



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
33 WEST STATE STREET  
P. O. BOX 039  
TRENTON, NEW JERSEY 08625-0039  
<https://www.njstart.gov>

FORD M. SCUDDER  
*State Treasurer*

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

JIGNASA DESAI-MCCLEARY  
*Director*

Telephone (609) 292-4886 / Facsimile (609) 984-2575

October 14, 2016

Via Electronic Mail [dwayne@myledlightingguide.com] and USPS Regular Mail

Dwayne Kula  
President  
DRK Enterprises, Inc.  
207 Highpoint Avenue, 7A  
Portsmouth, RI 02871

RE: Protest of Notice of Proposal Rejection  
Bid Solicitation {Request for Proposal} #16DPP00019 – Park and Playground Equipment

Dear Mr. Kula:

This letter is in response to your email of August 5, 2016, sent on behalf of DRK Enterprises, Inc. (DRK)<sup>1</sup> in response to the Notice of Proposal Rejection (Notice) sent by the Division of Purchase and Property's (Division) Proposal Review Unit. The Notice indicated that the Quote {Proposal} (proposal) submitted by DRK failed to contain an *Ownership Disclosure Form*. I treat your August 05, 2016 email as DRK's protest of the Notice.<sup>2</sup>

I have reviewed the record of this procurement, including the Bid Solicitation ({Request for Proposal} (RFP)), DRK's proposal, the August 5, 2016 email in protest, along with 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 this protest.

By way of background, the subject RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of New Jersey Agencies and State Cooperative Purchasing Program Participants for various types of park and playground equipment. RFP § 1.1 *Purpose and Intent*. The intent of

<sup>1</sup> The email address domain name for your protest email is myledlightingguide.com. The Division assumes that since you address DRK in an email from My LED Lighting Guide's domain name, you have a relationship with both companies.

<sup>2</sup> The Division also received an email dated August 19, 2016, from Steve Senders (copying Strategic Energy Solutions), indicating that he is the in-state representative of DRK. Mr. Senders' email also protests DRK's proposal rejection for failing to include the *Ownership Disclosure Form*. The Division similarly treats Mr. Sender's email as DRK's protest of its proposal rejection for failing to contain an *Ownership Disclosure Form*. It is not clear the full interrelationship between Mr. Senders, Strategic Energy Solutions, DRK, Mr. Kula and My LED Lighting Guide, however this final agency decision addresses both the August 5 and August 19, 2016 emails protesting the rejection of the DRK proposal.

the RFP is “to award multiple Master Blanket Purchase Orders (Blanket POs) {Contracts} [(hereinafter contract)] to those responsible Vendors {Bidders} [(hereinafter bidder)] whose proposals, conforming to this [RFP] are most advantageous to the State, price and other factors considered.” *Ibid.* The State intends to make one award per brand per region for each of the categories listed in the RFP. *Ibid.* Regions are broken into North, Central, and South, serving the 21 New Jersey counties. RFP § 3.3 *Regional Jurisdiction*. This is a procurement of Commodities similar to those offered by term contract T-0103. RFP § 1.2 *Background*.

On July 29, 2016, the Proposal Review Unit opened the proposals received by the submission deadline of 2:00 p.m. After conducting a review of the proposals submitted, the Proposal Review Unit found that DRK’s proposal did not contain an *Ownership Disclosure Form*. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection. In response to the Notice of Proposal Rejection, on August 5, 2016, you emailed to the Division, on behalf DRK, protesting the proposal rejection and also including a completed and signed *Ownership Disclosure Form* dated August 4, 2016. The email states, in pertinent part, as follows:<sup>3</sup>

We are not sure how this form was missed in our submission. My colleague Neil Peterson was pretty sure he filled it out. We apologize for it not appearing with our submission.

We also had a terrible time downloading and using the pdf version of the form. We did our best to get it filled in with the proper information.

The above-referenced procurement was comprised of the RFP and other documents, one of which was the *Ownership Disclosure Form*. This form is addressed in RFP § 4.0, *Quote {Proposal} Preparation and Submission*. The relevant text reads as follows:

**4.4.1.2 NJ STANDARD BID SOLICITATION {RFP} FORMS REQUIRED WITH THE QUOTE {PROPOSAL}**

VENDOR’S {BIDDER’S} FAILURE TO COMPLETE, SIGN AND SUBMIT THE FORMS IN SECTION 4.4.1.2 SHALL BE CAUSE TO REJECT ITS QUOTE {PROPOSAL} AS NON-RESPONSIVE.

