



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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March 9, 2015

Via Electronic Mail [joanie@demaios.com] and USPS Regular Mail

Joan Pendowski, Executive Assistant
DeMaio's Incorporated
543 Columbia Road
Egg Harbor City, NJ 08215

RE: Protest of Proposal Rejection
RFP #15-X-22978 – Aboveground Fuel Systems, Installation, Tank Removal (T0849)

Dear Ms. Pendowski:

This letter is in response to your emailed letter dated February 13, 2015, referencing the subject Request for Proposal (“RFP”) and regarding the proposal electronically submitted by DeMaio’s Incorporated (“DMI”) to the Division of Purchase and Property (“the Division”). Responding to a Notice of Proposal Rejection issued by the Division’s Proposal Review Unit, by which DeMaio’s was advised that its proposal was rejected promptly after the formal opening of timely submitted proposals on February 10, 2015, not because the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran* form were missing from DMI’s proposal as you indicate, but because neither of these forms included with DMI’s proposal contained an essential certification signature. DMI’s letter asserts that the forms were included and that the Division’s electronic bidding program “stated that all forms were attached before it was sent.”

In regard to the issue before me, I have reviewed the record of this procurement, including the RFP and DMI’s electronically submitted proposal, with consideration of 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 DMI’s protest.

The required submission of a completed and signed *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran* form is set forth in RFP Section 4.0, *Proposal Preparation and Submission*, and specifically, within RFP Paragraph 4.4.1, *Forms, Registrations and Certifications Required with Proposal*. The relevant text reads as follows:

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. A signed RFP Signatory Page is also not an acceptable substitute for signature on these two forms.

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.

[Emphasis in original]

Pursuant to the Division's regulations, specifically N.J.A.C. 17:12-2.2,¹ 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 segments 4.4.1.2, 4.4.1.2.1,

¹ 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>.

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, as these statutorily required signatory certifications are not covered by a bidder's use of its Personal Identification Number used to submit its electronic proposal.

Regarding the RFP's provisions for completing and submitting these two essential forms, the signature requirements were also set forth in the Proposal Checklist included as a guide to aid bidders in the completion of their proposals. This guide listed the Ownership Disclosure Form and the Disclosure of Investments in Iran Form on the checklist with an asterisk, which, near the bottom of the Checklist, advised bidders as follows in pertinent part:

*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).

My review of the record of electronically submitted proposals confirms that DMI's electronic submission contained a completed but unsigned *Ownership Disclosure Form* and a completed but unsigned *Disclosure of Investment Activities in Iran* form. Because a certifying signature on each of these forms is essential to meet statutory, regulatory and RFP requirements for such certifications, the rejection of DMI's proposal by the Division's Proposal Review Unit was proper and necessary. As affirmed by New Jersey courts, the deficiencies at issue cannot be remedied after the proposal submission deadline. Allowing the acceptance of DMI's proposal under these circumstances would be contrary to the provisions of the governing statutes and would provide DMI with disclamation options not available to those bidders whose proposals are fully responsive, thereby disturbing the equal footing standard of public bidding. In light of the findings, I must deny your request for an opportunity to remedy the signatory deficiencies. 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 DMI applied in preparing and submitting its proposal. Thank you in anticipation of your continuing interest in doing business with the State of New Jersey. In that regard, I invite you to take this opportunity to register your business entity with **NJ START** at www.njstart.gov, the State of New Jersey's eProcurement system, which is scheduled to go live in the near future. This new procurement solution will provide a "one-stop shop" for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,



Ronald G. Wengerd
Chief Hearing Officer

c: M. Griffin
L. Spildener
P. Locane
D. Rodriguez