



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 5, 2018

Via Electronic Mail [vhmotto@comcast.net] and USPS Regular Mail

Vincent H. Motto
VH Motto Contracting, Inc.
1 Stirling Way
Lumberton, NJ 08048

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

Dear Mr. Motto:

This letter is in response to your correspondences of August 6, 2018 and August 28, 2018, on behalf of VH Motto Contracting, Inc. (VH Motto) to the Division of Purchase and Property's Hearing (Division) Unit. In those correspondences VH Motto protests the August 24, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) indicating an intent to award a 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).

BACKGROUND

By way of background, on January 30, 2018, the Bureau issued Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation) on behalf of the New Jersey Department

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

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 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:

Snow Plowing and Hauling Services:

- 1st – Vendors {Bidders} supplying all required Class A trucks with equipment;
- 2nd – Vendors {Bidders} supplying all required Class A trucks without equipment;
- 3rd – Vendors {Bidders} supplying all required Class B trucks with equipment;

- 4th – Vendors {Bidders} supplying all required Class B trucks without equipment;
- 5th – Vendors {Bidders} supplying fewer than the required number of Class A trucks with equipment; and
- 6th – Vendors {Bidders} supplying fewer than the required number of Class B trucks without equipment.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class A trucks with Vendor {Bidder} owned equipment, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class A trucks without 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.

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*.

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 Two and Phase Three.

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 and spreading sections would be awarded based upon the Phase One submitted Quotes. The preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. Four Vendors {Bidders} withdraw a submitted Quotes for some or all of the snow plowing and/or and spreading sections originally submitted during Phase One. Thereafter, the Bureau commenced Phase Two to solicit Quotes pricing for those snow plowing and spreading sections for which no responsive Quotes had been received. On June 11, 2018, requests for Phase Two pricing were sent to all Vendors {Bidders} who submitted Quotes which were deemed initially responsive. Phase Two Quote submission pricing was due to the Bureau on June 18, 2018 at 2:00 p.m.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase Two was completed, the Bureau issued a second preliminary notice. That second preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One and Phase Two submitted Quotes. The second preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. Thereafter, the Bureau commenced Phase Three to solicit Quote pricing for those snow plowing and spreading sections for which no responsive Quotes had been received in either Phase One or Phase Two. Requests for Phase Three pricing were sent to all responsive Vendors {Bidders} on June 26, 2018 with a Phase Three Quote submission due date of June 28, 2018 at 2:00 p.m.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase Three was completed, the Bureau issued a third preliminary notice. That third preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One, Phase Two and Phase Three submitted Quotes. The third preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted a Quote or a preliminarily awarded price line.

Thereafter, on August 22, 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.² On August 24, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O.s consistent with the Bureau's Recommendation Report.

Prior to the release issuance of the August 24, 2018, NOI, on August 6, 2018, VH Motto submitted a letter to the Bureau questioning the ability of certain Vendors {Bidders} to perform the work sought in State's Bid Solicitation. That letter was forwarded to the Division's Hearing Unit for review and though pre-mature, was accepted as protest.³ Thereafter, on August 28, 2018, VH Motto submitted a second protest letter to the Division. In the August 6, 2018 and August 28, 2018, letters, VH Motto protests the Division's intent to Award Blanket P.O.s to the following Vendors {Bidders} AIT Express, LLC (AIT); MSN Trucking (MSN), LLC; Khan Trucking, LLC (Khan); and, ATA Express, LLC (ATA). More specifically, VH Motto states in part:

The main reason(s) for protesting is first, for the amount of time it took the State of NJ to award the contract and second for non-compliance issues. Several of the contractors "awarded" plowing and spreading services do not meet the NJDOT requirements outlined in the proposal and are not able to supply the amount of equipment needed for the upcoming season...

[August 28, 2018, protest letter.]

Additionally, VH Motto states that three of the listed Vendors {Bidders} only have one (1) truck but have been awarded multiple sections. VH Motto further questions whether the Division has verified: (1) that the

² The list of Vendors {Contractors} who are recommended to receive Blanket P.O. awards are listed in the attachment to the Bureau's August 24, 2018 Recommendation Report.

