



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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June 30, 2023

Via Electronic Mail maeve.cannon@stevenslee.com

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Re: Request for Reconsideration
Master Blanket P.O. #22-GNSV2-28430
Appraisal Services for New Jersey Department of Environmental Protection

Dear Ms. Cannon:

This is in response to your letter dated May 3, 2023, regarding Master Blanket P.O. #22-GNSV2-28430 - Appraisal Services for New Jersey Department of Environmental Protection (the “Curran Contract”) which was received by the Division of Purchase and Property’s (the “Division”) Hearing Unit. In that letter, Curran Realty Advisors, LLC, (“Curran Realty”) requests that the Division reconsider the April 21, 2023, final agency decision which upheld the Department of Environmental Protection’s (“DEP”) decision to terminate the Curran Contract, communicated by a letter from the Division on March 7, 2023.

By way of summary, on July 30, 2021, the Bureau issued the Bid Solicitation for T2957 on behalf of the DEP for Real Estate Appraisal services. The purpose of the Bid Solicitation was to solicit Quotes from qualified New Jersey State Certified General Real Estate Appraisers (SCGREAs) capable of performing real estate appraisals for DEP in connection with the acquisition of properties as open space preservation or flood plain protection by the State of New Jersey (State). Bid Solicitation Section 1.1 *Purpose and Intent*. It was the State’s intent to award multiple Master Blanket Purchase Orders (Blanket P.O.s) in each region to those responsible Bidders whose Quotes, conforming to the Bid Solicitation, are most advantageous to the State, price and other factors considered. *Id.* Critically, the bidding community was cautioned that this “new Bid Solicitation addresses current requirements”, so Bidders “should not rely upon or use data from the prior Blanket P.O.” Bid Solicitation Section 1.2 *Background*.

On October 7, 2021, the Division’s Proposal Review Unit opened twenty-four (24) Quotes which were received by the submission deadline of 2:00 pm Eastern Time. After conducting a review of the Quotes received, and as indicated in the August 31, 2022, Recommendation Report, the Bureau determined that three bidders’ Quotes were non-responsive for three different reasons: one bidder failed to provide the required Revised State Supplied Price Sheet for the current Bid Solicitation, and instead submitted the State Supplied Price Sheet from Bid Solicitation #19DPP00335; one bidder failed to provide requested financial information as required by the Bid Solicitation; and one bidder provided incorrect pricing on its State

Supplied Price Sheet. A fourth bidder provided a partially responsive Quote by failing to include pricing for all price lines in the Northern Region. *August 31, 2022, Recommendation Report, p. 3-4*. The remaining proposals were forwarded to the Bureau for evaluation. On August 31, 2022, the Bureau recommended that a Contract be awarded to Curran Realty and other responsive bidders for the three regions established in the Bid Solicitation.

On September 2, 2022, the Bureau issued the Notice of Intent to award ("NOI") advising all bidders of the State's intent to award a Contract to Curran Realty and the other advertised bidders. On September 6, 2022, a non-responsive bidder submitted a protest of the issuance of the NOI. The protest challenged the determination that the bidder's proposal was non-responsive for failing to provide pricing for "Appraisal Services" in three (3) Regions, and also did not submit pricing for "Other Appraisal Services", as required by Bid Solicitation Section 3.6, nor for "Testimony and Litigation Support", as required by Bid Solicitation Section 3.7, in any Region. On October 7, 2022, the Division issued a final agency decision which upheld the Bureau's issuance of the September 2, 2022 NOI.

On September 2, 2022, the Bureau awarded the contract to Curran Realty with an effective date of December 1, 2022. On or about December 8, 2022, DEP asked the Bureau if a conflict of interest exists when an awarded vendor is a former employee of DEP. The Bureau advised that DEP should contact its Ethics Liaison Officer with the details regarding the contract and the former employee's involvement with the awarded contract.

Then, by email to the Bureau dated January 31, 2023, the Bureau Chief for Green Acres Flood Buyout Implementation & State Land Acquisition Program, NJDEP Green Acres Program, advised the Bureau that the State Ethics Commission provided a staff opinion that Ms. Curran would violate N.J.S.A. 52:13D-17 if Ms. Curran or Curran Realty provided services on the T2957 contract based on her substantial and direct involvement with the development of the Bid Solicitation. Thus, DEP determined that Curran Realty could not be utilized for work on the contract.