**4.4.1.2.1 OWNERSHIP DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or sole proprietorship, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor’s {Bidder’s} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award

---

<sup>3</sup> The August 19, 2016 email sent by Mr. Senders on behalf of DRK stated, in pertinent part: “I am the in-state representative for DRK Enterprises. We submitted a bid for T0103 which was rejected due to inadvertently omitting the *Ownership Disclosure Form* in our bid package. Upon notification of this oversight, this form was sent to the appropriate email address. As a result of this are we being considered for an award or are we disqualified?”

of a Blanket PO {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

Vendors {Bidders} using NJSTART to submit a Quote {Proposal} shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the box applicable to it and completing the shortened NJSTART form if necessary. Vendors {Bidders} not using NJSTART to submit a Quote {Proposal} must complete the full version of the form located on the Division's website. The full version of the form is also available in NJSTART ([www.njstart.gov](http://www.njstart.gov)).

Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation {RFP} through NJSTART. Vendors {Bidders} may also refer to the QRG "Vendor Categories and Certifications" for additional instructions on completing shortened versions of required forms by completing certifications on the "Maintain Terms and Categories" Tab within its profile in NJSTART. QRGs are located on the NJSTART Vendor Support Page.

Pursuant to N.J.A.C. 17:12-2.2,<sup>4</sup> 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 and 4.4.1.2.1, and as noted above, the submission of a completed *Ownership Disclosure Form* as part of a bidder's proposal was required.

In this case, the record indicates that DRK's proposal did not include an *Ownership Disclosure Form* as evidenced by a review of the documents submitted through the Division's NJSTART eProcurement (NJSTART) system, nor was the Form contained within DRK's NJSTART Vendor Profile. (See attached printout of the Attachments page showing those documents DRK uploaded in response to RFP.) N.J.S.A. 52:25-24.2 and the RFP require that the information contained in the *Ownership Disclosure Form* be submitted prior to or at the time a proposal is submitted to the Division. However, the NJSTART system does not prevent a bidder from submitting a proposal without all required forms and documentation being uploaded. The responsibility for the contents of the proposal, forms, or submittals necessarily and appropriately rests solely with the bidder. Here, unfortunately, DRK's proposal did not contain the *Ownership Disclosure Form* indicating its then current ownership.

The requirement that a bidder indicate its ownership structure is set forth in N.J.S.A. 52:25-24.2. The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated requirements that a bidder must comply with in order to enter into a contract with the State. N.J.S.A. 52:25-24.2 states, in pertinent part:

No corporation or partnership shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid out of any public funds

---

<sup>4</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>.

by the State...unless **prior to the receipt of the bid or accompanying the bid**, of said corporation or said partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock, of any class or of all individual partners in the partnership who own a 10% or greater interest therein, as the case may be.....

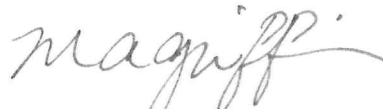
[(Emphasis added.)]

In reviewing proposals submitted in response to an RFP, the Division does not have the power to waive this legislative requirement, as only the New Jersey Legislature can change a requirement it has mandated. In order to make this process easier, the Division provides to the bidding community an *Ownership Disclosure Form* to be completed in order for bidders to comply with the statutory requirement of N.J.S.A. 52:25-24.2. Here, because the proposal submitted on behalf of DRK did not contain the *Ownership Disclosure Form* or other document identifying DRK's ownership structure as required by statute, it was not in compliance with the Legislative requirements.

Were the Division to allow DRK to submit a completed and signed *Ownership Disclosure Form* after bid opening, it would be in violation of the Legislative requirement outlined in N.J.S.A. 52:25-24.2. Notwithstanding DRK's interest in competing for this procurement, to allow a bidder who did not provide the required information to be eligible to participate in the procurement process would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary information and documents were provided as required. The deficiency at issue cannot be remedied or waived after the proposal submission deadline, as acceptance of DRK's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide DRK with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, DRK is not eligible 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 DRK's proposal. Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering with *NJ START* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice Griffin  
Chief Hearing Officer

c: J. Kerchner  
K. Thomas  
A. Nelson  
S. Senders [[stevensenders@comcast.net](mailto:stevensenders@comcast.net)]