



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

September 5, 2018

Via Electronic Mail [info@jerrellslandscapes.com] and USPS Regular Mail

Michelle Jerrell, President
Jerrell's Landscapes & Nurseries, Inc.
425 Hartford Road
Mount Laurel, NJ 08054

Re: I/M/O Bid Solicitation #18DPP00205 Jerrell's Landscapes & Nurseries, Inc.
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Ms. Jerrell:

This letter is in response to your correspondences of August 30, 2018, on behalf of Jerrell's Landscapes & Nurseries, Inc. (Jerrell's) to the Division of Purchase and Property's Hearing (Division) Unit. In those correspondences Associated protests the August 24, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) indicating an intent to award a Master Blanket Purchase Orders (Blanket P.O.s)¹ to several Vendors {Bidders} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation).

BACKGROUND

By way of background, on January 30, 2018, the Bureau issued Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation) on behalf of the New Jersey Department

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

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 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. 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 164 Quotes received through the State's *NJSTART* eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Thirty-two Quotes were automatically rejected by the Proposal Review Unit for failure to conform to the mandatory administrative requirements for Quote submission.

The remaining Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria* which states:

The following evaluation criteria categories, not necessarily listed in order of significance, may be used to evaluate Quotes {Proposals} received in response to this Bid Solicitation {RFP}. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

- A. Experience of firm (Attachment #2): The Vendor's {Bidder's} documented experience in successfully completing Blanket P.O. {Contracts} of a similar size and scope in relation to the work required by this Bid Solicitation {RFP};
- B. Vendor Equipment (Attachment #1): The quantity and type of Vendor {Bidder} trucks and ability to provide equipment; and
- C. Price: The Vendor's {Bidder's} hourly rate. See Section 6.7.1 below.

With respect to the evaluation of the Vendors' {Bidders'} Quote pricing, Bid Solicitation Section 6.7.1 *Vendor's {Bidder's} Price Schedule* states:

The Bureau will utilize a weighted price model. The price model will be date-stamped and entered into the record before Quote {Proposal} opening.

One (1) or multiple awards will be made to the Vendor {Bidder} submitting the lowest hourly rate for each Snow Section and meeting, at a minimum, the criteria for experience and equipment set forth in this Bid Solicitation {RFP}, in the following order:

Snow Plowing and Hauling Services:

- 1st – Vendors {Bidders} supplying all required Class A trucks with equipment;
- 2nd – Vendors {Bidders} supplying all required Class A trucks without equipment;
- 3rd – Vendors {Bidders} supplying all required Class B trucks with equipment;

- 4th – Vendors {Bidders} supplying all required Class B trucks without equipment;
- 5th – Vendors {Bidders} supplying fewer than the required number of Class A trucks with equipment; and
- 6th – Vendors {Bidders} supplying fewer than the required number of Class B trucks without equipment.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class A trucks with Vendor {Bidder} owned equipment, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class A trucks without equipment.

Spreading Services:

- 1st – Vendors {Bidders} supplying all required Class R trucks with an on board wetting system;
- 2nd – Vendors {Bidders} supplying all required Class R trucks;
- 3rd – Vendors {Bidders} supplying all required Class Q trucks with an on board wetting system;
- 4th – Vendors {Bidders} supplying all required Class Q trucks;
- 5th – Vendors {Bidders} supplying all required Class P trucks with an on board wetting system;
- 6th – Vendors {Bidders} supplying all required Class P trucks;
- 7th – Vendors {Bidders} supplying V Box trucks with an on board wetting system;
- 8th – Vendors {Bidders} supplying V Box trucks;
- 9th – Vendors {Bidders} supplying mid-body style trucks with an on board wetting system; and
- 10th – Vendors {Bidders} supplying mid-body style trucks.

For example, Vendors {Bidders} submitting responsive Quotes {Proposals} and able to supply all required Class R trucks, with an on board wetting system, will be awarded a Blanket P.O. {Contract} before the Vendors {Bidders} supplying Class R trucks without an on board wetting system.

The evaluation of Quotes received and submission of Quote pricing was conducted in three phases as set forth in Bid Solicitation Section 1.1 *Purpose and Intent*.

Award of this Bid Solicitation {RFP} will be conducted in three (3) consecutive phases, as described further below. All phases will continue until all Snow Sections have been awarded. Pricing shall not be released until completion of all phases and the final Notice of Intent to Award has been issued.