³ In accordance with the Division's governing regulations, "[a] bidder, having submitted a [Quote] in response to an advertised [Bid Solicitation] administered pursuant to N.J.S.A. 52:34-6 et seq., may submit a written protest to the Director concerning the... Notice of award of contract(s) or of intent to award contract(s) pertaining to the subject procurement." N.J.A.C. 17:12-3.3(a)(2). With respect to the subject Bid Solicitation, on August 6, 2018, the date the Bureau received VH Motto's protest, the Bureau had not issued a Notice of Intent to Award announcing an intent to make Blanket P.O. awards to specified Vendors {Bidders}; therefore, VH Motto's protest was premature.

listed Vendors {Bidders} and their subcontractors have valid Business Registration Certificates; (2) that the listed Vendors {Bidders} have a valid Public Works Contractors Registration Certificate; (3) that the listed Vendors {Bidders} have valid insurance. Additionally, VH Motto states that the Division took too long to award the Blanket P.O.s.

In consideration of VH Motto's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, 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

First, the August 24, 2108 NOI indicates that it is the Division's intent to award AIT, MSN, Khan and ATA fourteen spreading sections requiring a total of 85 trucks to perform the services required. With their respective submitted Quotes AIT, MSN, Khan, and, ATA each submitted Attachment #1 – *Vendor Equipment Form* for each price line bid. Each of these Vendors {Bidders} completed the form indicating that they had or would have the listed equipment available to perform the work required by the Bid Solicitation if awarded a Blanket P.O.

The Bid Solicitation did not require that a Vendor {Bidder} own the trucks necessary to perform the services required at the time of Quote opening.⁴ Rather, it is incumbent on the Vendor {Contractor} to have the equipment available to perform the work required. Further, the Bureau's Recommendation Report indicates that the fourteen spreading sections to be awarded to these four Vendors {Bidders} were all based upon Quotes submitted during Phase 1 of this procurement. As noted above, on June 5, 2018, the Bureau issued a preliminary notice advising the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase 1 submitted Quotes. The preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. Neither AIT, MSN, Khan nor ATA requested to withdraw their Quote or any price line preliminarily awarded.

Further, if a Vendor {Contractor} does not have a sufficient number of trucks available to perform all of the snow and/or spreading sections awarded, then the Vendor {Contractor} may choose to subcontract and inform the State of the same. Bid Solicitation Section 4.4.1.1.2 *No Subcontractor Certification* states in part:

For a Quote {Proposal} that does NOT include the use of any Subcontractors, by signing the Bid Solicitation {RFP} Offer and Acceptance Page {Signatory Page}, the Vendor {Bidder} is *automatically* certifying that:

- A. In the event the award is granted to the Vendor's {Bidder's} firm and the Vendor {Bidder} later determines at any time during the term of the Blanket P.O. {Contract} to engage Subcontractors to provide certain goods and/or services, pursuant to Section 5.8 of the SSTC, the Vendor {Bidder} shall submit a Subcontractor Utilization Plan form

⁴ Bid Solicitation Section 2.2 *General Definitions* defines Vendor {Bidder} as "an entity offering a Quote {Proposal} in response to the Division's Bid Solicitation {RFP}" and Vendor {Contractor} as "the Vendor {Bidder} awarded a Blanket P.O. {Contract} resulting from this Bid Solicitation {RFP}."

for approval to the Division in advance of any such engagement of Subcontractors.

Here, AIT, MSN, Khan and ATA, submitted Quotes indicating that they would have a sufficient number of trucks available to perform the work awarded for each price line awarded. If these Vendors {Bidders} must subcontract in order to perform the work awarded, the Bid Solicitation permits them to do so.

Second, VH Motto alleges that all Vendors {Bidders} were required to have their Business Registration Certificates in place at the time of Quote opening. To the contrary, Vendors {Bidders} are required to have a Valid Business Registration at the time of Blanket P.O. award, not at Quote opening. Bid Solicitation Section 4.4.2.1 *Business Registration* states in part:

In accordance with N.J.S.A. 52:32-44(b), a Vendor {Bidder} and its named Subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Blanket P.O. {Contract}. To facilitate the Quote {Proposal} evaluation and Blanket P.O. {Contract} award process, the Vendor {Bidder} should submit a copy of its valid BRC and those of any named Subcontractors with its Quote {Proposal}. See Section 2.1 of the SSTC.

[Emphasis added.]

Here, AIT, MSN, Khan and ATA all have valid Business Registration Certificates. If AIT, MSN, Khan and/or ATA hire any subcontractors after the award of the Blanket P.O.s, then AIT, MSN, Khan and/or ATA will be required to ensure that those subcontractors have valid Business Registration Certificates and submit proof of the same to the Division.

