



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

SHEILA Y. OLIVER
Lt. Governor

MAURICE A. GRIFFIN
Acting Director

May 17, 2018

Via Electronic Mail [hhcharter@gmail.com] and USPS Regular Mail

Evan Millas, Vice President
Canyon Trucking, Inc.
413 River Place
Manasquan NJ 08736

Re: I/M/O Bid Solicitation #18DPP00205 Canyon Trucking, Inc.
Protest of Notice of Proposal Rejection
T0777 Snow Plowing and Spreading Services

Dear Mr. Millas:

This letter is in response to your correspondence of April 25, 2018, on behalf of Canyon Trucking, Inc. (Canyon) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, Canyon protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation). The record of this procurement reveals that Scapple's Quote was rejected for failing to submit the *Ownership Disclosure Form* or pricing information with its Quote.

By way of background, on January 30, 2018, 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 snow plowing and spreading services on all State interstates and highways under the jurisdiction of NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Master Blanket Purchase Orders (Blanket P.O.s)¹ to those responsible Vendors

¹ For consistency, this final agency decision uses terminology employed by the State of New Jersey's **NJSTART** eProcurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

NJSTART Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

{Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On March 16, 2018, the Division's Proposal Review Unit opened 136 Quotes submitted through the State's *NJSTART* eProcurement system and 41 Quotes received in hardcopy format by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Canyon for failing to submit the *Ownership Disclosure Form* or pricing information with its Quote.

In response to the Notice of Proposal Rejection, on April 25, 2018, Canyon wrote to the Division's Hearing Unit stating in part:

As a small business owner filling out the bid paperwork for the first time I did have some difficulty. On the bid submission day I updated my owner disclosure form and it was my understanding that by updating it, that meant it fulfilled the requirement. I will scan a copy and enclose it with this email.

Regarding the missing pricing part, in the area that said to put in \$1.00 for each line item but then it was in increments of .10. This wording was very confusing and I was afraid to put in the wrong amount. I ended up taking my bid amount of 175\$ per hour, and dividing it by 10 to get the amount I put in there. I also filled out the pricing sheet but I may have filled out the incorrect one because there were so many revisions. As I was using a Mac computer I experienced some computer incompatibilities. I also scanned our pricing sheet and attached it.

With the protest, Canyon included a completed *Ownership Disclosure Form* and an excerpt of a completed price sheet indicating that Canyon intended to submit a Quote for prices lines 334 and 335.

In consideration of Canyon's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Canyon's proposal and protest, 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. I set forth herein the Division's Final Agency Decision.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall² conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

² "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added.*]

The record of this procurement reveals that on March 16, 2018, Canyon submitted a Quote to the Division in response to the subject Bid Solicitation. With the Quote, Canyon uploaded ten attachments as follows:

- Offer and Acceptance Page (.pdf)
- Disclosure of Investment Activities in Iran (.pdf)
- AA Supplement (.pdf)
- Price Schedule T0777 Snow Plowing and Spreading Services NJDOT (.numbers)
- Attachment 1 T0777 Revised Snow Plowing and Spreading Services NJDOT (.pages)
- Attachment 1 T0777 Revised Snow Plowing and Spreading Services NJDOT (.docx)
- T0777 Revised Price Schedule – Snow Plowing and Spreading Services NJDOT (.xlsx)
- Attachment 2 T0777 Snow Plowing and Spreading Services NJDOT (.pages)
- Attachment 1 T0777 Revised Snow Plowing and Spreading Services NJDOT (.pages)
- Disclosure of Investigations (.pdf)

The files were saved and uploaded to **NJSTART** in various formats including, .pdf, .numbers, .pages, .docx and .xlsx. Unfortunately, the .numbers and .pages files are not compatible with Microsoft Office™ or Adobe™ and therefore, the Division's Proposal Review Unit was unable to open four of Canyon's uploaded Quote attachments. In addition, the Division's Proposal Review Unit was unable to open Canyon's excel price sheet as the file appeared to be corrupted. Specifically, the Division was unable to the open the files indicated in the red boxes in the figure below:

