



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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May 23, 2018

Via Electronic Mail [katherinetransportationllc@gmail.com] and USPS Regular Mail

Katherine Gaguancella, President
Katherine Transportation, LLC
2 Magestro Ct.
Budd Lake, NJ 07828

Re: I/M/O Bid Solicitation #18DPP00222 Katherine Transportation, LLC
Protest of Notice of Proposal Rejection
T2924 Snow Plowing Services by Area - NJDOT

Dear Ms. Gaguancella:

This letter is in response to your email of May 15, 2018, on behalf of Katherine Transportation, LLC (“Katherine”) which was received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that email, Katherine protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00222 – T2924 Snow Plowing Services by Area - NJDOT (“Bid Solicitation”). The record of this procurement reveals that Katherine’s Quote was rejected for failing to submit the *Ownership Disclosure Form* or pricing information with its Quote.

By way of background, on February 13, 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 services for areas of State interstates and highways under the jurisdiction of the 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

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

Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

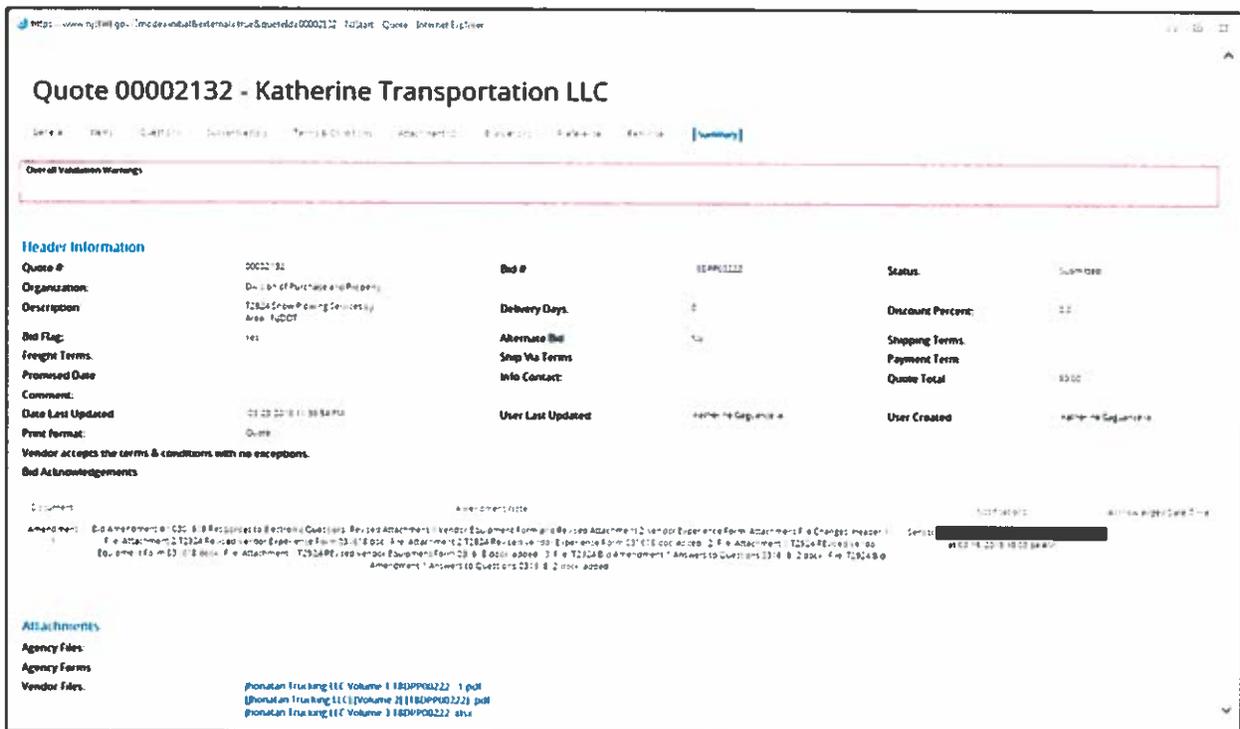
On March 16, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On April 12, 2018, the Division's Proposal Review Unit opened 21 Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Colonnelli for failure to submit the *Ownership Disclosure Form* with its Quote.

In response to the Notice of Proposal Rejection, on May 15, 2018, Katherine wrote to the Division's Hearing Unit stating:

I received a letter that my bid application for bid solicitation #18DPP00222 is incomplete. The items that are missing are the ownership disclosure form, pricing information, and BIC. If you can please provide me with the forms so I can complete them and send them in; I would greatly appreciate it.

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

At the outset I note that while Katherine's submitted a Quote (see screenshot below), none of the documents attached to the submitted Quote were for Katherine Transportation, LLC.



Rather, by way of example, as shown in the Offer and Acceptance page below, each of the documents was for an entity known as Jhonatan Trucking, LLC (Jhonatan).



OFFER AND ACCEPTANCE

State of New Jersey
 Department of the Treasury
 Division of Purchase and Property
 33 West State Street, P.O. Box 230
 Trenton, New Jersey 08623-0230

Bid Solicitation #:

Bid Solicitation Title:

Blanket P.O. (Contract) Form: Open to Cooperative Purchasing

OFFER (To be completed by the Vendor (Bidder))

TO THE STATE OF NEW JERSEY:
 The Undersigned hereby offers and agrees to furnish the goods, products, or services in compliance with all terms of this Master Blanket Purchase Order (Blanket P.O.) Contract as defined in Section 2.0 of the Bid Solicitation.

Vendor (Bidder):	<input type="text" value="JHONATAN TRUCKING LLC"/>	Title:	<input type="text" value="OWNER"/>
Address:	<input type="text" value="2 MAGESTRO CT."/>	E-Mail Address:	<input type="text" value=""/>
City, State, ZIP:	<input type="text" value="BUDD LAKE, NJ, 07828"/>	Phone Number:	<input type="text" value=""/>
Authorized Signature: <small>(Authorized person's signature)</small>		Fax Number:	<input type="text" value=""/>
Printed Name:	<input type="text" value="JHONATAN DIAZ"/>	FFIN:	<input type="text" value=""/>

Pursuant to P.L. 2017, c. 95, please indicate whether the Vendor (Bidder) identifies as any of the following as defined in N.J.S.A. 52:32-19.

Minority-Owned Business
 Women Owned Business
 Small Business
 Not Applicable

A review of the records maintained by the State of New Jersey indicate that Katherine and Jhonatan are separate entities. While Katherine and Jhonatan have the same address, Katherine and Jhonatan have distinct Federal Employee Information Numbers; have separate New Jersey Business Registration Certificates; and, are registered as separate vendors in **NJSTART**. Therefore, Katherine's failed to submit any Quote documents on its own behalf.

That being said, even if the submitted Quote documents could be attributed to Katherine, 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}*.]

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.

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*.

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 descriptors listed in the figure below:

Category: Ownership Disclosure

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.

Please select at most one category value

Select

- 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.)
- 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.)
- 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.

As shown in the screenshot below, Katherine did select an Ownership Disclosure category as required. However, the specific Ownership Disclosure category that Katherine selected required that it complete and submit the *Ownership Disclosure Form* either with its Quote or attach the form to its Vendor Profile within **NJSTART**.

Category: Ownership Disclosure

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.

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.

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

The screenshot shows the 'Vendor Profile - Katherine Transportation LLC' interface. It has a navigation bar with tabs: Organization Information, Users, Address, Commodity Codes and Services, Regions, Terms & Categories, Attachments (highlighted), and Vendor Performance. Under the 'Attachments Information' section, it states 'No Attachments found for this vendor.' Below that, under the 'Forms' section, it states 'No Form Attachments'. At the bottom, there is a 'Close Window' button and a copyright notice: 'Copyright © 2018 Periscope Holdings, Inc. All Rights Reserved.'

Nor, as noted above, did Katherine submit the *Ownership Disclosure Form* with its Quote.

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*. 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, Katherine did not comply with any of the options available to it for the submission of ownership information. Accordingly, Katherine's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the required ownership information with its Quote.³

Notwithstanding Katherine's interest in competing for this procurement, to allow Katherine to submit the completed and signed *Ownership Disclosure Form* after bid opening would violate the statutory and regulatory requirements. This is an unfortunate situation for the State as the Division encourages

³ With respect to the Quote pricing, I note that even if the submitted price sheet could be attributed to Katherine, the Division is unable to open the file as shown by the error message below.



competition and appreciates the time and effort put forth in preparing and submitting the Proposal. 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. 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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger