



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROCUREMENT BUREAU
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December 12, 2019

Via Electronic Mail [markfs@solarlandscape.com] and USPS Regular Mail

Mark Shottinger, General Counsel
Solar Landscape LLC
522 Cookman Avenue, Unit 3
Asbury Park, NJ 07712

Re: I/M/O Bid Solicitation #: 18DPP00260
Protest of Notice of Intent to Award, Solar Landscape LLC
T3104 Solar Power Purchase Agreements (PPA)

Dear Mr. Steele:

This letter is in response to your email of October 9, 2019, on behalf of Solar Landscape LLC, ("Solar Landscape") to the Division of Purchase and Property's (the "Division") Hearing Unit, protesting the Notice of Intent to Award letter (the "NOI") issued on September 25, 2019 by the Division's Procurement Bureau (the "Bureau") for Bid Solicitation #18DPP00260 - T3104 Solar Power Purchase Agreements ("PPA") (the "Bid Solicitation").

By way of background, on March 1, 2019, the Bureau issued the Bid Solicitation¹ on behalf of the Division of Property Management and Construction ("DPMC") to solicit Quotes to establish a pool of prequalified Vendors {Contractors}, who will be tasked with the design, installation, maintenance and ultimate removal of Vendor {Contractor} owned Solar Photovoltaic ("PV") Systems installed at various government owned sites located throughout the State. (Bid Solicitation § 1.1 *Purpose and Intent*). It is the State's intent to award Master Blanket Purchase Orders ("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.

In accordance with Bid Solicitation Instructions, potential Vendor(s) {Bidder(s)} were permitted to submit questions to the Bureau, using the Division's **NJSTART** eProcurement system by 2:00 p.m. Eastern time on March 27, 2019. (Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*). The Bureau received twenty-one (21) questions. Through the posting of Bid Amendment #1 on April 26, 2019, the Bureau answered all twenty-one (21) questions received.

The revised Bid Solicitation was also posted on the State's **NJSTART** eProcurement system on April 26, 2019. Pertinent to this protest, Bid Amendment #1 replaced the T3104 Solar PPA Price Schedule 20190304 (the "Original Price Schedule") with the T3104 Revised Price Schedule 042619 (the "Revised

¹ The terms Bid Solicitation and Request for Proposal ("RFP") are interchangeable.

Price Schedule”). The Revised Price Schedule divided each Price Line into two columns – “All U.S. Materials” and “Some or All non-U.S. Materials.”

On May 23, 2019, the Division’s Proposal Review Unit opened fifteen (15) Quotes submitted through the State’s **NJSTART** eProcurement system by the submission deadline of 2:00 p.m. Eastern time. After conducting a preliminary review of the Quotes submitted, all fifteen (15) Quotes were sent to the Bureau for further review and evaluation. As noted in the Recommendation Report, the Bureau found the Quote submitted by Solar Landscape was non-responsive based on its submission of the Original Price Schedule instead of the Revised Price Schedule in accordance with Bid Amendment #1.

On October 9, 2019, Solar Landscape submitted a protest to the Division’s Hearing Unit challenging the Evaluation Committee’s determination that Solar Landscape was nonresponsive because Solar Landscape submitted the Original Price Schedule with its Quote rather than submitting the Revised Price Schedule.

In consideration of Solar Landscape’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, Solar Landscape’s Quote, and Solar Landscape’s Letter of Protest, and 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.

Part One: Solar Landscape’s Protest of the NOI Letter

Solar Landscape argues that “[t]he Evaluation Committee incorrectly deemed Solar Landscape’s Quote non-responsive.” (Solar Landscape Letter of Protest at 1). In support of its main protest point, Solar Landscape makes three supporting arguments that are discussed below.

First, Solar Landscape argues, “[n]either the Bid Amendment, the Revised Bid Solicitation, nor any related document indicated that Bidders were required to submit the Revised Price Schedule instead of the Original Price Schedule; rather, the Bid Amendment and Revised Bid Solicitation indicated that the Revised Price Schedule only had to be submitted by Bidders who – unlike Solar Landscape – varied their US and Non-US pricing.” *Ibid.* Solar further argues that “[its] use of the Original Price Schedule instead of the Revised Price Schedule was entirely compliant with Bid Solicitation Section 4.4.5.” *Id.* at 4.