Quote 00002040 - CANYON TRUCKING INC

General Items Questions Subcontractors Terms & Conditions **Attachments(10)** Evaluations Preference Reminders Summary

Files

Name	Description	Confidential	Order	Attached By	Attached Date
Offer and Acceptance Page T0777-2.pdf (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/15/2018
DisclosureofInvestmentActivitiesinIran.pdf (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018
AA_Supplement.pdf (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018
Price Schedule T0777 Snow Plowing and Spreading Services-NJDOT-1 3.numbers (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018
Attachment 1 T0777 Snow Plowing and Spreading Services-NJDOT-1 4.pages (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018
Attachment 1 T0777 Snow Plowing and Spreading Services-NJDOT-1.docx (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018
T0777 Revised Price Schedule - Snow Plowing and Spreading Services-NJDOT.xlsx (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018
Attachment 2 T0777 - Snow Plowing and Spreading Services-NJDOT.pages (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018
Attachment 1 T0777 Snow Plowing and Spreading Services-NJDOT-1.pages (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018
DisclosureofInvestigations.pdf (view details)		<input checked="" type="checkbox"/>	0	George MILLAS	03/16/2018

Forms

No Form Attachments

Save & Continue Close Window

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In connection with the review of this protest and the record of this procurement, on May 14, 2018, the Division's Hearing Unit conducted a hearing using GoToMeeting™, a web-based conferencing service³. During the hearing, Canyon was able to share its screen such that the Division's hearing officer was able to watch as Canyon logged into *NJSTART*, navigated to the submitted Quote, and opened each of the five files in question.

1. Quote Pricing

With respect to Quote pricing, though Canyon was able to open both of its price sheet attachments (Price Schedule T0777 Snow Plowing and Spreading Services NJDOT.numbers and T0777 Revised Price Schedule – Snow Plowing and Spreading Services NJDOT.xlsx), neither document contained any Quote pricing. The Division's hearing officer could not confirm that Canyon had submitted a Quote for price lines 334 or 335 as intended. Therefore, Canyon's proposal was properly rejected by the Division's Proposal Review Unit for failure to include Quote pricing.

2. Ownership Disclosure

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any [Blanket P.O.] nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

If the requirements of N.J.S.A. 52:25-24.2 is not met, a Quote must be rejected as the statute mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

³ <https://www.gotomeeting.com/>

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

Among those forms required to be submitted with the Quote is the *Ownership Disclosure Form* discussed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

Vendors {Bidders} using **NJSTART** to submit a Quote {Proposal} shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the [Division's website](#). This form is also available in [NJSTART \(www.njstart.gov\)](#).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the "Maintain Terms and Categories" Tab within its profile.

Canyon did complete the Ownership Disclosure category as required (see screenshot below); however, Canyon's response to the Ownership Disclosure category required that it complete and submit the *Ownership Disclosure Form* either with its Quote or attach the form to its Vendor Profile within **NJSTART**.

Category: Ownership Disclosure

Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.

Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

As shown in the screenshot below, Canyon did not upload the *Ownership Disclosure Form* to its profile.

Vendor Profile - CANYON TRUCKING INC

Organization Information Users Address Commodity Codes and Services Regions Terms & Categories **Attachments** Vendor Performance

Attachments Information

No Attachments found for this vendor.

Forms

No Form Attachments

[Close Window](#)

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As noted above, during the GoToMeeting™ hearing conducted by the Hearing Unit, Canyon opened each of the uploaded Quote attachments. None of documents included ownership information as required by N.J.S.A. 52:25-24.2.

The **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, Canyon submitted a Quote without the *Ownership Disclosure Form* attached. In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, Canyon did not comply with any of the options available to it for the submission of ownership information. Accordingly, Canyon's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

Notwithstanding Canyon's interest in competing for this procurement, to allow Canyon to submit the completed and signed *Ownership Disclosure Form* or a completed price sheet after bid opening would violate the statutory and regulatory requirements. This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Proposal. However, in light of the findings set forth above, I have no choice but to deny your request

for eligibility to participate in the competition for the subject contract. 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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger