



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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February 25, 2015

Via Fax [856-423-6235] and USPS Regular Mail

Charles J. Gillen, Sr., President
Service Station Service, Inc.
401 Southgate Court
Mickleton, NJ 08056

RE: Protest of Proposal Rejection
RFP #15-X-22978 – Aboveground Fuel Tanks . . . (Contract T0849)

Dear Mr. Gillen:

This letter is in response to your faxed and emailed letter dated and received February 13, 2015, referencing the subject Request for Proposal (“RFP”) and regarding the hardcopy proposal timely submitted by Service Station Service, Inc. (“SSS”) 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 you were advised that SSS’s proposal was rejected because the *Ownership Disclosure Form* (“ODF”) included in SSS’s proposal was not signed, you request the Division’s acceptance of a completed New Jersey Department of Labor and Workforce Development/Division of Wage and Hour Compliance Application for Public Works Contractor Registration form completed, signed and dated May 23, 2014, or that the Division allow you to resubmit a corrected/signed ODF at this time to remedy the cited material deficiency of SSS’s proposal.

In regard to the issue before me, I have reviewed the record of this procurement, including the RFP and SSS’s 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 SSS’s protest.

The required submission of a completed and signed *ODF* is set forth in RFP Section 4.0, *Bid 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.

....

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.

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 and 4.4.1.2.1, a bidder's submission of a completed and signed *ODF* prior to or as part of its proposal was required.

My review of SSS's proposal confirms that it contained a completed and initialed but unsigned *Ownership Disclosure Form*. Because a certifying signature on that form is essential to meet statutory, regulatory and RFP requirements for certification, the rejection of SSS's proposal by the Division's Proposal Review Unit was proper and necessary.

With regard to your request that the Division now accept the Public Works Contractor Registration form you completed, signed and dated May 23, 2014, as a suitable substitute for the Division's *ODF*, I am guided by court decisions which have affirmed that remedial modifications of material deficiencies are not subject to post-deadline remedy. The Division's effort to apply its policy of maintaining the effectiveness of properly completed and signed *ODFs* for six months after the date of submission could not be applied here since there is no record of SSS's filing of a properly completed and signed *ODF* in that period was on file.

Allowing the acceptance of SSS's proposal under these circumstances would be contrary to the provisions of the governing statutes and would provide SSS with disclamation options not available to bidders whose proposals are fully responsive, thereby disturbing the equal footing

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>.

Charles J. Gillen, Sr., President
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standard of public bidding. In light of the findings, I must deny your request for an opportunity to remedy the signatory deficiency. 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 SSS applied in preparing and submitting its proposal. Thank you in anticipation of your continuing interest in doing business with the State of New Jersey. With that in mind, I invite you to take this opportunity to register your business with NJ START at www.njstart.gov, the State of New Jersey's new eProcurement system, which is scheduled to go live this fall and 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,

A handwritten signature in blue ink, appearing to read 'Ronald G. Wengerd', with a long horizontal flourish extending to the right.

Ronald G. Wengerd
Chief Hearing Officer

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