



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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March 20, 2017

Via Electronic Mail [[dc.strang@farm-rite.com](mailto:dc.strang@farm-rite.com)] and USPS Regular Mail

Donald C. Strang, President  
Farm-Rite Inc.  
122 Old Cohansey Rd.  
P.O. Box 29  
Shiloh, NJ 08353

RE: Protest of Notice of Proposal Rejection  
Bid Solicitation {Request for Proposal} #17DPP00032 – T3057- Wheel Loader with Quick-Detachable Minimum 3 Cu. Yd. Bucket, Diesel Engine, Forklift Attachment & Accessories

Dear Mr. Strang:

This letter is in response to your letter of protest dated March 8, 2017, on behalf of Farm-Rite Inc. (Farm-Rite), acknowledging receipt of a Notice of Proposal Rejection (Rejection Notice) sent by the Division of Purchase and Property's (Division) Proposal Review Unit. The Rejection Notice indicated that Farm-Rite failed to include a signed *Offer and Acceptance* Page with its Quote {Proposal} (proposal). In your letter, you state that the lack of signature "was simply a clerical mistake" and request the Division accept the attached signed form as a compliment to Farm-Rite's proposal.

I have reviewed the record of this procurement, including the Bid Solicitation ({Request for Proposal} (RFP)), Farm-Rite's proposal, and the 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 Farm-Rite's protest.

By way of background, the subject RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of the New Jersey Department of Transportation (NJDOT), Using Agencies and Cooperative Purchasing Partners for wheel loaders with quick-detachable minimum 3 cu. yd. bucket, diesel engine, forklift attachment and accessories. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award one (1) Master Blanket Purchase Order (Blanket P.O.) {Contract} [(hereinafter contract)] for each Make/Model that meets the specifications. Awards shall be made 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 RFP includes seven price lines, grouped to create a single award. *Ibid*.

On February 28, 2017, 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 Farm-Rite failed to submit a signed *Offer and Acceptance* Page with its proposal. Accordingly, the Proposal Review Unit issued a Rejection Notice.

In its letter of protest, Farm-Rite submits that the failure to sign the *Offer and Acceptance* Page was a clerical mistake and the unsigned version was mistakenly included with the proposal. Farm-Rite notes that “all the other forms submitted with the bid” were properly signed. Farm-Rite also states that, as a previous State contractor, it has performed well and continues to have a good relationship with DOT, and requests the Division accept the properly signed form included with its letter of protest.

The subject solicitation was comprised of the RFP and other documents, including the *Offer and Acceptance* Page. All RFP-required documents were available on the Division’s website as downloaded documents through NJSTART. The *Offer and Acceptance* Page is addressed in numerous locations in the RFP and is specifically listed under RFP Section 4.4.1, *Forms, Registrations and Certifications Required with Quote {Proposal}*. As stated in RFP Section 4.4.1.1:

**4.4.1.1 OFFER AND ACCEPTANCE PAGE {Signatory page}**

The Vendor {Bidder} shall complete, including signature of an authorized representative of the Vendor {Bidder}, and submit the Offer and Acceptance Page {Signatory Page} accompanying this Bid Solicitation {RFP} (whether submitted through *NJSTART* or as a hard copy). If the Vendor {Bidder} is a limited partnership, the Offer and Acceptance Page {Signatory Page} must be signed by a general partner. All information requested must be submitted. If the Vendor {Bidder} is a joint venture, the Offer and Acceptance Page {Signatory Page} must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the Quote {Proposal}.

[(Emphasis added.)]

Additionally, pursuant to N.J.A.C. 17:12-2.2,<sup>1</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 § 4.4.1.1, the submission of a completed and signed *Offer and Acceptance* Page with the bidder’s proposal was required. The *Offer and Acceptance* Page also notified the bidder that the form must be signed and submitted with the proposal, otherwise the bidder’s proposal would be deemed non-responsive. Here, the *Offer and Acceptance* Page uploaded by Farm-Rite with its proposal was not signed.

Notwithstanding Farm-Rite’s interest in competing for this procumbent, to allow a bidder who did not provide the required certification 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. Because the *Offer and Acceptance* page notifies the bidding community that failure to submit a signed *Offer and Acceptance* Page will render the bidder’s proposal non-responsive, the deficiency cannot be remedied or waived after the proposal submission deadline. Acceptance of Farm-Rite’s proposal under these circumstances would place Farm-Rite in a position different from others in the bidding community and would provide Farm-Rite with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, Farm-Rite is not eligible to participate in the competition for the subject contract. This is my final agency decision on this matter.

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<sup>1</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>.

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 Farm-Rite's proposal. Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business 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

MAG:DF

c: J. Kerchner  
K. Thomas  
M. Gilbert  
A. Nelson