

**RESOLUTION AWARDING THE CONTRACT FOR TEMPORARY LABOR FOR
THE GLOUCESTER TOWNSHIP GRASS AND LEAF COLLECTION TO LABOR
TEAM USA, INC.**

R-02-23-25

WHEREAS, detailed specifications were completed and bids were properly advertised by the Gloucester Township Municipal Utilities Authority (“GTMUA” and/or “Authority”) for the Temporary Labor for the Gloucester Township Grass and Leaf Collection; and

WHEREAS, on January 26, 2023, the Authority received two (2) bids for the contract as follows:

<u>VENDOR</u>	<u>HOURLY BILL RATE</u>
1. PeopleReady, Inc.	\$27.51
2. Labor Team USA, Inc.	\$28.93

WHEREAS, the bids were reviewed by the Authority Solicitor who, via opinion letter dated February 1, 2023, opined that the bid submitted by PeopleReady, Inc. must be rejected as non-responsive due to its noncompliance with the bid specifications and the contract be awarded to Labor Team USA; Inc; and

WHEREAS, the Authority’s Executive Director concurs with the recommendations of the Authority Solicitor.

NOW, THEREFORE, BE IT RESOLVED by the Chairman and Board Members of the Gloucester Township Municipal Utilities Authority as follows:

1. The provisions of the **WHEREAS** clauses set forth above are incorporated herein by reference and made a part hereof.
2. The bid received from PeopleReady, Inc. is hereby rejected as non-responsive.
3. The contract for Temporary Labor for the Gloucester Township Grass and Leaf collection is hereby awarded to Labor Team USA, Inc.
4. The Executive Director and/or his designee is hereby directed to take any and all actions necessary for the award of this contract.

BE IT FURTHER RESOLVED, that the Gloucester Township Municipal Utilities Authority certifies that funds are available for payment. The amount to be expended under this resolution shall not exceed \$150,000.00. Funds will be charged against the Solid Waste Operating Fund.


ATTEST:

**THE GLOUCESTER TOWNSHIP
MUNICIPAL UTILITIES AUTHORITY**


Frank Schmidt, Secretary


Richard P. Calabrese, Chairman

Certified that the above is a true and correct copy of a Resolution duly adopted by the Gloucester Township Municipal Utilities Authority at its Regular Meeting of February 16, 2023.


Marlene Hrynio, Administrative Secretary

Dated: February 16, 2023

WADE, LONG, WOOD & LONG, LLC

Howard C. Long, Jr. †

Daniel H. Long †±◇

Christopher F. Long †◇

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John D. Wade †

OF COUNSEL

Leonard J. Wood, Jr. †

OF COUNSEL

February 1, 2023

Raymond J. Carr, Executive Director
Gloucester Township
Municipal Utilities Authority
Landing Road
P.O. Box 216
Glendora, New Jersey 08029

RE: Temporary Labor for the Gloucester Township Grass and Leaf Collection

Dear Mr. Carr:

I. INTRODUCTION

This office has reviewed all documents provided regarding the bid submission for the contract for Temporary Labor for the Gloucester Township Grass and Leaf Collection on behalf of the Gloucester Township Municipal Utilities Authority's ("GTMUA" and/or "Authority"). The GTMUA received two (2) bids for the specified Contract. The bids were received on January 26, 2023, at 10:00 a.m. as follows:

<u>VENDOR</u>	<u>HOURLY BILL RATE</u>
1. PeopleReady, Inc.	\$27.51
2. Labor Team USA, Inc.	\$28.93 (see below)

II. FACTUAL ANALYSIS

The bid specifications sought bids to obtain prices for the provision of temporary labor to assist in the seasonal operations in which the Authority requires additional manpower. Temporary laborers will be required to arrive "safety equipped" and pick up grass and/or leaves and/or recycling material throughout Gloucester Township and deposit it into a rear loading compactor trash truck or side loading recycle truck. The specifications make clear that it is the intention of the Authority to award this bid to the lowest qualified bidder, however, it is clearly understood that the low priced proposal shall not be the sole criteria upon which the Authority will predicate its selection.

