



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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May 20, 2022

Via Electronic Mail Only kbrown@seiu32bj.org

Kevin Brown, Executive Vice President and New Jersey State Director SEIU Local 32BJ
Service Employees International Union CTW, CLC
25 West 18th Street
New York, NY 10011-1991

Re: I/M/O Bid Solicitation #20DPP00471 Service Employees International Union, Local 32B-J
Protest of Notice of Intent to Award
T1628 Enhanced Motor Vehicle Inspection Maintenance System

Dear Mr. Brown:

This final agency decision is in response to your letter of January 10, 2022, on behalf of Service Employees International Union, Local 32B-J (SEIU) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that letter, SEIU protests the December 21, 2021, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #20DPP00471 – T1628 Enhanced Motor Vehicle Inspection Maintenance System (Bid Solicitation).

SEIU is protesting the bid specifications and the award alleging the following: (1) Bid specification failed to require the Vendor to offer employment to the current workforce and (2) Opus cannot deliver uninterrupted quality services.

Background

By way of background, the Clean Air Act (CAA) Amendments of 1990 gave the United States Environmental Protection Agency (EPA) the authority to require metropolitan areas designated as serious, severe or extreme non-attainment for carbon monoxide or ozone, to implement an Inspection and Maintenance (I/M) Program. In New Jersey, the Motor Vehicle Commission (MVC) and the Department of Environmental Protection (DEP) are partners in the effort to protect the health and safety of New Jersey residents by overseeing the I/M Program. Since its inception over 81 years ago, when it was introduced as a vehicle safety initiative, the I/M Program has gone through many changes. Many of these changes were based upon amendments to the various State and federal laws and regulations, including the CAA Amendment of 1990 which govern the I/M Program.

In August 1995, the enhanced version of the I/M program was adopted. This enhanced program is an integral part of New Jersey's compliance plan with the National Ambient Air Quality Standards (NAAQS), and a component of the State Implementation Plan (SIP) which is designed to attain and maintain the health-based NAAQS for ozone and designed to improve air quality and protect the health and

safety of the State's residents as well as the environment. Although the MVC operates the I/M Program, DEP is the lead agency responsible for ensuring the State meets the mandates of the CAA, its amendments and federal regulations. Further, DEP is charged with monitoring compliance with the SIP.

In August 1998, the State awarded a contract to privatize the centralized vehicle inspection program. See, Request for Proposal 08-X-39078, section 1.2.1 *Program History*. That first contract was awarded to Parsons Infrastructure, which retrofitted/built and equipped 132 inspection lanes, designed and built a vehicle inspection database, and assumed the operation of the Centralized Inspection Facilities (CIFs). *Ibid.* Private Inspection Facilities (PIFs) remain part of New Jersey's I/M program. The current I/M program is considered a hybrid system, meaning it utilizes both CIFs and PIFs. There are approximately 2,100,000 emission inspections performed annually.

The first contract expired and was rebid as Request for Proposals #08-X-39078, and the second contract was awarded to Parsons in 2008. In 2016, the Bureau issued Request for Proposals #16-X-24049, and on May 13, 2016, notice of intent to award was issued to SGS Testcom, Inc. (SGS). Parsons Environment and Infrastructure Group, Inc. (Parsons) and Opus Inspection, Inc. (Opus) protested that intended award which resulted in Bureau rescinding the intended award to SGS and issuing an amended notice of intent to award to Opus on August 18, 2017. Parsons, then protested the August 18, 2017 notice of intent to award claiming that Opus' bid was not responsive and suggested that the contract be awarded to Parsons or that the procurement be canceled and re-bid. That protest resulted in the Bureau rescinding the notice of intent award and canceling the procurement.

On August 28, 2019, the Bureau issued the Bid Solicitation for this procurement, which will be the third contract for the program. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for implementing the next generation Motor Vehicle Inspection and Maintenance program (NGSystem). The Inspection and Maintenance program is for the mandatory periodic inspection of vehicles to assure compliance with standards established by the State and the federal government. *Ibid.* The intent of this Bid Solicitation is to award a Master Blanket Purchase Order (Blanket P.O. or Contract) to that responsible Vendor {Bidder} (Bidder) whose Quote, conforming to this Bid Solicitation, is most advantageous to the State, price and other factors considered. *Ibid.*, Bid Solicitation Section 7.2 *Final Blanket P.O. Award*. On June 23, 2021 the SEIU submitted a challenge to the workforce specifications of Bid Solicitation.¹ Specifically, SEIU requested that the Bid Solicitation be modified to require that

the contractor shall give all qualified personnel of the current vendor the right of first refusal with regard to employment under the new contract, in

