



State of New Jersey

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

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September 10, 2018

Via Electronic Mail [luz@melkass.com] and USPS Regular Mail

Luz Cortes
Leo's Trucking, LLC
104 W. Clinton Street
Dover, NJ 07801

Re: I/M/O Bid Solicitation #18DPP00222 Leo's Trucking, LLC
Protest of Notice of Proposal Rejection
T2924 Snow Plowing Services by Area - NJDOT

Dear Mr. Cortes:

This letter is in response to your correspondence dated September 4, 2018, on behalf of Leo's Trucking, LLC (Leo's) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Leo's protests the August 23, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #18DPP00222 – T2924 Snow Plowing Services by Area - NJDOT (Bid Solicitation).

By way of background, on February 13, 2018, the 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 services for areas of State interstates and highways under the jurisdiction of the 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 {Bidders} whose

¹ For consistency, this 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

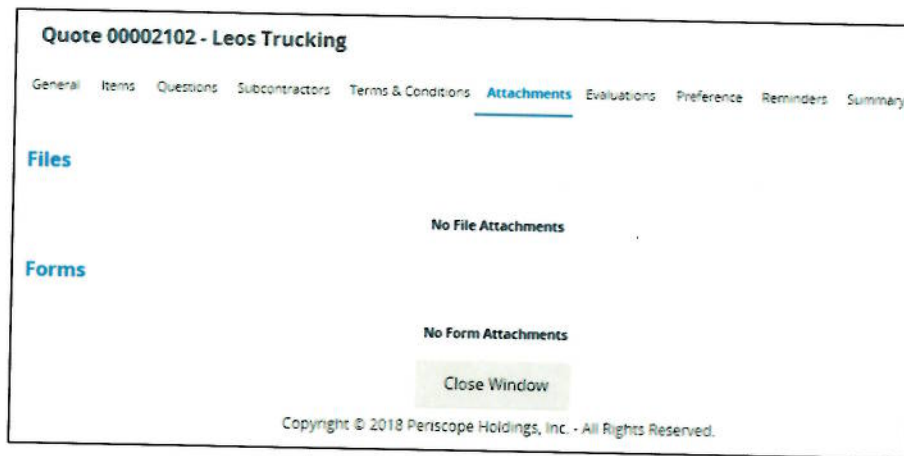
Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On March 16, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On April 12, 2018, the Division's Proposal Review Unit opened 21 Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Leo's for failing to submit the *Ownership Disclosure Form*, the *Disclosure of Investment Activities in Iran Form* or pricing information with its Quote.

In response to the Notice of Proposal Rejection, on May 5, 2018, Leo's sent an email the Division's Hearing Unit. With that email, Leo's attached a six page document comprised of the following items:

- Notice of Proposal Rejection (page 1)
- Screenshot of **NJSTART** Summary Tab (page 2)
- *Disclosure of Investment Activities in Iran Form* (page 3)
- Vendor Experience Form – Bid Solicitation Attachment 2 (page 4)
- Vendor Experience Form - Bid Solicitation Attachment 1 (page 5)
- Offer & Acceptance Letter – T2924 (page 6)

In reviewing Leo's protest, it was found that Leo's did not include any attachment with its Quote submission.



Accordingly, on May 23, 2018, the Division issued a final agency decision stating in part:

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, Leo's submitted a Quote without the *Ownership Disclosure Form* or the *Disclosure of Investment Activities in Iran Form* attached, and without all of the necessary pricing information included. If the requirements of N.J.S.A. 52:25-24.2, N.J.S.A. 52:32-58, 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.

[May 23, 2018, final agency decision.]

In response, on June 5, 2018, Leo's submitted a request for reconsideration stating:

I am writing in response to your letter dated May 23, 2018 with your proposed Rejection of Bid. I would kindly and humbly ask your office to reconsider your decision in regards to our bid.

As your office is aware, I have had this snow plowing contract for many years and our pricing has always being very competitive and my company has always performed an excellent and timely service. I again humbly ask that your office gives us the opportunity to continue servicing the state in the same manner we have been for years.

On June 11, 2018 the Division issued its decision with respect to Leo's request for reconsideration finding that the Division's Proposal Review Unit properly rejected Leo's Quote. In part that decision stated:

...the New Jersey Legislature has mandated that: (1) to be eligible to enter into a Contract with the State, a Vendor {Bidder} must supply its ownership information, prior to or with its Quote; and, (2) a Vendor {Bidder} must certify with its Quote submission that it is not identified as a person or entity engaging in investment activities in Iran. See, N.J.S.A. 52:25-24.2 and N.J.S.A. 52:32-58(a). As noted in the May 23, 2018 Final Agency Decision, Leo's failed to supply its ownership information and to certify that it is not engaged in investment activities in Iran 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 or certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. Therefore, the Division's Proposal Review Unit properly rejected Leo's Quote.

The remaining Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*. On August 20, 2018, the Bureau completed its 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. On August 23, 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.

On September 5, 2018 the Division's Hearing Unit received Leo's email protesting the August 23, 2018 NOI. In that email Leo's states:

I am in receipt of your letter dated August 23, 2018 in which you notify us of your intent to award the above mentioned contract to three (3) different contractors. I would like to protest such intent and reiterate that I have requested to be reconsidered for the award of such Solicitation since I have

been working these routes for the last few years and I am able and capable of performing such work in a timely and professional fashion. I've also requested an interview and/or meeting to further discuss this contract.

In consideration of Leo's September 5, 2018 email, I have reviewed the record of this procurement, including the Bid Solicitation, Leo's Quote and protests, the relevant statutes, regulations, and case law.

The Division's governing regulations require that in submitting a protest, the protestor shall set forth the specific grounds for challenging the intended award. Specifically,

1. A protest regarding the Director's decision to award a contract shall contain the following items:
 - i. Identification of the Division's solicitation number for the particular procurement;
 - ii. The specific grounds for challenging the intended contract award, including all arguments, materials and/or other documentation that may support the protester's position that the contract award should be overturned; and
 - iii. A statement as to whether the protestor requests an opportunity for an in-person presentation and the reason(s) for the request.

[N.J.A.C. 17:12-3.3(b)(1), emphasis added.]

Here, Leo's has not provided the specific ground(s) for challenging the award of Blanket P.O.s. Therefore, Leo's protest is administratively dismissed for not providing any specific grounds for challenging the intended contract award.

To the extent that Leo's again seeks to protest to Proposal Review Unit's Notice of Proposal Rejection, I note that if Leo's was dissatisfied with the Division's May 23, 2018 and the June 11, 2018 decisions, its recourse was to file an appeal with the Appellate Division. The Division's governing regulations state in part that "final agency determinations by the Director on matters of protest are appealable to the Appellate Division of the Superior Court of New Jersey." N.J.A.C. 17:12-3.1. Further, "appeals from final decisions or actions of state administrative agencies or officers...shall be taken within 45 days from the date of service of the decision or notice of the action taken." New Jersey Court Rule 2.4-1(b). Accordingly, Leo's should have filed its appeal with the Appellate Division by July 26, 2018.

With respect to Leo's request for an in-person interview or meeting, pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protestor is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." "In cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an information hearing." N.J.A.C. 17:12-3.3(d). Here, Leo's has not presented a challenge to the intended Blanket P.O. awards which would require an in-person presentation in order to determine the facts of this matter. Accordingly, find that an in-person presentation is not warranted.

Finding no reason to disturb the Bureau's recommendation, I sustain the Proposal Review Unit's Notice of Proposal Rejection and the August 23, 2018, Notice of Intent to Award. This is my final agency decision with respect to the protest submitted by Leo's.

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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger