



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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October 1, 2019

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

Erica Makuch
Hamilton Auto Clinic
22 Route 130, Suite A
Yardville, NJ 08620

Re: I/M/O Bid Solicitation #19DPP00334 Hamilton Auto Clinic
T2171 – Vehicle Towing and Roadside Services
Protest of Notice of Intent to Award

Dear Ms. Makuch:

This letter is in response to your email of August 20, 2019, on behalf of Hamilton Auto Clinic (Hamilton) to the Division of Purchase and Property's (Division) Hearing Unit requesting that its Quote be considered for an award of a Master Blanket Purchase Order (Blanket P.O.) for Bid Solicitation #19DPP00334 T2171 – Vehicle Towing and Roadside Services (Bid Solicitation). The record of this procurement reveals that the Division's Procurement Bureau (Bureau) deemed Hamilton's Quote non-responsive to the requirements of the Bid Solicitation because it was not certified as a Small Business Enterprise as of the Quote opening date.

By way of background, on January 18, 2019, the Bureau issued the Bid Solicitation on behalf of the Bureau of Transportation Services, Division of Administration, Department of the Treasury (Transportation), to solicit Quotes from qualified Vendors {Bidders} to provide vehicle towing and roadside repair services. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award up to five Blanket P.O.s in each county to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. *Ibid*. On February 28, 2019, the Bureau issued Bid Amendment #1 extending the Quote submission deadline to April 3, 2019. On March 25, 2019, the Bureau issued Bid Amendment #2 responding to the questions received from potential Vendors {Bidders} and extending the Quote submission deadline to April 11, 2019.

On April 11, 2019, the Division's Proposal Review Unit opened 34 Quotes received by the submission deadline of 2:00 pm eastern time. On July 30, 2019, after completing its review and evaluation of the Quotes received, the Bureau completed a recommendation report which recommended Blanket P.O. awards be made to sixteen Vendors {Bidders} whose submitted Quotes were most advantageous to the State, price and other factors considered. On August 9, 2019, the Bureau issued a Notice of Intent to Award Letter (NOI) advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s to the following Vendors {Bidders}:

A&B Auto Repair	Jack's Auto Service
A-1 Towing	John's Main Auto Body
Bergen Brookside Towing	Johnson Specialized Transportation
City Wide Towing	Nick's Towing Service
Donald Rzepka (a/l Al's Auto Body)	P.P.T.D. LLC
GJ Auto Repair & Service	Puleio's Service Center
Glendola Service Center	SHT Corporation
Hy-Way Towing & Collision	TruckMasters Inc.

On August 20, 2019, Hamilton submitted a protest to the Division's Hearing Unit stating:

Attached is our certificate for Hamilton Auto Clinic as per the N.J.A.C. for Small Business Set-Aside Blanket P.O. It appears as this was the only reason we were not accepted for this bid. Now that it has been addressed we would appreciate it to be reconsidered for this bid.

With the protest, Hamilton submitted a copy of its certification demonstrating its approval as a Category 1 Small Business Enterprise in the State of New Jersey. The certification indicated that it had been issued on August 15, 2019.

In consideration of Hamilton'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 Hamilton. I set forth herein my final agency decision.

In 1983 the New Jersey Legislature enacted the "Set-Aside Act for Small-Businesses, Female Businesses and Minority Businesses." See, N.J.S.A. 52:32-17 et seq. The law required that the Division, when setting contracts aside for award to Small Business Enterprises advise the bidding community of the same and reject all Quotes from those businesses which are not certified as of the Quote opening date. See, N.J.S.A. 52:32-234, 52:32-25. The regulations promulgated by the Department of the Treasury regarding Small Business Set-Asides similarly states "[i]f a business is to be eligible to bid on a specific set-aside contract or participate in the subcontracting target programs for purposes of this chapter, it must be registered as a small or veteran-owned business by [DORES] on or before the date the bid or proposal is due at the State contracting agency." See, N.J.A.C. 17:13-3.2. A review of the subject Bid Solicitation reveals that all Vendors {Bidders} were put on notice that awards would be confined to those businesses certified as Small Business Enterprise as of the Quote opening date. Specifically, the Bid Solicitation stated that:

Pursuant to the provisions of N.J.S.A. 52:32-17 and N.J.A.C. 17:13 this is a full Set-Aside Blanket P.O. for Category I, II, & III for Small Businesses. The Vendor {Bidder} must¹ be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened. Evidence that the Vendor {Bidder} has registered as a small business should be submitted with the Quote. Vendors {Bidders} should verify its Small, Minority, Veteran, and Women Owned

¹ "Must – Denotes that which is a mandatory requirement." See, Bid Solicitation Section 2.2 *General Definitions*.

