



# State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY  
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October 30, 2018

Via Electronic Mail [skirikian@aol.com] and USPS Regular Mail

Sarkis Kirikian  
Hamilton Car Wash /Windsor Car Wash  
709 Route 33  
Hamilton, NJ 0819

Re: I/M/O Bid Solicitation #18DPP00227 Hamilton Car Wash / Windsor Car Wash  
T0390 – Vehicle Washing and Cleaning Services  
Protest of Notice of Intent to Award

Dear Mr. Kirikian:

This letter is in response to your email of October 8, 2018, on behalf of Hamilton Car Wash (Hamilton) and Windsor Car Wash (Windsor) which was received by the Division of Purchase and Property’s (Division) Hearing Unit. In that letter, Hamilton and Windsor protest the Division’s Procurement Bureau’s (Bureau) October 1, 2018, Notice of Intent to Award (NOI) which did not list either Vendor {Bidder} as an intended awardee for a Master Blanket Purchase Order (Blanket P.O.) for Bid Solicitation #18DPP00227 – T0390 – Vehicle Washing and Cleaning Services (Bid Solicitation).<sup>1</sup>

By way of background, on March 23, 2018, the Bureau issued the Bid Solicitation on behalf of State Agencies and Cooperative Purchasing participants to solicit Quotes for Brick and Mortar Vehicle Washing and Cleaning Services and Mobile Vehicle Washing and Cleaning Services. Bid Solicitation § 1.1 *Purpose and Intent*. The intent of this Bid Solicitation is to award Blanket P.O.s to those responsible

<sup>1</sup> 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.

<b>NJSTART Term</b>	<b>Statutory, Regulatory and/or Legacy Term</b>
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

Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. The State may award any and all price lines. Ibid. The State will evaluate and award the Brick and Mortar Vehicle Washing and Cleaning Services, and the Mobile Vehicle Washing and Cleaning Services, separately and by county as referenced in Bid Solicitation Section 1.2.1 *Counties*. Ibid. It is the intent of the State to award a Blanket P.O. to one or more Vendors {Bidders} in each county for each award grouping. Ibid.

On May 3, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On May 16, 2018, the Division's Proposal Review Unit opened the Quotes received by the submission deadline of 2:00 pm eastern time. After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*.

On September 26, 2018, the Bureau completed a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation were most advantageous to the State, price and other factors considered. On October 1, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s.

In response to the NOI, on October 8, 2018, Hamilton and Windsor wrote to the Division's Hearing Unit stating:

Enclosed is my letter of protest representing Hamilton and Windsor Car Wash. We have been providing car wash services for the state of New Jersey since before 2003. We are not sure why we were rejected this time, but we would like to continue to provide this service for the State of New Jersey. In order to be approved for the State of New Jersey contract, we are willing to reduce our price for the State of New Jersey from \$ 8.50 to \$ 7.00 - full service (interior vacuuming and window cleaning) and \$ 6.00 for exterior washes. We are located very close to Trenton and we feel our locations make it easier for the State employees to keep their vehicles clean because of our close vicinity to Trenton. In 2018, we will have washed close to 1000 New Jersey State vehicles and we would like to continue this service. We also feel the amount of State vehicles washed here by the State employees shows that they are satisfied with our service provided to the State and we feel there will be a huge void for the State employees in this area if we do not continue this service.

In consideration of Hamilton's and Windsor's joint protest I have reviewed the record of this procurement, including the Bid Solicitation, Hamilton's and Windsor's Quotes 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.

A review of Hamilton's and Windsor's Quotes reveals that while each company submitted a Quote to provide Vehicle Washing and Cleaning Services at a brick and mortar location as sought in Bid Solicitation Section 3.1 *Brick and Mortar Vehicle Washing / Cleaning Services and Responsibilities*, there were deficiencies in both Quotes related to pricing. Specifically, the Bid Solicitation required that the brick and mortar locations offer the following services: (1) exterior vehicle washing and cleaning; (2) interior vehicle cleaning; and (3) full service vehicle washing and cleaning. Bid Solicitation §§ 3.1.1 *Exterior Vehicle Washing and Cleaning*, 3.1.2 *Interior Vehicle Cleaning*, 3.1.3 *Full Service Vehicle Washing and*

*Cleaning.* In submitting Quote pricing, the Bid Solicitation required that Vendors {Bidders} provide pricing for each of the three services identified in the scope of work.

Vendors {Bidders} must provide unit pricing for Price Lines 1-3 in order to be eligible for award of Brick and Mortar services in the respective county. Failure to provide all unit pricing for Price Lines 1-3 shall result in the Vendor {Bidder} being deemed non-responsive for the Brick and Mortar award for the respective county being bid upon.

[Bid Solicitation § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*, emphasis added.<sup>2</sup>]

As shown in the screen shot below, on the State Supplied Price Sheet/Schedule, price line 1 required that the Vendor {Bidder} provide the firm fixed cost for a complete interior cleaning only; price line 2 required that the Vendor {Bidder} provide the firm fixed cost for a complete exterior cleaning only; and, price line 3 required that the Vendor {Bidder} provide the firm fixed cost for the complete interior and exterior cleaning.

