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July 31, 2019

Via Electronic Mail [nrusso@malouf.com] and USPS Regular Mail

Richard Malouf, President Norm Russo, Parts Director Malouf Ford Lincoln 2210 US Highway 1 North Brunswick, New Jersey 08902

Re:

I/M/O Bid Solicitation #: 19DPP00280 Malouf Ford Lincoln

Protest of Notice of Intent to Award

Bid Solicitation Title: T2760 OEM Automotive Parts and Accessories for Light Duty Vehicles

Class 4 or Lower.

Dear Mr. Malouf and Mr. Russo:

This letter is in response to your letter dated May 14, 2019 on behalf of Malouf Ford Lincoln (Malouf Ford) to the Division of Purchase and Property's (Division) Hearing Unit, protesting the Notice of Intent Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #19DPP00280: T2760 OEM Automotive Parts and Accessories for Light Duty Vehicles Class 4 or Lower (Bid Solicitation). Malouf Ford protests the NOI questioning why it was "awarded Ford Quaternary North and no position in Central when all of our pricing and delivery days are better." Malouf Ford's May 14, 2019 protest.

By way of background, on October 18, 2018, the Bureau issued a Bid Solicitation on behalf of the State of New Jersey, Department of the Treasury, Bureau of Transportation Services to solicit Quotes from qualified Vendors {Bidders} for OEM Automotive Parts and Accessories for Light Duty Vehicles, for the following manufacturer's brands: General Motors, Chevrolet, Ford, Dodge, Chrysler, Toyota, Nissan, Isuzu and Honda. Bid Solicitation § 1.1 *Purpose and Intent*. The State intends to award four Master Blanket Purchase Orders (Blanket P.O.s) for each brand/price line for each region of the State. <u>Ibid</u>. The intent of this Bid Solicitation was to award 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. <u>Ibid</u>.

Importantly, the Bid Solicitation advised all potential Vendors {Bidders} that significant changes had been made to the current specifications from the prior procurement. In part:

The current Bid Solicitation requires Vendors {Bidders} to provide a percentage discount or markup based on the brand manufacturer's latest retail price list. The State will not accept any other price list types, such as wholesale, jobber, invoice, etc. A Vendor's {Bidder's} offering of a

manufacturers price list other than the manufacturers latest retail price list on any given price line item will render its Quote non-responsive for that price line item.

[Bid Solicitation Section 1.2.2 Significant Bid Solicitation Changes.]

Further, Bid Solicitation Section 4.4.5.2 State Supplied Price Sheet Instructions which provided specific detailed instructions to the potential Vendors {Bidders} on how to complete the State Supplied Price Sheet, provided in part:

• Step 3 – The Vendor {Bidder} shall insert a firm, fixed % discount or markup off of the manufacturer's latest retail price list, by entering the percentage discount or markup bid in the "% Discount/Markup" column on each price line for which a Quote is submitted on the State-Supplied Price Sheet. A Vendor's {Bidder's} entry in the "% Discount/Markup" column shall be considered a percentage (%). For example, entry of "50" shall be considered "50%" and that of "0.50" shall be considered "0.50%".

Vendors {Bidders} must provide a percentage discount or markup based on the brand manufacturer's latest retail price list. The State will not accept any other price list types, such as wholesale, jobber, invoice, etc. A Vendor's {Bidder's} offering of a manufacturers price list other than the manufacturers latest retail price list on any given price line item will render its Quote non-responsive for that price line item.

The State will accept up to two (2) decimal places to the right of the decimal point. Percentages may be offered on the State-Supplied Price Sheet up to two (2) decimal places to the right of the decimal point. Price Sheet formatting will automatically round percentages containing more than two (2) decimal places to the right of the decimal point so as not to exceed this limit.

The Vendor {Bidder} is permitted to bid a % mark-up (by entering "+5%" or "5% mark-up", for example) on the manufacturer's latest retail price list in the "% Discount/Markup" column on each price line.

If a Vendor {Bidder} leaves the "% Discount/Markup" column blank on any price line, it shall be considered that the Vendor {Bidder} provided no Quote for that price line item.

Multiple or series or range of discounts or fixed price (firm dollar amount) on any price line will not be acceptable, and will result in rejection of the Quote for that price line only.

The State will consider a Vendor's {Bidder's} volume discounts for ordering; however, such discounts will not be factored in to the evaluation of the Quote. Volume discounts should be offered on the Vendor's {Bidders} letterhead and must be provided with the Quote.

[Emphasis added.]

Moreover, the State Supplied Price Sheet, altered Vendors {Bidders} that the percentage discount or markup would be applied to the brand manufacturer's latest retail price list.

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On November 30, 2018, the Bureau posted Bid Amendment #1, providing answers to questions received from potential Vendors {Bidders} along with a revised Bid Solicitation. In the revised Bid Solicitation, the Bureau answered two (2) questions (Questions #1 and #3) from potential Vendors {Bidders} related to the State-Supplied Price Sheet, specifically reciting Bid Solicitation Section 4.4.5.2. In its answers, the Bureau reminded the Vendors {Bidders} that they were to "provide a percentage discount or markup based on the brand manufacturer's latest retail price list."

	Bid Solicitation Section Reference	Question (Bolded) and Answer
1	Section 1.2.1 Significant Bid Solicitation Changes Paragraph 3 Section 4.4.5.2 State- Supplied Price Sheet Instructions Paragraph 6	Where would a vendor list exceptions on discount percentage for items that pertain to certain automotive parts in this bid? The State will not accept any exceptions to the discount percentages. Bid Solicitation Section 4.4.5.2 states: "Multiple or series or range of discounts or fixed price (firm dollar amount) on any price line will not be acceptable, and will result in rejection of the Quote for that price line only." Bid Solicitation Section 4.4.5.2 further states: "The Vendor (Bidder) shall insert a firm, fixed % discount or markup off of the manufacturer's latest retail price list, by entering the percentage discount or markup bid in the "% Discount/Markup" column on each price line for which a Quote is submitted on the State-Supplied Price Sheet. A Vendor's {Bidder's} entry in the "% Discount/Markup" column shall be considered a percentage (%). For example, entry of "50" shall be considered "50%" and that of "0.50" shall be considered "0.50%". Vendors {Bidders} must provide a percentage discount or markup based on the brand manufacturer's latest retail price list. The State will not accept any other price list types, such as wholesale, jobber, invoice, etc. A Vendor's (Bidder's) offering of a manufacturers price list other than the manufacturers latest retail price list on any given price line item will render its Quote non-responsive for that price line item."
3	Section 4.4.5. State- Supplied Price Sheet Section 4.4.5.2 State- Supplied Price Sheet Instructions	The state supplied price sheet that is the reference, is this in regards to our pricing discounts and markups or the manufacturers price sheet? The Vendor {Bidder} must submit its percentage discount or markup off of the manufacturer's latest retail price list utilizing the State-Supplied Price Sheet accompanying the Bid Solicitation and located on the "Attachments" Tab in NJSTART. Please refer to Section 4.4.5.2 State-Supplied Price Sheet Instructions for further details on how to fill out the State-Supplied Price Sheet.

On December 19, 2018, the Division's Proposal Review Unit opened eighteen Quotes submitted through the State's *NJSTART* eProcurement system and received by the submission deadline of 2:00 p.m. eastern time.

After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation § 6.6 Evaluation Criteria.

The following criteria will be used to evaluate Quotes received in response to this Bid Solicitation. The criteria are not necessarily listed in order of importance:

- a. Price highest percentage discount or lowest percentage markup bid based on the brand manufacturer's latest retail price list for the brand bid
- b. Experience of the Vendor {Bidder}
- c. The Vendor's {Bidder's} documented past performance under similar Blanket P.O.s, including, but not limited to, the Division's Vendor {Contractor} performance database.

After the completing the review and evaluation of all Quotes received, on May 3, 2019, the Bureau prepared a Recommendation Report which recommended that Blanket P.O.s be awarded to the following Vendors {Bidders}: Beyer Bros. Corp., Beyer Ford LLC, Beyer of Morristown LLC, Bob Novick Chevrolet, Chapman Ford Sales, Inc., Ciocca Chevrolet of Princeton, DFFLM LC t/a Ditschman Flemington Ford FBO NJ Parts of Flemington, Fred Beans Parts Inc., Freehold Ford Inc., Gentilini Ford,

Malouf Ford Lincoln, and McGuire Chevrolet Cadillac. On May 7, 2019, the Bureau issued to the NOI advising all Vendors {Bidders} of intended Blanket P.O. awards.

On May 14, 2019, Malouf Ford sent the Division a letter protesting the intended Blanket P.O. award. Specifically, Malouf Ford asserts:

We are writing this letter in protest of the results sent to us for the bid solicitation of 19DPP00280 OEM Automotive Parts and Accessories for Light Duty Vehicles.

