



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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September 5, 2018

Via Electronic Mail [joclawfirm@yahoo.com] and USPS Regular Mail

Joseph O. Consiglio, Esq.
2273 Hwy. #33, Suite 207
Hamilton Square, NJ 08690

Re: I/M/O Bid Solicitation #18DPP00205 H. Liedtka Co., Inc.
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Mr. Consiglio:

This letter is in response to your correspondence of August 30 and 31, 2018, on behalf of H. Liedtka Co., Inc. (Liedtka) to the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence Liedtka protests the August 24, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) indicating an intent to award Master Blanket Purchase Orders (Blanket P.O.s)¹ to several Vendors {Bidders} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation). Specifically, Liedtka protests the intended award of price line 337.

BACKGROUND

By way of background, on January 30, 2018, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified 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} 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 Blanket P.O.s to those responsible Vendors {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 164 Quotes received through the State's *NJSTART* eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Thirty-two Quotes were automatically rejected by the Proposal Review Unit for failure to conform to the mandatory administrative requirements for Quote submission.

The remaining Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria* which states:

The following evaluation criteria categories, not necessarily listed in order of significance, may be used to evaluate Quotes {Proposals} received in response to this Bid Solicitation {RFP}. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

- A. Experience of firm (Attachment #2): The Vendor's {Bidder's} documented experience in successfully completing Blanket P.O. {Contracts} of a similar size and scope in relation to the work required by this Bid Solicitation {RFP};
- B. Vendor Equipment (Attachment #1): The quantity and type of Vendor {Bidder} trucks and ability to provide equipment; and
- C. Price: The Vendor's {Bidder's} hourly rate. See Section 6.7.1 below.

With respect to the evaluation of the Vendors' {Bidders'} Quote pricing, Bid Solicitation Section 6.7.1 *Vendor's {Bidder's} Price Schedule* states:

The Bureau will utilize a weighted price model. The price model will be date-stamped and entered into the record before Quote {Proposal} opening.

One (1) or multiple awards will be made to the Vendor {Bidder} submitting the lowest hourly rate for each Snow Section and meeting, at a minimum, the criteria for experience and equipment set forth in this Bid Solicitation {RFP}, in the following order:

....

Spreading Services:

- 1st – Vendors {Bidders} supplying all required Class R trucks with an on board wetting system;
- 2nd – Vendors {Bidders} supplying all required Class R trucks;
- 3rd – Vendors {Bidders} supplying all required Class Q trucks with an on board wetting system;

- 4th – Vendors {Bidders} supplying all required Class Q trucks;
- 5th – Vendors {Bidders} supplying all required Class P trucks with an on board wetting system;
- 6th – Vendors {Bidders} supplying all required Class P trucks;
- 7th – Vendors {Bidders} supplying V Box trucks with an on board wetting system;
- 8th – Vendors {Bidders} supplying V Box trucks;
- 9th – Vendors {Bidders} supplying mid-body style trucks with an on board wetting system; and
- 10th – Vendors {Bidders} supplying mid-body style trucks.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class R trucks, with an on board wetting system, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class R trucks without an on board wetting system.

The evaluation of Quotes received and submission of Quote pricing was conducted in three phases as set forth in Bid Solicitation Section 1.1 *Purpose and Intent* which states:

Award of this Bid Solicitation {RFP} will be conducted in three (3) consecutive phases, as described further below. All phases will continue until all Snow Sections have been awarded. Pricing shall not be released until completion of all phases and the final Notice of Intent to Award has been issued.

This procurement will be bid in three consecutive phases, numbered One, Two and Three. The first Phase will be Phase One (1). In Phase One (1), the State will attempt to award all Snow Sections. To the extent that any Snow Sections remain un-awarded following Phase One (1), the State will request that all Vendors {Bidders} who submitted a Quote {Proposal} to this Bid Solicitation {RFP} for Phase One (1) submit a Phase Two (s) price sheet addressing any Snow Sections that remain un-awarded that the Vendor {Bidder} is interested in. The State will attempt to award all remaining Snow Sections in Phase Two (2) based on the Phase Two price sheets received. In the event that any Snow Sections remain un-awarded after Phase Two (2) is completed, the State will request that all Vendors {Bidders} submit a Phase Three (3) price sheet, addressing any Snow Sections that remain un-awarded, that the Vendor {Bidder} is interested in.

Under no circumstances shall any Vendor {Bidder}, when submitting a Phase Two (2) or Phase Three (3) price sheet after being requested to do so by the State, submit any supplemental or additional information regarding any other aspects of its previously-submitted bid. During Phase Two and Phase Three, the State will only consider the price sheets, and will not consider any additional or supplemental information or documents.

