



State of New Jersey

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December 19, 2014

Via Fax (201-223-4311) and USPS Regular Mail

Armand Pohan, Chairman
Port Imperial Ferry Corporation d/b/a NY Waterway
4800 Avenue at Port Imperial
Weehawken, New Jersey 07086-7142

Re: Protest of Scheduled Contract Award
RFP #15-X-23659 - *Pulaski Ferry Service – State Funded*

Dear Mr. Pohan:

This letter is in response to your letter dated November 14, 2014, on behalf of Port Imperial Ferry Corp d/b/a NY Waterway (“NY Waterway”), by which you request reconsideration of the announced intent of the Division of Purchase and Property’s Procurement Bureau (“Bureau”) to award the contract resulting from the above-referenced Request for Proposal (“RFP”) to Seastreak, LLC (“Seastreak”). NY Waterway seeks reconsideration of an alternative ferry service offer it included in its proposal in response to the subject RFP. NY Waterway contends its Alternate A offer could provide substantial savings to the State and advantages for the commuting public.

NY Waterway’s letter also requests the opportunity of an in-person presentation. I have reviewed the Bureau’s record of the subject procurement, commentary of New Jersey Department of Transportation (“NJDOT”) officials who participated in the proposal evaluation process and who will be overseeing the performance of the contract relative to the points of protest presented, as well as applicable statutes, regulations and case law. This review has provided me with sufficient information to render an informed final agency determination regarding this matter. Therefore, an in-person hearing is not necessary. N.J.A.C. 17:12-3.3(d).

By way of background, the Bureau publicly advertised RFP #15-X-23659, *Pulaski Ferry Service – State Funded*, on September 5, 2014. On the same date, the Bureau posted the RFP on the Division’s website, where it was available for download by interested parties. The purpose of the RFP was to solicit responses from qualified ferry service providers for the operation and maintenance of a temporary Monday-through-Friday morning ferry service originating from a designated dock in Monmouth County to docks in Jersey City and the City of Hoboken in Hudson County, and a return afternoon/evening ferry service from Jersey City and Hoboken to the same Monmouth County dock. The RFP established that NJDOT will subsidize costs of this

service to provide motorists with a transportation option until the closed Pulaski Skyway is re-opened.

As provided by RFP Section 1.3.1, *Electronic Question and Answer Period*, the Bureau accepted questions by potential bidders until September 19, 2014. In response to the questions received, the Bureau issued RFP Addendum #1 on September 24, 2014, containing clarifying answers to the posed questions and some modifications to the RFP.

Two proposals were received by the 2:00 p.m., October 3, 2014, proposal submission deadline: one from Seastreak and the other from NY Waterway. Both proposals were deemed responsive by the Division's proposal intake unit. In accord with standard Bureau procedures, the proposals, sans pricing information, were distributed to the NJDOT representatives on the Evaluation Committee ("Committee") for their technical evaluations. Per standard procedure, the Bureau's procurement specialist for this competitive procurement also evaluated the two proposals.

The procurement record reveals that the proposals were evaluated by the Committee based upon the assessment factors set forth in RFP Subsection 6.7, *Evaluation Criteria*. With 1000 points as a maximum technical score, the Committee's evaluation resulted in a technical score of 757.5 points for Seastreak's proposal and a technical score of 697.5 points for NY Waterway's proposal. The price proposals of the two bidders were then revealed and evaluated. Seastreak proposed a daily price of \$8,470 and NY Waterway proposed a daily price of \$8,500 as the amount to be paid by the State for the ferry service. As permitted by the RFP, NY Waterway offered an Alternate A solution for which it proposed a \$2,000 per day price. In order to meet NJDOT's schedule for timely award of contract, the Bureau invited both bidders to submit best and final offers (BAFOs) on or before October 10, 2014, while the Committee was evaluating the technical proposals. Both NY Waterway and Seastreak timely responded with BAFOs. Seastreak reduced its pricing approximately 15% to \$7,200 and NY Waterway reduced its base offer pricing approximately 4.7% to \$8,100. Upon conclusion of its technical evaluations of the proposals, the Committee was apprised of the BAFO pricing offered by both bidders, and in consideration of these factors, recommended award to the bidder whose proposal received the highest technical rating and whose BAFO offered the most favorable pricing, i.e., Seastreak. The procurement record indicates that the Committee deemed NY Waterway's proposal non-responsive because it failed to comply with a provision of RFP Paragraph 4.4.6, *Additional Submittals*, which reads, in pertinent part, as follows:

1. Bidder must provide:
 - Ridership estimates,
 - Operating cost without any fare box revenue.
 - Describe the details of its marketing plan for the service.

2. Bidder may submit alternate service patterns and travel times that they believe will be most effective and efficient but, at a minimum must meet the requirements as requested of the contractor in section 3.0 Scope of Work.

[(Underlining added for emphasis.)]

Specifically, the deficiency that caused the Committee to deem NY Waterway's proposal non-responsive and thus ineligible for award of contract was that its base proposal failed to include RFP-required information about its operating costs without any fare box revenue, i.e., information NJDOT had, in developing the RFP, deemed essential to assess the general costs of operation as part of its comprehensive review and substantive evaluation of NY Waterway's proposal, including its Alternate A offer. Because operational cost was expressly included in the RFP as one four technical evaluation criteria¹, the absence of the information adversely affected the scoring of NY Waterway's proposal.

Attending to NY Waterway's point of protest, i.e., that the record of the Committee's evaluations of the proposals does not address consideration of NY Waterway's alternate, lower priced offer, I note that this alternative offer by NY Waterway provides a ferrying route that would depart from the RFP-permitted Belford berth in Monmouth County, then travel to Pier 11 in New York City and then to the World Financial Center ("WFC") pier in New York City before docking at the RFP-stipulated Paulus Hook. To get to Hoboken, a rider would need to exit the ferry at the WFC pier and use a free NY Waterway-provided transfer to board one of the NY Waterway ferries that departs that pier every 10 minutes. The evening return route from Hoboken would similarly require docking at both the WFC and Pier 11 piers and another free transfer to return to Belford, Monmouth County. See NY Waterway proposal, Volume Two, P. 3.

With regard to this proposed alternative solution, the second paragraph of the introductory segment of RFP Section 3.0, *Scope of Work*, stipulated the following base conditions:

Contractor shall provide daily ferry service as follows:

- Two (2) morning (AM) trips from a proposed berth in Monmouth County to Paulus Hook (Jersey City) and Hoboken, Hudson County (Atlantic Highlands/Jersey City/Hoboken) and three (3) evening (PM) trips from Jersey City and Hoboken (Hoboken/Jersey City/Atlantic Highlands) returning to the same Monmouth County berth (see Exhibit A, Schedule of Services accompanying the RFP).
- Operations will be from approximately 6:30 AM to 8:30 AM and from 3:25 PM to 7:25 PM.

RFP Paragraph 3.1.3, *Docking Sites*, as part of the RFP's Scope of Work section, addressed "alternative docking locations" as follows²:

The ferry service shall be operated exclusively between suitable safe berths in Monmouth County, New Jersey and suitable safe berths in Hudson County (Paulus Hook and Hoboken

¹ See RFP Subsection 6.7, *Evaluation Criteria*, specifically Criterion d) "The bidder's Marketing Plan for service; ridership estimates, operating cost without any fair box revenue, and details of marketing plan for service."

² The term "Docking Sites" was defined in RFP Subsection 2.2, *Contract Specific Definitions*, as follows:

Docking Sites – Suitable safe berths in Monmouth County (or an alternate location proposed by the Contractor), Paulus Hook, and Hoboken Terminal in Hudson County.

Terminal) to accommodate displaced Pulaski Skyway users destined for major employment centers in Jersey City and Hoboken.