As the enclosed quoted invoices and excel spreadsheet show, our pricing to the state and delivery days are better than other vendors who were given a higher position in certain territories than we were. As you probably noticed, we were the only vendor who priced the bid at a Cost plus price instead of a List down. The reason we priced it in this manner was to give better pricing to the state as the quotes will show. Ford has a variety of list to cost markups mostly ranging from 40 to 55%. Many of the parts which are purchased by state repair garages are in the 55% list to cost range which we are clearly cheaper than every other bidder. On those items which have a 40% list to cost markdown, we are cheaper than Ditschman Flemington Ford, Beyer Ford and Gentilini Ford. Ditschman and Beyer were both given better positions than we were. Ditschman was awarded Ford secondary North and Ford Quaternary central. We were awarded Ford Quaternary North and no position in Central when all of our and delivery days are better. Ditschman's delivery days on stocked parts is 3 days while ours is 1. Ditschman's delivery days on non stocked parts is 10 while ours is 2. We are clearly better.

Beyer was awarded Ford Tertiary North and we were awarded Ford Quaternary North while our price on all parts types was cheaper than Beyers. Please review the quotes.

As previously stated, on those parts which have a 55% list to cost markdown, we are cheaper than all other vendors pricing.

This is how our Cost plus pricing relates to List down pricing. On items with a 55% list to cost markdown, our cost plus pricing equates to List -44.8% which is better than all vendors. On items with a 40% list to cost markdown, our cost plus pricing equates to List -39.73% which is lower than Ditschman Flemington and Beyer Ford. We have provided you with our current price lists which will bear out our claim. We have been a NJ State parts vendor for decades with an impeccable record with no blemishes and we would like to continue as one in more areas than just Quaternary North."

In consideration of Malouf Ford's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the protest, the relevant statutes, regulations, and case law. This review 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 submitted by Malouf Ford. I set forth herein my final agency decision.

A review of Malouf Ford's submitted Quote reveals for Price Line 3 (Ford) it offered a ".+0.49% Markup" in the % Discount/Markup column.

STATE	-SUPPLIED PRIC	E SHEET - OEM AUTOM OR LOW		RTS AND ACCI		LIGHT DUTY VE	HICLES (CLASS 4
			T-2760 (1	9DPP00280)			
4	I in a sale u		Region Served			Delivery	
Line Item	Description (Brands)	% Discount/Markup	<u>North</u>	<u>Central</u>	<u>South</u>	Stocked Delivery	Non-Stocked Delivery
1	General Motors						
2	Chevrolet						
3	Ford	.+ " 0.49 % " MARKUP	X	X		1	2

Along with Malouf Ford, the following Vendors {Bidders} bid on Price line 3: Chapman Ford Sales, Inc. (offering 39.99% discount), Gentilini Ford (offering 39% discount), Freehold Ford (offering 44.2% discount), DFFLM LC t/a Ditschman Flemington Ford FBO NJ Parts of Flemington (offering 39.6% discount), Beyer Ford LLC (offering 38.4% discount), Fred Beans Parts Inc. (offering 40.2% discount), Stevens Jersey City Ford (the quote was nonresponsive pursuant to Bid Solicitation Section 4.4.5.2, Step 3, offering range of discounts) and Winzer Corporation (withdrew Quote per Bid Solicitation Section 1.2.7.2).

On January 14, 2019, the Bureau sent a letter to Malouf Ford requesting that it submit a Best and Final Offer (BAFO) pursuant to Bid Solicitation Section 6.8 Negotiation and Best and Final Offer (BAFO) which states in pertinent part "[a]ny BAFO that does not result in more advantageous pricing to the State will not be considered, and the State will evaluate the Vendor's {Bidder's} most advantageous previously submitted pricing. If required, after review of the BAFO(s), clarification may be sought from the Vendor(s) {Bidder(s)}." In response to the BAFO request, Malouf Ford indicated "+ 0.45"%" for Price Line 3.

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Ver	ndor (Bidder) : L/	ALOUF FORD NEOLN INC	Cash Disc (i.e. 2% 1	count for Excedit O Days, Net 30 C n 4.4.5.6)			
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	E-SUPPLIED BAFO		LOWER, 15,0	E PARTS AND AC 000 LB. GVWR O: (19DPP00280) Region Serve	R LESS)	DEIM	·
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Line	Item Description	OR	T-2760	000 LB. GVWR O: (19DPP00280) Region Serve	R LESS)	Delive	Non-Stocke
Line Item	Item Description (Brands)	OR	T-2760	000 LB. GVWR O: (19DPP00280) Region Serve	R LESS)	Delive	Non-Stocke
Line Item	item Description (Brands) General Motors	OR	15,6 T-2760 North	000 LB. GVWR O: (19DPP00280) Region Serve	R LESS)	Delive	Non-Stocke

On March 15, 2019, the Bureau sent a clarification letter to Malouf Chevrolet Cadillac requesting clarification with respect to its submitted BAFO¹.

