



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

OFFICE OF THE DIRECTOR

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September 6, 2018

Via Electronic Mail [PFicoEsq@pficolaw.com; vbisogno@baskingridgelaw.com] and USPS Regular Mail

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Re: I/M/O Bid Solicitation #18DPP00205 LaFerrara Construction LLC
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Mr. Fico and Mr. Bisogno:

This letter is in response to your correspondence of August 29 and 30, 2018, on behalf of LaFerrara Construction LLC (LaFerrara) to the Division of Purchase and Property's (Division) Hearing Unit both indicating that your respective firms represent LaFerrara. In that correspondence LaFerrara 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

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} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation). The record of this procurement reveals that LaFerrara's Quote was rejected for failing to submit the *Ownership Disclosure Form* 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 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 Quotes from 164 Vendors {Bidders} received through the State's *NJSTART* eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Thirty-two Vendors' {Bidders}' Quotes were automatically rejected by the Proposal Review Unit for failure to conform to the mandatory administrative requirements for Quote submission, including LaFerrara's Quote which was rejected for failure to include an *Ownership Disclosure Form* with the Quote.

In response to the Notice of Proposal Rejection, on April 16, 2018, LaFerrara wrote to the Division's Hearing Unit stating "Attached is a signed letter of protest as well as our Ownership Disclosure Form and Business Registration Certificate."² With the protest, LaFerrara included a completed and signed *Ownership Disclosure Form*.

On April 23, 2018, the Division issued a Final Agency Decision with respect to the protest submitted by LaFerrara. In part that decision stated:

If the requirements of N.J.S.A. 52:25-24.2 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These statutes and regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

....

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, LaFerrara 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

² LaFerrara's Quote was not rejected for the failure to include the Business Registration Certificate with its submitted Quote. Rather, the Notice of Proposal Rejection advised LaFerrara that "Although not a cause for rejection at this time, Division records indicate your firm is not currently business-registered by the Division of Revenue of the Department of the Treasury (N.J.S.A. 52:32-44.1(b)) – please see the warning letter attached." The warning letter advised LaFerrara that it "must be business-registered and in possession of a valid Business Registration Certificate ("BRC") prior to the award of any contract."

information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, LaFerrara did not comply with any of the options available to it for the submission of ownership information. Accordingly, LaFerrara's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

[April 23, 2018, Final Agency Decision.]

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.

After the review and evaluation of all Quotes received in response to the Bid Solicitation Phases one, two and three was completed, 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.³ 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 29, 2018, Mr. Fico sent the Division a letter, on behalf of LaFerrara, protesting the rejection. Mr. Fico argues it was "unfair" that the Bureau did not give LaFerrara the opportunity to correct this problem. Mr. Fico further states that LaFerrara has been a Vendor {Contractor} for the State of New Jersey for more than twenty years, and has over thirty-five years of experience, with no past performance issues and positive ratings from supervisors. Mr. Fico argues the *NJSTART* website "accepted the application and did not flag it as incomplete," and states that no one from the Bureau requested additional documentation. In addition, Mr. Fico argues that LaFerrara's attempts to contact the State to provide information and participate in Phase 2 of bidding were not answered and only responded to with form responses that did not address the question about subsequent Phases. Finally, Mr. Fico states that his client is "not computer literate" and that the rejection will "irreparably damage their business" and "cause[] undue hardship." By letter dated August 30, 2018, and received by the Division on September 5, 2018, Mr.

³ The list of Vendors {Contractors} who are recommended to receive Blanket P.O. awards are listed in the attachment to the Bureau's August 22, 2018 Recommendation Report.

Bisogno wrote to the Division on behalf of LaFerrara, stating that LaFerrara's Quote was rejected "because of a minor technicality" and requesting a hearing. Mr. Bisogno's letter included a letter dated August 27, 2018 from Robert LaFerrara, which additionally states that the Quote was unfairly rejected and LaFerrara should have been given the opportunity to correct the problem. Mr. LaFerrara notes his firm has more than thirty-five years of experience removing snow and states that "the website accepted our application and did not flag it as incomplete." Mr. LaFerrara argues that no one from the Division contacted him to request additional documentation and its requests for information during Phases two and three were met with only form responses.

Unfortunately, the time within which LaFerrara could have sought reconsideration or appealed the Division's April 23, 2018 Final Agency Decision has passed. The Division's governing regulations state in part that "final agency determinations by the Director on matters of protest are appealable to the Appellate Division of the Superior Court of New Jersey." N.J.A.C. 17:12-3.1. Further, "appeals from final decisions or actions of state administrative agencies or officers... shall be taken within 45 days from the date of service of the decision or notice of the action taken." New Jersey Court Rule 2.4-1(b). As such, LaFerrara should have submitted its appeal of the Division's April 23, 2018, Final Agency Decision by June 9, 2018.

Nevertheless, even if the Division were to take LaFerrara's protest letters as a reconsideration, there is no new information presented which would change the decision outlined in the April 23, 2018, Final Agency Decision. In short, given the statutory and regulatory requirements, the Division is not allowed to permit a Vendor {Bidder} to supplement a Quote after the Quote submission deadline has passed.

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation regarding LaFerrara's nonresponsive determination. Accordingly, I sustain the Proposal Review Unit's Notice of Proposal Rejection and the August 24, 2018 Notice of Intent to Award.

I turn now to the additional arguments challenging the NOI and Mr. Bisogno's request for an in-person hearing. Pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an information hearing." N.J.A.C. 17:12-3.3(d). In consideration of LaFerrara's protests, I have reviewed the record of this procurement, including the Bid Solicitation, LaFerrara's Quote and protests, the relevant statutes, regulations, and case law. The issues raised in LaFerrara's protests are sufficiently clear such that a review of the record of this procurement 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 protests submitted by LaFerrara on the written record. I set forth herein the Division's Final Agency Decision.

First, Mr. Fico and Mr. LaFerrara assert LaFerrara should have been permitted to participate in Phase Two and Phase Three. Bid Solicitation section 1.1 *Purpose and Intent* described the Bureau's intent to use a three-phased approach to award all Snow Sections. Only Vendors {Bidders} that were responsive to Phase One would be invited to participate in Phase Two and Phase Three. Because LaFerrara was deemed nonresponsive in Phase One as detailed in the April 23, 2018, Final Agency Decision, the Bureau correctly determined that LaFerrara was not eligible to participate in Phase Two and Phase Three.

Next, Mr. Fico and Mr. LaFerrara argue that it was unfair for the Bureau not to return LaFerrara's calls and emails regarding its requests to participate in Phase Two and Phase Three. Bid Solicitation section 1.3.1 *Electronic Question and Answer Period* advised all Vendors {Bidders} that "[a] Vendor {Bidder} shall not contact the Using Agency and/or the Procurement Specialist directly, in person, by telephone or by e-mail, concerning this Bid Solicitation {RFP} prior to the final award of the Blanket P.O. {Contract}." Nevertheless, given, the public procurement law requirements, the Division responded to LaFerrara's

inquiries, including replying to LaFerrara's July 29, 2018 email. On July 29, 2018, LaFerrara submitted an email inquiry as follows:

Hello Michelina,

I am writing you to follow-up on the contracts for NJ DOT Spreading Services. I last wrote you on June 20th regarding this topic and have not received a response. Douglas Campbell's voicemail indicated that you were the correct person to contact for more information regarding this topic.

We put in a bid for NJ DOT Spreading Services. Unfortunately, it was rejected because the state did not receive our Ownership Disclosure form at the time of the bid. The Ownership Disclosure form has subsequently been submitted.

Have the contracts all been awarded? Is there a second round of bidding and / or any sections that are still open? If so, now that we have submitted the required documentation are we eligible to bid?

Thank you for responding in this matter.

Peter LaFerrara
Office Manager
LaFerrara Construction LLC

In response to this email inquiry, the Division's Vendor Administration Team replied as follows:

From: NJSTART
Sent: Monday, July 30, 2018 2:17 PM
To: bobbylaferrara@gmail.com
Subject: RE: Follow-up on NJ DOT Spreading Services Contracts

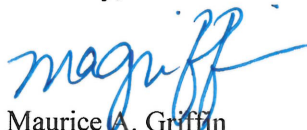
The Division of Purchase and Property is unable to provide any comment regarding the status of the evaluation of the Quotes {Proposals} received by the Division's Procurement Bureau. Once the evaluation of the Quotes {Proposals} received is completed, all Vendors {Bidders} who submitted Quotes will receive written notification of the intended Contract awardee(s).

LaFerrara may have been frustrated by the Bureau's inability to discuss specifics of the Division's ongoing evaluation with the Procurement Specialist, but the Bureau correctly concluded that it was unable to discuss the evaluation the Bid Solicitation evaluation prior to the issuance of the final NOI, and properly forwarded those inquiries to the **NJSTART** Vendor Administration Team in order to ensure the integrity of the public bidding process. While the Bureau could have reminded LaFerrara that its Quote was rejected for failure to submit the Ownership Disclosure Form and referred to the April 23, 2018 Final Agency Decision, LaFerrara was nonetheless ineligible to participate in Phase Two and Three.

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 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. 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:REG

c: P. Michaels
L. Spildener
M. Groninger