



State of New Jersey

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April 25, 2018

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

Emre Ulu
ULU Transportation, LLC
701 Bradford Ct
Bordentown, NJ 08505

Re: I/M/O Bid Solicitation #: 18DPP00205 ULU Transportation, LLC
Protest of Notice of Proposal Rejection
Bid Solicitation Title: T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Ulu:

This letter is in response to your email and fax of April 12, 2018, on behalf of ULU Transportation LLC (“ULU Transportation”) to the Division of Purchase and Property’s (“Division”) Hearing Unit. In those communications, ULU Transportation protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (“Bid Solicitation”). The record of this procurement reveals that ULU Transportation’s Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

By way of background, on January 30, 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 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 Master Blanket Purchase Orders (“Blanket P.O.s”)¹ to those responsible 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.

<i>NJSTART</i> 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} 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 136 Quotes submitted through the State's *NJSTART* eProcurement system and 41 Quotes received in hardcopy format by the submission deadline of 2:00 pm eastern time. A review of the Quotes submitted by the submission deadline reveals ULU Transportation uploaded a Quote via *NJSTART* at 9:13:42 p.m. on March 15, 2018 which included the following documents:

- *Offer and Acceptance Page*;
- Bid Solicitation Attachment 1 Vendor {Bidder} Equipment Form & Attachment 2 Vendor {Bidder} Experience Form;
- State-supplied price sheet/schedule excerpts.

On March 28, 2018 the Division issued ULU Transportation a Notice of Proposal Rejection, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, ULU Transportation's Quote was missing a completed *Ownership Disclosure Form*. The Notice of Proposal Rejection also advised that while not a basis for rejection of the Quote, ULU Transportation was not currently business-registered with the State of New Jersey, Department of the Treasury, Division of Revenue and Enterprise Services ("DORES").

In response to the Notice of Proposal Rejection, ULU Transportation sent the Division a completed *Ownership Disclosure Form* dated April 17, 2018, and a print out of data from DORES. The Division has accepted this communication as a protest of the Notice of Proposal Rejection.

In consideration of ULU Transportation's protest, I have reviewed the record of this procurement, including the Bid Solicitation, ULU Transportation'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 and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

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. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall² conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:
...
4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's

² "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added*.]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

Among those forms required to be submitted with the Quote are the *Ownership Disclosure Form* discussed in Bid Solicitation Section 4.4.1.2.1.

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any [Blanket P.O.] nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

The *Ownership Disclosure Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

Vendors {Bidders} using *NJSTART* to submit a Quote {Proposal} shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using *NJSTART* to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the Division's website. This form is also available in NJSTART (www.njstart.gov).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using *NJSTART* to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the "Maintain Terms and Categories" Tab within its profile. As shown in the screenshot below, ULU Transportation completed the Ownership Disclosure category, but was directed to submit a completed *Ownership Disclosure Form* either by attaching it to its Vendor Profile or by including it with its Quote.

Vendor Profile - Ulu transportation llc

Organization Information Users Address Commodity Codes and Services Regions **Terms & Categories** Attachments Vendor Performance

Terms and Categories Information

Terms

Payment Terms: Net 30
 Freight Terms:
 Shipping Method:
 Shipping Terms: F O B Destination

Categories & Certifications

Category: 1. Primary Business Function - (MANDATORY FIELD)

Provides Construction Goods

Category: 3. Business Formation (MANDATORY FIELD)

Limited Liability Company

Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)

Description: I certify that I am an appointed agent of the vendor referenced and that I hereby authorize the State of NJ to initiate payments to the bank acct and bank named in the electronic funds transfer (if and when the information is provided). This authority is to remain in full force and effect until the State of NJ receives notification of any changes, and in such a manner as to afford the State of NJ a reasonable opportunity to Act.

Select if you intend to enter the data for EFT payment and agree with the statement above. To enter banking data, you must log in after the initial registration process has been completed, add or edit a Remit address, and check the EFT Enabled box.

Category: 5. Tax ID Certification (Substitute W9) (MANDATORY FIELD)

Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for federal tax purposes.

Select if you agree with the statement above.

Category: Ownership Disclosure

Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.

Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

Category: Disclosure of Investment Activities in Iran

Description: P.L. 2012, c. 25 requires that an authorized representative of the bidder certify, under penalty of perjury, that the bidder and its parents, subsidiaries and affiliates are not identified on the Department of the Treasury's list of entities engaged in prohibited investment activities in Iran ("Chapter 25 List").

Yes, the bidder and its parents, subsidiaries and affiliates are not on the Chapter 25 List. (No Disclosure of Investment Activities in Iran form is required.)

Category: Disclosure of Investigations and Other Actions Involving Bidder

Description: Within the past 5 years, no named individual or business entity has been implicated in any criminal or disorderly persons matter; prohibited from contracting with any government agency; or the subject of a complaint involving a public sector client.

Yes, the bidder makes this certification on behalf of the individual or business entities named on its Statement of Bidder Ownership or list of Non-Profit Officers and Directors. (No Disclosure of Investigations form is required.)

Category: Disclosure of Non-Profit Officers and Directors

Description: Bidders that are non-profit entities are required to disclose all officers and directors.

The above statement does not apply because the bidder is NOT a non-profit entity.

As shown in the screenshot below, ULU Transportation did not upload the *Ownership Disclosure Form* to its profile.

Vendor Profile - Ulu transportation llc

Organization Information Users Address Commodity Codes and Services Regions Terms & Categories **Attachments** Vendor Performance

Attachments Information

No Attachments found for this vendor.

Forms

No Form Attachments

Similarly, as outlined above, ULU Transportation did not submit an *Ownership Disclosure Form* 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. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, ULU Transportation did not comply with any of the options available to it for the submission of ownership information. Accordingly, ULU Transportation's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

If the requirements of N.J.S.A. 52:25-24.2 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. 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, ULU Transportation submitted a Quote without the *Ownership Disclosure Form* attached and the Division is prohibited from accepting them after the Quote submission deadline. Notwithstanding ULU Transportation's interest in competing for this procurement, to allow ULU Transportation to submit the completed and signed *Ownership Disclosure Form* after bid opening would violate the Legislative requirements outlined in N.J.S.A. 52:25-24.2, requirements that the Division is not authorized to waive.³

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 Proposal. However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject contract. 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 business with *NJSTART* at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG:REG

c: P. Michaels
L. Spildener
M. Groninger

³ As noted in the Notice of Proposal Rejection and accompanying letter, proof of business registration is a requirement that must be fulfilled prior to the award of a Blanket P.O. As proof of business registration was not a basis upon which ULU Transportation's Quote was rejected, it is not discussed in this final agency decision.