Bid Solicitation (RFP) #18DPP00227 Brick and Mortar Vehicle Washing and Cleaning Price Schedule T0390 - Vehicle Wash Services				
<b>Vendor {Bidder} Name:</b>				
<b>Car Wash County:</b>				
<b>Car Wash Address:</b>				
<b>Instructions:</b>	Refer to Bid Solicitation (RFP) Section 4.4.5 for Vendor {Bidder} instructions.			
Item#	Description	Quantity	Unit of Measure	Unit Cost
Mandatory Vehicle Washing and Cleaning Services (Bid Solicitation (RFP) Sections 3.1 - 3.1.3) :				
1	<b>Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW)</b> - Supply a three (3) year firm, fixed unit cost for a complete interior only cleaning.	1	Each	
2	<b>Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW)</b> - Supply a three (3) year firm, fixed unit cost for a complete exterior only cleaning.	1	Each	
3	<b>Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW)</b> - Supply a three (3) year firm, fixed unit cost for a complete interior and exterior cleaning.	1	Each	

Additionally, consistent with Bid Solicitation § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*, the State Supplied Price Sheet/Schedule further advised Vendors {Bidders} that submission of Quote pricing for price lines 1, 2 and there was mandatory.

<sup>2</sup> Bid Solicitation Section 2.2 *General Definitions* defines “must” and “shall” as “denotes that which is a mandatory requirement.”

In submitting Quote pricing, as shown in the screen shots below, neither Hamilton nor Windsor provided any pricing for price line 1.

Bid Solicitation (RFP) #18DPP00227 Brick and Mortar Vehicle Washing and Cleaning Price Schedule TD300 - Vehicle Wash Services				
Vendor (Bidder) Name:	Hamilton Car Wash Inc.			
Car Wash County:	Mercer			
Car Wash Address:	709 Rte # 33 Hamilton NJ 08619			
Instructions:	Refer to Bid Solicitation (RFP) Section 4.4.5 for Vendor (Bidder) instructions.			
Item#	Description	Quantity	Unit of Measure	Unit Cost
Mandatory Vehicle Washing and Cleaning Services (Bid Solicitation (RFP) Sections 3.1 - 3.1.3)				
1	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a three (3) year firm, fixed unit cost for a complete interior only cleaning.	1	Each	N/A
2	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a three (3) year firm, fixed unit cost for a complete exterior only cleaning.	1	Each	\$ 6.00
3	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a three (3) year firm, fixed unit cost for a complete interior and exterior cleaning.	1	Each	\$ 8.50
Optional Vehicle Detailing Services (Bid Solicitation (RFP) Sections 3.1.4-3.1.5)				

Bid Solicitation (RFP) #18DPP00227 Brick and Mortar Vehicle Washing and Cleaning Price Schedule TD300 - Vehicle Wash Services				
Vendor (Bidder) Name:	Windsor Car Wash Inc.			
Car Wash County:	Mercer			
Car Wash Address:	610 Rte # 130 E. Windsor NJ 08520			
Instructions:	Refer to Bid Solicitation (RFP) Section 4.4.5 for Vendor (Bidder) instructions.			
Item#	Description	Quantity	Unit of Measure	Unit Cost
Mandatory Vehicle Washing and Cleaning Services (Bid Solicitation (RFP) Sections 3.1 - 3.1.3)				
1	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a three (3) year firm, fixed unit cost for a complete interior only cleaning.	1	Each	N/A
2	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a three (3) year firm, fixed unit cost for a complete exterior only cleaning.	1	Each	\$ 6.00
3	Vehicle Wash Service Normal Size Vehicle (under 10,000 GVW) - Supply a three (3) year firm, fixed unit cost for a complete interior and exterior cleaning.	1	Each	\$ 8.50
Optional Vehicle Detailing Services (Bid Solicitation (RFP) Sections 3.1.4-3.1.5)				

Because Hamilton and Windsor failed to provide any Quote pricing for price line 1 as required by the Bid Solicitation, the Bureau deemed the Quotes non-responsive. See, Recommendation Report, p. 2.

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 Award of On-Line Games Prod. And Operation Servs. Contract, 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.” River, *supra*, 127 N.J. Super. at 222. The question to be answered then is whether or not a Vendor’s {Bidder’s} failure to provide all of the required pricing results is a material deviation which would render a bid nonresponsive. C&H Industrial Services, Inc. v. City of Vineland, 2014 N.J. Super Unpub. Lexis 1187, at \*13 (App. Div. May 23, 2014).

Based upon the relevant case law, I find that Hamilton’s and Windsor’s Quotes contain a material deviation from the requirements of the solicitation rendering the Quotes nonresponsive. Hamilton’s and Windsor’s failure to provide pricing for all of the required services identified in the Bid Solicitation deprives the State of the assurance that Blanket P.O. will be entered into, performed and guaranteed according to its specified requirements, and places them in a position of advantage over other Vendors {Bidders} who might have submitted a Quote had they known that they would not be required to submit pricing for each of the required services. River Vale, *supra*, 127 N.J. at 216.

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 Quote. Further, I have no reason to dispute Hamilton’s and Windsor’s assertion that the State employees utilizing Hamilton’s and Windsor’s car wash services have been satisfied with the service provided. However, in light of the findings set forth above, I sustain the Bureau’s determination that Hamilton’s and Windsor’s Quotes were non-responsive and sustain October 1, 2018 NOI. This is my final agency decision with respect to the protest submitted by Hamilton and Windsor.

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

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: A. Davis  
K. Popso  
J. Frew