



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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P. O. BOX 039  
TRENTON, NEW JERSEY 08625-0039

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July 17, 2015

Via Facsimile [201.44.4335] and USPS Regular Mail

Dennis J. Francis, Esq.  
Law Office of Dennis J. Francis, Esq.  
37 Liberty Square, Suite 1  
Little Ferry, New Jersey 07643

Re: Protest of Notice of Intent to Award  
RFP# 15-X-23440: Maintenance and Repair Services for Heavy Duty Vehicles  
(Class 5 or Higher, Over 15,000 lb. GVWR)/T-2108

Dear Mr. Francis:

This letter is in response to your June 26, 2015 letter, on behalf of Zoland Corp. (Zoland), to the Division of Purchase and Property (Division), in which you protest the Procurement Bureau's (Bureau) June 8, 2015 Notice of Intent to Award (NOI) for Solicitation # 15-X-23440 (RFP). In the protest letter, Zoland contends that less than 10 contract awards are being made for line items 39 to 42; therefore, Zoland's proposal, which conforms to the RFP requirements, should have been considered for an award. Additionally, Zoland contends that it should have been afforded a second opportunity to lower its pricing post proposal opening. You request that the Division review the same.

In consideration of this protest, I have reviewed the record of this procurement, including the RFP, Zoland's proposal, and 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 submitted by Zoland. I set forth herein my Final Agency Decision.

By way of background, the subject RFP was issued by the Bureau on behalf of State agencies and cooperative purchasing partners to solicit proposals for the maintenance and repair services of heavy duty vehicles (Class 5 or higher, 15,000 lb. GVWR). This RFP is a re-procurement of the maintenance and repair services contract for heavy duty vehicles (T-2108).

At the outset, I note that Zoland's protest was filed out of time. Pursuant to the Division's Administrative regulations,

A bidder, having submitted a proposal in response to an advertised RFP and finding cause to protest the award decision pursuant to (a)1 or 2 above, shall make written request to the Director, setting forth, in detail, the specific grounds for challenging the rejection of its proposal or for challenging the scheduled contract award, as applicable. The protest shall be filed within 10 business days following the bidder's receipt of written

notification that its proposal is non-responsive or of notice of the intent to award, as applicable, or, pursuant to (e) below, prior to the deadline specified in the Division's notice of intent to award communication to the bidder, whichever date is earlier.

[N.J.A.C. 17:12-3.3(b) (emphasis added).]

The Bureau issued the NOI related to this RFP on June 8, 2015, and specifically advised that the protest period ended on June 22, 2015. The NOI stated in pertinent part:

These awards are being made in accordance with the procedure set forth in New Jersey Administrative Code 17:12-2.2. The contract awards identified herein are contingent upon the availability of funds. **Note that in accordance with New Jersey Administrative Code 17:12-3.3, the protest period ends with the close of business on June 22, 2105.** New Jersey Administrative Code 17:12 may be viewed at <http://www.state.nj.use/treasury/purchase/AdminCode.shtml>.

[Emphasis added.]

Contrary to the instruction above, Zoland's protest was dated and received on June 26, 2015. As such, the Division is not compelled to accept or consider Zoland's untimely protest as "[t]he Director may disregard any protest of award filed after the 10 day protest period and proceed with the award of contract(s)." N.J.A.C. 17:12-3.3(b)(3).

Notwithstanding the untimeliness of Zoland's protest, I will address the merits here. First, I note that the standard for awarding State contracts is established by N.J.S.A. 52:34-12(a), which states in pertinent part that:

Whenever advertising is required: . . . (g) award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, **will be most advantageous to the State, price and other factors considered.**

[Emphasis added.]

This standard is reiterated in RFP Section 1.1, which provides that the intent of this RFP is to award contracts to those responsible bidders whose proposals, conforming to the RFP requirements are most advantageous to the State, price and other factors considered. In an effort to accommodate the needs of the contract users, the Bureau intended to award multiple contracts for each OEM and non-OEM line item in each region.<sup>1</sup> (RFP § 1.2.3). For each of the price lines 39 – 42, the Bureau intended to award a total of 10 contracts per line, per region (for a total of 30 contracts per line). (RFP § 3.3 *Brands and Categories Preventative Maintenance and Repair Services for Heavy Duty Vehicles*).

