



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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April 25, 2018

Via Electronic Mail (gorellano@aol.com) and USPS Regular Mail

Graciela Orellano
JRM Trucking, LLC
1 Marineview Plaza 14C
Hoboken, NJ 07030

Re: I/M/O Bid Solicitation #18DPP00205 JRM Trucking, LLC
Protest of Notice of Proposal Rejection
T0777 Snow Plowing and Spreading Services

Dear Ms. Orellano:

This letter is in response to your email of April 24, 2018, on behalf of JRM Trucking, LLC (“JRM”) which was received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that email, JRM protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (“Bid Solicitation”). The record of this procurement reveals that JRM’s Quote was rejected for failing to submit the *Ownership Disclosure Form* or pricing information 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 Master Blanket Purchase Orders (“Blanket P.O.s”)¹ to those responsible 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} 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 136 Quotes submitted through the State's **NJSTART** eProcurement system and 41 Quotes received in hardcopy format by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to JRM for failure to submit the *Ownership Disclosure Form* or any pricing information with its Quote.

In response to the Notice of Proposal Rejection, on April 24, 2018, JRM wrote to the Division's Hearing Unit stating:

To whom it may concern,
I'm writing in response to the Notice of Proposal Rejection that I recently received.
To my knowledge all of the forms that were required were fully completed and submitted via the NJ Start portal.
This was the first time I was submitting a proposal and it did take some time to navigate the system but with some patience and attention, I completed all the forms that were on the site. After creating and submitting the quote I tried to go back to see if I could open it up to review what I had submitted but the system didn't not allow it.
I am humbly requesting that the division reconsider. I made a good faith effort to follow the provisions of the code and wasn't intentionally trying to be non-compliant. I honestly am not sure why those specific documents are missing.

In consideration of JRM's protest, I have reviewed the record of this procurement, including the Bid Solicitation, JRM's proposal and protest, 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.

I. Statement of Vendor {Bidder} Ownership/Ownership Disclosure Form

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any [Blanket P.O.] nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is

submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

Further, the Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall² conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added*.]

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 subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

² "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

Among those forms required to be submitted with the Quote is the *Ownership Disclosure Form* discussed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

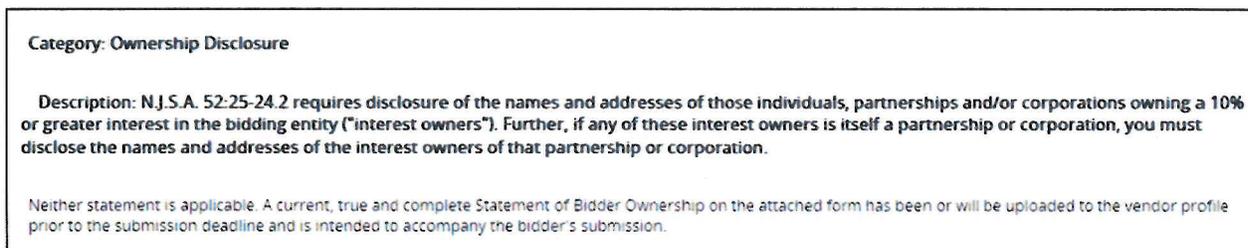
Vendors {Bidders} using **NJSTART** to submit a Quote {Proposal} shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the [Division's website](#). This form is also available in [NJSTART \(www.njstart.gov\)](#).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote.

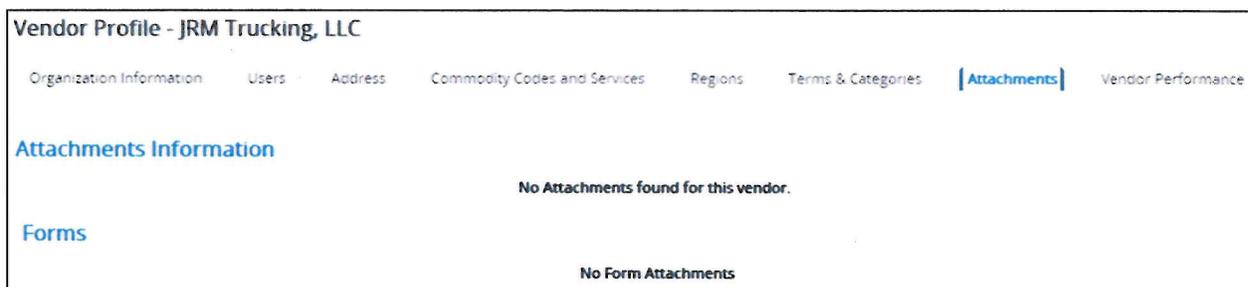
As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the "Maintain Terms and Categories" Tab within its profile. With respect to ownership, Vendors {Bidders} are able to select one of the following descriptors:

<p>Category: Ownership Disclosure</p> <p>Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.</p> <p><i>Please select at most one category value</i></p> <p>Select</p> <p><input type="checkbox"/> The bidder is a non-profit entity and is exempt from the ownership disclosure requirement. See Disclosure of Non-Profit Officers and Directors below. (No Ownership Disclosure form is required.)</p> <p><input type="checkbox"/> There are no individuals, partnerships or corporations with a 10% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement. (No Ownership Disclosure form is required.)</p> <p><input type="checkbox"/> Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.</p>
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As shown in the screenshot below, JRM did complete the Ownership Disclosure category as required. However, JRM's response to the Ownership Disclosure category required that it complete and submit the *Ownership Disclosure Form* either with its Quote or attach the form to its Vendor Profile within **NJSTART**.



As shown in the screenshot below, JRM did not upload the *Ownership Disclosure Form* to its profile.



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

II. Missing Pricing Information

With respect the submission of Quote pricing, the Bid Solicitation cautioned Vendors {Bidders} regarding the need to ensure that all required forms, including the State-Supplied Price Sheet, are properly submitted. Specifically Bid Solicitation Section 4.4 *Quote {Proposal} Content* states:

...

Note: Vendors {Bidders} submitting Quotes {Proposals} through NJSTART must complete the State-supplied price sheet/schedule(s) (Volume 3) accompanying this Bid Solicitation {RFP} and upload it as an attachment on the "Attachments" Tab (See Section 4.4.5 of this Bid Solicitation {RFP}).

[*Emphasis in the original.*]

To assist Vendors {Bidders} in completing the State-supplied price sheet/schedule, the Bid Solicitation further advised:

The Vendor {Bidder} must submit its pricing using the format set forth in the State-supplied price sheet/schedule accompanying this Bid Solicitation {RFP}.

The State's Price Sheet/Schedule solicits pricing for the following:

- A. Snow Plowing and Hauling Services;
- B. Snow Plowing Services/Other Equipment; and
- C. Spreading Services.

The Vendor {Bidder} is not required to submit pricing for all line items in order to be considered for award. The Vendor {Bidder} may submit pricing for one (1) or multiple line items.

A. Snow Plowing Services - Price Lines one (1) to 298:

- 1. The Vendor {Bidder} must submit an all-inclusive hourly rate to provide snow plowing services with one of the following options:
 - i. Snow plowing truck only; or
 - ii. Snow plowing truck and equipment, as defined in Sections 3.12.2 and 3.12.3 of this Bid Solicitation {RFP}.
- 2. The Vendor {Bidder} must submit an all-inclusive hourly rate for the following:
 - i. Snow Plowing Superintendent; and
 - ii. Hauling Services.

B. Snow Plowing Services/Other Equipment – Price Lines 299 to 309:

- 1. The Vendor {Bidder} must submit an all-inclusive hourly rate for any other additional equipment offered.

C. Spreading Services – Price Lines 310 – to 375:

- 1. The Vendor {Bidder} must submit an all-inclusive hourly rate to provide spreading services.

[Bid Solicitation § 4.4.4.2 *Price Sheet/Schedule Attachment Instructions*.]

Each of the 375 price lines included on the price sheet/schedule represents a specific jurisdiction for which snow plowing and or spreading services are sought. See Bid Solicitation Section 3.11 *Highway Operations Crew Jurisdiction & Snow Sections* which states:

A Highway Operations Jurisdiction (Jurisdiction) consists of specific State highways, including ramps and turnarounds, or portions thereof, or any other areas identified by the NJDOT. Each Jurisdiction is broken down into Snow Sections and assigned to a Highway Operations Crew (Crew). If new lane miles are added, or if a section of the roadway adjacent to a contracted Snow Section is not covered by a Vendor {Contractor}, Snow Sections may be expanded during the Winter Season at the request of the NJDOT Site Supervisor.

For example,

VENDOR (BIDDER) NAME:							
SNOW PLOWING SERVICES (PAGES 1 TO 100)							
LINE NO	DESCRIPTION	QTY	UNIT	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING-TRUCK ONLY	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING TRUCK & EQUIPMENT	ALL-INCLUSIVE HOURLY RATE SNOW PLOWING SUPERINTENDENT	ALL-INCLUSIVE HOURLY RATE HAULING ONLY
1	SNOW PLOWING SERVICES - D.O.T. REGION: NORTH CREW 210 PATERSON SUBREGION: NS SNOW SECTION: 5210261 RT 208, FROM GOFFLE ROAD, HAWTHORNE BORO, PASSAIC CO. TO RT 202 OAKLAND BORO, BERGEN CO (MP 4.4 TO 10.7) NUMBER OF TRUCKS REQUIRED: 7	1	HOUR				
SNOW PLOWING SERVICES/ OTHER EQUIPMENT							
LINE NO	DESCRIPTION	QTY	UNIT	QUANTITY AVAILABLE	INCLUDE SNOW SECTION FOR EQUIPMENT (E.G. SNOW SECTION)	DO NOT USE	ALL-INCLUSIVE HOURLY RATE
299	CLASS "C" GRADER - 20,000 TO 27,999 LBS	1	HOUR				
300	CLASS "D" GRADER - 28,000 LBS AND UP	1	HOUR				
301	CLASS "E" FRONT END LOADER - 1 1/4 TO 2 CY	1	HOUR				
302	CLASS "F" FRONT END LOADER - 2 1/4 - 2 3/4 CY	1	HOUR				
303	CLASS "G" FRONT END LOADER - 3 TO 3 3/4 CY	1	HOUR				
304	CLASS "H" FRONT END LOADER - 4 TO 6 CY	1	HOUR				
305	CLASS "I" FRONT END LOADER - 6 3/4 CY TO 8 CY	1	HOUR				
306	CLASS "J" FRONT END LOADER - 8 3/4 CY TO 10 CY	1	HOUR				
309	CLASS "K" FRONT END LOADER - 10 3/4 CY AND UP	1	HOUR				
SPREADING SERVICES							
LINE NO	DESCRIPTION	QTY	UNIT	DO NOT USE	ALL-INCLUSIVE HOURLY RATE CLASS R TRUCK	ALL-INCLUSIVE HOURLY RATE CLASS G TRUCK	ALL-INCLUSIVE HOURLY RATE CLASS P TRUCK
310	SPREADING SERVICES - D.O.T. REGION: NORTH CREW 8: 210 PATERSON YARD ROUTE 20 SOUTH AND 4TH AVENUE, PATERSON, NJ NUMBER OF TRUCKS REQUIRED: 8 CLASS R, 1 CLASS G CLASS R - 8 CLASS G - 1	1	HOUR				

JRM did not submit the State-Supplied Price Sheet or any other document setting forth its pricing with its Quote.

The question then is whether JRM's failure to submit the pricing information with its Quote results in a material deviation. In order for JRM's Quote to be considered responsive, JRM's failure to submit all of the information required by the State-Supplied Price Sheet with its Quote would have to be deemed a minor irregularity. Minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 1.4.10, *Quote {Proposal} Acceptances and Rejections*. It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity." In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, supra, 127 N.J. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed

and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” *Id.* at 222.

By not including the State-Supplied Price Sheet or any other document setting forth its Quote pricing, the Division has no information regarding the jurisdiction or type of service – whether snow plowing, equipment, or spreading services - for which it was submitting a Quote. Additionally, the Division has no information regarding the price that JRM would charge the State for any of the services which it may provide. JRM’s failure to include any of the necessary pricing information with its Quote submission is a material deviation from the requirements of the Bid Solicitation. Permitting JRM, or any other Vendor {Bidder}, to submit the required information after the Quote opening deadline has passed would place that Vendor {Bidder} in a position of advantage over other Vendors {Bidders} who timely submitted the required pricing information with the Quote. Accordingly, JRM’s Quote was properly rejected by the Division’s Proposal Review Unit for failure to submit pricing information with its Quote.

III. Reviewing a Submitted Quote

Finally, JRM states that “[a]fter creating and submitting the quote I tried to go back to see if I could open it up to review what I had submitted but the system didn’t not allow it.” To the contrary, the **NJSTART** system does allow a Vendor {Bidder} to review submitted Quote and to withdraw, revise and re-submit those Quotes.

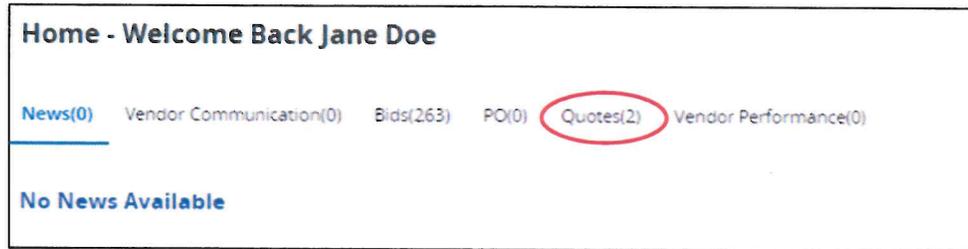
I note that the **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Accordingly, to assist Vendors {Bidders} in preparing and submitting Quotes, the Division provides the bidding community with Quick Reference Guides that provide information and instructions on how to submit a Quote. Bid Solicitation Section 1.3.3 *Vendor Bidder Support* specifically advises Vendors {Bidders} of the availability of these guides:

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of **NJSTART** terms, and helpdesk contact information.

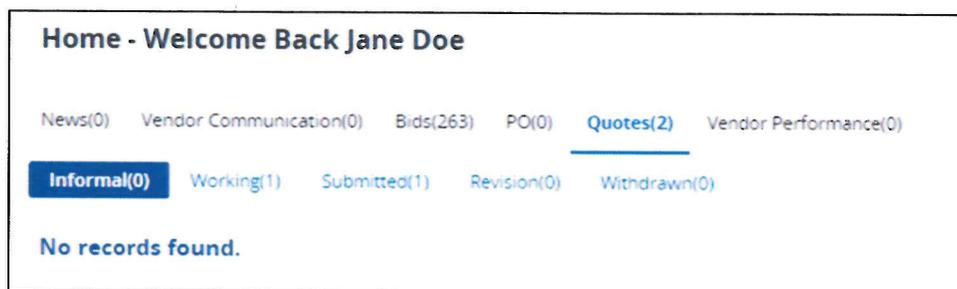
The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote {Proposal} using the **NJSTART** process. It is the Vendor’s {Bidder’s} responsibility to ensure that the **NJSTART** Quote {Proposal} and attachments have been properly submitted.

The Division’s Quick Reference Guide entitled “Submit a Quote” provide Vendors {Bidders} with specific information on how to locate a bid solicitation, how to complete the information required by the **NJSTART** portal, and how to attach documents to the Quote. That documents also provides Vendors {Bidders} with

instructions on how to review a submitted Quote. I note that to review a submitted Quote, once logged into to **NJSTART** a Vendor {Bidder} should click on the “Quotes(##)” tab as shown in the screenshot below:



The following screen appears, where a Vendor {Bidder} can see a record of those Quotes which are listed as: informal, working, submitted revision or withdrawn.



A review of JRM’s Quote history reveals that JRM created six Quotes in response to the Bid Solicitation. Only one of one of those Quotes (#0002091) was submitted, the remainder are listed as “in progress.” I do note that the Division’s Hearing Unit undertook a review of each of the six Quotes prepared by JRM and found that JRM did not attach any documents to any of the six Quotes.

Quote #	Bid #	Description	Entered Date	Vendor
00002057	18DPP00205	T0777 Snow Plowing and Spreading Services - NJDOT	03/16/2018	JRM Trucking, LLC
00002069	18DPP00205	T0777 Snow Plowing and Spreading Services - NJDOT	03/16/2018	JRM Trucking, LLC
00002074	18DPP00205	T0777 Snow Plowing and Spreading Services - NJDOT	03/16/2018	JRM Trucking, LLC
00002086	18DPP00205	T0777 Snow Plowing and Spreading Services - NJDOT	03/16/2018	JRM Trucking, LLC
00002090	18DPP00205	T0777 Snow Plowing and Spreading Services - NJDOT	03/16/2018	JRM Trucking, LLC
00002091	18DPP00205	T0777 Snow Plowing and Spreading Services - NJDOT	03/16/2018	JRM Trucking, LLC

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. However, in light of the findings set forth above, I have no choice but to deny your

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. 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.

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. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger