



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY

OFFICE OF THE DIRECTOR

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July 22, 2016

Via Electronic Mail [tslackenv@comcast.net] and USPS Regular Mail

Theodore P. Slack, President  
T. Slack Environmental Services  
180 Market Street  
Kenilworth, NJ 07033

RE: Protest of Notice of Award  
RFP #15-X-22978 Aboveground Storage Tanks: Installation, Removal, Repair and Related Equipment

Dear Mr. Slack:

This correspondence is in response to your letter of protest on behalf of T. Slack Environmental Services (Slack), received April 27, 2015, referencing the subject Request for Proposal (RFP) and regarding the Notice of Intent to Award issued by the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). In your letter, you protest the slated award to E.O. Habegger, Whitemarsh Corp., and John W. Kennedy, alleging none of these companies held a required New Jersey Department of Environmental Protection (DEP) Certification "for tanks" and "do not carry the same pollution liability insurance as is required of the contractors."

I have reviewed the record of this procurement, including the RFP, the proposals in question, and 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 determination on the merits of Slack's protest.

On December 2, 2014, the Bureau publicly released and advertised the subject RFP to solicit proposals for Aboveground Storage Tanks: Installation, Repair, Removal, and Accessory Equipment on behalf of the New Jersey Department of Transportation (DOT) and Statewide Using Agencies. The RFP included three categories of work, as set forth in RFP Section 3.0 *Commodity Description/Scope of Work*; bidders were not required to bid on all three categories. Category I is "for the supply of various brands and sizes of aboveground diesel and gasoline storage tanks complete with outer shell tanks and all inclusive related accessories[;]" Category II is "for Fuel Storage Tank related equipment (i.e. fuel dispensers, pumps, filtration and monitoring systems, etc.)[;]" and Category III is "for the installation, removal and repairs of aboveground storage tanks described in this RFP." The RFP intended to make an award to one responsible, responsive bidder for each approved brand or equal in Category I and II. In Category III, the RFP specified an award would be made to all responsible, responsive bidders conforming to the RFP, price and other factors considered. (See RFP Section 7.2 *Final Contract Award*.)

The Bureau received 18 proposals by the deadline of February 10, 2015. A number of proposals were rejected for failure to provide mandatory documents, signatures, or pricing information. Upon completing a review of the remaining proposals, the Bureau made the following award recommendation:

**Category I – Lines 00001- 00004**

E.O. Habhegger Company

Note: NO Award – Line Item 00004. There were 3 proposals received and all 3 were for a Cylindrical Highland tank. This is not an Alternate “Brand” as Highland Tanks is covered under Line Item 00003.

**Category II – Lines 00005 – 00014 & 00034**

E.O. Habhegger Company (00005, 00009, 00010, 00011, 00014)

Fairfield Maintenance (00006)

John W. Kennedy Company (00008)

Petroleum Equipment of New Hampshire (00012, 00013)

NOTE: NO Award – Line 00007. There was 1 proposal received and it was for a Dresser Wayne Dispenser. This is not an Alternate “Brand” as Dresser Wayne Dispensers is covered under Line Item 00006.

**Category III – Lines 00015 – 00032 \*South Region Only**

R.J. Walsh

A & J Construction

Whitemarsh Corporation

Independence Constructors

E.O. Habhegger

Fairfield Maintenance

TTI Environmental

Petro Mechanics

Aurora Environmental

C3 Technologies

John W. Kennedy Company

Spark Electric\*

The Bureau issued a formal Notice of Intent to Award Letter on April 10, 2015, to all bidders. This protest followed.

The record reveals that John W. Kennedy Company was not Public Works registered at the time of proposal opening. In a letter to the Procurement Specialist dated April 23, 2015, the branch manager confirmed John W. Kennedy Company was not Public Works registered and requested to rescind its proposed pricing submitted in response to Category III price lines. Therefore, the intent to award Category III to John W. Kennedy Company must be rescinded and I need not address Slack’s argument as it pertains to John W. Kennedy Company.

Although Slack argues that the two remaining intended awardees in question “do not have NJDEP Certifications for above ground storage tanks,” the RFP did not require such a certification. NJDEP confirmed that “No certifications are required for above ground tanks.” Rather, only local permits and licenses would be applicable. Further, the RFP specified, in pertinent part:

**3.10 CODES AND STANDARDS**

All projects performed under this RFP shall comply with the latest editions of codes, laws, and ordinances of Federal, State and Local governing bodies and authorities having jurisdiction.

**3.10.1** Permit and code inspections are performed by other regulating agencies. Therefore, the Using Agency cannot control these inspection schedules. The contractor will be responsible to schedule all necessary code inspections.

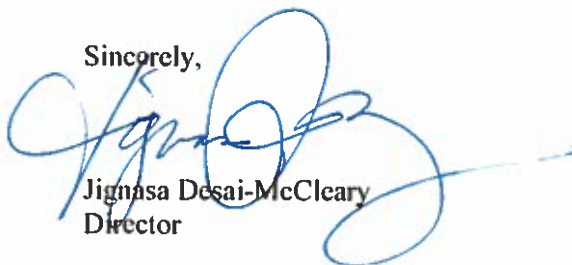
**3.10.2** If permit or code violations are found in any work performed by the contractor, the contractor must correct all violations at no additional cost to the State.

Similarly, Slack's argument that E.O. Habegger and Whitemarsh Corp. do not carry "the same pollution liability insurance as is required of the contractors" is without merit. First, the requirement to provide insurance certificates pertains only to contractors, and is not required of bidders. RFP §7.3, *Insurance Certificates*. The State of New Jersey Standard Terms and Conditions specified in Section 4.2, *Insurance*, that the insurance to be provided by the contractor includes: (a) Occurrence Form Comprehensive General Liability Insurance or its equivalent; (b) Automobile Liability Insurance; and (c) Worker's Compensation Insurance. Secondly, pollution liability insurance was not a requirement of the RFP nor in the Standard Terms and Conditions. Therefore, neither E.O. Habegger nor Whitemarsh Corp. was required to provide it with their proposals.

Based on the foregoing, I must deny Slack's protest. The Bureau is instructed to continue with award of contract as applicable. This is my final agency decision.

Thank you for your continued interest in doing business with the State of New Jersey and for registering your business with NJSTART at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jignasa Desai-McCleary", is written over the typed name and title. The signature is stylized and includes a long horizontal flourish extending to the right.

Jignasa Desai-McCleary  
Director

JD-M:DF

- c: G. Olivera  
K. Woolford  
R. Regan

*T. Slack Environmental Services*

*RE: Protest of Notice of Award*

*RFP #15-X-22978 Aboveground Storage Tanks: Installation, Removal, Repair and Related Equipment*

Additionally c:

Peter Hojnowski, E.O. Habegger Company, Inc.

John Conaty, John W. Kennedy Company Inc.

Ron Masarik, Whitmarsh Corporation