The apparent low bid for this contract was submitted by PeopleReady, Inc. ("PeopleReady"). Upon review of the bid submitted by PeopleReady, it was uncovered that the bidder made several exceptions to

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the bid specifications, Specifically, PeopleReady amended the insurance coverage to be provided under the agreement, as well as the hold harmless language within the specifications. The bid was reviewed by Mr. Raymond Carr, Executive Director on behalf of the Authority, who, via correspondence dated January 31, 2023, opined that the bid submitted by PeopleReady does not comply with the specifications.

The second apparent low bid was submitted by Labor Team USA, Inc. ("Labor Team") with a bid as outlined above. Upon review of the bid submitted by Labor Team, the bid appears to be in the appropriate form from a legal perspective and contained no apparent defects¹. Of note, the bid submitted by Labor Team did not contain a New Jersey Business Registration Certificate or a Certificate of Employee Information Report. Both documents should be submitted to the Authority prior to the award of the contract. The bid was also reviewed by Mr. Carr, who, via correspondence dated January 31, 2023, opined that the bid complied with the specifications and recommended the award to Labor Team.

III. LEGAL ANALYSIS

The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. regulates bidding on contracts of public entities in New Jersey. In general, the practice of public bidding is universally recognized and deeply imbedded in the public policy of the State of New Jersey. N.E.R.I. Corp. v. New Jersey Highway Authority, 147 N.J. 223, 236 (1996). There is a prima facie presumption that power and discretion of governmental action in awarding bids on public contracts has been properly exercised. Colonnelli Bros., Inc. v. Village of Ridgefield Park, 284 N.J.Super. 538, 541 (App.Div.1995).

Public bidding statutes are to be construed with sole reference to the public good and rigidly adhered to by courts. Hall Const. Co., Inc. v. New Jersey Sports & Exposition Authority, 295 N.J.Super. 629, 634 (App.Div.1996). Furthermore, public bidding statutes exist for the good of taxpayers, not bidders, and they must always be construed for the public good and to guard against favoritism, improvidence, extravagance, and corruption. Sevell v. New Jersey Highway Authority, 329 N.J.Super. 580, 584 (App.Div.2000).

Every contract awarded by the contracting agent for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded only by Resolution of the governing body of the contracting unit to the lowest responsible bidder after public advertising for bids and bidding therefore. N.J.S.A. 40A:11-4. "*Lowest responsible bidder or vendor*" means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible. N.J.S.A. 40A:11-2. The lowest responsible bidder on a public contract must not only be deemed responsible but must submit the lowest bid which conforms to the contract specifications. Matter of Protest of Award of On-Line Games Production & Operation Services Contract, Bid No. 95-X-20175, 279 N.J.Super. 566, 590 (App.Div.1995).

It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Terminal Const. Corp. v. Atlantic Cty. Sewerage Auth., 67 N.J. 403, 409 (1975). A contracting body is generally without discretion to accept a defective bid. Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 314 (1994). However, while material conditions contained in

¹ The bid submitted by Labor Team contained an addendum that Labor Team will pay employees \$1.50 more than the New Jersey minimum wage mandate in effect and that billing will be calculated at the same margin rate and terms as before any minimum wage increase.

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bidding specifications may not be waived, this rule does not apply to minor or inconsequential conditions. Public contracting units may resolve problems arising from such conditions in a sensible or practical way. Terminal Const. Corp., 67 N.J. at 409-11. Materiality of a particular specification is to be determined as a matter of law. Hanover Tp. v. Inter. Fidelity Ins. Co., 122 N.J.Super. 544, 548 (App.Div.1973).

There are two (2) criteria for determining whether a specific non-compliance constitutes a substantial and, hence, non-waivable irregularity: (1) Whether the effect of a waiver would be to deprive the public body of its assurance that the contract will be entered into, performed, and guaranteed according to its specific 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 the other bidders or by otherwise undermining the necessary common standard of competition. Township of River Vale v. R.J. Longo Constr. Co., 127 N.J.Super. 207, 222 (Law.Div.1974).

The court has provided further guidance as to materiality where an error is "patent and the true intent of the bidder obvious". In such a situation, the Appellate Division has held that such an error may be disregarded by the public agency. The Court held that certain non-compliance (i.e. obvious error) with the bid specifications may be deemed not material and therefore waivable by the public entity. Spina v. Borough of Fairview, 304 N.J. Super. 425, (App. Div. 1997).