On April 26, 2019, T3104 Bid Amendment #1 was publicly posted on **NJSTART**. Bid Amendment #1 contained the following instructions:

The following constitutes Bid Amendment #1 to the above referenced Bid Solicitation:

- This Bid Amendment includes answers to questions;
- This Bid Amendment extends the Quote submission due date to May 23, 2019; and
- Please note that for all additions, deletions, clarifications and modifications to the Bid Solicitation, please refer to the following documents:
 1. Revised Bid Solicitation entitled “T3104 Revised Bid Solicitation 042619”;

2. Revised Pricing Schedule entitled “T3104 Revised Price Schedule 042619”, and
3. T3104 Attachment 3 – Preliminary Sites.

It is the sole responsibility of the Vendor {Bidder} to be knowledgeable of all the additions, deletions, clarifications, and modifications to the Bid Solicitation and/or the New Jersey Standard Terms and Conditions relative to this Bid Solicitation as set forth in all Bid Amendments.

[(Emphasis added).]

The Revised Price Schedule, which broke each Price Line into two columns – (1) “All U.S. Materials” and (2) “Some or All non-U.S. Materials” – was posted on *NJSTART* on April 26, 2019. The Revised Price Schedule is shown below:

Revised Price Schedule Bid Solicitation 18DPP00260 T3104 Solar Power Purchase Agreements (PPA)					
1	Vendor (Bidder) Name:				
2	Instructions: Please Refer to Bid Solicitation 4.4.5 for Vendor (Bidder) Instructions				
3	All U.S. Materials		Some or All Non-U.S. Materials		
4	Solar PV Array Pool Northern Region - Ground Mount	Projected Price per kWh	Estimated Annual Generation	Projected Price per kWh	Estimated Annual Generation
5	Panel 1 - Small System Pricing for Systems < 50kW				
6	Panel 2 - Medium System Pricing for Systems > 50kW and < 2MW				
7	Panel 3 - Large System Pricing for Systems > 2MW and Greater				
8	Solar PV Array Pool Northern Region - Roof Mount	Projected Price per kWh	Estimated Annual Generation	Projected Price per kWh	Estimated Annual Generation
9	Panel 1 - Small System Pricing for Systems < 50kW				
10	Panel 2 - Medium System Pricing for Systems > 50kW and < 2MW				
11	Panel 3 - Large System Pricing for Systems > 2MW and Greater				
12	Solar PV Array Pool Northern Region - Car Port Mount	Projected Price per kWh	Estimated Annual Generation	Projected Price per kWh	Estimated Annual Generation
13	Panel 1 - Small System Pricing for Systems < 50kW				
14	Panel 2 - Medium System Pricing for Systems > 50kW and < 2MW				
15	Panel 3 - Large System Pricing for Systems > 2MW and Greater				
16	Solar PV Array Pool Southern Region - Ground Mount	Projected Price per kWh	Estimated Annual Generation	Projected Price per kWh	Estimated Annual Generation
17	Panel 1 - Small System Pricing for Systems < 50kW				
18	Panel 2 - Medium System Pricing for Systems > 50kW and < 2MW				
19	Panel 3 - Large System Pricing for Systems > 2MW and Greater				
20	Solar PV Array Pool Southern Region - Roof Mount	Projected Price per kWh	Estimated Annual Generation	Projected Price per kWh	Estimated Annual Generation
21	Panel 1 - Small System Pricing for Systems < 50kW				
22	Panel 2 - Medium System Pricing for Systems > 50kW and < 2MW				
23	Panel 3 - Large System Pricing for Systems > 2MW and Greater				
24	Solar PV Array Pool Southern Region - Car Port Mount	Projected Price per kWh	Estimated Annual Generation	Projected Price per kWh	Estimated Annual Generation
25	Panel 1 - Small System Pricing for Systems < 50kW				
26	Panel 2 - Medium System Pricing for Systems > 50kW and < 2MW				
27	Panel 3 - Large System Pricing for Systems > 2MW and Greater				
28					
29					