In accordance with the guidance provided by DEP, on March 7, 2023, the Division issued a letter advising Curran Realty that the Director of the Division was canceling the contract for convenience pursuant to SSTC Section 5.7(A), and set forth a brief summation of DEP and SEC's reasons for doing so (the "Notice of Contract Termination for Convenience"). Curran Realty requested a short extension to respond to the Division's letter, and an extension was granted until March 24, 2023. Curran Realty protested the Termination for Convenience by letter submitted to the Division on March 24, 2023 (the "Curran Protest"). Curran Realty asserted that a: (1) Stay of Termination was warranted pending receipt of the SEC's Advisory Opinion and a hearing before the Division; and (2) Ms. Curran has not, and will not, Violate N.J.S.A. 52:13D-1. Additionally, Curran Realty requested that the entire record underlying this decision, including but not limited to the SEC's advisory opinion and any communications by and between NJDEP, SEC and the Division regarding this matter, be produced immediately.

On March 24, 2023, Curran Realty wrote to the Division's Hearing Unit protesting the March 7, 2023, Notice of Termination for Convenience letter. As relief, Curran Realty requested that its contract not be terminated.

On April 21, 2023, the Division issued its final agency decision which upheld DEP's decision to request a termination for convenience based on its determination, in consideration with a staff opinion from SEC, that Ms. Curran's performing work for this specific contract would violate ethics laws due to Ms. Curran's substantial and direct role in the Bid Solicitation's development. Reviewing Curran Realty's involvement in the preparation of the Bid Solicitation, and deferring to the expertise of DEP and SEC in the specialized and complex areas covered by the various statutes and regulations as guided by Metromedia,

Inc. v. Dir., Div. of Taxation, 97 N.J. 313, (1984), the Director sustained the March 7, 2023, Notice of Contract Termination for Convenience.

On May 3, 2023, Curran Realty submitted a request for reconsideration to the Division's Hearing Unit. In that letter, Curran Realty again argues that Ms. Curran denies substantial involvement in the Bid Solicitation because the work performed by Ms. Curran was a mere transcription of existing appraisal requirements already available on public websites, that she gained no advantage because every responsive vendor received an award, and that she did not provide any forms while employed at DEP.

Curran Realty has requested that the Division reconsider the allegations of its protest and the Division's final agency decision. Reconsideration however,

should be utilized only for those cases which fall into that narrow corridor in which either 1) the [tribunal] has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [tribunal] either did not consider, or failed to appreciate the significance of probative, competent evidence. . . .

Alternatively, if a litigant wishes to bring new or additional information to the [tribunal's] attention which it could not have provided on the first application, the [tribunal] should, in the interest of justice (and in the exercise of sound discretion), consider the evidence. Nevertheless, motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour. Thus, the [tribunal] must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration.

[Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996), citing, D'Atria v. D'Atria, N.J. Super. 392, 402-402 (Ch. Div. 1990).]

In requesting reconsideration, Curran Realty has not brought to light any new or additional information which was not included or addressed in the original protest. Rather, Curran Realty simply disagrees with the Division's decision, and asks that the Division reconsider the decision based upon the same information and arguments presented in the original protest. While Curran Realty may not be entitled to reconsideration under the law, for the sake of completeness I will address the request here.¹

In consideration of Curran Realty's request for reconsideration, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, evaluation materials, Curran Realty's Protest, prior final agency decisions, the relevant statutes, regulations, case law, and the draft Bid Solicitations to determine if any evidence exists supporting either party's position. For the reasons set forth herein, I uphold the April 21, 2023, final agency decision and do not find reason to reverse the termination of Curran Realty's contract at this time.

First, Curran Realty claims that the April 21, 2023, final agency decision erroneously concluded that Ms. Curran had substantial involvement in preparing the Bid Solicitation. She again states that her input was solely related to publicly available requirements, and that she did not have access to any

¹ The Division's governing regulations do not contemplate requests for reconsideration. Rather, upon issuance of the final agency decision, the appropriate course of action would be to file an appeal with the Superior Court Appellate Division. N.J.A.C. 17:12-3.1 (b).

confidential information. However, these statements again do not match up to the facts established in the final agency decision.

As noted in the April 21, 2023, final agency decision, DEP believes Ms. Curran did play a substantial role in the Bid Solicitation's development, and that she did have access to information not available to the public. As quoted from the December 15, 2022, email from DEP's Ethics Liaison Officer (ELO) to a Legal Specialist at SEC, the ELO provided the following summary regarding Ms. Curran's involvement:

However, I will focus on her substantial and direct involvement with the development of the new State Term Appraisal contract. Whereas she worked and developed the draft and final version submitted to Treasury, and whereas she was privy to communications and discussions between other outside appraisers, NJDEP Green Acres/Blues Acres management and staff, and was aware of the specifics concerns and ultimate terms and conditions of the new State Term Appraisal contract, it would appear that she was "substantially and directly involved" with the development of the new State Term Appraisal contract. The NJ State Ethics Code does have language in Appendix H, "Post Employment Restrictions - New Jersey Conflicts of Interest Law", which describes in part such factors as whether the individual had provided input in a matter and access to confidential information when considering whether an individual had "substantially and directly involvement in a matter".

[April 21, 2023 final agency decision, page 5 (emphasis added).]

It is clear that DEP thought Ms. Curran's involvement was significant enough for them to provide the SEC with the details related to Ms. Curran's involvement with the Bid Solicitation preparation, the dates of her employment, the dates of the Bid Solicitation preparation and advertisement, Curran Realty's bid submission date, the date of award, Ms. Curran's most recently approved Outside Activity Questionnaire (OAQ), and most recent ethics training receipts for a review as it related to her involvement with the T2957 contract. Additionally, SEC found the provided information significant enough to determine that, based upon the facts presented, if Ms. Curran or Curran Realty worked on the contract, it would violate N.J.S.A. 52:13D-17. No new facts have been presented to counter the determinations of either agency.

In Curran Realty's May 3, 2023, letter, a new argument is raised that there were differences between the draft Bid Solicitation and the final Bid Solicitation. While this is a new argument, the underlying facts regarding Ms. Curran's involvement in the process remain unchanged. As shown by the italicized language in the block quote above from the April 21, 2023, final agency decision, DEP was also concerned about Ms. Curran's involvement with communications and discussions between other outside appraisers, the DEP Green Acres/Blues Acres management and staff, and the specific concerns and ultimate terms and conditions of the new State Term Appraisal contract. The draft Bid Solicitation pages in the April 21, 2023, final agency decision merely represented a physical manifestation of one aspect of Ms. Curran's involvement in the Bid Solicitation preparation process.

Curran Realty also argues that the process confirms that she had no advantage because other awards were also made to other vendors. However, such a statement fails to recognize that the goal of public contract awards "is to secure for the public the benefits of unfettered competition." Barrick, supra, 218 N.J. at 258 (citing, Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)). Permitting a former New Jersey employee to not only bid on public contracts, but to also be awarded a contract, after having substantial involvement in the preparation of the bid documents flies in the face of

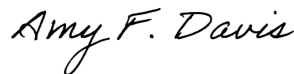
New Jersey's public contracting law. The success of another vendor does not remove the fact that DEP and SEC found Ms. Curran was substantially involved in the Bid Solicitation preparation process as highlighted above, and in the April 21, 2023, final agency decision.

Finally, Curran Realty states that Ms. Curran was not actually employed when the Quote was submitted in response to the Bid Solicitation. As proof, it notes that Ms. Curran's final day of employment was September 14, 2021, and the Quote was submitted on October 7, 2021. These are not new facts, and were noted in the April 21, 2023, final agency decision. Additionally, the substantial involvement noted in the final agency decision occurred during Ms. Curran's employment, with work on the Bid Solicitation occurring prior to the final Bid Solicitation being publicly posted on July 30, 2021. Thus, this is not a new fact requiring reconsideration.

As stated in the April 21, 2023, final agency decision, the Procurement Bureau must ensure that all Bidders, when creating and submitting Quotes, are aware of the terms and conditions of the contract such that they are all on a level playing field and that no one Bidder is placed in a position of advantage over another. The New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey's statutory procurement scheme is "to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." Barrick, supra, 218 N.J. at 258 (citing, Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)).

Based upon the foregoing, I sustain the April 21, 2023, final agency decision. Thank you for your company's interest in doing business with the State of New Jersey. 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 Division's [NJSTART](#) website for future bidding opportunities for these services.

Sincerely,



Amy F. Davis
Acting Director
Division of Purchase and Property

c: C. Clarke
D. Warren
C. Fullam, Esq. (State Ethics Commission)