



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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April 8, 2016

Via Electronic Mail [Babatunde.A.Adedeji@gsk.com] and USPS Regular Mail

Babatunde Adedeji, Contract Development Manager
GlaxoSmithKline LLC
Mail Code- NY0300
5 Crescent Drive
Philadelphia, PA 19112

RE: Protest of Notice of Proposal Rejection
RFP # 16-X-24217 Influenza Vaccine – Statewide

Dear Mr. Adedeji:

This correspondence is in response to your letter of protest dated and received March 22, 2016, referencing the subject Request for Proposal (RFP) and regarding the proposal submitted by GlaxoSmithKline LLC (GSK) to the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). The record of this procurement shows that GSK's proposal was rejected for failing to submit a signed *Ownership Disclosure Form*. In your letter, you state that GSK's proposal was submitted on time and that the "instruction on the bid packet indicates that we can type the name of the signatory if . . . using electronic signature." You attach an *Ownership Disclosure Form* to your letter of protest for the Division's "perusal."¹

I have reviewed the record of this procurement, including the RFP, GSK's proposal, and 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 GSK's protest.

By way of the background, the subject RFP was issued by the Bureau on behalf of statewide using agencies to solicit proposals for influenza vaccines, delivered F.O.B. destination to State agencies and Cooperative Purchasing Partners. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award contract(s) to a minimum of three (3) responsible Bidder(s) whose proposal(s), conforming to this RFP (are) most advantageous to the State, price and other factors considered." *Ibid*. This is a procurement of term contract T-2276.

The above-referenced solicitation was comprised of the RFP and other documents, one of which was the three-part document titled *NJ Standard RFP Forms*. This document includes the *Ownership*

¹ GSK's letter misstates that its proposal was rejected in part due to GSK not being business registered by the Division of Revenue of the Department of the Treasury. As noted on the Notice of Proposal Rejection and accompanying letter, this is not a cause for rejection, but rather a warning that "a bidder and any subcontractors named within the proposal must be business-registered and in possession of a valid Business Registration Certificate ("BRC") prior to the award of any contract resulting from [the] solicitation." A review of the business registration database shows that GSK was in fact registered. Therefore, this notice was issued in error.

Disclosure Form. RFP Section 4.0 *Proposal Preparation and Submission* provides the following guidance concerning these documents:

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.

If the bidder is submitting an electronic proposal through the Division's eBid system, there are only two acceptable forms of signature for the two forms:

1. The bidder may download the document, physically complete and sign each form, scan the completed document and then upload it, or
2. The bidder may download the document, type the name of the signatory in the space designated for certification signature in each of the forms and then upload the document.

Note: A bidder's entry of a Personal Identification Number (PIN) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document.

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.

[(Emphasis in original.)]

Furthermore, as a courtesy to all bidders, the Division provided a Proposal Checklist as an accompaniment to the RFP. The Checklist included the following:

FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:

- RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
- Completed Price Sheets as instructed in Section 4.4.5 of the RFP
- Completed and signed Ownership Disclosure Form*
- Completed and signed Disclosure of Investments in Iran Form*

....

** The Ownership Disclosure, Disclosure of Investigations and Other Actions Involving Bidder, and the Disclosure of Investments in Iran forms MUST each contain either a physical or typed signature (typed signatures are only acceptable for eBid submissions). . . .*

Pursuant to N.J.A.C. 17:12-2.2,² 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 Sections 4.4.1.2 and 4.4.1.2.1, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal was required.

In this case, the record reveals that GSK submitted an electronic proposal by the submission deadline of March 17, 2016. GSK's protest indicates that GSK signed the electronic *Ownership Disclosure Form* by typing the name of the signatory. As noted above, the two permissible ways to sign these forms were either: 1) downloading the document, physically signing the form, scanning the completed document, and then uploading it; or 2) typing the name of the signatory in the space designated for certification signature and uploading the document. Here, although GSK implies that it typed the signatory name on the signature line, a review of the uploaded form received by the Division shows that all the lines contained in the certification block of the *Ownership Disclosure Form*, including Full Name, Signature, Title, Date, and REIN/SSN were all left blank. Regrettably, GSK's proposal did not include a properly signed *Ownership Disclosure Form*.³

Notwithstanding GSK's interest in competing for this procurement, it would not be in the State's best interests to allow a bidder who did not provide the required information to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary documents and information were provided as required. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of GSK's proposal under these circumstances would be contrary to the provisions of governing statutes and would provide GSK with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, I must deny your request for eligibility 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 GSK's proposal. Thank you for registering your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,


Maurice Griffin
Chief Hearing Officer

MG:DF

c: P. Michaels
J. Kemery
C. Murphy
A. Nelson

² 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>.

³ I also note that the *Ownership Disclosure Form* included with GSK's letter of protest is a duplicate of the form submitted with GSK's proposal, i.e., the form lacks the required signature.