



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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June 11, 2024

Via Electronic Mail Only: rosenkoetter@sageconsultants.org

Robert L. Rosenkoetter
SAGE Management Consultants LLC.
10085 Buice Road
Johns Creek, GA 30022

Re: I/M/O Bid Solicitation #23DPP00886 – SAGE Mang. Consultants LLC.
Protest of Notice of Proposal Rejection
T2482 Management/Financial Consulting: Contracted Management and Financial Auditing Firms-
New Jersey Board of Public Utilities

Dear Mr. Rosenkoetter:

This final agency decision is in response to your protest dated January 26, 2024, on behalf of SAGE Mang. Consultants LLC (SAGE) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In its correspondence, SAGE protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation No. 23DPP00886 - T2482 Management/Financial Consulting: Contracted Management and Financial Auditing Firms - New Jersey Board of Public Utilities (Bid Solicitation). The record of this procurement reveals that SAGE's Quote was rejected for failing to submit an *Ownership Disclosure Form* with its Quote.

By way of background, on September 6, 2023, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of the State of New Jersey. Bid Solicitation Section 1.1, *Purpose and Intent*. The purpose of this Bid Solicitation is to solicit Quotes to provide various types of audits, including, but not limited to, management, regulatory accounting and cost recovery, fiscal accountability (which would include, but not be limited to, an audit of cost recovery rate clauses and riders), financial and operational performance, capital structure, capacity needs, distribution resiliency and reliability, asset management, Affiliate transaction, relations and compliance, information systems/technology, cyber security internal control, and programs managed by state utilities.

A pool of up to ten (10) Contractors will be awarded Contracts resulting from this Bid Solicitation and will be prequalified to participate in a competitive Engagement Process for these projects as they arise. Ibid.

On December 14, 2023, the Division's Proposal Review Unit opened nine (9) Quotes that were received by the submission deadline of 2:00 pm Eastern Time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to SAGE for failing

to submit an *Ownership Disclosure Form* with its Quote. In response to the Notice of Proposal Rejection, SAGE submitted a letter of protest to the Division stating in part:

- **Solicitation Number: 23DPP00886 T2482**
- **Specific Grounds:** Misleading and incorrect RFP instructions regarding the necessity to complete and submit a paper-based Ownership Disclosure Form.

On page 6 of the Revised Bid Solicitation # 23DPP00886, paragraph 3.13.2 **Ownership Disclosure Form**, the instructions state, “NOTE: In lieu of completing and submitting the paper-based form, the Bidder has the option to complete this form online in NJSTART on the ‘Terms and Categories’ tab.”

However, on the Terms and Categories tab in NJSTART, there is no form to complete; there is only a choice of selecting one block to check from a set of three.

Therefore, the instructions on page 6 of the RFP are incorrect; one must complete the paper-based form.

Following these misleading instructions, SAGE did not submit the paper-based Ownership Disclosure Form and believed its on-line input concerning this form was sufficient.

Based on these grounds, SAGE requests that the Division of Purchase and Property accept SAGE’s proposal with the completed Ownership Disclosure Form (attached).

[Protest letter, dated January 26, 2024 (emphasis in original).]

With the protest, SAGE submitted a completed *Ownership Disclosure Form*.

Per N.J.A.C. 17:12-3.3(d), any “protest accepted by the Director shall be resolved by written decision on the basis of the Director’s review of the written record including, but not limited to, the written protest, the terms, conditions and requirements of the RFP, the proposals submitted in response to the RFP, the evaluation committee report and/or the award recommendation document, pertinent administrative rules, statutes, and case law, and any associated documentation the Director deems appropriate.” In-person presentations are fact-finding for the benefit of the Director and she has the sole discretion to determine if an in-person presentation is necessary to reach an informed decision on the matter(s) of the protest. N.J.A.C. 17:12-3.3(e). Further, “[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.” N.J.A.C. 17:12-3.3(d).

In consideration of SAGE’s Protest, I have reviewed the record of this procurement, including the RFP, the Quotes received, Evaluation materials, SAGE’s Protest, prior final agency decisions, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the Protest on the written record. As such, an in-person hearing was not held for this Protest. I set forth herein the Division’s final agency decision.

The Division’s administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall¹ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a) (emphasis added).]

If the requirements of N.J.A.C. 17:12-2.2 are not met, then a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State's bidding process.

The subject procurement was comprised of the Bid Solicitation, other documents, and mandatory forms which were specifically addressed in Bid Solicitation Section 3.13, *FORMS, REGISTRATIONS AND CERTIFICATIONS TO BE SUBMITTED WITH QUOTE*.

Among those forms required to be submitted with the Quote is the *Ownership Disclosure Form*. Bid Solicitation Section 3.13.2. With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Bidder must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states, in pertinent part:

No corporations, partnership, or limited liability company shall be awarded any [Blanket P.O.] 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 with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting for the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established in this act, has been listed.

[*Emphasis added.*]

The *Ownership Disclosure Form* is specifically discussed in Bid Solicitation Section 3.13.2 which states in relevant part:

¹ Shall or Must - Denotes that which is a mandatory requirement." Bid Solicitation Section 9.2, *Definitions*.

Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or limited liability company, the Bidder must disclose all 10% or greater owners by (a) completing and submitting the Ownership Disclosure Form with the Quote; (b) if the Bidder has submitted a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement, the Division may rely upon that form; however, if there has been a change in ownership within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote; or, (c) a Bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

NOTE: In lieu of completing and submitting the paper-based form, the Bidder has the option to complete this form online in [NJSTART](#) on the “Terms and Categories” Tab.

A Bidder’s failure to submit the information required by N.J.S.A. 52:25-24.2 will result in the rejection of the Quote as non-responsive and preclude the award of a Contract to said Bidder.

[Emphasis added.]

To make complying with this statutorily-required certification process easier, the Division provides the *Ownership Disclosure Form* to the bidding community to be completed by the Contractor / Vendor. A review of the record for this procurement reveals that on December 12, 2023, SAGE submitted its Quote for this RFP.

As an alternative to submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 3.13.2 above, Bidders using [NJSTART](#) are able to make a certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab within its profile. With respect to ownership, Bidders are able to select one of the following descriptors:

Category: Ownership Disclosure	
Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity (“interest owners”). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.	
<i>Please select at most one category value</i>	
Select	
<input type="checkbox"/>	The bidder is a non-profit entity and is exempt from the ownership disclosure requirement. See Disclosure of Non-Profit Officers and Directors below. (No Ownership Disclosure form is required.)
<input type="checkbox"/>	There are no individuals, partnerships or corporations with a 10% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement. (No Ownership Disclosure form is required.)
<input type="checkbox"/>	Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder’s submission.

In its Vendor profile, SAGE selected the third box indicating that:

Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

Thus, the Bidder indicated that a completed Ownership Disclosure would "be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission." While the Protest indicates that this **NJSTART** question and the instructions are confusing, the answer selected by SAGE clearly stated that it would submit a completed form. More importantly, this is a statutory requirement expressly spelled out in N.J.S.A. 52:25-24.2.

The **NJSTART** system does not prevent a Bidder from submitting a Quote without all of the required forms and documents completed and/or attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are completed and uploaded into **NJSTART** necessarily and appropriately rests solely with the Bidder. Bid Solicitation Section 3.2, *Bidder Responsibility*. Here, unfortunately, SAGE submitted a Quote without an *Ownership Disclosure Form* attached.

In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Bidder provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, SAGE did not comply with any of the options available to it for the submission of ownership information. Accordingly, SAGE's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

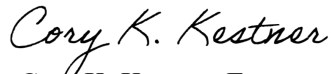
Finally, as noted above, with the Protest, SAGE submitted a completed *Ownership Disclosure Form*, and requests accept the newly submitted Ownership Disclosure Form to complete the Quote review process. However, allowing SAGE to submit the completed *Ownership Disclosure Form* after the Quote opening date would result in an impermissible change or correction to its Quote, which the Division cannot allow as doing so would be contrary to the Court's holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (holding that "in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP"); see also, Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974) (stating "If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.")

Notwithstanding SAGE's interest in competing for this procurement, to allow SAGE to submit the *Ownership Disclosure Form* after Quote opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2, a requirement that this Division is not authorized to waive. 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 the Quote. In light of the findings set forth above, I sustain the Proposal Review Unit's Notice of Proposal Rejection.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov. I encourage you to log into **NJSTART** to select any and all commodity codes for procurements you may be interested in submitting a

Quote for so that you may receive notification of future bidding opportunities. This is my final agency decision on this matter.

Sincerely,

A handwritten signature in black ink that reads "Cory K. Kestner". The signature is written in a cursive, flowing style.

Cory K. Kestner, Esq.
Chief Hearing Officer

CKK: DPK

- c. R. Regan
- M. Maguire
- K. Tran