¹ On May 25, 2021, Parsons submitted a challenge to certain specifications of the Bid Solicitation. Specifically, Parsons raised the following concerns regarding the Bid Solicitation: (1) Parsons is at a disadvantage with respect to Quote pricing because it has specific information regarding maintenance, repairs, and renovations that are needed at the various inspection facilities; (2) inaccurate/incomplete information has been provided to potential Bidders with respect to the requirement to hire the current inspection workforce; (3) there was no information included in the Bid Solicitation regarding required COVID protocols; and (4) the Bid Solicitation failed to include or reference new and emerging technologies. On June 4, 2021, the Division issued its final agency decision finding that no amendments to the Bid Solicitation were necessary. The June 4, 2021 final agency decision is available at: <https://www.state.nj.us/treasury/purchase/pdf/decisions/2021/IMOBidSolicitation20DPP00471Parsons.pdf>. The June 4, 2021 final agency decision found, in relevant part to SEIU's challenge, that the CAA only required the original contractor awarded the initial privatization contract to hire the State employees of Motor Vehicles Services. This hiring requirement did not extend to subsequent contracts.

order of seniority. In order to encourage the current trained and qualified workforce to continue in employment and to avoid disruption in service, contractor shall maintain the current prevailing level of wages, health and retirement benefits and the monetary equivalent of the other terms and conditions of employment, as established in the collective bargaining agreement between the current vendor and the exclusive majority collective bargaining representative of the employees of the current vendor.

[SEIU June 23, 2021, specification challenge.]

After reviewing SEIU's June 23, 2021, challenge to the specifications, the requirements of the law and the Bid Solicitation, the Division issued its final agency decision on June 29, 2021, which found no amendments to the Bid Solicitation were necessary.² In the June 29, 2021 final agency decision, the Director found that the Federal Clean Air Mandate Compliance Act (Act), P.L. 1995, c. 112, states:

All qualified full-time employees whose employment with the division³ is terminated as a result of [the Act] shall be offered full-time employment. If more than one contract for the operation of official inspection facilities is awarded, each contractor shall offer full-time employment to a percentage of the number of such employees that is equal to the percentage of the total number of inspection lanes that will be operated by that contractor.

[N.J.S.A. 39:8-44(c)(7) (emphasis added).]

The Director again concluded that the plain language of the Act required that the original contractor awarded a contract for privatization of the State's inspection and maintenance program offer employment to all then-full-time employees of the Division of Motor Vehicles. The Director also concluded that the Act does not require future contractor(s) to hire the employees of any prior contractor providing the services for the State's inspection and maintenance program.

On July 21, 2021, the Division's Proposal Review Unit opened three (3) Quotes received by the submission deadline.⁴ After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded the three Quotes to the Bureau for further review. After completing the initial review of the submitted Quotes, the Bureau determined that the Quote submitted by Parsons was non-responsive to the requirements of the Bid Solicitation. The remaining two (2) Quotes were forwarded to the Evaluation Committee for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*.

² The June 29, 2021 final agency decision is available at: <https://www.state.nj.us/treasury/purchase/pdf/decisions/2021/IMO-Bid-Solicitation-20DPP00471-Service-Employees-International-Union.pdf>

³ N.J.S.A. 39:8-43 defines Division as "the Division of Motor Vehicles in the Department of Law and Public Safety;" the Division of Motor Vehicles is now known as the Motor Vehicle Commission.

⁴ Quotes were submitted by Parsons Environment and Infrastructure Group, Inc. (Parsons), Opus Inspection, Inc. (Opus), and Applus Technologies, Inc. (Applus).

After completing its evaluation, on November 22, 2021, the Evaluation Committee prepared a report detailing the review of the Quotes submitted by Applus and Opus and ultimately recommended that a Contract be awarded to Opus.

Thereafter, the Bureau prepared a Recommendation Report summarizing the procurement, and recommending that a contract be awarded to Opus based upon the review and evaluation conducted by the Evaluation Committee. See, December 8, 2021, Recommendation Report. On December 21, 2021, the Bureau issued the NOI advising all Bidders of the State's intent to award a Contract to Opus.⁵

On January 10, 2022, SEIU submitted a protest letter to the Division.⁶ SEIU challenges the Bid Solicitation specifications claiming (A) the Act requires that the Contractor offer employment to the current workforce; and, (B) that Opus cannot deliver uninterrupted quality service. By way of remedy, SEIU requests that the State rescind the intended Contract award to Opus, and reissue the Bid Solicitation with revised specifications requiring: (1) an offer of employment to all current workers, subject to reasonable background check; (2) adequate staffing levels set with specific employee headcount in the bid specification sufficient to provide the required service, including reasonable breaks, meal time and paid time off; and, (3) Maintenance of current wage and benefit standards subject to reasonable increases in wages and benefit costs in light of inflation. See SEIU protest letter, p. 3.

Analysis

In consideration of SEIU's protest, I have reviewed the record of this procurement, including the Bid Solicitation, relevant statutes, regulations, case law and the Quotes received in response to this Bid Solicitation. This review has provided me with the information necessary to determine the facts of this matter and to render this final agency decision.

First, SEIU is protesting the bid specifications relating to workforce and requests that the State reissue the Bid Solicitation requiring any new Contractor to offer employment to the current employees, include specific employee head counts for performing the contracted work, and include specific wage and benefit terms, subject to increase. This is a rehash of the challenge presented by SEIU in its June 2021 protest.

Pursuant to the Division's governing regulations, a "challenge to a specification contained within the [Bid Solicitation]" must be brought prior to the Quote opening date. N.J.A.C. 17:12-3.2(a) and (b). SEIU availed itself of the opportunity to challenge the specifications, and as noted above, on June 23, 2021 submitted a protest challenging the terms and conditions of the Bid Solicitation related to workforce. On June 29, 2021, the Division issued its final agency decision finding that no amendments to the terms and conditions of the Bid Solicitation related to workforce were necessary. If SEIU disagreed with the Division's final agency decision, its recourse was to file an appeal with the Appellate Division, not wait until the issuance of the Notice of Intent to Award to raise the same issue and request that Bid Solicitation be canceled and re-bid. N.J.A.C. 17:12-3.1(b).

⁵ The December 21, 2021, NOI advised all Bidders that the protest period ended at 4:00 pm on January 6, 2022. However, Counsel for Parsons requested a short extension of Protest period which was granted. On January 3, 2022, all Bidders were advised that the protest period was extended to noon on Monday, January 10, 2022.

⁶ On January 10, 2022, Parsons also submitted a protest letter to the Division challenging the Bureau's determination that its Quote was non-responsive. Parson's protest is decided in a separate final agency decision.

Second, SEIU that “Opus clearly intends to slash the modest wages and benefits of the current workforce” which can be the only explanation for the difference between the contract price bid by Parsons and that of Opus. SEUI’s statements are nothing more than conjecture as it has offered no support for these statements. However, I note that in evaluating a Quote received, the Division is not evaluating pricing in terms of a Contractor’s profitability. Rather, the Division evaluates the Quote to ensure that the Contract is awarded to that responsible Bidder whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. RFP § 1.1 *Purpose and Intent*.

Finally, SEIU alleges that Opus cannot deliver uninterrupted quality service; and therefore, requests that the State reissue the Bid Solicitation with specific employee head counts. The Bid Solicitation did not mandate specific staffing levels; rather, the Bid Solicitation required that

The Vendor {Contractor} shall provide a sufficient number of trained supervisors, managers, and lane inspectors to:

1. Conduct inspections and operate CIFs in accordance with all governing inspection regulations and the terms of this Bid Solicitation;
2. Perform management, administrative, and service functions associated with the conduct of such inspections and the operation of the inspection facilities; and
3. Meet the Wait Time standards defined in Section 3.17 of this Bid Solicitation

[Bid Solicitation Section 3.14 *Workforce* (C).]

As written, the Bid Solicitations terms ensured that each potential Bidder could create its own operational and staffing procedures based upon its knowledge and experience in the industry and the technology it chooses to employ, while at the same time ensures that the contract work is performed as envisioned by MVC and DEP. Nothing in N.J.S.A. 39:8-44, or the State’s Federal Clean Air Mandate Compliance Act, L. 1995, c. 112 (c.39:8-41 to -58) require that the State set specific head counts or other staffing ratios at the CIFS. As such, there is no requirement to cancel this Bid Solicitation and issue a new one with such requirements.

Based upon the foregoing, I find no reason to cancel this Bid Solicitation or disturb the Bureau’s recommendation that the Contract be awarded to Opus Inspection, Inc. Accordingly, I sustain the December 21, 2021, Notice of Intent to Award. This is my final agency decision.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: M. Dunn
J. Pastuzyn
J. Borek, Esq.