



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>

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

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

AMY F. DAVIS, ESQ.
Acting Director

June 25, 2024

Via Electronic Mail Only to matt.mitchell@playandpark.com

Matt Mitchell
Director of Sales Administration
Play & Park Structures
544 Chestnut Street
Chattanooga, TN 37402

Re: I/M/O Bid Solicitation #23DPP00902 Play & Park Structures
Protest of Notice of Proposal Rejection
T0103 Park and Playground Equipment

Dear Mr. Mitchell:

This final agency decision is in response to the protest letter dated March 28, 2024 ("Letter"), submitted by Play & Park Structures ("Play & Park"). That Letter was received by the Division of Purchase and Property's ("Division") Hearing Unit on March 28, 2024. In that correspondence, Play & Park protests the Notice of Proposal Rejection issued on March 19, 2024, by the Division's Procurement Bureau ("Bureau") for Bid Solicitation #23DPP00902 – T0103 Park and Playground Equipment - Statewide ("Bid Solicitation"). The record of this procurement reveals that the Quote submitted by Play & Park was deemed non-responsive on the grounds of "Required certification(s), form(s), or attachment(s) are not signed or completed"; "Ownership Disclosure Form pursuant to Bid Solicitation Sections 3.13.2, *Ownership Disclosure Form*. In their letter, Play & Park stated that "PS Commercial Play, LLC is 100% owned by our parent company Playcore Wisconsin Inc.". Additionally, Play & Park also attached an Ownership Disclosure Form for Solicitation Number 16DPP00019, dated July 13, 2016.

By way of background, on September 27, 2023, the Procurement Bureau issued the Bid Solicitation on behalf of Statewide Using Agencies and Cooperative Purchasing Participants. The purpose of the Bid Solicitation was to solicit "Quotes for various types of Park and Playground Equipment." Bid Solicitation Sec. 1.1, *Purpose and Intent*. It is the intent of the State to award a Contract to that responsible Bidder whose Quote, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. The State may award any or all price lines.

On November 15, 2023, the Division's Proposal Review Unit opened forty-one (41) Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, it was determined that

Play & Park's Quote was non responsive for failing to submit a completed Ownership Disclosure Form, as required in Bid Solicitation Section 3.13.2.

In consideration of the Play & Park protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, 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. 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 **shall** 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, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Vendors {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 3.0, *Quote Submission Requirements*, which states in pertinent part that:

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.”

[Bid Solicitation Section 3.13.2, emphasis added.]

The term “must” denotes a mandatory requirement as further set forth in the Bid Solicitation’s glossary:

Must – Denotes that which is a mandatory requirement.

[Bid Solicitation Section 9. *GLOSSARY*]

The term “shall” also denotes that which is a mandatory requirement as further set forth in the Bid Solicitation’s glossary:

Shall – Denotes that which is a mandatory requirement.

[Bid Solicitation Section 9. *GLOSSARY*]

Along with their Quote, Play & Park submitted an incomplete and/or inaccurate Ownership Disclosure Form (“Form”). In response to question 3, “The vendor is a **corporation, partnership, or limited liability company** with individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest; and therefore, disclosure is necessary” (emphasis in original), Play & Park checked the box for “YES”. The Form further instructed: “If you answered YES to Question 3, you must disclose the information requested in the space below: (a) the names and addresses of all stockholders in the corporation who own 10% or more of its stock, of any class; (b) all individual partners in the partnership who own a 10% or greater interest therein; or, (c) all members in the limited liability company who own a 10% or greater interest therein. Play & Park responded “N/A”. Based on the assertion in the Letter that “PS Commercial Play, LLC is 100% owned by our parent company Playcore Wisconsin Inc.”, the answer of “N/A” in response to the disclosure requirements of Question 3 in the Form is not responsive nor accurate.

Included with their Letter, Play & Park provided an Ownership Disclosure Form that was submitted in connection with Solicitation 16DPP00019 and is dated July 13, 2016. In their letter, Play & Park state that they completed the Form “to maintain consistency with our 2017 submission documents for BID Number: 16DPP00019, for which we were awarded”. The documents submitted for Bid Solicitation 16DPP00019 have no bearing on the issue at hand for the current Bid Solicitation. As ownership structures can and frequently do change over time, and as the questions in the Form are not optional (see the discussion of “must” language above), the fact that Play & Park was awarded a bid in 2017 having filled out a similar, although not identical form is irrelevant.


Play & Park was non-compliant with the terms in Bid Solicitation Section 3.13.2. As such, Play & Park's Quote contained a non-waivable deviation rendering the Quote non-responsive. Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974).

In light of the findings set forth above, I sustain the conclusions in the Bureau's March 19, 2024 Proposal Rejection Letter, that the Play & Park Quote was non-responsive for failing to disclose any persons and/or entities owning a 10% or greater interest in Play & Park as required by the Bid Solicitation and uphold the March 19, 2024, Notice of Proposal Rejection.

Thank you for your company's continuing interest in doing business with the State of New Jersey, 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 the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Cory K. Kestner, Esq.
Acting Chief Hearing Officer

CKK: CMD

c. K. Thomas
C. Murphy
E. Flynn