escape U0E which is cutoff

Moreover, should these vendors be permitted to roll these over (which I don't know why they would as they could have bid the 2021 like Beyer and Miller) I would be deeply concerned if they attempted a price increase that would result in their pricing exceeding that of Beyer Ford's 2021 pricing submitted correctly.

In consideration of Beyer's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes submitted, Beyer's protest, the relevant statutes, regulations and case law. The 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 record of this procurement reveals that Beyer submitted a Quote for sections 1 – 15, 19, and 20. Beyer is the intended awardee for section 20 for the Ford Mustang. Gentilini Ford (Gentilini) is the intended awardee for providing Ford vehicles for sections 6 - Explorer, 11 - Escape, 12 - Escape, and, 15 - Escape. Ditschman Flemington Ford (Ditschman) is the intended awardee for providing Ford Vehicles for sections 1 - Eco Sport, 2 - Eco Sport, 3 - Escape, 4 - Escape, 5 - Explorer, 7 - Expedition, 8 – Expedition, 9 - Expedition and, 10 - Expedition.

In connection with Beyer's protest, on February 9, 2021 the Division's Hearing Unit requested that Beyer provide any information/documentation in its possession regarding the 2020 model year vehicle cut-off date. In response to that request Beyer provided a document identifying the 2020 model year vehicle cut-off date for the Ford Expedition, Explorer and Escape vehicles. See screenshot below.

Fleet Distribution News Bulletin FDNB – 2105
 February 5, 2021

2020/2021

CAR & TRUCK NOTES:

- All Dates are subject to change – All changes will be communicated via the Fleet DNB and Fleet.Ford.Com
- Selected vehicle lines and/or options may balance out earlier than reflected due to high demand and/or commodity shortage.
- Shaded boxes indicate dates in the past.

Vehicle Line	20MY Fleet Final Order Due Date	20MY Last Day to Spec Change/ Cancel	20MY Balance Out Date	21MY Order Bank Open Date	21MY Scheduling Begins	21MY Job #1 Date
Ecosport	02/28/20	03/12/20	08/31/20	04/15/20	06/11/20	09/01/20
Edge	10/02/20	10/08/20	12/18/20	10/28/20	11/19/19	01/25/21
Escape	10/02/20	10/15/20	12/23/20	10/28/20	11/19/20	01/04/21
Early B/O Paint: Sedona Orange			02/03/20			
Expedition	09/04/20	09/17/20	12/01 (split day)	09/16/20	10/15/20	12/01 (split day)
Early B/O Paint: Desert Gold	02/21/20		03/30/20			
Explorer	04/03/20	07/23/20	09/24/20	07/13/20	08/13/20	09/23/20
Early B/O Paint: Rich Copper Blue Metallic Silver Spruce	02/14/20		04/23/20			
Magnetic			05/24/20			
Police Utility	04/03/20	07/02/20	09/20/20	04/06/20	08/13/20	09/21/20
3.3L Gas Police	03/27/20					
Early B/O Paint: Blue Metallic	02/14/20		04/23/20			
Police VSO	03/06/20	06/18/20	08/10/20	05/11/20	08/03/20	10/12/20

On February 9, 2021, the Hearing Unit afforded Gentilini and Ditschman the opportunity to respond to the statements made in the protest. On February 10, 2021, Gentilini responded to the protest stating:

All dealers were instructed and approved to bid the 2020 Escape due to no availability of pricing for the 2021 model Escape. We will submit and work with NJ State for a full product line roll over for Escapes. In addition, Gentilini Ford will submit the cut off date per the contract instructions. Ford did not approve 2021 Escape pricing or concessions for this bid.

As you may be aware all dealers are currently experiencing un-announced and early build outs due to semi-conductor issues. The good news is dealers and manufactures have been more than accommodating working toward rollovers. Gentilini does not have any issues with this model year roll overs according to the contract terms. All dealers were given authorization (by Ford) to bid Escape pricing for 2020 Escapes only and Ford did not and would not provide 2021 Escape pricing or GPC approval for this bid (19DPP00311) at that time. Contract rollovers are nothing new and are a necessary process that happens at the end of each model year build out.

If we are the successful bidder, Gentilini has no issue working with NJ State and the product roll overs.