The Revised Price Schedule was posted by the Bureau in Bid Amendment #1 as shown below:

#	Bid Solicitation Section Reference	Question (Bolded) and Answer
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15	<p>Buy American Requirement</p> <p>Section 9.0, Subsection 3.7</p>	<p>In Section 3.7: Buy American, the RFP requests that all manufactured items be produced in the United States. Most high quality solar modules and inverters are manufactured outside of the United States, so only using American made equipment will significantly increase the proposed PPA prices. Is the State of NJ willing to accept proposals from bidders that make a reasonable effort to have some equipment, but not all, meet the Buy American requirement in order to offer the most economic proposal to the State of New Jersey?</p> <p>Please refer to T3104 Revised Bid Solicitation 042619 Sections 1.1 and 4.4.5.2, and T3104 Revised Price Schedule 042619.</p>
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The Revised Bid Solicitation and the Revised Price Schedule were both posted on **NJSTART**, as shown below:



Thus, Solar Landscape was given appropriate notice that a change had been made to the Bid Solicitation, and further, that a Revised Price Schedule had been posted. Nevertheless, Solar Landscape submitted the following version of the Original Price Schedule with its Quote:

Price Schedule Bid Solicitation 18DPP00260 T3104 Solar Power Purchase Agreements (PPA)		
Vendor (Bidder) Name:	SOLAR LANDSCAPE LLC	
Instructions:	Please Refer to Bid Solicitation 4.4.5 for Vendor (Bidder) Instructions	
Solar PV Array Pool Northern Region - Ground Mount	Projected Price per kWh	Estimated Annual Escalation Rate
Pool 1 - Small System Pricing for Systems < 50kW	\$0.1000	1.500%
Pool 2 - Medium System Pricing for Systems > 50 kW and < 2MW	\$0.0500	1.500%

Pool 3 - Large Systems Pricing for Systems 2 MW and Greater	\$0.0350	1.500%
Solar PV Array Pool Northern Region - Roof Mount	Projected Price per kWh	Estimated Annual Escalation Rate
Pool 1 - Small System Pricing for Systems < 50kW	\$0.0800	1.500%
Pool 2 - Medium System Pricing for Systems > 50 kW and < 2MW	\$0.0500	1.500%
Pool 3 - Large Systems Pricing for Systems 2 MW and Greater	\$0.0350	1.500%
Solar PV Array Pool Northern Region - Car Port Mount	Projected Price per kWh	Estimated Annual Escalation Rate
Pool 1 - Small System Pricing for Systems < 50kW	\$0.2500	1.500%
Pool 2 - Medium System Pricing for Systems > 50 kW and < 2MW	\$0.0800	1.500%
Pool 3 - Large Systems Pricing for Systems 2 MW and Greater	\$0.0600	1.500%
Solar PV Array Pool Southern Region - Ground Mount	Projected Price per kWh	Estimated Annual Escalation Rate
Pool 1 - Small System Pricing for Systems < 50kW	\$0.1000	1.500%
Pool 2 - Medium System Pricing for Systems > 50 kW and < 2MW	\$0.0500	1.500%
Pool 3 - Large Systems Pricing for Systems 2 MW and Greater	\$0.0350	1.500%
Solar PV Array Pool Southern Region - Roof Mount	Projected Price per kWh	Estimated Annual Escalation Rate
Pool 1 - Small System Pricing for Systems < 50kW	\$0.0800	1.500%
Pool 2 - Medium System Pricing for Systems > 50 kW and < 2MW	\$0.0500	1.500%
Pool 3 - Large Systems Pricing for Systems 2 MW and Greater	\$0.0350	1.500%
Solar PV Array Pool Southern Region - Car Port Mount	Projected Price per kWh	Estimated Annual Escalation Rate
Pool 1 - Small System Pricing for Systems < 50kW	\$0.2500	1.500%
Pool 2 - Medium System Pricing for Systems > 50 kW and < 2MW	\$0.0800	1.500%
Pool 3 - Large Systems Pricing for Systems 2 MW and Greater	\$0.0600	1.500%

The Division has broad discretion to select among qualified, responsive bidders in public contracting matters. *Barrick v. State*, 218 N.J. 247, 258 (2014); *In re Request for Proposals ##17DPP00144*, 454 N.J. Super. 527, 559 (App. Div. 2018). N.J.S.A. 52:34-12(a)(g) states that the “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.” (Emphasis added). “Any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do.” N.J.S.A. 52:34-12(a).

Thus, our State's "public bidding statutory scheme vests discretion in the Director of the Division to select which of the responsive bids is 'most advantageous to the State.'" Barrick v. State, 218 N.J. 247, 258 (2014) (quoting N.J.S.A. 52:34-12(a)). Nevertheless, the discretion afforded to the Director, "while broad, is not limitless. 'In line with the policy goal of thwarting favoritism, improvidence, extravagance, and corruption, the Division may not award a contract to a bidder whose proposal deviates materially from the RFP's requirements.'" 17DPP00144, 454 N.J. Super. at 559 (quoting Barrick, 218 N.J. at 258-59).

For that reason, the Division's governing regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State's bidding process. Notably, "to be eligible for consideration for award of contract, the bidder's proposal shall conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance: . . . [i]nclude all RFP-required pricing information . . ." N.J.A.C. 17:12-2.2(a)(6). If the requirements of N.J.A.C. 17:12-2.2(a) are not met, a Quote "shall be subject to automatic rejection." N.J.A.C. 17:12-2.2(b).

Since price is a material term, Solar Landscape's non-compliant bid was "subject to automatic rejection." Solar Landscape's argument that its use of the Original Price Schedule instead of the Revised Price Schedule was entirely compliant with Bid Solicitation Section 4.4.5 is much too narrow an interpretation of its responsibilities under this Bid Solicitation. The **NJSTART** system does not prevent a Bidder from submitting a Quote without all of the required forms and documents attached as mandated by the specifications, nor does it ensure the Bidder has attached the proper version of the required forms and documents. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Bidder. (Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*). In accordance with Bid Solicitation Section 1.4.2, and the Instructions in Bid Amendment #1, it was Solar Landscape's responsibility to properly fill out and submit the Revised Price Schedule, not the Original Price Schedule. Thus, Solar Landscape's bid was deemed non-responsive in accordance with the "well-established" principle "that a publicly-advertised contract should not be awarded to a bidder who has failed to meet material bid requirements." Waste Mgmt. of N.J., Inc. v. Morris Cty. Mun. Utils. Auth., 433 N.J. Super. 445, 452 (App. Div. 2013).

Second, Solar Landscape argues that using the Original Price Schedule instead of the revised Price Schedule created no substantive difference in Solar Landscape's Quote. (Solar Landscape Letter of Protest at 4). Solar Landscape writes that "the information sought by the Revised Price Schedule (i.e., pricing for US and non-US materials) was already included in Solar Landscape's Quote (i.e., in the Original Price Schedule), inasmuch as Solar Landscape's pricing is identical for US and non-US materials." Id. at 5. However, the Director must determine whether an RFP requirement is "material and, as a consequence, non-waivable," "at the time that the bids are opened." Barrick, 218 N.J. at 260. "The timing requirement assures the bidders of an even playing field and the public of a fair and impartial public contract award process." Ibid. (citing In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 591 (App. Div. 1995)). The Bureau had no indication, based on Solar Landscape's submitted Quote, that Solar Landscape's submission of the Original Price Schedule was meant to include both U.S. materials and non-US materials, and that Solar Landscape's pricing was identical for both. Therefore, the Division properly deemed Solar Landscape's bid non-responsive at the time it was opened.

