



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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April 23, 2018

Via Electronic Mail [brentstephens1968@gmail.com] and USPS Regular Mail

Brent Stephens
Stephens Contracting
994 Lower Mill Road
Pittsgrove, NJ 08318

Re: I/M/O Bid Solicitation #18DPP00205 Stephens Contracting
Protest of Notice of Proposal Rejection
T0777 Snow Plowing and Spreading Services

Dear Mr. Stephens:

This letter is in response to your email of April 12, 2018, on behalf of Stephens Contracting (“Stephens”) which was received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that email, Stephens 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 Stephens’ Quote was rejected for failing to submit pricing information 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.

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

{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. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Stephens for failure to submit pricing information with its Quote.

In response to the Notice of Proposal Rejection, on April 12, 2018, Stephens wrote to the Division's Hearing Unit stating:

We received a bid rejection by email stating #7 on the bid requirement was missing somewhere. It stated at the bottom of the email to contact you with questions, etc. I need to know what I have to do to rectify this so our bid will be valid? (sic) We have provided these services for the state for the past four years so I don't know how we made this oversight but I apologize.

In consideration of Stephens' protest, I have reviewed the record of this procurement, including the Bid Solicitation, Stephens' proposal and 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 record of this procurement reveals that on March 13, 2018, Stephens submitted a Quote to the Division in response to the subject Bid Solicitation.

Quote 00001882 - Stephens Contracting

[General](#) | [Items](#) | [Questions](#) | [Subcontractors](#) | [Terms & Conditions](#) | [Attachments](#) | [Evaluations](#) | [Preference](#) | [Reminders](#) | **[Summary](#)**

Header Information

Quote #:	00001882	Bid #:	18DPP00205	Status:	Submitted
Organization:	Division of Purchase and Property	Delivery Days:	0	Discount Percent:	0.0
Description:	T0777 Snow Plowing and Spreading Services - NJDOT	Alternate Bid:	Yes	Shipping Terms:	F.O.B. Destination
Bid Flag:	Yes	Ship Via Terms:		Payment Term:	Net 30
Promised Date	03/16/2018	Info Contact:	Stephens Contracting Brent Stephens 609-381-1096	Quote Total	\$16.00
Comment:	Re-bid on current contract	User Last Updated:	Brent Stephens	User Created:	Brent Stephens
Date Last Updated:	03/13/2018 09:47:56 AM				
Print format:	QUOTE				

Vendor accepts the terms & conditions with no exceptions.

Bid Acknowledgements:

Document	Amendment Note	Notifications	Acknowledged Date/Time
Amendment 1	Bid Amendment #1 030118 Responses to Electronic Questions, Revised Bid Solicitation, Revised Attachment #1 and Revised Price Schedule/Sheet, Attachment File Changes: Header 1, File 'T0777 Bid Amendment 1 030118.docx', File 'T0777 Bid Amendment 1 030118.docx', added. 2. File 'Attachment 1 T0777 - Revised Snow Plowing and Spreading Services - NJDOT.docx', File 'Attachment 1 T0777 - Revised Snow Plowing and Spreading Services - NJDOT.docx', added. 3. File 'T0777 Revised RFP Snow Plowing and Spreading Services - NJDOT 030118.docx', File 'T0777 Revised RFP Snow Plowing and Spreading Services - NJDOT 030118.docx', added. 4. File 'T0777 Revised Price Schedule - Snow Plowing and Spreading Services - NJDOT.xlsx', File 'T0777 Revised Price Schedule - Snow Plowing and Spreading Services - NJDOT.xlsx', added.	At bid acknowledgement	03/13/2018 10:58:55 AM

However, as shown in the screenshot below, Stephens did not include any attachments with its submitted Quote.



Specifically, as set forth in the Notice of Proposal Rejection, Stephens did not submit the required pricing information with its Quote.

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*.]

If the mandatory submission requirements are not met, a Quote must be rejected.

With respect the submission of Quote pricing, the Bid Solicitation cautioned Vendors {Bidders} regarding the need to ensure that all required forms, including the State-Supplied Price Sheet, are properly submitted. Specifically Bid Solicitation Section 4.4 *Quote {Proposal} Content* states:

...

Note: Vendors {Bidders} submitting Quotes {Proposals} through NJSTART must complete the State-supplied price sheet/schedule(s)

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*.

(Volume 3) accompanying this Bid Solicitation {RFP} and upload it as an attachment on the “Attachments” Tab (See Section 4.4.5 of this Bid Solicitation {RFP}).

[*Emphasis in the original.*]

To assist Vendors {Bidders} in completing the State-supplied price sheet/schedule, the Bid Solicitation further advised:

The Vendor {Bidder} must submit its pricing using the format set forth in the State-supplied price sheet/schedule accompanying this Bid Solicitation {RFP}.

The State’s Price Sheet/Schedule solicits pricing for the following:

- A. Snow Plowing and Hauling Services;
- B. Snow Plowing Services/Other Equipment; and
- C. Spreading Services.

The Vendor {Bidder} is not required to submit pricing for all line items in order to be considered for award. The Vendor {Bidder} may submit pricing for one (1) or multiple line items.

A. Snow Plowing Services - Price Lines one (1) to 298:

- 1. The Vendor {Bidder} must submit an all-inclusive hourly rate to provide snow plowing services with one of the following options:
 - i. Snow plowing truck only; or
 - ii. Snow plowing truck and equipment, as defined in Sections 3.12.2 and 3.12.3 of this Bid Solicitation {RFP}.
- 2. The Vendor {Bidder} must submit an all-inclusive hourly rate for the following:
 - i. Snow Plowing Superintendent; and
 - ii. Hauling Services.