1. **Phase One (1)** – will apply to all Vendors {Bidders} that have submitted a responsive Quote {Proposal};

2. **Phase Two (2)** – will apply to all Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase One (1) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Two (2); and
3. **Phase Three (3)** – will apply to Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase Two (2) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Three (3).

In other words, only those Vendors {Bidders} whose original submitted Quotes were responsive to the requirements of the Bid Solicitation would be able to participate in, and submit pricing for Phase 2 and Phase 3.

Vendors {Bidders} were required to provide information within their Quote regarding their equipment and pricing such that the award methodology established in Bid Solicitation section 6.7.1 *Vendor's {Bidder's} Price Schedule* could be applied. First, section 4.4.4.2 of the Bid Solicitation, titled *Price Sheet/Schedule Attachment Instructions* advised all Vendors {Bidders} that all pricing must be submitted using the State-supplied price sheet/schedule accompanying the Bid Solicitation. The State-supplied price sheet/schedule advised Vendors {Bidders} of the region, crew number, crew location, and the number and class of trucks required to cover the Snow Section. Accordingly, in relevant part, the State-supplied price schedule for price line 337 was as follows:

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
337	SPREADING SERVICES – D.O.T. REGION-CENTRAL CREW #: 316 LAWRENCE YARD ROUTE 1 BUSINESS SOUTH, LAWRENCEVILLE, NJ NUMBER OF TRUCKS REQUIRED: CLASS R - 4 CLASS Q - 3 CLASS P - 2	1	HOUR				

Review of the record reflects Liedtka submitted a hard copy Quote. With respect to price line 337, Liedtka's Quote reflected it proposed an hourly rate of \$225 per hour:

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
337	SPREADING SERVICES – D.O.T. REGION-CENTRAL CREW #: 316 LAWRENCE YARD ROUTE 1 BUSINESS SOUTH, LAWRENCEVILLE, NJ NUMBER OF TRUCKS REQUIRED: CLASS R - 4 CLASS Q - 3 CLASS P - 2	1	HOUR		\$ 225 ⁰⁰		

Second, Vendors {Bidders} were required to submit Bid Solicitation Attachment #1 – Vendor Equipment Form, which detailed the equipment the Vendor {Bidder} was proposing for the hourly rate set forth on the State-supplied price sheet/schedule. Bid Solicitation § 4.4.3 *Submittals*. Liedtka's submitted

Bid Solicitation Attachment #1 – Vendor Equipment Form reflected it proposed four class R trucks for crew 316 (price line 337), with V Box equipment:

SPREADING ONLY	
Crew #:	<u>316</u>
Number of Class P Trucks	_____
Number of Class Q Trucks	_____
Number of Class R Trucks	<u>4</u>
Type of spreading equipment	Tailgate mounted or <u>V Box</u>
Are you able to provide on board wetting?	YES ___ or NO <input checked="" type="checkbox"/>
Are your vehicles capable of offloading unused material quickly after an event?	YES <input checked="" type="checkbox"/> or No ___

Similarly, Ivyland Construction Co., Inc. (Ivyland) submitted a Quote for price line 337.² In relevant part, Ivyland’s State-supplied price sheet/schedule reflected an all-inclusive hourly rate of \$279 for class R trucks:

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
337	SPREADING SERVICES – D.O.T. REGION: CENTRAL CREW #: 316 LAWRENCE YARD ROUTE 1 BUSINESS SOUTH, LAWRENCEVILLE, NJ NUMBER OF TRUCKS REQUIRED: CLASS R - 4 CLASS Q - 3 CLASS P - 2	1	HOUR		\$ 279.00		

Ivyland’s Bid Solicitation Attachment #1 – Vendor Equipment Form for price line 337 reflected it was providing four class R trucks, all with tailgate mounted equipment:

² A total of six Vendors {Bidders} submitted Quotes for price line 337, including Vivali Trucking, Garden State Sealing, JMN Trucking, Liedtka, Longford Landscape and Excavating, and Ivyland. Only Liedtka and Ivyland are discussed in this final agency decision because the other Vendors’ {Bidders’} Quotes reflected fewer trucks than required for the price line (Zivali Trucking, JMN Trucking, Longford Landscape and Excavating) or trucks of a different class (Garden State Sealing). Garden State Sealing’s intended award of the class Q and class P trucks on price line 337 are not at issue in this Final Agency Decision.