NJDOT will consider alternate docking locations which may be proposed by a contractor as long as it does not adversely affect the departure and arrival of the riders, and the docking facility is in safe condition and meets USCG standards.

Contractor shall operate service consistent with Exhibit A, Schedule of Services.

[[Underlining added for emphasis.]]

As established by the use of “exclusively” in the first paragraph of the quoted text above and indicated in the RFP’s Exhibit A titled *Schedule of Services – Pulaski Ferry Service*, and affirmed by discussion with the NJDOT evaluators, the RFP was prepared with an intent to have a contract that does not include dockings beyond the three locations specified. While I find no other express provision in the RFP, its addendum or exhibit that forthrightly precludes the use of other docking sites, the RFP provision inviting bidders to offer an alternative solution was with an expectation that bidders may have optional berthing locations within Monmouth County. While these ferry services are presently offered to the public from the Atlantic Highlands berth in Monmouth County, the State was open to consider other berthing locations throughout Monmouth County. The above language is clear in that it required the Contractor to operate the services consistent with the Schedule of Services in Exhibit A and that the alternate docking locations may be proposed so long as it did not adversely affect the departure and arrival of the riders. The alternative proposed by NY Waterway varied from the requirements of Section 3.1.3 which mandated that the “Contractor shall operate service consistent with Exhibit A, Schedule of Services,” as it added additional stops to that schedule and it also adversely affected the departure and arrival of the riders by requiring them to travel first to berths in New York City before reaching the desired locations. Thus, the Alternative A proposal submitted by NY Waterway, which would necessitate additional stops and add several minutes to ferry rides, is less efficient for, and thus would be less enticing to, the users. The NJDOT representatives have indicated that these aspects of NY Waterway’s alternate A offer contravene the State’s purpose in establishing this contract.

Finally, like with its base proposal, NY Waterway’s Alternate A offer did not include the RFP-required information concerning NY Waterway’s operating costs without any fare box revenue. As a result, the alternative offer must also be deemed non-responsive because the absence of operating cost information precluded the Committee’s ability to assess the offered pricing relative to that data, which, for the record, was included and detailed in Seastreak’s proposal.

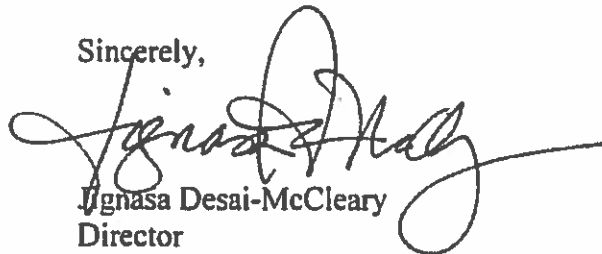
While I do appreciate that NY Waterway offered the State an alternate solution, the Division cannot accept any offer that did not comply with all material RFP requirements or that provided an advantage that was not available to other bidders or potential bidders. In consideration of these findings, I have determined that NY Waterway’s proposed alternate solution is materially non-compliant with the subject RFP’s requirements. Requiring New Jersey riders to travel to New York City to get to New Jersey destinations is at odds with the stated purpose and intent of the subject RFP and contract. An award of contract based upon the provisions of the alternate offer would not serve the best interests of the State.

In light of the foregoing, the Bureau's notice of intent to award the contract resulting from RFP #15-X-23096 to Seastreak is hereby affirmed and upheld. This is my final agency determination regarding this matter.

By copy of this letter, I am directing the Bureau to proceed with the award of contract to Seastreak as promptly as possible to ensure no gap in ferry service as the new contract replaces the current provisional contract slated to end on December 31, 2014.

Thank you for your interest in doing business with the State of New Jersey. I invite you to register your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system, which will soon provide a "one-stop shop" for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,

A handwritten signature in black ink, appearing to read "Ignasa Desai-McCleary", with a long horizontal flourish extending to the right.

Ignasa Desai-McCleary
Director

JD-M/RW

c: L. Dubois
M. Griffin
J. Kemery
A. Miller