B. Snow Plowing Services/Other Equipment – Price Lines 299 to 309:

- 1. The Vendor {Bidder} must submit an all-inclusive hourly rate for any other additional equipment offered.

C. Spreading Services – Price Lines 310 – to 375:

- 1. The Vendor {Bidder} must submit an all-inclusive hourly rate to provide spreading services.

[Bid Solicitation § 4.4.4.2 *Price Sheet/Schedule Attachment Instructions.*]

Each of the 375 price lines included on the price sheet/schedule represents a specific jurisdiction for which snow plowing and or spreading services are sought. See Bid Solicitation Section 3.11 *Highway Operations Crew Jurisdiction & Snow Sections* which states:

A Highway Operations Jurisdiction (Jurisdiction) consists of specific State highways, including ramps and turnarounds, or portions thereof, or any other areas identified by the NJDOT. Each Jurisdiction is broken down

into Snow Sections and assigned to a Highway Operations Crew (Crew). If new lane miles are added, or if a section of the roadway adjacent to a contracted Snow Section is not covered by a Vendor {Contractor}, Snow Sections may be expanded during the Winter Season at the request of the NJDOT Site Supervisor.

For example,

VENDOR (BIDDER) NAME:							
SNOW PLOWING SERVICES (PAGES 1 TO 100)							
LINE NO	DESCRIPTION	QTY	UNIT	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING-TRUCK ONLY	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING TRUCK & EQUIPMENT	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING SUPERINTENDENT	ALL-INCLUSIVE HOURLY RATE HAULING ONLY
1	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 210 PATERSON SUBREGION: N3 SNOW SECTION: S210261 RT 208, FROM GOFFLE ROAD, HAWTHORNE BORO, PASSAIC CO, TO RT 202 OAKLAND BORO, BERGEN CO (MP 4.4 TO 10.7) NUMBER OF TRUCKS REQUIRED: 7	1	HOUR				
SNOW PLOWING SERVICES/ OTHER EQUIPMENT							
LINE NO	DESCRIPTION	QTY	UNIT	QUANTITY AVAILABLE	INCLUDE SNOW SECTION FOR EQUIPMENT (E.G. SNOW SECTION)	DO NOT USE	ALL-INCLUSIVE HOURLY RATE
239	CLASS "C" GRADER - 20,000 TO 27,999 LBS	1	HOUR				
300	CLASS "D" GRADER - 28,000 LBS AND UP	1	HOUR				
301	CLASS "E" FRONT END LOADER - 1 1/2 TO 2 CY	1	HOUR				
302	CLASS "F" FRONT END LOADER - 2 1/2 - 2 3/4 CY	1	HOUR				
303	CLASS "G" FRONT END LOADER - 3 TO 3 1/2 CY	1	HOUR				
304	CLASS "H" FRONT END LOADER - 4 TO 6 CY	1	HOUR				
305	CLASS "I" FRONT END LOADER - 6 1/2 CY TO 8 CY	1	HOUR				
306	CLASS "J" FRONT END LOADER - 8 1/2 CY TO 10 CY	1	HOUR				
309	CLASS "K" FRONT END LOADER - 10 1/2 CY AND UP	1	HOUR				
SPREADING SERVICES							
LINE NO	DESCRIPTION	QTY	UNIT	DO NOT USE	ALL-INCLUSIVE HOURLY RATE CLASS R TRUCK	ALL-INCLUSIVE HOURLY RATE CLASS Q TRUCK	ALL-INCLUSIVE HOURLY RATE CLASS P TRUCK
310	SPREADING SERVICES - D.O.T. REGION: NORTH CREW 8: 210 PATERSON YARD ROUTE 20 SOUTH AND 4TH AVENUE, PATERSON, NJ NUMBER OF TRUCKS REQUIRED: 8 CLASS R, 1 CLASS Q CLASS R - 8 CLASS Q - 1	1	HOUR				

Stephens did not submit the State-Supplied Price Sheet with its Quote. Rather, Stephens included it hourly rate on the "Items" Tab within [NJSTART](#).

Item Information									
Print Sequence # 1.0: (968 - 72) The Vendor (Bidder) must enter a Unit Cost of \$1.00 for each price line item on the Items Tab. The Vendor (Bidder) must submit its pricing as an attachment using the State supplied price/sheet schedule(s) accompanying this Bid Solicitation (RFP) and located on the Attachments Tab. Please refer to Bid Solicitation (RFP) Section 4.4.5									
Quantity	UOM	Unit Cost	Discount %	Tax Rate	Freight	Extended Amount	No Bid	No Charge	See Quote Attachment(s)
0.1	HOUR	\$160.00	0.0%	0.0%	\$0.00	\$16.00	No	No	No

The question then is whether Stephens' submission of pricing information on the "Items" Tab results in a deviation from the requirements of the Bid Solicitation. In order for Stephens' Quote to be considered responsive, Stephens' failure to submit all of the information required by the state supplied price

sheet with its Quote would have to be deemed a minor irregularity. Minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 1.4.10, *Quote {Proposal} Acceptances and Rejections*. It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity.” In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, supra, 127 N.J. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, supra, 127 N.J. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” Id. at 222.

By submitting its Quote pricing on the “Items” Tab rather than on the State-Supplied Price Sheet, Stephens did not provide the jurisdiction or type of service – whether snow plowing, equipment, or spreading services - for which it was submitting a Quote. Stephens’ failure to include all of necessary information with its Quote submission is a material deviation from the requirements of the Bid Solicitation as the Division has no information from which I can determine the jurisdiction or type of service for which Stephens submitted a Quote. Permitting Stephens, or any other Vendor {Bidder}, to submit the required information after the Quote opening deadline has passed, would place that Vendor {Bidder} in a position of advantage over other Vendors {Bidders} who timely submitted the required pricing information with the Quote.

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. 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.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger