



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
PROCUREMENT BUREAU  
33 WEST STATE STREET  
P. O. BOX 230  
TRENTON, NEW JERSEY 08625-0230  
<https://www.njstart.gov>

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MAURICE A. GRIFFIN  
*Acting Director*

April 11, 2018

Via Electronic Mail [demarinotrucking1@gmail.com] and USPS Regular Mail

Erwin DeMarino  
President  
E. DeMarino Trucking, Inc.  
3 Westwind Court  
Saddle River, NJ 07458

Re: I/M/O Bid Solicitation #: 18DPP00205 DeMarino Trucking, Inc.  
Protest of Notice of Proposal Rejection  
Bid Solicitation Title: T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. DeMarino:

This letter is in response to your email of March 22, 2018, on behalf of E. DeMarino Trucking, Inc. (hereinafter “DeMarino”), to the Division of Purchase and Property’s (hereinafter “Division”) Hearing Unit. In that email, DeMarino requests that its un-submitted Quote {Proposal} (hereinafter “Quote”)<sup>1</sup> be accepted for consideration for the subject solicitation.

In consideration of DeMarino’s protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter “Bid Solicitation”) #18DPP00205 – T0777 Snow Plowing and Spreading Services, DeMarino’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

<sup>1</sup> 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.

<b><i>NJSTART</i> 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

and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

By way of background, on January 30, 2018, the Division's Procurement Bureau (hereinafter "Bureau") issued the Bid Solicitation on behalf of the State of New Jersey, Department of Transportation, Bureau of Operations (hereinafter "NJDOT"), to solicit Quotes to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of the NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. The Bid Solicitation sought Quotes for "approximately 303 Snow Sections, with each section requiring a specific amount of equipment to perform snow plowing and spreading services." Bid Solicitation § 1.2 *Background*. It is State's intent to award one or multiple Statewide Blanket P.O.s {Contracts} (hereinafter "Blanket P.O.") to the Vendor {Bidder} "submitting the lowest hourly rate for each Snow Section, and meeting, at a minimum, the criteria for experience and equipment as set forth in [the] Bid Solicitation." Bid Solicitation § 1.1 *Purpose and Intent*.

On February 28, 2018, the Bureau posted Bid Amendment {Addendum} (hereinafter "Addendum") #1, responding to the questions posted by potential Vendors {Bidders}, posting a revised Bid Solicitation, and a revised State-supplied price schedule. The Bid Solicitation and Addendum advised all Quotes were due March 16, 2018, by 2:00 p.m.

On March 16, 2018, the Proposal Review Unit opened 136 Quotes received via *NJSTART* and 41 Quotes received in hardcopy by the submission deadline of 2:00 p.m. A review of the Quotes submitted by the submission deadline reveals the DeMarino did not submit a Quote by the 2:00 p.m. deadline as required.

On March 16, 2018, after the Quote submission deadline, DeMarino wrote to *NJSTART*:

**From:** Jackie Ferron [mailto:demarinotrucking1@gmail.com]  
**Sent:** Friday, March 16, 2018 2:32 PM  
**To:** NJSTART <njstart@treas.nj.gov>; Steven <Steven [REDACTED]>; Erwin DeMarino <[REDACTED]>  
**Subject:** Bid Solicitation # 18DPP00205

To Whom It May Concern,

Attached please find the offer and acceptance, the disclosure of Investment activities in Iran, and price sheet for bid #18DPP00205. I was attempting to upload my bid and there was not any section on my page to upload. I also received numerous error alerted when attempting to go into open bid section on NJStart.

Also I did not receive any notice from the state that this bid was open and I did not receive any notice that today was the deadline for the bid submittal even though, E DeMarino Trucking Inc. has been working in the Fort Lee area for 4 years.

Please accept my bid. If you have an questions, please call me at (201) [REDACTED]

Attached to the email were the following: a signed *Offer and Acceptance Page*, a *Disclosure of Investment Activity in Iran Form*, and a State-supplied price schedule with prices on price lines number 304 and 312.

