



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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June 4, 2015

Via Electronic Mail [mcannon@hillwallack.com] and USPS Regular Mail

Ms. Maeve Cannon, Esq.  
Hill Wallack LLP  
21 Roszel Road, P.O. Box 5226  
Princeton, NJ 08543

RE: Protest of Notice of Proposal Rejection  
RFP #15-X-23841 OEM and Non-OEM Maintenance and Repair Services for Light/Medium  
Duty Vehicles, 15,000 lb. GVWR or Less (T-0126)

Dear Ms. Cannon:

This correspondence is in response to your supplemental letter of protest, dated May 13, 2015, on behalf of Joe's Transmission Service, Inc. ("JTS") to the Division of Purchase and Property ("the Division"). The record of this procurement notes that that JTS's proposal was rejected for failing to include a properly completed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form. In your letter, you contend that the Division erroneously rejected JTS's proposal and that the forms in question were signed and uploaded into the Division's eBid system by the proposal submission deadline. As such, you request JTS's proposal be reinstated.

I have reviewed the record of this procurement, including the RFP, JTS's proposal, and relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of JTS's protest. Therefore, I am denying your request for an in-person presentation. See N.J.A.C. 17:12-3.3(d)(1) (stating the "Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest").<sup>1</sup>

The above-referenced solicitation was comprised of the RFP and other documents, one of which was the three-part document titled *NJ Standard RFP Forms*. This document is comprised of three expandable forms, namely an *Ownership Disclosure Form*, a *Disclosure of Investigations and Other Actions Involving Bidder Form*, and a *Disclosure of Investment Activities in Iran* form.

These forms are addressed in RFP Section 4.0, *Proposal Preparation and Submission*. The relevant text reads as follows:

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<sup>1</sup> The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

#### **4.4.1.2 NJ STANDARD RFP FORMS**

One of the downloadable RFP documents is titled NJ STANDARD RFP FORMS. It is comprised of three separate forms, two of which (Ownership Disclosure and Disclosure of Investment Activities in Iran) discussed below, must be completed, signed and submitted with the bidder's proposal. **The bidder is cautioned that failure to complete, sign and submit either of these two forms will be cause to reject its proposal as non-responsive as noted below.** If the bidder submits a hard copy proposal, each of the two forms must be physically signed.

If the bidder is submitting an electronic proposal through the Division's eBid system, there are only two acceptable forms of signature for the two forms:

1. The bidder may download the document, physically complete and sign each form, scan the completed document and then upload it, or
2. The bidder may download the document, type the name of the signatory in the space designated for certification signature in each of the forms and then upload the document.

**Note: A bidder's entry of a Personal Identification Number (PIN) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document.**

#### **4.4.1.2.1 OWNERSHIP DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:25-24.2, in the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete and sign the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the submitted proposal. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a contract to said bidder unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six months prior to the proposal submission deadline for this procurement. If any ownership change has occurred within the last six months, a new Ownership Disclosure Form must be completed, signed and submitted with the proposal.

#### **4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM**

Pursuant to N.J.S.A. 52:32-58, the bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities as directed on the form. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as nonresponsive and preclude the award of a contract to said bidder.

Furthermore, as a courtesy to all bidders, the Division provided a Proposal Checklist as an accompaniment to the RFP. The Checklist included the following:

#### **FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:**

- RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
- Completed Price Sheets as instructed in Section 4.4.5 of the RFP

- Completed and signed Ownership Disclosure Form\*
- Completed and signed Disclosure of Investments in Iran Form\*

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*\* The Ownership Disclosure, Disclosure of Investigations and Other Actions Involving Bidder, and the Disclosure of Investments in Iran forms MUST each contain either a physical or typed signature (typed signatures are only acceptable for eBid submissions). . . .*

Pursuant to N.J.A.C. 17:12-2.2, a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set forth in RFP 4.4.1.2, 4.4.1.2.1, and 4.4.1.2.2, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal and a completed and signed *Disclosure of Investment Activities in Iran* form as part of a bidder's proposal was required.

In this case, Hill Wallack incorrectly asserts that JTS's proposal was rejected for failing to submit an *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form. Rather, as is evidenced by the Notice of Proposal Rejection included as Exhibit A to the supplemental letter of protest, JTS's proposal was rejected for submitting "not signed or completed" forms. While it is true that JTS properly uploaded these forms to the Division's eBid system, a review of the submitted forms reveals they were improperly completed with the signature lines containing JTS's typed PIN. As noted above, the two permissible ways to sign these forms were either: 1) downloading the document, physically signing the form, scanning the completed document, and then uploading it; or 2) typing the name of the signatory in the space designated for certification signature and uploading the document. Also as clarified in bold type in the RFP and above, "A bidder's entry of a Personal Identification Number (PIN) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document." Although the eBid system does not allow for proposal submission until all forms have been uploaded, the eBid system cannot differentiate what documents are uploaded or what information is contained within a document. Rather, it accepts any document the bidder uploads in a required document field. The sole responsibility for the contents of the proposal or submittal necessarily and appropriately rests with the bidder.

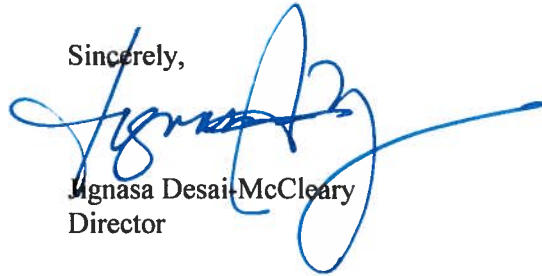
In response to the first letter of protest filed by JTS, dated May 4, 2015, a review of the Division's records indicate that JTS included the Standard RFP Forms in its mailing to the Division's Chapter 51 Review Unit, along with its Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions. The Standard RFP Forms submitted to the Chapter 51 Unit apparently differed from the forms submitted through the Division's eBid system, and contained a physical signature next to the typed PIN. However, the Division received this certified mailing to the Chapter 51 Unit on April 20, 2015, three days following the proposal submission deadline of April 17, 2015, and therefore cannot accept them in response to the subject RFP. In addition, JTS's email to the Chapter 51 Review Unit at [cd134@treas.state.nj.us](mailto:cd134@treas.state.nj.us) on April 16, 2015, contained duplicate Standard RFP forms as those included with its eBid submission, i.e., forms including a PIN in the place of a proper signature.

Notwithstanding JTS's interest in competing for this procurement, it would not be in the State's best interests to allow a bidder who did not provide the required information to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary documents and information were provided as required. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of JTS's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide JTS with disclamation options not available to those bidders whose proposals were fully

responsive. In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision on this matter.

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 JTS's proposal. Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJ STARF** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Ignasa Desai-McCleary  
Director

JD-M:DF

c: M. Griffin  
K. Thomas  
V. Bequer  
D. Rodriguez  
A. Nelson