Additionally, Gentilini provided the following statement from its Ford Motor Company Dealer contact:

FMC Dealer Communication Questions submitted with GPC request below (Government Price Concession)

- Dealer Question 8/26/20 by Len Polistina (Gentilini) to Ford Motor=> "ESCAPE?? CLARIFICATION FOR 2020 OR 2021 CAN YOU GIVE PRICING PERCENTAGE FOR 2021 MODEL IF BIDDING?" Ron Andersons response in part "Due to timing we are bidding 2020" That was the official response from Ford and Ron Anderson (department and regional Ford representative). Instructions from FORD Bid 2020.
 Len Polistina
 08/26/2020 11:28 AM EDT Messages for #41437

Moreover, on February 10, 2021, Ditschman responded to the protest stating:

On 8/26/2020 when the bids were submitted for the small sport utility vehicles, the following vehicles were only available as 2020 model.

U0F – Ford Escape Fwd
U9F – Ford Escape 4wd
U1F – Ford Expedition 4x2
U1G – Ford Expedition 4x4
K1F – Ford Expedition Max 4x2
K1G – Ford Expedition Max 4x4

When the award came out on January 22, 2021 these models had already switched over to 2021 model year vehicles.

I contacted Ford Motor Company on January 25, 2021 about having the the price rolled over for the 2021 model year. This would keep the pricing the same that was submitted on 8/26/2020 and the contracted price for the 2021 model year. Ford has completed the roll over keeping the contracted price.

Please call or email me with any questions pertaining to this matter.

As noted above, the Bid Solicitation was advertised on June 24, 2020, and sought Quotes for “2020 model year or later Sport Utility Vehicles and Crossovers, with Various Drivetrains, and Gasoline Engines, Hybrid and Plug-In Hybrid Engines, and Electric Engines.” Bid Solicitation Section 1.1 *Purpose and Intent*. Quotes were due on August 27, 2020, prior to the vehicle cut-off date for the Escape and Expedition as shown on the documentation provided by Beyer with the protest. Both Gentilini and Ditschman state that the vehicle manufacturer advised them to submit Quotes for the 2020 model year vehicles.

It appears that the Bid Solicitation contemplated such a scenario stating “should a potential awardee be notified by a vehicle manufacturer of a cut-off date after the Quote opening and after receiving a letter of intent to award, but before [the] Blanket P.O. award has been finalized, the awardee must immediately notify the Procurement Bureau in writing.” Bid Solicitation Section 3.4.9.2. Further, the Bid Solicitation advises that “failure to fax or e-mail the cut-off date notification on time may be considered a violation of the Blanket P.O. terms and conditions and may result in termination of the Blanket P.O. for cause.” Bid Solicitation Section 3.4.9.3. The purpose of the vehicle cut-off date notification is to allow to Bureau to post a list alerting Using Agencies of the last date that a vehicle can be ordered. Bid Solicitation Section 3.4.9.1. The notification also allows the Bureau to review the vehicle roll-over request to ensure that the new model year meets the requirements of the Bid Solicitation and Blanket P.O. Bid Solicitation Section 3.4.9.5. Additionally, if a price adjustment is requested, the notification should also provide the Bureau with the information necessary to review and determine whether a price adjustment is reasonable and permitted. See State of New Jersey Standard Terms and Conditions Section 6.1.

The NOI was issued on January 22, 2021. The Bureau advises that only Hertrich Fleet Services, Inc. has submitted a vehicle cut-off date notification.¹ Based upon the language of the Bid Solicitation, the information provided by Beyer with the protest, and Gentilini’s and Ditschman’s response to the protest, I see no reason to overturn the January 22, 2021 NOI. The Bid Solicitation permitted Vendors {Bidders} to submit Quotes for 2020 model year vehicles, which as of the Quote opening date could still be ordered and did not yet have a vehicle cut-off date.

¹ Hertrich’s vehicle cut-off date notice relates to 2021 model year vehicles.

However, based upon the information provided, it appears that at least two, if not more, of the intended awardees should have submitted the vehicle cut-off date notification required by Bid Solicitation Section 3.4.9.2. Accordingly, prior to finalizing the Blanket P.O. awards, the Bureau should ensure that all necessary documentation has been received. If the information regarding the vehicle cut-off date has not been received by the Bureau as required by Bid Solicitation Sections 3.4.9.1 and 3.4.9.2, the Bureau shall take any necessary steps, as permitted by the Bid Solicitation, to ensure that awarded vehicles are available for Using Agencies to order. This is my final agency decision.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with *NJSTART* at www.njstart.gov. I encourage Beyer to log into *NJSTART* to select any and all commodity codes for procurements it may be interested in submitting a Quote for so that it may receive notification of future bidding opportunities.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
S. Ghorbani
S. Sanchez
Gentilini Ford
Ditschman Flemington Ford