This procurement will be bid in three consecutive phases, numbered One, Two and Three. The first Phase will be Phase One (1). In Phase One (1), the State will attempt to award all Snow Sections. To the extent that any Snow Sections remain un-awarded following Phase One (1), the State will request that all Vendors {Bidders} who submitted a Quote {Proposal} to

this Bid Solicitation {RFP} for Phase One (1) submit a Phase Two (s) price sheet addressing any Snow Sections that remain un-awarded that the Vendor {Bidder} is interested in. The State will attempt to award all remaining Snow Sections in Phase Two (2) based on the Phase Two price sheets received. In the event that any Snow Sections remain un-awarded after Phase Two (2) is completed, the State will request that all Vendors {Bidders} submit a Phase Three (3) price sheet, addressing any Snow Sections that remain un-awarded, that the Vendor {Bidder} is interested in.

Under no circumstances shall any Vendor {Bidder}, when submitting a Phase Two (2) or Phase Three (3) price sheet after being requested to do so by the State, submit any supplemental or additional information regarding any other aspects of its previously-submitted bid. During Phase Two and Phase Three, the State will only consider the price sheets, and will not consider any additional or supplemental information or documents.

1. **Phase One (1)** – will apply to all Vendors {Bidders} that have submitted a responsive Quote {Proposal};
2. **Phase Two (2)** – will apply to all Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase One (1) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Two (2); and
3. **Phase Three (3)** – will apply to Snow Sections not awarded and will occur after the Notice of Intent to Award has been issued for Phase Two (2) and prior to the issuance of the final Notice of Intent to Award. All Vendors {Bidders} that have submitted a responsive Quote {Proposal}, in response to this Bid Solicitation {RFP}, will be eligible to participate during Phase Three (3).

In other words, only those Vendors {Bidders} whose original submitted Quotes were responsive to the requirements of the Bid Solicitation would be able to participate in and submit pricing for Phase Two and Phase Three.

In accordance with the procedure set forth in Bid Solicitation Section 1.1 *Purpose and Intent*, after the review and evaluation of all Quotes received in response to Bid Solicitation Phase One was completed, the Bureau issued a preliminary notice. That preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One submitted Quotes. The preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. Four Vendors {Bidders} withdrew a submitted Quotes for some or all of the snow plowing and/or spreading sections originally submitted during Phase One. Thereafter, the Bureau commenced Phase Two to solicit Quote pricing for those snow plowing and spreading sections for which no responsive Quotes had been received. On June 11, 2018, requests for Phase Two pricing were sent to all Vendors {Bidders} who submitted Quotes which were deemed initially responsive. Phase Two Quote submission pricing was due to the Bureau on June 18, 2018 at 2:00 p.m.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase Two was completed, the Bureau issued a second preliminary notice. That second preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One and Phase Two submitted Quotes. The second preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. Thereafter, the Bureau commenced Phase Three to solicit Quote pricing for those snow plowing and spreading sections for which no responsive Quotes had been received in either Phase One or Phase Two. Requests for Phase Three pricing were sent to all responsive Vendors {Bidders} on June 26, 2018 with a Phase Three Quote submission due date of June 28, 2018 at 2:00 p.m.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phase Three was completed, the Bureau issued a third preliminary notice. That third preliminary notice advised the Vendors {Bidders} which snow plowing and spreading sections would be awarded based upon the Phase One, Phase Two and Phase Three submitted Quotes. The third preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted a Quote or a preliminarily awarded price line.

Thereafter, on August 22, 2018, 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.² On August 24, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O.s consistent with the Bureau's Recommendation Report.

On August 30, 2018, Jerrell's submitted a letter to the Division protesting the award of price line 375 to MSN Trucking, LLC (MSN).³ Specifically, Jerrell's states that review of the Federal Motor Carrier Safety Administration Registration System (SAFER) website reveals that MSN does not have a sufficient number of trucks to provide the services required for all of the price lines for which it is the intended awardee.

In consideration of Jerrell's 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. I set forth herein the Division's Final Agency Decision.

DISCUSSION

First, the August 24, 2018 NOI indicates that it is the Division's intent to award price line 375 to MSN. The record also reveals that Jerrell's submitted a Quote for price line 375. Per the State supplied price sheet, price line 375 required five (5) Class R Trucks to perform the work required. With its submitted Quote, Jerrell's included Attachment #1 as required indicating that it had two (2) Class R Trucks available. Jerrell's was not recommended for an award because it did not have the full quantity of trucks required to perform the work required for this spreading section. According to the Bureau's Recommendation Report, five (5) other Vendors {Bidders} submitted Quotes for price line 375, each of them indicating that they had five (5) Class R Trucks available to perform the work required. In accordance with Bid Solicitation Section

² The list of Vendors {Contractors} who are recommended to receive Blanket P.O. awards are listed in the attachment to the Bureau's August 24, 2018 Recommendation Report.

³ With the protest letter, Jerrell's requested several documents from each Quote submitted for price line 375. The request for documents was forwarded to the Bureau which provided Jerrell's with documents responsive to the request.

6.7.1 *Vendor's {Bidder's} Price Schedule* awards will be made first to those Vendors {Bidders} supplying all Class R Trucks required for a price line. Specifically, the Recommendation Report states:

Price Line# 375 - the following Vendors {Bidders} submitted responsive Quotes; however, the Quote submitted by MSN is considered to be the overall lowest cost responsive, responsible Quote most advantageous to the State price and other factors considered. This Section requires five (5) Class R Trucks.

- MSN - offered five (5) Tailgate Mounted Class R Trucks, at a rate of \$175 per hour;
- ATA - offered five (5) Tailgate Mounted Class R Trucks, at a rate of \$195 per hour;
- M&M - offered five (5) Tailgate Mounted Class R Trucks, at a rate of \$210 per hour;
- AIT - offered five (5) Tailgate Mounted Class R Trucks, at a rate of \$220 per hour;
- Caner- offered five (5) Tailgate Mounted Class R Trucks, at a rate of \$235 per hour; and
- Jerrell's - offered two (2) V Box Class R Trucks, less than the quantity required.

Although ATA, M&M, AIT and Caner all offered the required quantity of trucks, the Quotes submitted are not considered to be the overall lowest cost responsive, responsible Quotes. Therefore for the reasons stated, MSN is recommended for award of this price line.

[Recommendation Report, p. 47-48.]

Therefore, based upon the evaluation and award criteria, Jerrell's was have been 6th in line for a Blanket P.O. award for this price line as it did not offer the full complement of Class R Trucks to perform the work required for this spreading section.

In the protest Jerrell's questions the Division's intended award of contracts to MSN noting that per the Federal Motor Carrier Safety Administration Registration System (SAFER) website MSN does not have a sufficient number of trucks to provide the services required for all of the price lines for which they are the intended awardees.

With its submitted Quote MSN included Attachment #1 – *Vendor Equipment Form* for each price line bid, indicating that it had or would have the equipment available to perform the work required by the Bid Solicitation if awarded a Blanket P.O. The Bid Solicitation did not require that a Vendor {Bidder} own the trucks necessary to perform the services required at the time of Quote opening.⁴ Rather, it is incumbent on the Vendor {Contractor} to have the equipment available to perform the work required. Further, the Bureau's Recommendation Report indicates that MSN was awarded its spreading sections as a result of Phase I of this procurement. As noted above, on June 5, 2018, the Bureau issued a preliminary notice advising the Vendors {Bidders} which snow plowing and spreading sections would be awarded

⁴ Bid Solicitation Section 2.2 *General Definitions* defines Vendor {Bidder} as “an entity offering a Quote {Proposal} in response to the Division's Bid Solicitation {RFP}” and Vendor {Contractor} as “the Vendor {Bidder} awarded a Blanket P.O. {Contract} resulting from this Bid Solicitation {RFP}.”

based upon the Phase 1 submitted Quotes. The preliminary notice also provided Vendors {Bidders} the opportunity to withdraw a submitted Quote or a preliminarily awarded price line. MSN did not request to withdraw any price line for which it is the intended awardee.

Further, if a Vendor {Contractor} does not have a sufficient number of trucks available to perform all of the snow and/or spreading sections awarded, then the Vendor {Contractor} may choose to subcontract and inform the State of the same. Bid Solicitation Section 4.4.1.1.2 *No Subcontractor Certification* states in part

For a Quote {Proposal} that does NOT include the use of any Subcontractors, by signing the Bid Solicitation {RFP} Offer and Acceptance Page {Signatory Page}, the Vendor {Bidder} is *automatically* certifying that:

- A. 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. {Contract} 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.

Here, MSN submitted a Quote indicating that it would have a sufficient number of trucks available to perform the work awarded. If MSN must subcontract in order to perform the work awarded, the Bid Solicitation permits it to do so.

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation. Accordingly, I sustain the August 24, 2018 NOI.⁵ This is my final agency decision with respect to the protest submitted by Associated.

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

⁵ On August 30, 2018, Jerrell's wrote to the Bureau stating:

Upon review of Intent to Award Bid 18DPP00205 for Jerrell's Landscapes & Nurseries Inc., I bid out Quantity 2 for Line 301 Class E Loader for \$200 an hour for Section 5434266, however the State has an intent to award my company for Quantity 2 for Line 300 Class D Grader Section 5434266. My line item for the grader was a "No Bid" since I do not own a grader.

Please review my documents for this error and advise if the state can remove me from Line 300 and if the state has the intent to award my company Line 301.

A review of the Bureau's Recommendation Report reveals that Jerrell's is not an intended awardee for price line 300. Rather, Jerrell's is an intended awardee for price line 301 consistent with its submitted Quote. Recommendation Report, p. 34.

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. Please monitor the New Jersey Department of Transportation's, the Division's and the [NJSTART](#) websites for future bidding opportunities for these services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger