



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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June 11, 2018

Via Electronic Mail [luz@melkass.com] and USPS Regular Mail

Cesar Acosta
Leo's Trucking
104 W. Clinton Street
Dover, NJ 07801

Re: I/M/O Bid Solicitation #18DPP00222 Leo's Trucking
Request for Reconsideration - Protest of Notice of Proposal Rejection
T2924 Snow Plowing Services by Area - NJDOT

Dear Mr. Acosta:

This letter is in response to your email of June 5, 2018, on behalf of Leo's Trucking ("Leo's") which was received by the Division of Purchase and Property's ("Division") Hearing Unit. In that email, Leo's requests that the Division reconsider its May 23, 2018 decision which upheld the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #18DPP00222 – T2924 Snow Plowing Services by Area - NJDOT ("Bid Solicitation"). The record of this procurement reveals that Leo's Quote was rejected for failing to submit the *Ownership Disclosure Form*, the *Disclosure of Investment Activities in Iran Form* or pricing information with its Quote.

By way of background, on February 13, 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 services for areas of State interstates and highways under the jurisdiction of the 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

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

Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On April 12, 2018, the Division's Proposal Review Unit opened 21 Quotes which were received 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 SDK for failure to submit the *Ownership Disclosure Form*, the *Disclosure of Investment Activities in Iran Form* or pricing information with its Quote.

In response to the Notice of Proposal Rejection, on May 5, 2018, Leo's sent an email the Division's Hearing Unit with the following items attached:²

- Notice of Proposal Rejection (page 1)
- Screenshot of *NJSTART* Summary Tab (page 2)
- *Disclosure of Investment Activities in Iran Form* (page 3)
- Vendor Experience Form – Bid Solicitation Attachment 2 (page 4)
- Vendor Experience Form - Bid Solicitation Attachment 1 (page 5)
- Offer & Acceptance Letter – T2924 (page 6)

On May 23, 2018 I issued the Division's Final Agency Decision upholding the Proposal Review Unit's Notice of Proposal Rejection. In summary, I noted that

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, Leo's submitted a Quote without the *Ownership Disclosure Form* or the *Disclosure of Investment Activities in Iran Form* attached, and without all of the necessary pricing information included. If the requirements of N.J.S.A. 52:25-24.2, N.J.S.A. 52:32-58, 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.

On the June 5, 2018, Leo's submitted a request for reconsideration stating in part:

I am writing in response to your letter dated May 23, 2018 with your proposed Rejection of Bid. I would kindly and humbly ask your office to reconsider your decision in regards to our bid.

As your office is aware, I have had this snow plowing contract for many years and our pricing has always being very competitive and my company has always performed an excellent and timely service. I again humbly ask

² None of the documents included with Leo's protest were attached to its Quote.

that your office gives us the opportunity to continue servicing the state in the same manner we have been for years.

In consideration of Leo's request for reconsideration I have reviewed the record of the procurement, including the Bid Solicitation, Leo's proposal and protest, the May 23, 2018 Final Agency Decision, the request for reconsideration, 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 decision. For the reasons set forth in the May 23, 2018 Final Agency Decision, I sustain the Proposal Review Unit's Notice of Proposal Rejection.

By way of summary I note that the New Jersey Legislature has mandated that: (1) to be eligible to enter into a Contract with the State, a Vendor {Bidder} must supply its ownership information, prior to or with its Quote; and, (2) a Vendor {Bidder} must certify with its Quote submission that it is not identified as a person or entity engaging in investment activities in Iran. See, N.J.S.A. 52:25-24.2 and N.J.S.A. 52:32-58(a). As noted in the May 23, 2018 Final Agency Decision, Leo's failed to supply its ownership information and to certify that it is not engaged in investment activities in Iran 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 or certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. Therefore, the Division's Proposal Review Unit properly rejected Leo's Quote.

As to the submission of pricing details, Leo's failed submit the State supplied price sheet with its Quote or to otherwise include all of the pricing information requested by the Bid Solicitation with its Quote. In order for Leo's Quote to be considered responsive, Leo's failure to submit all of the information required by the Bid Solicitation 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.]

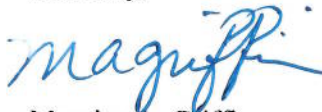
"If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all." Id. at 222.

By submitting its Quote pricing on the "Items" Tab rather than on the State-Supplied Price Sheet, Leo's did not provide the jurisdiction/service area for which it was submitting a Quote. Because Leo's did not include any documents, attachments or forms with its submitted Quote, the Division has no information from which the jurisdiction/service area for which Leo's intended to submit a Quote can be garnered. Leo's failure to include all of necessary information with its Quote submission is a material deviation from the requirements of the Bid Solicitation. Permitting Leo's, 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 details with the submitted Quote. As such, Leo's Quote was properly rejected by the Division's Proposal Review Unit.

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 Leo's assertion in its June 5, 2018 letter that it had the snow plowing contract for many years, has always has competitive pricing, excellent performance, and timely service. Unfortunately, as indicated above I do not have power to waiver requirements that the legislation has mandated.

Thank you for your continuing interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink that reads "maguffin".

Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger