



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039
https://www.njstart.gov

Telephone (609) 292-4886 / Facsimile (609) 984-2575

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

October 30, 2018

Via Electronic Mail [scott@allhandsfire.com] and USPS Regular Mail

Scott T. Colarusso, Co-Owner
All Hands Fire Equipment
P.O. Box 1245
Wall, NJ07719

Re: I/M/O Bid Solicitation # 17DPP00100 All Hands Fire Equipment
Protest of Notice of Intent to Award
T0790 Firefighter Protective Clothing & Equipment

Dear Mr. Colarusso:

This letter is in response to your email of September 19, 2018, on behalf of All Hands Fire Equipment (All Hands) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email All Hands protests the September 13, 2018, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #T0790 Firefighter Protective Clothing & Equipment (Bid Solicitation).1

By way of background, on July 10, 2017, the Bureau issued the Bid Solicitation on behalf of State Using Agencies and Cooperative Purchasing Partners to solicit Quotes for firefighter protective clothing and equipment. Bid Solicitation § 1.1 Purpose and Intent. The intent of the Bid Solicitation is to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsive Vendors {Bidders} who submitted Quotes that meet the category definition and requirements set forth in the Bid Solicitation. Ibid.

1 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.

Table with 2 columns: NJSTART Term and Statutory, Regulatory and/or Legacy Term. Rows include Bid Solicitation, Bid Amendment, Change Order, Master Blanket Purchase Order, Offer and Acceptance Page, Quote, Vendor {Bidder}, and Vendor {Contractor}.

Specifically, Bid Solicitation Section 3.1 *Firefighter Protective Clothing and Equipment Categories* identified the following eight (8) categories of firefighter protective clothing and equipment sought:

- Category 1: Turnout Gear;
- Category 2: Helmets;
- Category 3: Protective Hoods;
- Category 4: Boots;
- Category 5: Gloves;
- Category 6: Pass Devise;
- Category 7: SCBA; and,
- Category 8: Search and Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment.

On September 29, 2017, the Division's Proposal Review Unit opened the Quotes received by the submission deadline of 2:00 p.m. After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*.

On September 19, 2018, the Bureau completed 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. On September 14, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the Bureau's Recommendation Report.

On September 19, 2018, All Hands submitted an email to the Division protesting the Bureau's decision not to award it certain brands for which it had submitted Quotes. In the protest letter, All Hands states that the following brands for which it had submitted Quotes were not listed on the September 13, 2018 NOI for award: (1) Chemguard & Denko Foam; (2) AB Profile, Achilles, Wing, & AHF Water Rescue Motor Packages; (3) Groves and Groves Extractor; and, (4) Junkin. All Hands asserts that "this equipment has been requested by several high profile customers and used by just about every Fire Department in the State" and therefore, must approved and added to the State's Blanket P.O. awards.

In consideration of All Hands' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, 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.

First, All Hands claims that all of the brands proposed have been requested by several "high profile customers" and that some "customers cannot buy unless it is on [a] NJ State Contract." See, All Hands Protest. With respect to the category descriptions, each category description was established based the State's needs and input received from the New Jersey State Police, Office of Homeland Security and the Division of Criminal Justice – the State's primary using agencies. While the State intends to extend the Blanket P.O.s awarded to Cooperative Purchasing Program participants,<sup>2</sup> these entities have their own

---

<sup>2</sup> Cooperative Purchasing Program is defined in Bid Solicitation Section 2.2 *General Definitions* as the "Division's intrastate program that provides procurement-related assistance to New Jersey local governmental entities and boards of education, State and county colleges and other public entities having statutory authority to utilize select State Blanket P.O.s {Contracts} issued by the Division, pursuant to the

procurement authority and are not limited to purchasing only those items which are available through the State's Blanket P.O.s. I note that during the procurement, the Bureau did not receive any questions related to including addition brands or categories as part of the Bid Solicitation. See, Bid Amendment #4, dated September 15, 2017.

Second, All Hands disputes the Bureau's decision to not include the following brands in the award for Category 8:

- Chemguard;
- Denko;
- AB Profile;
- Achilles;
- Wing;
- Junkin;
- AHF Water Rescue Motor Packages;
- Groves; and,
- Groves Extractor.

New Jersey's governing laws require that "all purchases, contracts or agreements, the cost or contract price whereof is to be paid with or out of State funds shall, except as otherwise provided in this act, be made or awarded only after public advertisement for bids therefore, in the manner provided in this act." N.J.S.A.52:34-6. Moreover, New Jersey's statutes require that "whenever advertising is required: (a) specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency..." N.J.S.A. 52:34-12, emphasis added. 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 v. State of New Jersey, 218 N.J. 247, 258. (2014); citing, Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985). The Division's overriding mission in conducting sealed, advertised bidding is to "encourage free and open competition." N.J.A.C. 17:12-2.1. It is only through maintaining a level playing field for all potential Vendors {Bidders} that the public policy of "thwarting favoritism, improvidence, extravagance, and corruption" underlying the public bidding process can be realized. Barrick, supra, 218 N.J. at 258-59 (2014).

In an effort to protect against favoritism, improvidence, extravagance, and corruption, as noted above, Bid Solicitation Section 3.1 *Firefighter Protective Clothing and Equipment Categories* described the firefighter protective clothing and/or equipment sought and designated groupings/categories for those items. With respect to the categories described, the Bid Solicitation further stated:

The following is a list of the categories included in this Bid Solicitation {RFP} that meets the State's current requirements. No other categories of

---

provisions of N.J.S.A. 52:25-16.1 et seq." Participants include quasi-State entities, counties, municipalities, school districts, volunteer fire departments, first aid squads, independent institutions of higher learning, County colleges, and State colleges.

firefighter protective clothing or equipment other than what is specified herein are a part of this Blanket P.O. {Contract}.

Each category includes products identified by the State Using Agencies as critical to their day-to-day operations. These products are currently identified by known brand names, however Vendors {Bidders} may offer any brand that meets the requirements of the category and the Bid Solicitation {RFP}.

[Bid Solicitation § 3.1 *Firefighter Protective Clothing and Equipment Categories*, emphasis added.]

With respect to Category 8: Search and Rescue/Vehicle Extrication/Equipment/Thermal Imaging Devices/Firefighting Equipment, the Bid Solicitation described the category as follows:

The category consists of search and rescue/vehicle extrication equipment including: firefighter thermal imaging cameras\*, nozzles, valves, water cannons, bags, hose straps, slings, cots, stair chairs, transporters, stretchers, escape kits, rescue cutters, spreaders, rams, life-safety rope, harnesses and hardware. All brands/items must be NFPA certified as applicable to the category.

\*Firefighter thermal imaging cameras are included within this category and must meet the following requirements: heat resistant, flame resistant, able to withstand a harsh environment and temperature extremes; must be able to provide high visibility and high quality images, specifically in smoke filled environments and must be NFPA 1801 certified.

...

[Bid Solicitation § 3.1 *Firefighter Protective Clothing and Equipment Categories*.]

As noted above, the category descriptions were established for State use. With its Quote submission, All Hands submitted Quotes for the Chemguard and Denko brands. A review of All Hands' submitted price list reveals that the Chemguard brand consists of chemical foam concentrates for fire suppression. Similarly, a review of the submitted brochure and price list for the Denko brand reveals that the Denko brand consists of chemical foam concentrates, waxes and cleaners. Neither chemical foam concentrate for fire suppression, wax, or cleaner is included or covered by Category 8 or any other Category of this Bid Solicitation as these items were not requested by the State's primary using agencies to be added to this Bid Solicitation and no Vendor {Bidder} requested that they be added as a Category during the Question and Answer period. Accordingly, the Bureau found that All Hands' Quote for the Chemguard and Denko brands was not responsive to the requirements of the Bid Solicitation. Recommendation Report, pgs. 27 – 29. The Bureau could not make a Blanket P.O. award for either of these brands as doing so would be contrary to the Division's governing statutes and regulations which require full and free competition. Here, the Bid Solicitation did not seek chemical foam concentrate for fire suppression, wax, or cleaner; and therefore, the bidding community was not put on notice that it could submit and the Division would accept Quotes for these products as required by New Jersey's governing laws. N.J.S.A.52:34-6, N.J.S.A.52:34-12. Further, if the Bureau were to make Blanket P.O. awards for products not sought in the Bid Solicitation, it would be contrary to the State's longstanding procurement mandate which is "to guard against favoritism, improvidence, extravagance and corruption." Barrick, supra, 218 N.J. at 258.

As to All Hands Quote for AB Profile, Achilles, Wing, & All Hands Kits and Packages Water Rescue Motor Packages, a review the submitted price lists and brochures reveals that these brands consist of boats, inflatable water craft, boat motors and accessories. As noted above, Category 8 consists of search and rescue/vehicle extrication equipment including: firefighter thermal imaging cameras\*, nozzles, valves, water cannons, bags, hose straps, slings, cots, stair chairs, transporters, stretchers, escape kits, rescue cutters, spreaders, rams, life-safety rope, harnesses and hardware. The items proposed are not included or covered by Category 8 or any other Category of this Bid Solicitation as these items were not requested by the State's primary using agencies to be added to this Bid Solicitation and no Vendor {Bidder} requested that they be added as a Category during the Question and Answer period. Accordingly, the Bureau concluded that All Hands' Quote for these brands was not responsive to the requirements of the Bid Solicitation. Recommendation Report, pgs. 27 – 29. Again, the Bureau could not make a Blanket P.O. award for any of these brands as doing so would be contrary to the Division's governing statutes, regulations and case law, which require full and free competition, and aim to prevent "favoritism, improvidence, extravagance and corruption." N.J.S.A.52:34-6, N.J.S.A.52:34-12, Barrick, supra, 218 N.J. at 258.

Further, with respect to All Hands Quote for AB Profile, Junkin and Wing brand products, Bid Solicitation Section 4.4.5.2 *Price Sheet/Schedule Attachment Instructions* instructed Vendors {Bidders} in part that they:

shall<sup>3</sup> bid a firm, fixed percentage discount or markup off the manufacturer's latest price list... A series or a range of discounts or fixed prices (firm dollar amount) on any price line shall not be acceptable, and shall result in rejection of the Quote {Proposal} for that price line.

[Emphasis added.]

All Hands did not submit "firm, fixed percentage discount or markup" as required by the Bid Solicitation. Rather, for these three brands, All Hands submitted a price Quote indicating a firm dollar amount mark-up to the manufacturer's pre-printed price list. Accordingly, the Bureau concluded that All Hands' Quote for these brands was not responsive to the requirements of the Bid Solicitation. Recommendation Report, pgs. 27 – 29.

With respect to the Groves brand proposed, a review of All Hands' submitted price list reveals that the brand consists of storage units for firefighting turnout gear and equipment. The items proposed are not included or covered by Category 8 or any other Category of this Bid Solicitation. In reviewing the Quote submitted and the Bid Solicitation, the Bureau determined that it could not make a Blanket P.O. award for any of this brand as doing so would be contrary to the Division's governing statutes, regulations and case law, which require full and free competition, and aim to prevent "favoritism, improvidence, extravagance and corruption." N.J.S.A.52:34-6, N.J.S.A.52:34-12, Barrick, supra, 218 N.J. at 258. Accordingly, the Bureau concluded that All Hands' Quote for this brand was not responsive to the requirements of the Bid Solicitation. Recommendation Report, pgs. 27 – 29.

Finally, as to the Grove Extractor brand, a review of All Hands' submitted price list reveals that the item proposed is an industrial washing machine. The item proposed is not included or covered by Category 8 or any other Category of this Bid Solicitation. Again, in reviewing the Quote submitted and the Bid Solicitation, the Bureau determined that it could not make a Blanket P.O. award for this brand as doing so would be contrary to the Division's governing statutes, regulations and case law, which require full and

---

<sup>3</sup> Bid Solicitation Section 2.2 *General Definitions* defines shall as "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."

free competition, and aim to prevent “favoritism, improvidence, extravagance and corruption.” N.J.S.A.52:34-6, N.J.S.A.52:34-12, Barrick, supra, 218 N.J. at 258. Accordingly, the Bureau concluded that All Hands’ Quote for this brand was not responsive to the requirements of the Bid Solicitation. Recommendation Report, pgs. 27 – 29.

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 Quote. However, in light of the findings set forth above, I have no choice but to deny your request that the listed brands be added to the State’s Blanket P.O. awards. Accordingly, I sustain the Bureau’s October 19, 2018 NOI. This is my final agency decision with respect to the protest submitted by All Hands Fire Equipment.

Thank you for your company’s interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey’s eProcurement system. I encourage you to log into [NJSTART](http://www.njstart.gov) 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,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: J. Kerchner  
K. Thomas  
K. Popso