SPREADING ONLY

Crew #: 316 Lawrence yard

Number of Class P Trucks _____

Number of Class Q Trucks _____

Number of Class R Trucks 4

Type of spreading equipment Tailgate mounted Mid-Body, or V Box

Are you able to provide on board wetting? YES ___ or NO ___

Are your vehicles capable of offloading unused material quickly after an event?
 YES or No ___

On June 5, 2018, in accordance with the procedure set forth in Bid Solicitation Section 1.1 *Purpose and Intent*, after the review and evaluation of all Quotes received in response to Bid Solicitation Phase One was completed, the Bureau issued a preliminary notice. That preliminary notice advised the Vendors {Bidders} which snow plowing sections would be awarded based upon the Phase One submitted Quotes. In relevant part, the Phase One preliminary notice advised the Bureau proposed the following awards for price line 337:

Line #	AWARDED VENDOR {BIDDER}	AWARDED CLASS "R" TRUCKS	AWARDED CLASS "Q" TRUCKS	AWARDED CLASS "P" TRUCKS	QUANTITY AVAILABLE FOR PROCUREMENT PHASE TWO (2)
332	JMN Trucking Inc.	1	0	N/A	1 CLASS "R" & 2 CLASS "Q"
333	Majestic Leasing & Prieto Enterprises LLC	6	N/A	N/A	0
334	Atlantic Recycling Group	1	5	N/A	0
335	Atlantic Recycling Group	N/A	4	N/A	0
336	Ivyland Construction Co. Inc. & Garden State Sealing	4	4	N/A	1 CLASS "Q"
337	Ivyland Construction Co. Inc. & Garden State Sealing	4	3	2	0

Thereafter, the Bureau commenced Phase Two to solicit Quote pricing for those snow plowing sections for which no responsive Quotes had been received. Requests for Phase Two pricing were sent to all responsive Vendors {Bidders} on June 11, 2018 with a Phase Two Quote submission due date of June 18, 2018 at 2:00 p.m. Phase Three commenced with requests for pricing on June 26, 2018, with a Phase Three Quote submission due date of June 28, 2018 at 2:00 p.m. Because price line 337 received responsive Quotes during Phase One, it was not part of Phase Two or Three.

On July 30, 2018, the Bureau issued a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most

advantageous to the State, price and other factors considered.³ In relevant part, the Recommendation Report detailed the Quotes received for price line 337 and the equipment each Vendor {Bidder} proposed:

Price Line #337 – the following Vendors {Bidders} submitted responsive Quotes; however, GSS and Ivyland submitted responsive, responsible Quotes most advantageous to the State price and other factors considered. This Snow Section requires four (4) Class R, three (3) Class Q and two (2) Class P Trucks. The Quotes submitted by GSS and Ivyland offer the State the quantity of trucks required for this Section. Therefore, this price line is recommend as a multiple award to both GSS and Ivyland.

- Zivali Trucking – offered one (1) Tailgate Mounted Class R Truck, less than the quantity required;
- GSS – offered three (3) Tailgate Mounted Class Q Trucks and Two (2) V Box Class P Trucks;
- JMN – Offered one (1) Tailgate Mounted Class R Truck, less than the quantity required;
- H. Liedtka – offered four (4) V Box Class R Trucks, although the quantity required, in accordance with Section 6.7.1, V Box trucks, without a wetting system is number eight (8) in the order of award order;
- Longford Landscape – offered three (3) Tailgate Mounted Class R Trucks, less than the quantity required; and
- Ivyland – offered four (4) Tailgate Mounted Class R Trucks.

[Recommendation Report, p. 39.]

Accordingly, the attachment to the Recommendation Report reflected price line 337 was to be awarded as follows:⁴

337	Multiple	Crew# 316 Lawrence Yard	Ivyland Construction Co. Inc	Phase One (1)	Four (4) Class R - without a wetting system
			Garden State Sealing	Phase One (1)	Three (3) Class Q & One (1) Class P - without a wetting system

On August 30, 2018, the Division received Liedtka’s protest challenging the intended Blanket P.O. awards. By way of summary, Liedtka protests the Division’s intended award of price line 337, arguing its pricing was lower and that it proposed all required equipment. In a supplemental protest filed with the Hearing Unit on August 31, 2018, counsel for Liedtka further noted that Liedtka presented the lowest bid “they had the applicable equipment and they are supremely qualified based upon their many years of experience performing this exact job.”

In consideration of Liedtka’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, the protests, 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.

DISCUSSION

As noted above, Bid Solicitation Section 6.7.1 *Vendor’s {Bidder’s} Price Schedule* advised Vendors {Bidders} that the Bureau would recommend Blanket P.O. awards for spreading services to the Vendor {Bidder} submitting the lowest hourly rate for each Snow Section, with a preference provided to

³ The list of Vendors {Contractors} who are recommended to receive Blanket P.O. awards are listed in the attachment to the Bureau’s July 30, 2018 Recommendation Report.