On March 18, 2019, Malouf Ford, responded to the Malouf Chevrolet Cadillac's clarification letter stating in part:

I am sending these BAFO response pages for both of our dealerships, Malouf Ford Lincoln and Malouf Chevrolet Cadillac in response to your question of our original pricing. As per the original price sheet "also attached", we saw the terms % Discount / Markup and priced the bid the same way we did the original bid. In you (sic) letter sent to us on January 14, 2019 you said our response must include "commitments stated in your original quote", which we took to mean the same pricing we gave you in the original bid. Nowhere in the letter was it specific that the bid was now being changed to only list less percentage from the manufacturer's list price and not either cost plus or list down as per the original bid. I do see that in section # 2 of the BAFO sheet it states latest retail list price but to be honest, we missed that and priced it as we had done before because the BAFO sheet said % Discount / Markup as the original price sheet stated and nowhere was it specific that the bid was changing from its original formula to a new one.

[Emphasis added.]

In its March 18, 2019 letter, Malouf Ford admits that it missed the fact that the percentage discount or markup offered on the Price Sheet would be applied to the manufacturers' latest retail price list. Malouf Ford attached updated Price Sheets with its response to the clarification letter, revising its previous markup percentages to a discount percentage of 39.8%.

RTH E	FORD LINCOLN PY 1210 US HWY 1 BRUNSWICK NJ 0 8009596256 MALOUFPARTS.C	8902 Department	State of New . of Treasury, Pr est State St., F Trenton, NJ C	rocurament Bur P.O. Box 230	eau		
	vendor: Maco	UF FORD LINEOR	ash Discount F % 10 Days, Ne .4.5.6)	or Expedited Part 30 Days). (Ref	er to Section		
STATE-S	SUPPLIED MAFO PRICE S	HEET - OEM AUTOMOTIV	E PARTS AND 000 LB. GVWR		OR LIGHT DU	TY VEHICLES (CI	LASS 4 OR LOWE
STATE-S	SUPPLIED <u>BAFO</u> PRICE S	15,	000 LB. GVWR T-2760 (190PF	COR LESS)	OR LIGHT DU		
STATE-S	SUPPLIED SAFO PRICE SI	15,	000 LB. GVWR T-2760 (190PF	R OR LESS)	OR LIGHT DU		silve-y
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On March 21, 2019, Malouf Ford sent a second follow up response to the Bureau. In that letter, Malouf Ford stated:

¹ While the March 15, 2019 clarification letter was addressed to Malouf Chevrolet Cadillac and was in respect to Malouf Chevrolet Cadillac's submitted BAFO only, the March 18, 2019 response included references to both Malouf Chevrolet Cadillac and Malouf Ford Lincoln BAFO responses.

First of all I would like to apologize for my ignorance in this pricing matter. I was on vacation the week of March 11th - 15th which is when you contacted our Chevrolet Parts manager Keith Diperi and asked him if pricing on our BAFO sheets of +"0.45" (Ford) and + "0.75" (GM and Chevrolet) were accurate and instead of answering ves which is what he should have done, he waited until I returned on the 18th and proceeded to tell me that based on #2 note on the BAFO sheet that the bid pricing was being changed to a discount off the manufacturer's "list" price without the option of a cost plus markup as in the original bid. I took his word on this since I had not been contacted by you directly and that is why I sent you the new BAFO sheets the other day. I see where his confusion was, when he read note # 2 he took the words "manufacturer latest retail price list" to mean the manufacturer's "retail list price" instead and caused all the confusion. I see now in reading note # 2 that you meant a cost + markup or List minus discount off of the pricing in the "manufacturer's retail price list". Ford (sic) this reason, I would like to defer back to our original BAFO sheets of + "0.45" (Ford) and + "0.75" for GM and Chevrolet. This pricing structure is more advantageous to the State which is why we priced it that way originally. Once again I apologize for the confusion, and had I not been on vacation and had the opportunity I would have responded correctly last week.

[Emphasis added.]

Based on Malouf Ford's BAFO response and language in the March 21, 2019 letter and the requirements outlined in the Bid Solicitation and Price Sheet, the Bureau interpreted Malouf Ford's statements to mean that the percentage markup offered in the BAFO response, specifically a 0.45 percent markup is to be applied to the latest retail price list for Ford.

Other Vendor {Bidders} who submitted Quotes for Price Line 3 offered discounts, not markups, to be applied to the manufacturer's latest retail price list. For example, Beyer Ford LLC, a proposed awardee for Price Line 3 (tertiary-north), offered 38.4% discount. Chapman Ford Sales, Inc., another proposed awardee for Price Line 3 (secondary south and tertiary central), offered 39.99% discount. DFFLM LC t/a Ditschman Flemington Ford FBO NJ Parts of Flemington, another proposed awardee for Price Line 3 (tertiary south, secondary north and quaternary central), offered 39.6% discount; Fred Beans Parts Inc., primary proposed awardee for Price Line 3 in north, south, and secondary in central, offered 40.2% discount. Finally, Freehold Ford Inc., primary proposed awardee in central offered 44.2% discount and Gentilini Ford (quaternary south) offered 39% discount. These discounts are based on the brand manufacturer's latest retail price list, as required by Bid Solicitation Section 4.4.5.2 State Supplied Price Sheet Instructions. Given the percentage discounts provided by other Vendor {Bidders}, the Bureau concluded that 0.45% markup offered by Malouf Ford was less cost effective for the State as compared to Quote pricing the proposed by the other Vendors {Bidders} listed as intended awardees.

In its May 14, 2019 protest letter, Malouf Ford asserts that its "Cost plus price instead of a List down" would provide the State with better pricing because "Ford has variety of list cost markups mostly ranging from 40% to 55%. Many of the parts which are purchased by state repair garages are in the 55% list to cost range which we are clearly cheaper than every other bidder." Based upon this statement in the protest, it now appears that Malouf Ford may have intended that its Quote pricing of 0.45% markup was to applied to "cost" list price rather than the manufacturers' latest retail price list; however, nowhere in Malouf Ford's Quote, BAFO response or March 21, 2019 letter did it indicate that the BAFO Quote price of .45% markup was to be applies to a "cost" list price rather than the manufacturers' latest retail price list. Had Malouf Ford intended that its BAFO Quote price of .45% markup be applied to a "cost" list price rather

than the manufacturers' latest retail price list, it should have stated the same within its Quote. However, had Malouf Ford stated that its Quote price of .45% markup be applied to a "cost" list price, its Quote would be deemed non-responsive to the requirements of the Bid Solicitation as Vendors {Bidders} were required to provide a discount or markup based on the brand manufacturer's latest retail price list. Bid Solicitation Section 6.4 Clarification of Quote/State's Right to Request Further Information, specifically states that "[a] request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions, or revise or modify a Quote." Furthermore, it has long been established that post-bid clarifications are disallowed by New Jersey Courts. (See example, In re Motor Vehicle Comm'n Surcharge Sys. Accounting & Billing Servs., 2018 N.J. Super. Unpub. LEXIS 285, *29, 2018 WL 766856 (2018); Matter of Protest of Award of On-Line Games Production and Operation Services Contract, Bid No. 95-X-20175, 653 A.2d 1145, 1163 (1995).)

Finally, throughout its protest, Malouf Ford asserts that its "delivery days are better than the other vendors who were given a higher position in certain territories." However, as stated in the Bid Solicitation Section 6.6 Evaluation Criteria, the following criteria were used to evaluate Quotes received in response to this Bid Solicitation:

- a. Price highest percentage discount or lowest percentage markup bid based on the brand manufacturer's latest retail price list for the brand bid
- b. Experience of the Vendor {Bidder}
- c. The Vendor's {Bidder's} documented past performance under similar Blanket P.O.s, including, but not limited to, the Division's Vendor {Contractor} performance database.

Pursuant to Bid Solicitation Section 6.2.1 *Tie-Breaking Criteria*, delivery times were to be considered only in a tie-break scenario. Since there was no tie-breaking scenario during the Quote evaluations of this procurement, the delivery times were irrelevant for the evaluation of the Quotes.

Based on the review of the Quotes, the Bureau decided to award a Blanket P.O. to Malouf Ford as the quaternary Vendor {Contractor} in the north region, based upon Bid Solicitation Section 6.6 Evaluation Criteria. The Hearing Unit's review of the record confirms the Bureau's decision. In light of the findings set forth above, I sustain the Bureau's Notice of Intent to Award for of Bid Solicitation 19DPP00280. 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 eProcurement system.

Sincerely,

Maurice A. Onffi Acting Director

MAG: RD

c:

J. Kercher

K. Thomas

S. Ghorbani

B. Birchmeier