The Law requires certain items to be included as material aspects of every bid. The statute reads:

"When required by the bid plans and specifications, the following requirements shall be considered mandatory items to be submitted at the time specified by the contracting unit for the receipt of the bids; the failure to submit any one of the mandatory items shall be deemed a fatal defect that shall render the bid proposal unresponsive and that cannot be cured by the governing body:

- a. A guarantee to accompany the bid pursuant to section 21 of P.L.1971, c.198 (C.40A:11-21);
- b. A certificate from a surety company pursuant to section 22 of P.L.1971, c.198 (C.40A:11-22);
- c. A statement of corporate ownership pursuant to section 1 of P.L.1977, c.33 (C.52:25-24.2);
- d. A listing of subcontractors pursuant to section 16 of P.L.1971, c.198 (C.40A:11-16);
- e. A document provided by the contracting agent in the bid plans, specifications, or bid proposal documents for the bidder to acknowledge the bidder's receipt of any notice or revisions or addenda to the advertisement or bid documents;"

N.J.S.A. 40A:11-23.2.

Finally, a local contracting unit is permitted to reject all bids within a part under certain conditions. N.J.S.A. 40A:11-13.2, provides in pertinent part:

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“A local contracting unit can reject all bids for any of the following reasons:

- a. The lowest bid substantially exceeds the cost estimates for the goods or services;
- b. The lowest bid substantially exceeds the contracting unit's appropriation for the goods or services;
- c. The governing body of the contracting unit decides to abandon the project for provision or performance of the goods or services;
- d. The contracting unit wants to substantially revise the specifications for the goods or services;
- e. The purposes or provisions or both of P.L.1971, c. 198 (C.40A:11-1 et seq.) are being violated;
- f. The governing body of the contracting unit decides to use the State authorized contract pursuant to section 12 of P.L.1971, c. 198 (C.40A:11-12).

N.J.S.A. 40A:11-13.2.

The apparent low bidder for the above mentioned contract was PeopleReady. As outlined above, it was uncovered that PeopleReady included several exceptions to the bid specifications within their proposal. After researching the applicable law and reviewing the contract specifications, it is my legal opinion that the defects within PeopleReady's bid are material in nature and may not be waived by the Authority. A waiver of the defects does deprive the Authority of its assurance that the Contract will be entered into, performed, and guaranteed according to its specific requirements, as the defect amends the terms and conditions of the specifications. Further, a waiver would adversely affect competitive bidding by placing a PeopleReady in a position of advantage over the other bidders. As such, it is my legal opinion that the Authority is left with no alternative but to reject the bid submitted by PeopleReady as non-responsive pursuant to the Court's holdings in River Vale and Terminal Const. Corp..

Following the rejection of the bid submitted by PeopleReady as non-responsive, the apparent low bid was submitted by Labor Team. As outlined above, there are no apparent defects within the bid submitted by Labor Team. To the extent a defect may be uncovered, it is my legal opinion that any such defect is minor in nature and may be waived by the Authority pursuant to the Court's holdings in River Vale and Spina.

IV. LABOR TEAM USA, INC.'S BID

My review consisted of an examination of the following documents submitted by Labor Team that the Authority has provided:

1. Bid Specifications;
2. Bid Proposal;
3. New Jersey Division of Consumer Affairs Certificate;
4. Disclosure of Investment Activities in Iran;

Raymond J. Carr
Executive Director
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5. Certificate of Liability Insurance.

The bid submitted by Labor Team is in the appropriate form.

V. CONCLUSION

After researching the applicable law, reviewing the contract specifications and documents, and conferring with staff, it is my legal opinion that the bid submitted by PeopleReady be rejected as non-responsive and the bid submitted by Labor Team is in the appropriate form. Accordingly, it is recommended that the contract for Temporary Labor for the Gloucester Township Grass and Leaf Collection be awarded to Labor Team USA, Inc. It is further recommended that a Resolution be placed on the Agenda for an upcoming meeting awarding said Contract subject to staff concurrence and the availability of funds.

If you have any questions or require any further clarification, please do not hesitate to contact me.

Very truly yours,
WADE, LONG, WOOD & LONG, L.L.C.

Christopher F. Long

Christopher F. Long, Esquire

cc: Marlene Hrynio