Business Certification status on the “Maintain Terms and Categories” Tab within its profile in *NJSTART*. In the event of an issue with a Vendor’s {Bidder’s} Small, Minority, Veteran, and Women Owned Business Certification status, *NJSTART* provides a link to take corrective action.

Inasmuch as this is a full or partial set-aside Blanket P.O., the Vendor {Bidder} should provide, as part of its response to this Bid Solicitation, proof of its current registration as a qualifying small business with the New Jersey Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit. Application and registration requirements are presented on the web at <http://www.nj.gov/njbusiness/contracting/> or by contacting that agency as indicated below during business hours.

New Jersey Department of the Treasury
Division of Revenue and Enterprise Services
Small Business Registration and M/WBE Certification Services Unit
33 West State Street – Fifth Floor
PO Box 026
Trenton, NJ 08625-0026
Telephone: 609-292-2146
Fax #: 609-292-8764

**** IF THE VENDOR {BIDDER} IS AN INCUMBENT VENDOR {CONTRACTOR} AND/OR HAS PREVIOUSLY REGISTERED OR BEEN CERTIFIED UNDER THE FORMER SBE/MBE/WBE PROGRAM, THE VENDOR {BIDDER} SHOULD ENSURE IT IS REGISTERED ON THE DAY OF QUOTE RECEIPT WITH THE DIVISION OF REVENUE AND ENTERPRISE SERVICES, SMALL BUSINESS REGISTRATION AND M/WBE CERTIFICATION SERVICES UNIT TO BE ELIGIBLE FOR AWARD.**

IN ORDER TO EXPEDITE THE SMALL BUSINESS REGISTRATION PROCESS FOR THIS PROCUREMENT, THE VENDOR {BIDDER} MAY FAX A COPY OF BID SOLICITATION PAGE ONE (1) REFLECTING THE QUOTE SUBMISSION DATE ALONG WITH THE COMPLETED SMALL BUSINESS REGISTRATION FORM TO THE NEW JERSEY DIVISION OF REVENUE AND ENTERPRISE SERVICES, SMALL BUSINESS REGISTRATION AND M/WBE CERTIFICATION SERVICES UNIT TO THE FAX NUMBER ABOVE.

[Bid Solicitation Section § 4.4.1.4.1 *Small Business Set-Aside Blanket P.O. Emphasis added.*]

Moreover, in response to a question posed by a potential Vendor {Bidder}, in Bid Amendment #2, the Bureau confirmed the requirement that a Vendor {Bidder} must be registered as Small Business Enterprise by the Quote opening date. See screenshot below.

#	Bid Solicitation Section Reference	Question (Bolded) and Answer
7	Section 4.4.1.4.1 Small Business Set-Aside Blanket P.O.	My firm has always been a small business. Is it really necessary for me to be registered in order to submit a bid? YES. The Vendor {Bidder} must be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the Quote is received and opened. Evidence that the Vendor {Bidder} has registered as a small business should be submitted with the Quote. Please refer to Section 4.4.1.4.1 for more information related to this Bid Solicitation's Small Business Set-Aside requirements.

A review of the records maintained by DORES reveals that Hamilton was not certified as a Small Business Enterprise on April 11, 2019, the Quote opening date. Rather, the records reveal that Hamilton submitted its application for certification as a Small Business Enterprise to DORES on or about August 15, 2019, after the issuance of the NOI.

Accordingly, Hamilton is not eligible for a Blanket P.O. award as it was not certified as a Small Business Enterprise as of the Quote opening date. Unfortunately, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} be certified as a Small Business Enterprise as of the Quote opening date. Only the New Jersey Legislature can change a requirement it has mandated.

In light of the findings set forth above, I must unfortunately deny your request for eligibility to participate in the competition for the subject Blanket P.O. This is my final agency decision.

Thank you for your company's 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. 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.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD

c: A. Davis
R. Regan
E. Castaldo