⁴ Again, the intended awards to Garden State Sealing for class Q and class P trucks are not at issue in this Final Agency Decision.

Vendors {Bidders} that could supply all required trucks on a given line, and a further preference for equipment, both in class of truck and vehicle equipment:

Spreading Services:

- 1st – Vendors {Bidders} supplying all required Class R trucks with an on board wetting system;
- 2nd – Vendors {Bidders} supplying all required Class R trucks;
- 3rd – Vendors {Bidders} supplying all required Class Q trucks with an on board wetting system;
- 4th – Vendors {Bidders} supplying all required Class Q trucks;
- 5th – Vendors {Bidders} supplying all required Class P trucks with an on board wetting system;
- 6th – Vendors {Bidders} supplying all required Class P trucks;
- 7th – Vendors {Bidders} supplying V Box trucks with an on board wetting system;
- 8th – Vendors {Bidders} supplying V Box trucks;
- 9th – Vendors {Bidders} supplying mid-body style trucks with an on board wetting system; and
- 10th – Vendors {Bidders} supplying mid-body style trucks.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class R trucks, with an on board wetting system, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class R trucks without an on board wetting system.

[Emphasis added.]

In other words, class R trucks with tailgate mounted equipment would be awarded lines before class R trucks with V Box equipment, and class R V Box trucks would be awarded lines before class R mid-body style trucks. See Bid Amendment No. 1, Question 6 (modifying Bid Solicitation sections 1.1 and 6.7.1 to reflect award preference based on type of equipment).

Here, as noted above, the Bureau received two Quotes on price line 337 from Vendors {Bidders} that included all four required class R trucks that the line required; one from Liedtka and the other from Ivyland. But, each Vendor {Bidder} proposed different equipment. Liedtka proposed four V Box trucks while Ivyland proposed four tailgate mounted trucks. Accordingly, the Bureau correctly applied the preference methodology from Bid Solicitation section 6.7.1 and recommended Ivyland as the intended awardee for price line 337 because Ivyland proposed all required class R trucks for the Snow Section with tailgate mounted equipment, which would receive a higher ranking than all required class R trucks with V Box equipment. See Bid Amendment No. 1, Question 6 (modifying Bid Solicitation sections 1.1 and 6.7.1 to reflect award preference based on type of equipment). Even though Ivyland Quoted an hourly rate of \$279 per hour while Liedtka Quoted a rate of \$225, the order of award preference set forth in Bid Solicitation section 6.7.1 dictates Ivyland be the intended awardee for class R trucks on price line 337.

Liedtka states it is supremely qualified and has provided excellent service to the State of New Jersey. I have no reason to doubt Liedtka's statements regarding its past performance. However, awarding Liedtka a Blanket P.O. on price line 337 would require waiving the award and ranking methodology set forth in Bid Solicitation section 6.7.1 *Vendor's {Bidder's} Price Schedule*. New Jersey courts have held that

. . . there are certain requirements often incorporated in bidding specifications which by their nature may be relinquished without there being any possible frustration of the policies underlying competitive bidding. In sharp contrast, advertised conditions whose waiver is capable of becoming a vehicle for corruption or favoritism, or capable of encouraging improvidence or extravagance, or likely to affect the amount of any bid or to influence any potential bidder to refrain from bidding, or which are capable of affecting the ability of the contracting unit to make bid comparisons, are the kind of conditions [which] may not under any circumstances be waived.

[Terminal Constr. Corp. v. Atlantic County Sewerage Auth., 67 N.J. 403, 412 (1975).]

Such is the case here, as awarding Liedtka a Blanket P.O. for price line 337 by waiving the ranking and award methodology would undermine the level playing field, and potentially become a vehicle for favoritism by giving Liedtka an advantage that the State is not providing to its competitors. Therefore, the Division cannot waive Bid Solicitation section 6.7.1 *Vendor's {Bidder's} Price Schedule* and offer Liedtka a Blanket P.O. for price line 337.

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation. Accordingly, I sustain the August 24, 2018 Notice of Intent to Award. This is my final agency decision with respect to the protest submitted by Liedtka.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's eProcurement system. I encourage you to log into **NJSTART** 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. Please monitor the New Jersey Department of Transportation's, the Division's and the **NJSTART** websites for future bidding opportunities for these services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: Robert Liedtka Sr. (via email only at dirtybob22@yahoo.com)
P. Michaels
L. Spildener
M. Groninger