



State of New Jersey

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

Via Electronic Mail [edrees@thesouthjerseygroup.com] and USPS Regular Mail

Edrees Siddigi
The South Jersey Group, LLC
P.O. Box 403
Pedricktown, NJ 08067

Re: I/M/O Bid Solicitation #: 18DPP00205 The South Jersey Group, LLC
Protest of Notice of Proposal Rejection
Bid Solicitation Title: T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Siddigi:

This letter is in response to your email of April 17, 2018, on behalf of The South Jersey Group, LLC (“SJG”) to the Division of Purchase and Property’s (“Division”) Hearing Unit. In that email, SJG protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (“Bid Solicitation”). The record of this procurement reveals that SJG’s Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

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

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

{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 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.

A review of the Quotes submitted by the submission deadline reveals SJG uploaded two Quotes via *NJSTART*. The first Quote, uploaded at 12:42:56 p.m. on March 16, 2018, included a single attached file titled "Salt Bid," which included an executed *Offer and Acceptance* Page, a completed Bid Solicitation Attachment 1 Vendor {Bidder} Equipment Form, and a State-supplied Price Sheet/Schedule excerpt. The second Quote, uploaded at 12:51:49 p.m. on March 16, 2018, included a single attached file titled "Salt Bid 2018~1," which included the same files attached to the first Quote: an executed *Offer and Acceptance* Page, a completed Bid Solicitation Attachment 1 Vendor {Bidder} Equipment Form, and a State-supplied Price Sheet/Schedule excerpt.

After review, the Division issued SJG a Notice of Proposal Rejection, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, SJG's Quote was missing a completed *Ownership Disclosure Form*.

On April 17, 2018, in response to the Notice of Proposal Rejection, SJG sent the Division the following email:

Good Afternoon,

I am writing this letter on behalf of my company, The South Jersey Group LLC (Vendor # V00010272), which received a letter stating that our bid had been rejected due to a missing "Ownership Disclosure Form". I am writing to ask that you please reconsider because we had all of the required items completed prior to the bid opening but for some reason it looks as though the file in its entirety did not upload properly. I have attached the "Ownership Disclosure Form" along with the other forms which were supposed to have all been uploaded to the NJSTART website on the bid opening date. I ask that you please take into consideration that this was not intentional nor were we negligent; the scanner must not have picked up all of the documents properly which caused some of the pages from our bid package to be missing.

We have serviced the Bridgeport yard for NJDOT for the past several years and would really appreciate the opportunity to be considered for this work again. We have a great rapport with the Supervisors from this and the neighboring depots. I would hate to miss out on the opportunity for consideration due to a technicality. I realize that the issue stemmed from our end but we put in an competitive offer and would be grateful for the opportunity to provide this service. Please let me know if there is anything I can do to remedy this situation.

Accompanying the email, SJG included a copy of the *Offer and Acceptance* Page, a copy of Bid Solicitation Attachment 1 Vendor {Bidder} Equipment Form, an excerpt of the State-supplied Price Sheet/Schedule, a *Disclosure of Investigations and Other Actions Involving the Vendor/Bidder Form* dated March 16, 2018, an *Ownership Disclosure Form* dated March 16, 2018, and a completed *Disclosure of Investment Activities in Iran Form* dated March 16, 2018. The Division has accepted SJG's email as a protest of the Notice of Proposal Rejection.

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

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. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall² conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:
- ...
4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added*.]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

Among those forms required to be submitted with the Quote are the *Ownership Disclosure Form* discussed in Bid Solicitation Section 4.4.1.2.1.

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any [Blanket P.O.] nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any

² "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

The *Ownership Disclosure Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

Vendors {Bidders} using *NJSTART* to submit a Quote {Proposal} shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using *NJSTART* to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the Division's website. This form is also available in NJSTART (www.njstart.gov).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using *NJSTART* to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab within its profile. As shown in the screenshot below, SJG completed the Ownership Disclosure category, but it was directed to complete an *Ownership Disclosure Form* and attach it to its Vendor Profile or include it with its Quote.

The screenshot shows the 'Vendor Profile - The South Jersey Group LLC' interface. The 'Terms & Categories Information' tab is active. Under the 'Terms' section, 'Payment Terms', 'Freight Terms', 'Shipping Method', and 'Shipping Terms' are listed. The 'Categories & Certifications' section contains several mandatory fields: 'Category: 1. Primary Business Function - (MANDATORY FIELD)' with the value 'Provides Construction Services'; 'Category: 3. Business Formation (MANDATORY FIELD)' with the value 'Limited Liability Company'; 'Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)' with a description and a selection box; 'Category: 5. Tax ID Certification (Substitute W9) (MANDATORY FIELD)' with a description and a selection box; 'Category: Ownership Disclosure' with a description and a selection box; and 'Category: Disclosure of Investment Activities in Iran' with a description and a selection box.

As shown in the screenshot below, SJG did not upload the *Ownership Disclosure Form* to its profile.

The screenshot shows the 'Vendor Profile - The South Jersey Group LLC' interface. The 'Attachments Information' tab is active, displaying 'No Attachments found for this vendor.' Below it, the 'Forms' section displays 'No Form Attachments'.

Similarly, as outlined above, SJG did not submit an *Ownership Disclosure Form* with its Quote.

In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, SJG did not comply with any of the options available to it for the submission of ownership information. Accordingly, SJG’s Quote was properly rejected by the Division’s Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

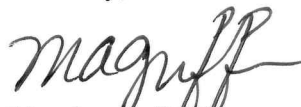
If the requirements of N.J.S.A. 52:25-24.2 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These statutes and regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. The *NJSTART* system 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, SJG submitted a Quote without the *Ownership Disclosure Form* attached and the Division is prohibited from accepting them after the Quote submission deadline. Notwithstanding SJG's interest in competing for this procurement, to allow SJG 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.

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 Proposal. However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision on this matter.

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, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG:REG

c: P. Michaels
L. Spildener
M. Groninger