Notably, while Solar Landscape's first and second arguments assert its Quote was conforming because its pricing is the same for US and non-US materials, in its request for a stay, which is discussed in detail below, Solar Landscape argues "the public interest weighs in favor of granting the stay because . . . Solar Landscape is offering identical pricing for US and non-US materials (which will entail a discount to the State and public if US materials are used)." (Solar Landscape Letter of Protest at 7) (emphasis added). A "discount" is a "reduction" from the "regular" price. Merriam-Webster, <https://www.merriam-webster.com/dictionary/discount> (last visited Nov. 20, 2019). At best, Solar Landscape's use of the word

“discount” undercuts its argument the Division should have known Solar Landscape would be willing to provide US and non-US materials at the same price by acknowledging the general cost difference between American and non-American made solar modules and inverters. At worst, Solar Landscape’s use of the word “discount” indicates its arguments are a post hoc fabrication because it indicates Solar Landscape’s “regular” price for US material is more than its “regular” price for non-US materials.

Third, Solar Landscape argues that making an award to Solar Landscape would serve the public interest, as Solar Landscape is one of the most experienced solar contractors in New Jersey, and including more Bidders on the Blanket P.O. will cause more competition in future bidding. (Solar Landscape Letter of Protest at 6). According to the Recommendation Report for this Bid Solicitation, the Bureau recommends that the Division make Blanket P.O. awards to a pool of twelve (12) pre-qualified, responsive Bidders who will be eligible to bid on a series of solar projects during the Blanket P.O. term. Such a large pool of awarded Vendors affords the State great competition in future bidding. Thus, even if I were empowered to waive Solar Landscape’s non-compliance with a material term, see, e.g., On-Line Games Prod., 279 N.J. Super. at 595 (noting “a non-conforming bid is no bid at all”), I do not find that it would serve the public policy to tilt the playing field in Solar Landscape’s direction under the circumstances.

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 a Quote. However, in light of the findings set forth above, I have no choice but to uphold the Division’s determination that Solar Landscape’s submitted Quote was non-responsive. This is my final agency decision on this matter.

Part Two: Solar Landscape’s Request for a Stay

Additionally, as part of its Letter of Protest, Solar Landscape has requested a stay of the award of the Blanket P.O. pending the outcome of Solar Landscape’s appeal of the Division’s final agency decision above. (Solar Landscape Letter of Protest at 6).

In consideration of Solar Landscape’s request for a stay, I reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, Solar Landscape’s Letter of Protest, the Division’s Final Agency Decision (above), and Solar Landscape’s request for a stay, and the relevant statutes, regulations, and case law. This review has provided me with the information necessary to render an informed decision with respect to Solar Landscape’s request for a stay.

Because a request for a stay is an extraordinary remedy, the party who seeks a stay “must satisfy a ‘particularly heavy’ burden.” Gauman v. Velez, 421 N.J. Super. 239, 247 (App. Div. 2011) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006)). In exercising discretion to grant a request for stay, an agency must be guided by the four fundamental principles set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). First, a stay should be granted only “when necessary to prevent irreparable harm.” Id. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Second, “temporary relief should be withheld when the legal right underlying plaintiff’s claim is unsettled.” Id. at 133 (citing Citizens Coach, 29 N.J. Eq. at 304-05). Third, the “plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits.” Ibid. (quoting Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)). The fourth and final consideration “is the relative hardship to the parties in granting or denying the relief.” Id. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)). The movant must clearly and convincingly demonstrate the right to a stay. Waste Mgmt. of N.J., Inc. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

As discussed in detail below, in reviewing each of the Crowe factors with respect to this request, Solar Landscape has not demonstrated that it is entitled to a stay.

1. Solar Landscape will not suffer irreparable harm.

Solar Landscape will not suffer irreparable harm if the stay of the Blanket P.O. award is denied. When considering a stay request, “harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Crowe, 90 N.J. at 132-33. While monetary damages are never available for the failure to award a public contract, not every request for stay that concerns a public contract award is granted. See, e.g., In re Challenge of Contract Award Solicitation No. 13-X-22694 Lottery Growth Mgmt. Servs., 436 N.J. Super. 350, 358 (App. Div. 2014) (denying stay of award of contract). One of the pillars underlying the public bidding laws is that no bidder is entitled to award of a public contract. Comm’l Cleaning Corp. v. Sullivan, 47 N.J. 539, 546 (1966).