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<sup>1</sup> North region includes Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union and Warren counties; Central region includes Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset counties; South region includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem counties; Statewide encompasses the north, central and south regions. (RFP § 3.2 *Regional Jurisdiction*).

In its proposal, Zoland proposed the following pricing on the contested line items:

Price Line	Region <sup>2</sup>	Hourly Rate
00039	North	\$99.00
00040	North	\$99.00
00041	North	\$99.00
00042	North	\$99.00

In the June 26, 2015 protest letter, Zoland contends that in the past it was afforded multiple opportunities to reduce its pricing post proposal opening and that it was not afforded that same opportunity in connection with this proposal. However, there is no requirement that post-proposal negotiations be conducted with bidders. Whether negotiations are conducted lies solely within the Bureau's discretion. (*N.J.A.C.* 17:12-2.7(j)(2)). The RFP cautions bidders "to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder." (RFP § 6.7 *Negotiation and Best and Final Offer*). With respect to this RFP, the Bureau opted to conduct one round of negotiations with bidders pursuant to RFP Section 6.7, which states in pertinent part:

After evaluating proposals, the Division may<sup>3</sup> enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. . . .

. . .

**Negotiations will be conducted only in those circumstances where they are deemed by the Division or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the bidder is advised to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.**

[RFP § 6.7 *Negotiation and Best and Final Offer (BAFO)* (emphasis in the original).]

The record reveals that the Bureau did request a BAFO from Zoland via email on December 29, 2014:

[i]n accordance with Section 6.7 of the RFP (Negotiation and Best and Final Offer - BAFO), your firm is being notified in an effort to significantly lower the bid pricing provided in your firm's subject proposal. The State is looking to maximize its ability to get the best value, based on the requirements and evaluation criteria set forth in the RFP.

Note: Any failure to reduce the current bid pricing may significantly reduce the likelihood that an award will be made.

[Emphasis added.]

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<sup>2</sup> Bidders were required to specify the region - north, central, south or statewide - to be covered by the proposal. (RFP § 3.2 *Regional Jurisdiction*).

<sup>3</sup> "May" denotes that which is permissible, not mandatory." (RFP § 2.1 *General Definitions*)

On December 31, 2014, Zoland responded with the following BAFO pricing:

Price Line	Region	Hourly Rate
00039	North	\$85.00
00040	North	\$85.00
00041	North	\$85.00
00042	North	\$95.00

The Bureau did not conduct any additional negotiations with any bidders and all awards were made on the basis of the prices submitted on the initial proposal or in response to the BAFO. Zoland was therefore not entitled to a second opportunity to lower its proposal pricing which would place it at an advantage over all other bidders.

Following the evaluation of all proposals, the Bureau issued the NOI to all bidders. Upon receiving the NOI, Zoland contacted the Bureau requesting information on why it was not awarded any contracts. On June 11, 2015, the Bureau replied to Zoland advising that contracts were being awarded to those 10 vendors for each of the price lines in the north region who submitted proposals conforming to the RFP and whose price is the most advantageous to the State. Specifically, the Bureau responded, in pertinent part that:

[w]ith regard to price line items 39 through 42, Zoland Corp. met the requirements for non-OEM categories/price line items bid; however, Zoland Corp. was not in contention for an award due to price and a lack of awards left to be made for a particular region. As stated in Sections 3.3 and 7.2 of the subject Request for Proposal (RFP), ten awards for each non-OEM price line item shall be made for each region. The number of awards per region were exhausted before an award could be made to Zoland Corp.

In its June 26, 2015 protest letter, Zoland contends that its proposals for Line Items 39 – 42 met the requirements of the RFP and therefore “disputes the notion that [it] was not in contention for the awards due to price and lack of awards left in a particular region.” Zoland also asserts that the “documentation indicates that for Items 39, 40, 41, 42 there were not 10 awards tendered to ‘North’ vendors.”

RFP Section 3.1.3 states “[t]en awards shall be made for each non-OEM group/price line items (39 through 52) for each region.” A review of the record of this procurement reveals that the following awards are intended for price lines 39 - 42 for the north region:

**Price Line 39: NON-OEM CHASSIS PREVENTIVE MAINTENANCE – MINOR**  
(North Region - 10 Contracts to be awarded)

A. Lembo Car & Truck Collision  
Air Brake & Equipment  
Bud’s Auto & Truck Repair, Inc.  
Central Jersey Starter & Alternator, Inc.  
Cirele Automotive, Inc.  
Mercer Spring  
Midland Radiator Service Co.  
N.E. Auto & Truck Parts  
Perth Amboy System Brake  
Pete’s Welding Co., Inc.

**Price Line 40: NON-OEM CHASSIS PREVENTIVE MAINTENANCE - MAJOR**

(North Region - 10 Contracts to be awarded)

A. Lembo Car & Truck Collision  
Air Brake & Equipment  
Bud's Auto & Truck Repair, Inc.  
Central Jersey Starter & Alternator, Inc.  
Circle Automotive, Inc.  
Mercer Spring  
Midland Radiator Service Co.  
N.E. Auto & Truck Parts  
Perth Amboy System Brake  
Pete's Welding Co., Inc.

**Price Line 41: NON-OEM CHASSIS REPAIRS - MINOR**

(North Region - 10 Contracts to be awarded)

A. Lembo Car & Truck Collision  
Central Jersey Starter & Alternator, Inc.  
Circle Automotive, Inc.  
Mercer Spring  
Midland Radiator Service Co.  
N.E. Auto & Truck Parts  
Perth Amboy System Brake  
Pete's Welding Co., Inc.  
R&H Spring & Truck Repair  
Sanitation Truck Repair

**Price Line 42: NON-OEM CHASSIS REPAIRS - MAJOR**

(North Region - 10 Contracts to be awarded)

A. Lembo Car & Truck Collision  
Central Jersey Starter & Alternator, Inc.  
Circle Automotive, Inc.  
Mercer Spring  
Midland Radiator Service Co.  
N.E. Auto & Truck Parts  
Perth Amboy System Brake  
Pete's Welding Co., Inc.  
R&H Spring & Truck Repair  
Sanitation Truck Repair

Therefore, contrary to Zoland's belief, 10 contract awards will be made for the north region for each price line 39 through 42.

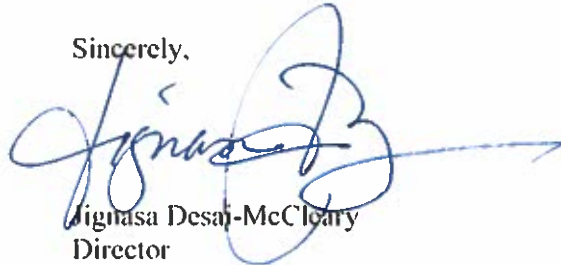
Further, despite Zoland's assertion that it should have been considered for an award simply because its proposal conformed to the RFP requirements, a review of the record reveals that many vendors submitted proposals that conformed to the RFP requirements and will not be awarded contracts as their proposals were not among the most advantageous to the State, price and other factors considered. Placing the responsive proposals for the north region from lowest to highest price, Zoland was not within the ten lowest price proposals for Price Lines 39-42.

Accordingly, despite the fact that Zoland's proposal conformed to the RFP requirements, Zoland's BAFO price did not place it among the ten (10) proposals, that conformed to the RFP

requirements, and that offered the best price to the State for the north region for price lines 39 - 42. Therefore, a contract cannot be awarded to Zoland. In light of the findings set forth above, I sustain the Bureau's Notice of Intent to Award. 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 company with **NJ START** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jignasa Desai-McCleary", with a long horizontal flourish extending to the right.

Jignasa Desai-McCleary  
Director

JD-M: RUD

c: D. Reinert  
K. Thomas  
V. Bequer