On March 19, 2018 the Division issued DeMarino a Notice of Proposal Rejection, advising that the Quote was rejected because it was not timely submitted. On March 22, 2018, DeMarino emailed a written protest of the Notice of Proposal Rejection to the Hearing Unit stating:

On Friday March 16, 2018 while attempting to submit the bid #18DPP00205 for Erwin DeMarino Trucking Inc. for Spreading in Fort Lee, NJ, I keep getting

"Exception Occurred: null. There is a system error. Please contact the system administrator for help."

I do not know who the system administrator is, but I was able to contact an employee from the state. He gave me the number for NJStart. They told me to send an email with our bid to NJStart. By the time all the phone calls were made and I emailed our bid to NJStart, we missed the deadline by 30 minutes. I know the bid was open for a bit of time, but I was only told on Friday to look at the bid.

Erwin DeMarino Trucking Inc. has had this Fort Lee Salt Spreading contract for a number of years and the state employees there really like our work. We also provide a loader to the Fort Lee yard and load all the trucks with salt ourselves.

Please reconsider our bid 18DPP00205 for Fort Lee spreading and loader.

...

First, DeMarino asserts that it did not receive notice of the posting of the Bid Solicitation or that the Quote submission deadline was on March 16, 2018. See DeMarino email of March 16, 2018. The Division's advertising requirements are established by statute. N.J.S.A. 52:34-12(b) states that whenever advertising is required, "the advertisement for bids shall be in a newspaper or newspapers and other medium or media selected by the State Treasurer as will best give notice thereof to bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding[.]" The Division's regulations further state that all "[a]dvertisements shall be made a minimum of seven business days in advance of the announced deadline for receipt of proposals to encourage free and open competition." N.J.A.C. 17:12-2.1(a). The Division is also required to publish notices of bidding opportunities on its website. N.J.A.C. 17:12-2.1(c).

The record shows that the Division complied with the advertising requirements for this Bid Solicitation. Notice of the subject Bid Solicitation was publicly advertised on the Division's *NJSTART* eProcurement site, and as shown below, notice was also published in The Star-Ledger on January 30, 2018 as required by the applicable regulation. N.J.A.C. 17:12-2.1(a) and (c).

NOTICE OF NJSTART  
BID SOLICITATION

NOTICE IS HEREBY GIVEN THAT  
SEALED QUOTES (PROPOSALS) WILL  
BE RECEIVED IN THE PROCUREMENT  
BUREAU RECEPTION ROOM, 9TH  
FLOOR, 33 WEST STATE STREET, P.O.  
BOX 230, TRENTON, N.J., 08625-  
0230, UNTIL 2:00 P.M. **ON MARCH  
16, 2018** AND WILL BE PUBLICLY  
OPENED AND ANNOUNCED FOR  
THE FOLLOWING NJSTART PRO-  
CUREMENT PROGRAM SOLICITA-  
TION:

18DPP00205 (T-0777) - Snow Plow-  
ing and Spreading Services -  
NJDOT

VENDORS (BIDDERS) ARE ALSO RE-  
QUIRED TO COMPLY WITH THE  
STANDARD TERMS AND CONDI-  
TIONS CONTAINED IN THE BID SO-  
LICITATION (RFP).

INFORMATION ON THE NJSTART  
PROCUREMENT PROGRAM AND BID  
SOLICITATION (RFP) DOCUMENTS  
ARE AVAILABLE AT: [www.njstart.gov](http://www.njstart.gov)  
AND ON THE DIVISION'S WEBSITE  
AT:  
[www.state.nj.us/treasury/purchase](http://www.state.nj.us/treasury/purchase)

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND  
PROPERTY  
1/30/2018 \$60.45

Further, the Division's regulations set forth electronic procurement notification requirements at N.J.A.C. 17:12-2.1 which states in pertinent part:

- (d) As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service known as the e-RFP Notification Service. Vendors and other interested parties can register to receive direct e-mail notices pertaining to the Division's procurements for goods or services based upon specific commodity classes or codes. As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for e-RFP Notification Service registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division

In keeping with regulation, all Vendors {Bidders} who were registered with *NJSTART* for *NIGP Commodity Code 968-72/Snow and Ice Removal Services*, the sole class code associated with this procurement, received electronic notification of the procurement.<sup>2</sup> The responsibility of registration and

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<sup>2</sup> The current Bid Solicitation was a reprourement and combination of two separate contracts, T-0777 Snow Plowing & Hauling Services Statewide for the N.J.D.O.T. (previously procured under RFP 13-X-22591, 13-X-22747 (Rebid for Open Snow Sections), and 13-X-22837 (Rebid #2 for Open Snow Sections)) and T-1415 Spreading Services for Deicing Chemicals and Abrasives (previously procured under RFP numbers 13-X-22592, 13-

the selection of commodity codes necessarily rests solely with the potential Vendor {Bidder} who will only receive an electronic notification for procurements associated with those commodity codes for which it is registered. A review of DeMarino's selected NIGP codes reveals that it is only registered for one NIGP code, a code which was not associated with this procurement.

Vendor Profile - Erwin DeMarino Trucking Inc.			
<a href="#">Organization Information</a> <a href="#">Users</a> <a href="#">Address</a> <a href="#">Commodity Codes and Services</a> <a href="#">Regions</a> <a href="#">Terms &amp; Categories</a> <a href="#">Attachments</a> <a href="#">Vendor Performance</a>			
Commodity Codes and Services Information			
Active	Code	Description	Date Added
<input checked="" type="checkbox"/>	765-60	Snow Plows, Motorized	07/27/2017

Second, notwithstanding the fact that it acknowledged it missed the Quote submission due date, DeMarino requests the Division accept its non-submitted Quote for consideration in response to the Bid Solicitation. 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. In relevant part, the regulations state: "[i]n order to be eligible for consideration for award of contract, the bidder's proposal shall ... [b]e submitted on or before the due date and time and at the place specified in the RFP." N.J.A.C. 17:12-2.2(a)(2) (emphasis added). If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These regulations are stringently enforced to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. Under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, the Division cannot accept a late Quote from DeMarino or any other Vendor {Bidder}. Such acceptance would un-level the Vendor's {Bidder's} playing field as the Division received Quotes from other Vendors {Bidders} by the submission deadline. In fact, the Division received 177 Quotes by the submission deadline.

While DeMarino asserts the Division should consider its Quote because it had technical difficulties with the *NJSTART* system, N.J.A.C. 17:12-2.6(a) sets forth narrow circumstances where the Quote submission date can be postponed:

The Director may, in the event of inclement weather or other condition affecting or likely to affect bidders' timely delivery of proposals, postpone the deadline to the next operable business day. If timely delivery of a physical or electronic proposal is not possible due to documentable cause of delay on the date of proposal opening and that is beyond the control of said vendor, said vendor can request, prior to the set deadline, that the Director postpone the deadline. If the Director determines that a postponement is in the State's best interest, the Director shall designate a revised same-day deadline. In either of these circumstances, the Director shall post notice of the postponement of the deadline for proposal submission on the Division's website.

[N.J.A.C. 17:12-2.6(a) (emphasis added).]

As the Division received 177 Quotes submitted in a timely fashion, I cannot conclude that there was a pervasive technical issue or condition affecting the ability of Vendors {Bidders} to upload Quotes. Further, even assuming DeMarino would be able to provide "documentable cause of delay" supporting its

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X-22748 (Rebid for Open Snow Sections) and 13-X-22838 (Rebid #2 for Open Snow Sections)). It is noted that both pre-existing contracts were procured using NIGP code 968-72, the same NIGP code as the current Bid Solicitation.

assertion that it was unable to submit a Quote, the Division is unable to postpone the Quote submission deadline because DeMarino did not request a postponement before the deadline. Therefore, I am without discretion to postpone the published Quote opening deadline.

Despite DeMarino's desire to submit a Quote for the subject solicitation, under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, the Division cannot accept DeMarino's Quote as timely submitted. DeMarino relates that the State employees "really like our work." See DeMarino email dated March 22, 2018. I have no reason to doubt these statements. However, the Division is not able to take this into account as acceptance of a Quote after the Bid Submission deadline would un-level the playing field. In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision.

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise and experience in the field. In the future, I encourage earlier initiation of submissions to ensure timely receipt of Quotes and to allow for any issues which may arise during the electronic Quote submission process. I also encourage DeMarino to revise the commodity codes it has registered for in *NJSTART* to capture all codes related to the work it is interested in providing to the State. Thank you for registering your company with *NJSTART* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system. I look forward to your company's continuing interest in doing business with the State of New Jersey.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: REG

c: P. Michaels  
L. Spildener  
M. Groninger