Solar Landscape argues that, “if a stay is not granted and Solar Landscape ultimately succeeds on the merits, the harm to Solar Landscape in the interim—i.e., exclusion from projects subject to the [Blanket P.O.]—will be irreparable.” (Solar Landscape Letter of Protest at 7). While Solar Landscape could suffer harm from not being awarded a Blanket P.O. pursuant to this Bid Solicitation, that is a risk a company routinely accepts when it participates in a public bidding process. Thus, Solar Landscape has not demonstrated by clear and convincing evidence that it will suffer irreparable harm if the Blanket P.O. award is not stayed.

2. Solar Landscape has the legal right to request a stay of the Contract award.

The Division acknowledges that it is well settled that a bidder claiming to be entitled to an award of a contract has standing to challenge the award of a contract to another. M.A. Stephen Constr. Co. v. Borough of Rumson, 125 N.J. Super. 67, 74 (App. Div. 1973).

3. Solar Landscape has not demonstrated a reasonable probability of ultimate success on the merits.

Solar Landscape has not established by clear and convincing evidence that it has a reasonable probability of success on the merits. Solar Landscape, relying entirely on the arguments set forth in the protest portion of its Letter of Protest states, “Solar Landscape complied with the requirements of the Bid Solicitation and any purported deviation was immaterial.” (Solar Landscape Letter of Protest at 7). For the reasons already articulated in Part One, above, the Evaluation Committee properly determined that Solar Landscape’s Quote was non-responsive. Further, Solar Landscape’s Request for a Stay makes no new arguments alleging that any aspect of the Quote Evaluation and award process was fraudulent, arbitrary, or capricious. Accordingly, Solar Landscape has not established by clear and convincing evidence that it has a reasonable probability of success on the merits.

4. The balance of the relative hardship weighs in favor of denying the request for a stay.

Lastly, Solar Landscape has not established that the balance of the hardship weighs in its favor, that it will suffer irreparable harm, or that the subject matter of the suit will be destroyed if the stay is not granted. Solar Landscape argues that, “the aforementioned irreparable harm to Solar Landscape will outweigh any potential harm to the Division and/or to other Bidders, who would merely be delayed—not excluded (in contrast to Solar Landscape)—from undertaking the projects subject to the Master Blanket Purchase Order. (Solar Landscape Letter of Protest at 7). However, as with Point 1 above, the fact that Solar Landscape has submitted a Quote in response to this Bid Solicitation does not entitle it to a contract. Comm’l Cleaning Corp, 47 N.J. at 546.

Moreover, in the Bid Solicitation, the Bureau articulated several noteworthy goals the PPA is intended to accomplish for the State, including: (1) to “[o]ffset as much of the State’s electric load as possible;” (2) to [i]ncrease the resiliency of State facilities;” (3) to use the “electric utility savings to finance roof replacements, additional Energy Conservation Measures or other capital improvements;” (4) to [I]essen the State’s use of non-renewable energy sources[] and [d]ecrease the State’s carbon footprint; and (5) to [s]upport the goals of the New Jersey Energy Master Plan.” (Bid Solicitation Section 1.2 *Background*). When “the public interest” is “implicated,” an agency confronted with the request for a stay may “go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” Morris Cty. Mun. Utils., 433 N.J. Super. at 454 (quoting Union Cty. Utils., 399 N.J. Super. at 520-21). Given the important public interests the PPA is intended to further and Solar Landscape’s failure to establish a probability of success on the merits, Solar Landscape has not demonstrate the balance of hardships weighs in its favor. Therefore, the balance of the hardship weighs in favor of denying Solar Landscape’s request for a stay.

For those reasons, I deny Solar Landscape’s request for a stay.

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

c: E. Merritt
S. Fletcher
L. Spildener
D. Rodriguez
A. Nelson