



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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October 7, 2021

Via Electronic Mail contact@ezmultiservice.com

Danilo L. Carvalhoesilva
EZ Multi Service and Parts, LLC
452-454 Jefferson Street
Newark, NJ 07114

Re: I/M/O Bid Solicitation #20DPP00556 EZ Multi Service and Parts, LLC
T3118 – Emergency Winter Season Towing Services – NJDOT
Protest of Revised Notice of Intent to Award

Dear Mr. Carvalhoesilva:

This final agency decision is in response to your September 21, 2021, correspondence on behalf of EZ Multi Service and Parts, LLC (EZ), to the Division of Purchase and Property’s (Division) Hearing Unit. In that correspondence, EZ protests the September 17, 2021, Revised Notice of Intent to Award (NOI), issued by the Bureau, which revised the Master Blanket Purchase Orders (Blanket P.O.s) for five (5) price lines (#13, 14, 21, 22, 54) for Bid Solicitation #20DPP00556 – T3118 Emergency Winter Season Towing Services (Bid Solicitation).¹ Specifically, EZ protests that it was not awarded the Blanket P.O. for price line 54.²

¹ The Revised Notice of Intent to Award, the Recommendation Report and Amended Recommendation Report, and the EZ Protest each state in error that the Bid Solicitation Number was 20DPP00537. The correct Bid Solicitation Number for T3118 Emergency Winter Towing Services – NJDOT is 20DPP00556. EZ did not submit a Quote in response to Bid Solicitation Number 20DPP00537. A review of the Division’s records on [NJSTART](https://www.njstart.gov) confirms that EZ’s Quote was submitted under the correct Bid Solicitation Number, 20DPP00556, as shown in the screenshot below.

Bid Tabulation for Bid #20DPP00556						
Quotes	Items	Header Questions	Subcontractors	Score	Summary	Back to Bid
Total Number of Submitted Quotes: 18						
Quote #	Description	Vendor ID	Vendor Name	Submit Date		
00005314	T3118 - Emergency Winter Season Towing Services - NJDOT	V00057630	EZ Multi Services & Parts LLC	02/04/2021 09:55:50 AM		

² EZ also protests the award of Price Lines 56 and 58 to Jhonatan Trucking LLC. However, these awards were announced with the initial August 20, 2021 Notice of Intent to Award (NOI). In accordance with the

By way of background, on December 22, 2020, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified Vendors {Bidders} to provide emergency towing and roadside services at all locations identified on the State-Supplied Price Sheet during the Winter Season, from October 1st through April 30th. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent 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, for each Price Line listed on the State-Supplied Price Sheet. Ibid.

In accordance with Bid Solicitation § 1.3.1 *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions was available to all potential Vendors {Bidders} until 2:00 p.m. on January 15, 2021. On January 25, 2021, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On February 5, 2021, the Division's Proposal Review Unit opened eighteen (18) Quotes received through the State's *NJSTART* eProcurement system by the submission deadline of 2:00 pm eastern time. All of the received Quotes were found by the Proposal Review Unit to conform to the mandatory administrative requirements for Quote submission.

Accordingly, these eighteen (18) Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation § 6.7 *Evaluation Criteria* which states:

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate Quotes received in response to this Bid Solicitation.

- A. Experience of Vendor {Bidder} (Attachment #1): The Vendor {Bidder} must have at least two (2) years of experience performing towing services on public roadways in order to be considered for award of that service; and
- B. Price: The Vendor's {Bidder's} pricing provided on the State-Supplied Price Sheet for each price line. See Section 6.7.1, subsections included, for information regarding the pricing evaluation methodology.

Seventeen (17) of the eighteen (18) Quotes evaluated by the Bureau were found to be responsive to all mandatory requirements of the Bid Solicitation; the Bureau further determined that each of the seventeen (17) Vendors {Bidders} met the minimum experience requirements of two (2) or more years of providing towing services on public roadways.

With respect to the evaluation of the Vendors' {Bidders'} Quote pricing, Bid Solicitation § 6.7.1 *Vendor's {Bidder's} State-Supplied Price Sheet* states:

The Division intends to award to one (1) responsive Vendor {Bidder} per price line for towing services. The Division will evaluate and rank based upon pricing, from lowest to highest.

In accordance with Bid Solicitation § 6.7.1, the Division evaluated and ranked based upon pricing, from lowest to highest. On May 14, 2021, the Division sent a letter inviting Vendors {Bidders} to submit

Division's administrative regulations, N.J.A.C. 17:12-3.3 *Protest Procedures*, the protest period ended on September 3, 2021.

a Best and Final Offer in accordance with Bid Solicitation § 6.8 *Negotiation and Best and Final Offer (BAFO)*. No response was received from EZ.

Thereafter, on August 17, 2021, 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. On August 20, 2021, an NOI was issued advising all Vendors {Bidders} of the State's intent to award Blanket P.O.s for all price lines.

In response to the August 20, 2021 NOI, two Vendors {Bidders} contacted the Bureau requesting that the Bureau allow the withdraw of their Quotes and requesting that the Bureau rescind the Notice of Intent to Award for Price Lines 13, 14, 21, 22, and 54.³ The Bureau determined that it was in the State's best interest to permit the withdrawal of the Quotes and to re-award the affected price lines.⁴ Accordingly, a Revised Notice of Intent to Award was issued on September 17, 2021 advising the affected Vendors {Bidders} of the State's intent to award Blanket P.O.s consistent with the Bureau's September 15, 2021, Amended Recommendation Report.

On September 21, 2021, the Division received the EZ protest challenging the intended Blanket P.O. awards for price lines 13, 14, 21, 22, and 54. EZ also protests the Blanket P.O. awards for price lines 56 and 58. By way of summary, EZ states that it possesses more than the minimum years of experience required, yet it "was not a winner on line 54 because of the time of experience." Furthermore, EZ complains that the awardee for lines 56 and 58 "does not even have their own towing trucks, they won the bid to subcontract the lines." See EZ Protest pp. 1-2.

In consideration of the EZ 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.

First, EZ protests the intended award for price lines 13, 14, 21 and 22. However, as shown in the screenshots on the following page, EZ did not submit a Quote for price lines 13, 14, 21 or 22.

³ City Wide Towing, Inc. requested the rescission of the award made to it for price lines 13, 14, 21, and 22. No other price lines had been awarded to City Wide Towing, Inc. Powder Mill Towing requested the rescission of the award made to it for price line 54 only.

⁴ The Vendors {Bidders} who made the requests for the affected price lines were City Wide Towing, Inc. (13, 14, 21 and 22) and Powder Mill Towing (54), as stated in the Bureau's September 15, 2021 Amended Recommendation Report.

State-Supplied Price Sheet Bid Solicitation #20DPP00556 - T3118 - Emergency Winter Season Towing Services						
Vendor (Bidder) Name:		EZ MULTI SERVICE AND PARTS LLC				
Instructions:		Refer to Bid Solicitation Section 4.4.5 for Vendor (Bidder) instructions. The Vendor (Bidder) shall provide pricing in the yellow highlighted cells below. The Vendor (Bidder) must not alter the price schedule in any matter.				
Line No.	Description	Quantity	Towing Equipment	Weight Category	Unit of Measure	All-Inclusive Hourly Rate

...

13	DEPLOY TO SITE: POMPTON LAKES WINTER YARD ADDRESS: RT 287 SOUTH MP 61.1, POMPTON LAKES MILE POST COVERAGE AREA: RT 287: MP 53.9 to NEW YORK STATE LINE	1	MEDIUM DUTY	< 11,500 lb. GWR	HOUR	NO BID
14	DEPLOY TO SITE: POMPTON LAKES WINTER YARD ADDRESS: RT 287 SOUTH MP 61.1, POMPTON LAKES MILE POST COVERAGE AREA: RT 287: MP 53.9 to NEW YORK STATE LINE	1	HEAVY DUTY	>11,500 lb. GWR	HOUR	NO BID

...

21	DEPLOY TO SITE: RIVERDALE MAINTENANCE YARD ADDRESS: RT 23 @ 1 RIVERDALE RD (BEHIND THE ARMORY), MILEPOST 12.6. BUTLER MILE POST COVERAGE AREA: RT 287; MP 46 to 53.8	1	MEDIUM DUTY	< 11,500 lb. GWR	HOUR	NO BID
22	DEPLOY TO SITE: RIVERDALE MAINTENANCE YARD ADDRESS: RT 23 @ 1 RIVERDALE RD (BEHIND THE ARMORY), MILEPOST 12.6. BUTLER MILE POST COVERAGE AREA: RT 287; MP 46 to 53.8	1	HEAVY DUTY	>11,500 lb. GWR	HOUR	NO BID

Because EZ did not submit a Quote for these price lines, it is not eligible for an award on these price lines.

Second, EZ protests the award of price line 54 to Tumino's Towing, Inc., stating that EZ has four (4) years of experience, which is more than the two (2) year minimum requirement.⁵ As noted above, price line 54 had been awarded to Powder Mill Towing, who then requested the withdrawal of its Quote for that

⁵ As required by the Bid Solicitation, EZ submitted Attachment #1 with its Quote, which indicated that it has two (2) years of experience providing towing services, and at least two (2) years of experience performing towing services on public roadways.

price line. This resulted in a tie in pricing for price line 54, with EZ and Tuminos Towing, Inc. each having bid Four Hundred Fifty Dollars (\$450).

As stated in Bid Solicitation Section 6.7.1, “[i]f two (2) or more Vendors {Bidders} are tied on pricing based upon the above pricing evaluation methodology, then the Division will rank based upon the years of experience recorded on Attachment #1, for the respective price line in question.” EZ’s Attachment #1 indicated two (2) years of experience, compared with the thirty-seven (37) years of experience listed by Tumino’s Towing, Inc. Accordingly, as a result of the tie breaking criteria, the Bureau recommended awarding price line 54 to Tumino’s Towing, Inc., because it disclosed more years of experience than EZ. This would be the recommendation even if EZ had disclosed four (4) years of experience on Attachment #1, as indicated in the EZ protest. I find that that tie-breaking methodology was correctly applied with regards to price line 54.

In the protest, EZ offers to reduce its price for heavy duty price lines to three hundred fifty dollars (\$350). As noted above, EZ did not respond to the Bureau’s request for a Best and Final Offer in accordance with Bid Solicitation § 6.8 *Negotiation and Best and Final Offer (BAFO)*. To allow EZ to change its Quote pricing after the issuance of the NOI would be contrary to the Court’s holding in *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175*, 279 N.J. Super. 566, 597 (App. Div. 1995). In *On-Line Games*, the Appellate Division held that “in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP”. Put another way, permitting EZ to alter its price at this time would give it an impermissible competitive advantage because Quote pricing has already been revealed.

Finally, with regards to price lines 56 and 58, EZ complains that the awardee, Jhonatan Trucking, LLC (Jhonatan) “does not even have their own towing trucks, they won the bid to subcontract the lines.” EZ offers no support for this allegation; and therefore, this allegation need not be addressed. However, for the sake of completeness I will briefly address it here. First, the protest period for the August 20, 2021, NOI expired on September 3, 2021, and EZ did not submit a protest to the August 20, 2021 NOI. EZ’s protest was not received until September 21, 2021, after the issuance of the Revised NOI, and therefore relates only to the price lines re-awarded therein. Second, EZ chose not to participate in the BAFO and cannot now alter its pricing after the NOI and protest period have concluded.

Further, I note that a Vendor’s {Bidder’s} use of a subcontractor is governed by Bid Solicitation § 4.4.1.3 *Subcontractor Utilization Plan* which states in pertinent part

Vendors {Bidders} intending to use a Subcontractor shall submit a Subcontractor Utilization Plan form. . . .

For a Quote that does NOT include the use of any Subcontractors, by signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} is automatically certifying that 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. 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 for approval to the Division in advance of any such engagement of Subcontractors.

Jhonatan did submit the Subcontractor Utilization Plan form with its Quote. The form indicated that Jhonatan was not using any subcontractors. By signing the Bid Solicitation Offer and Acceptance

Page, Jhonatan certified that, in the event it determines to engage subcontractors, it would submit a Subcontractor Utilization Plan form for approval to the Division in advance of any such engagement, as is required by Bid Solicitation § 4.4.1.3.

Moreover, the Bid Solicitation sets forth a procedure for the substitution or addition of subcontractors. As stated at Bid Solicitation § 5.7 *Substitution or Addition of Subcontractors*:

The Vendor {Contractor} may not subcontract other than as identified in the Vendor's {Contractor's} proposal without the prior written consent of the Director. The Vendor {Contractor} shall forward a written request to substitute or add a Subcontractor or to substitute its own staff for a Subcontractor to the State Contract Manager for consideration. If the State Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval. No substituted or additional Subcontractors are authorized to begin work until the Vendor {Contractor} has received written approval from the Director.

If it becomes necessary for the Vendor {Contractor} to substitute a Subcontractor, add a Subcontractor, or substitute its own staff for a Subcontractor, the Vendor {Contractor} will identify the proposed new Subcontractor or staff member(s) and the work to be performed. The Vendor {Contractor} must provide detailed justification documenting the necessity for the substitution or addition.

[Ibid. (emphasis added)].⁶

Jhonatan has not yet sought approval for the use of subcontractors. If subcontractors are to be used, Jhonatan will need to comply with the procedure set out at Bid Solicitation § 5.7. Even if Jhonatan, or any other Vendor {Contractor}, receives approval to use a subcontractor to perform a portion of the awarded work, the Vendor {Contractor} is nonetheless responsible for ensuring that the work is performed in accordance with the Bid Solicitation's requirements as the State has no contractual relationship with the subcontractor. See, SSTC § 5.9 *No Contractual Relationship Between Subcontractors and State* stating "Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State."

⁶ Similarly, The State of NJ Standard Terms and Conditions state that:

"[t]he contractor may not subcontract other than as identified in the contractor's proposal **without the prior written consent of the Director**. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws."

[See SSTC at § 5.8 (emphasis added)].

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation. Accordingly, I sustain the September 17, 2021, Revised Notice of Intent to Award. This is my final agency decision with respect to the protest submitted by EZ.

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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD/EEL

c: R. Regan
K. Popso
Jhonatan Trucking, LLC
Tumino's Towing, Inc.