



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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August 3, 2023

Via Electronic Mail Only rcomunale@jscomunalegroup.com

Richard Comunale, President
WJC Electronics and Appliance Parts Inc. d/b/a Johnstone Supply
23 Clinton Avenue
Pleasantville, NJ 08232

Re: I/M/O Bid Solicitation #22DPP00716 WJC Electronics and Appliance Parts Inc. d/b/a Johnstone Supply
Protest of Notice of Intent to Award
T3027 Plumbing and Heating, Ventilation and Air Conditioning (HVAC) Supplies/Equipment -
Statewide

Dear Mr. Comunale:

This final agency decision is in response to your July 17, 2023, email, on behalf of WJC Electronics and Appliance Parts Inc. d/b/a Johnstone Supply (Johnstone), to the Division of Purchase and Property's (Division) Procurement Bureau (Bureau). That correspondence was forwarded to the Division's Hearing Unit and has been accepted as a protest of the Bureau's July 11, 2023, Notice of Intent to Award letter (NOI) letter.

By way of background, on September 20, 2022, the Bureau issued Bid Solicitation #22DPP00716 – T3027 Plumbing and Heating, Ventilation and Air Conditioning (HVAC) Supplies/Equipment - Statewide (Bid Solicitation) on behalf of Statewide Using Agencies and Cooperative Purchasing Participants to solicit Quotes from Bidders for turf management and maintenance services and chemical turf treatment. Bid Solicitation Sec. 1.1, *Purpose and Intent*. It is the State's intent to award a Master Blanket Purchase Order (Blanket P.O.) to those responsible Bidders whose Quotes, conforming to the Bid Solicitation, are most advantageous to the State, price and other factors considered. Ibid.

The entire Bid Solicitation was designated as a Small Business Set-Aside Contract for Small Business Categories I, II and III, as further explained in Bid Solicitation Section 3.8, Small Business Set-Aside Contracts. Thus, the Bidder needed to be registered and approved as a qualifying small business with the Division of Revenue and Enterprise Services (DORES), Small Business Registration and M/WBE Certification Services Unity by the date the Quotes were opened. Ibid. As a full Small Business Set-Aside. N.J.S.A. 52:32-25 requires that, "When a contract or portion thereof has been designated as a set-aside, invitations for bids shall be confined to businesses designated by the department [Division of Revenue and Enterprise Services (DORES)] as appropriate for the set-aside and bids from other bidders shall be rejected." Further, N.J.S.A. 52:32-24 required that DORES "establish a procedure for annually reviewing the lists and determining whether the businesses on the lists shall continue to be designated as small businesses, minority businesses and female businesses." Accordingly, after receiving an initial

certification, a certified business is required to submit an Annual Verification Form to DORES indicating whether or not there were any changes to the company’s ownership status since the date of certification. The Annual Verification Form advises companies that the form must be submitted in order to maintain an active status.

Consistent with the statute, the Bid Solicitation included the following instructions regarding the Small Business Set-Aside requirement:

Pursuant to the provisions of N.J.S.A. 52:32-17 and N.J.A.C. 17:13 this is a full Set-Aside Blanket P.O. for **Category I, II, or III** for Small Businesses.

The Bidder must be registered as a qualified small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit, by the date the Quote is opened.

A Bidder should verify its Small, Minority, Veteran, and Women Owned Business Certification status on the “Maintain Terms and Categories” Tab within its profile in *NJSTART*. In the event of an issue with a Bidder’s Small, Minority, Veteran, and Women Owned Business Certification status, *NJSTART* provides a link to take corrective action.

If the Bidder has previously registered or been certified as a Small Business Enterprise, the Bidder should ensure it is currently registered and that its registration is active with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit, prior to the Quote opening date, to be eligible for award. The Bidder should ensure that it has completed the annual verification, if required.

[Bid Solicitation Section 3.8 *Small Business Set-Aside Contracts*, emphasis added.]

Potential Bidders were permitted to submit questions to the Bureau, using the Division’s *NJSTART* eProcurement system, by 2:00 pm Eastern Time on October 7, 2022 (Bid Solicitation Section 2.1, *Electronic Question and Answer Period*). Prior to that date, the Bureau posted Bid Amendment #1 on September 30, 2022, and revised the deadline to submit questions to October 14, 2022. Following the question and answer period, the Bureau posted Bid Amendment #2 on October 28, 2022. Two questions in Bid Amendment #2 specifically discussed the Small Business Set-Aside requirement as follows:

#	Bid Solicitation Section Reference	Question (Bolded) and Answer
6	Small Business Enterprise (SBE) Registration	<p>Q: For the SBE, what happens if I submit a Quote, but my firms SBE status is listed as Expired or Revoked with the Division of Revenue and Enterprise Services, Small Business Registration Certification Services Unit on the date the Quote is received and opened? Will my Quote be considered for the SBE?</p> <p>A: If your firms SBE status is listed as Expired or Revoked by the DORES Small Business Registration and MWBE Certification Services Unit at the date the Quote is received and</p>

		opened, the Quote submitted by your firm will not be evaluated as coming from a responsive qualifying SBE.
7	SBE Registration	<p>Q: For the SBE, how can I check if my business is registered and approved as an SBE with the Division of Revenue and Enterprise Services? Can I apply online?</p> <p>A: By clicking on the below link, you will be directed to the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, Small Business Registration Certification Services Unit. To verify the current SBE status of your firms account or for instructions to apply online for SBE certification, please visit: https://www.nj.gov/treasury/revenue/business-cert-program.shtml</p>

On November 16, 2022, the Division’s Proposal Review Unit opened nine (9) Quotes submitted through the State’s **NJSTART** eProcurement system by the submission deadline of 2:00 p.m. eastern time. After conducting a preliminary review of the Quotes submitted, all nine (9) Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 8.9. As noted in the Recommendation Report, the Bureau found that the Quote submitted by Johnstone was non-responsive to the mandatory requirements of the Bid Solicitation because Johnstone was not registered as a Small Business Enterprise (SBE) as of the Quote opening date.

On July 17, 2023, Johnstone submitted a protest by email challenging the Bureau’s determination that it was not awarded a contract despite not being properly registered as a SBE. That email read:

My name is Richard Comunale and I am the owner of WJC Electronic and Appliance Parts T/a Johnstone Supply.

We are very disappointed that we were not considered for any part of the award.

We have had a state contract for over 20 years.

We deal with so many of the state agencies and they have dealt with us and we are known for our reputation and our great service to the agencies.

We are a small business and this will hurt us very badly.

We spent countless hours putting this together for the state and were hoping to be awarded some part of the contract.

The reason we were disqualified was that we were not a certified a small business enterprise!!!!

I surely understand if we were out bid, that would be very understandable but to disqualify us for this reason seem extremely unfair.

We have bid this out in the past and the last time we were awarded the bid we were not certified at that time as well and yet we were awarded a few lines on the bid.

Their has to be something we can do.

I can’t speak for any else who was disqualified but most of the people that were also disqualified seemed to be for the same reason.

We pay every year quite a bit of sales tax for the state of New Jersey and as I stated before this is really going to hurt our company. Please let me know if there is anything that could be done so that we can be reinstated.

[Johnstone Protest Email, dated July 17, 2023, (Emphasis in original).]

I note that pursuant to N.J.A.C. 17:12-3.3(e), “[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 informal hearing.” N.J.A.C. 17:12-3.3(d). In consideration of Johnstone’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, the relevant statutes, regulations, and case law. The issues raised in Johnstone’s protest were 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 protest submitted by Johnstone on the written record and, as such, an in-person hearing is not warranted. I set forth herein the Division’s final agency decision.

In reviewing whether each bidder satisfied the requirements for SBE certification, the Procurement Specialist emailed DORES on November 18, 2023, requesting the status of each bidder. As shown in the screenshot below, DORES informed the Bureau that Johnstone’s SBE certification expired on February 1, 2004:

6152	WJC Electronics and Appliance	22- [REDACTED] NOT APPROVED – SBE expired on 2/01/2004
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This information is consistent with Johnstone’s **NJSTART** Vendor Profile which reveals that the certification was either expired or revoked on February 1, 2004, prior to the Quote opening date.

Category: Certification: Small Business Enterprise

Description: This Certification status is updated daily. If you have questions regarding Small Business eligibility, please see the following link:

Revoked or Expired

Notes:

EXPIRATION DATE 2004-02-01

In its July 17, 2023, email, Johnstone acknowledges that it was not certified at the time of Quote opening because it was not certified at the time of the last procurement. Furthermore, Johnstone suggests that it was not SBE certified for the prior contract, but was still awarded a contract. However, there is no need to examine the facts of the prior contract because Bid Solicitation Section 1.2 expressly informed Bidders that “Bidders are cautioned that this new Bid Solicitation addresses current requirements. Bidders should not rely upon or use data from the previous Contract.” Unfortunately, at the time of this Quote opening, Johnstone was not certified as a SBE; and therefore, Johnstone was ineligible for a Blanket P.O award. Accordingly, the Bureau properly determined that Johnstone was ineligible for a contract award

under this Contract because it was not SBE certified as of the Quote opening date as required by the governing law.

The Division encourages competition and appreciates the time and effort put forth by Johnstone in preparing and submitting a Quote, and while I am sure this was an oversight on the part of Johnstone, the Division does not have the power to waive the statutory requirements for eligibility to bid on a Small Business Set Aside contract. In light of the findings set forth above, I have no choice but to uphold the Bureau's determination to award Master Blanket P.O. in the accordance with the July 11, 2023 NOI. 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. 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.

Sincerely,

A handwritten signature in black ink that reads "Cory K. Kestner". The signature is written in a cursive style with a large, looping initial 'C'.

Cory K. Kestner
Chief Hearing Officer

c: K. Thomas
C. Murphy
J. Brown