Third, with respect to VH Motto's allegation that the Vendors {Bidders} are required to have a public works certification, the New Jersey Legislature has declared that "the public policy of this State to establish a prevailing wage level for workmen engaged in public works in order to safeguard their efficiency and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to efficiency and well-being." N.J.S.A. 34:11-56.25. Public Work is defined as:

- (5) "Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:
 - (a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and
 - (b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

[N.J.S.A. 34:11-56.26(5).]

With respect to New Jersey Prevailing Wage Act and the Public Works Contractor Registration Act, the Department of Labor and Workforce Development's – Prevailing Wage Rate Determination page includes the following statement:

<p>Snow Plowing</p> <p>Snow plowing contracts are <u>not</u> subject to the New Jersey Prevailing Wage Act or the Public Works Contractor Registration Act.</p>

[See, <https://lwdwebpt.dol.state.nj.us/archivewages/247111915-mercer-9-4-18.pdf>, p. 2.]

Snow plowing and spreading services, as sought under the subject Bid Solicitation do not fall within the definition of a “public work”; therefore, a Public Work Certificate is not required to be submitted by any Vendor {Bidder} or the Vendor {Contractor} for this procurement.

Fourth, as to the insurance requirements, VH Motto states that AIT, MSN, Khan and ATA do not have current valid insurance certificates as noted on the Federal Motor Carrier Safety Administration Registration System (SAFER) website.⁵ With respect to the insurance requirements referenced on FMCSA website, those insurance requirements apply to “motor carriers of property operating motor vehicles in interstate, foreign, or intrastate commerce,” and “for-hire motor carriers of passengers operating motor vehicles in interstate or foreign commerce.” 49 CFR 387.1; 49 CFR 387.27. The subject Bid Solicitation does not involve the transport of property or persons in interstate, foreign or intrastate commerce. In addition, the subject Bid Solicitation did not require that the Vendors {Bidders} provide proof of insurance with the submitted Quote. Rather, Bid Solicitation Section 3.17.2 *Licenses, Registration and Insurance Requirements* states in part:

- During the term of the Blanket P.O. {Contract}, the Vendor {Contractor} shall:
- A. Maintain a current vehicle registration for each vehicle;
 - B. Ensure that all vehicles are legally insured, meeting, at a minimum, the requirements set forth in Section 4.2 of the SSTC's attached to Bid Solicitation {RFP}; and
 - C. Ensure that each of its drivers/operators possess and maintain a valid CDL.

Accordingly, the Vendor {Contractor}, not the Vendor {Bidder}, shall ensure that each vehicle to be used in performing work in accordance with the Blanket P.O. is properly registered and insured, and upon request, furnish the same to the State Contract Manager. Bid Solicitation Section 3.3.1(E) *Driver/Operator Requirements*.

Finally, VH Motto alleges that it has taken too long for the State to award these Blanket P.O.s which has prevented it from bidding on other work. VH Motto believes that the State should have made the Blanket P.O. awards within 60 days of the Quote opening. The requirement that contracts be awarded within 60 days is applicable to municipalities and counties whose public contracting is guided by the Local

⁵ Neither AIT, MSN, Khan nor ATA is listed either on the State of New Jersey's or the U.S. General Services Administration – System for Award Management's debarment list.

Public Contracts Law which states in part that “the contracting unit shall award the contract or reject all bids within such time as may be specified in the invitation to bid, but in no case more than 60 days.” N.J.S.A. 40A:11-24. With respect to State public contracting, there is no requirement that Blanket P.O.s be awarded within 60 days or any other specified time period. Rather, New Jersey statutory and regulatory laws governing the State’s public procurement require that an “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.” N.J.S.A. 52:34-12(a); N.J.A.C. 17:12-2.7(g). Here, the Bid Solicitation was advertised on January 30, 2018; 173 Quotes were received on March 16, 2018. From March to August, the Bureau evaluated the Quotes received, and conducted two additional pricing phases for this procurement. Given the number of Quotes received and the three phases of this procurement, the time spent by the Bureau in evaluating the Quotes received was reasonable.

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation. Accordingly, I sustain the August 24, 2018 NOI. This is my final agency decision with respect to the protest submitted by VH Motto.

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: P. Michaels
L. Spildener
M. Groninger