



STATE OF NEW JERSEY

Board of Public Utilities

44 South Clinton Avenue, 3rd Floor, Suite 314

Post Office Box 350

Trenton, New Jersey 08625-0350

www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE NEW JERSEY BOARD)	ORDER ON WAIVER
OF PUBLIC UTILITIES OFFSHORE WIND)	
SOLICITATION FOR 1,100 MW – EVALUATION)	
OF THE OFFSHORE WIND APPLICATIONS)	DOCKET NO. QO18121289

BY THE BOARD:

The New Jersey Board of Public Utilities (“BPU” or “Board”) seeks to procure professional services, pursuant to a waiver of advertisement, to assist Staff in the review of the responses for the first Offshore Wind solicitation issued by the Board (“Solicitation”). The New Jersey Department of Treasury, Division of Purchase and Property (“DPP”), requires agencies soliciting service under a waiver of advertisement “to seek as much competition as reasonable and practical under the circumstances for each waiver requested.” (NJ Department of the Treasury, Circular No. 18-14-DPP). DPP further states “when competition is required, the agency shall attempt to obtain at least three (3) written quotations for service(s) and/or product(s) contemplated under the waiver.” Ibid. In furtherance of this requirement, on October 29, 2018, Board staff issued a Request for Quotation (“RFQ”) to 13 contractors seeking quotations to engage a contractor to provide expertise on offshore wind economic analysis and development.

The RFQ stated “In order to be considered for award the Quotation must be received by the Board at the designated time and place.” For this RFQ, bidders were required to submit hard copies of the quotation to the Board’s office at “44 South Clinton Avenue, 3rd Floor, Suite 314, CN 350, Trenton, NJ 08625-0350” by November 28, 2018 at 2:00 P.M.

Two responses were delivered to the designated location by November 28, 2018 at 2:00 P.M. Sometime between November 29 and November 30, another response was delivered to the Board. Upon investigation, Board Staff discovered that this response, although addressed to the Board, was not delivered to the BPU, but rather left at a building in the surrounding neighborhood. The package was signed for by a person who is not employed by the Board. However, the package tracking information indicated that it was delivered to the correct address the morning of November 28, 2018.

Following discussion, Staff believes that it would be inappropriate under the circumstances to penalize any respondent for a mis-delivery that was essentially outside of their control. The shipping label provided the correct address, and the sending entity had no basis, foundation, or reason to assume that delivery did not occur. Thus, Staff asked the Board to consider waiving compliance with the RFQ's deadline to consider the late quotation.

FINDINGS AND HOLDINGS

Generally, the purpose of a competitive solicitation is to procure the bid which is most advantageous to the agency. Material conditions in a solicitation cannot be waived, in order to place bidders on equal footing. However, where other bidders are not disadvantaged competitively and there is no evidence of fraud or collusion, the procuring agency has in its "inherent discretionary power ancillary to its duty to secure the lowest responsible offer" the discretion to waive the delay as a minor irregularity. Young v. W. Orange Redev. Corp., 125 N.J. Super. 440, 444 (App. Div. 1973). In making the determination whether to waive the delay, the contracting agency should consider: (1) whether the effect of the waiver would be to deprive the public body of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements; and (2) 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. Turner Const. Co. v. N.J. Transit Corp., 296 N.J. Super. 530, 534-35 (App. Div. 1997).

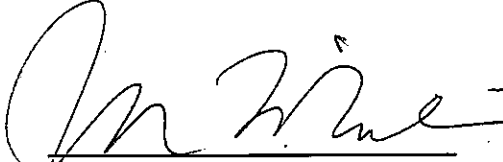
In this case, enforcement of the deadline as an absolute bar would not serve the best interests of the Board. Having additional responses to consider in a competitive bid process is only to the benefit of the Board, and the concerns that a strict deadline is designed to eliminate do not exist here. This is not a case where the respondent missed the deadline based upon any action or lack of action taken by them. Moreover, the contents of the quotation were delivered to the carrier a day prior to the deadline, so the bidder did not have any additional time to draft its quotation. Consequently, the Board **HEREBY FINDS** that the late delivery did not place that bidder in any position of advantage over the other bidders. Moreover, the late submission will not affect the bidder's ability to perform the work according to the required specifications. Accordingly, the Board **HEREBY WAIVES** the failure of the response to be received prior to the deadline and **HEREBY DIRECTS** the Solicitation Review Committee to consider the response in its deliberations.

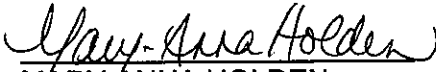
Nothing in this Order should be considered a decision on the content of the submission. Instead, this is purely a procedural decision to allow the submission to be reviewed with the other responses. The Board **HEREBY DIRECTS** Staff to serve a copy of this order to all bidders via electronic and regular mail immediately.

This Order takes effect immediately.


DATED: 12/18/18

BOARD OF PUBLIC UTILITIES
BY:

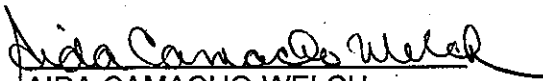

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COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

In the matter of the New Jersey Board of Public Utilities Offshore Wind Solicitation for 1,100
MW – Evaluation of the Offshore Wind Applications

BPU Docket No. QO18121289

SERVICE LIST

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