



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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January 27, 2021

Via Electronic Mail Only mschwartz@cooperlevenson.com

Mark G. Schwartz, Esq.
Cooper Levenson
1125 Atlantic Avenue
Atlantic City, NJ 08401

Re: I/M/O Bid Solicitation #19DPP00372 Yank Marine Services LLC
Protest of Notice of Proposal Rejection – Request for Reconsideration
T0969 Marine Craft and Related Products and Services

Dear Mr. Schwartz:

This decision is in response to your correspondence of January 13, 2021, on behalf of Yank Marine Services LLC (Yank) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, Yank requests that the Division reconsider its January 7, 2021 final agency decision which sustained the Notice of Proposal Rejection issued to Yank by the Division's Proposal Review Unit for Bid Solicitation #19DPP00372 T0969 - Marine Craft and Related Products and Services (Bid Solicitation).

By way of background, on October 30, 2020, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of New Jersey State Police, State Using Agencies and Cooperative Purchasing Program participates. Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for marine craft and related products and services. *Ibid*. It is the State's intent to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. *Ibid*.

On January 5, 2021, the Division's Proposal Review Unit opened twelve Quotes which 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 Yank for failing to submit a completed *Ownership Disclosure Form* with its Quote. In response to the Notice of Proposal Rejection, on January 7, 2021, Yank sent an email to the Division's Hearing Unit stating:

This was a complete oversight on my part.

I mistakenly attached the blank form that was saved to my computer desktop to our quote instead of the PDF Ownership Disclosure Form that I had properly filled out.

Please accept my apologies.

Attached is the correct version of this form for the bid.

Since we are the only commercial shipyard in the State of NJ that can perform the type of work that is requested by both the New Jersey State Police and the Bureau of Shellfisheries for their respective vessels, we hope that you will accept this form and not reject our quote for T0969.

With the protest, Yank included the completed *Ownership Disclosure Form*, no other information or documents were included with the protest.

On January 7, 2021, the Division issued its final agency decision which sustained the Proposal Review Unit's issued a Notice of Proposal Rejection stating in part:

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 Vendor {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, Yank did not comply with any of the options available to it for the submission of ownership information. Accordingly, Yank's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

Yank responded to the final agency decision stating "And the fact that prior to the bid opening I received a Small Business Enterprise Certification along with a Woman Owned Business Enterprise Certification from the State of NJ which required uploading copies of our Federal Income Tax Returns that showed proof of ownership?" Yank's January 7, 2021, email. Thereafter, counsel for Yank wrote to the Division's Hearing Unit alleging the following as follows: (1) that the Division was not required to reject Yank's Quote for a minor technicality; (2) that the information required on the *Ownership Disclosure Form*, while not included with the Quote, was otherwise provided by Yank to the State in connection with its application to the Division of Revenue and Enterprise Services (DORES) for certification as a Small Business Enterprise and Women Owned Enterprise and a recent contract extension; (3) that Yank provided an ownership statement in connection with the extension of its current contract in December 2020; and, (4) Yank alleges that other bidders do not have the facilities or capability to make repairs which may be required under this contract.

In consideration of Yank's request for reconsideration I have reviewed the record of this procurement, including the Bid Solicitation, Yank's Quote, protest and additional information provided with the request for reconsideration, the relevant statutes, regulations and case law. The review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed decision on the merits of the request for reconsideration.

First, with respect to Yank's claim that the Division was not required to reject Yank's Quote for its failure to submit the *Ownership Disclosure Form*, 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 mandate 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, a Quote must be rejected. The regulation mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. Among the required forms to be submitted with a Quote is the *Ownership Disclosure Form*. See, Bid Solicitation Section § 4.4.1.2.1. More importantly, the requirement that a Vendor {Bidder} supply its ownership information, prior to or with its Quote is mandated by the New Jersey Legislature. *George Harms Constr. Co. v. Lincoln Park*, 161 N.J. Super. 367, 371-372 (App. Div. 1978). The Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Here, Yank did not comply with any of the options available to it for the submission of ownership information with its Quote and therefore the Proposal Review Unit rejected Yank's Quote for failure to comply with the submission requirements of N.J.A.C. 17:12-2.2; specifically for a failing to comply with the disclosure requirements of N.J.S.A. 52:25-24.2 as mandated by the New Jersey Legislature. Contrary to Yank's assertion this was not a minor technicality that the Division had the authority to waive.

Turning to Yank's second point, I note that neither with its Quote submission nor with the original protest did Yank advise that it had within the past six months submitted documentation to the DORES, a division separate and apart from the Division of Purchase and Property, information detailing its ownership structure. However, even had it advised the Division of the same, the Division could not accept the information submitted to DORES. In *Ernest Bock & Sons, Inc. v. Mercer County Improvement Auth.*, 2010 N.J. Super. Unpub. LEXIS 312, the Appellate Division affirmed Judge Bookbinder's holding that disclosure to entity other than the one soliciting the bids did not satisfy the requirements of N.J.S.A. 52:25-24.2. In *Ernest Bock*, the Appellate Division agreed that Judge Bookbinder properly rejected the bidder's argument that it had "in fact, provide an accurate and complete statement of corporate ownership 'prior to the receipt of the bid or accompanying the bid'" when the bidder provided the information to an entity other than the one soliciting the bids. *Ernest Bock*, 2010 N.J. Super. Unpub. LEXIS 312, *11.

The judge concluded that [the bidder's] disclosure to the DPMC fails to satisfy N.J.S.A. 52:25-24.2 because the disclosure was to the DPMC rather than to the MCIA.

The judge rejected Hunter's suggestion that the disclosure may be submitted to any state agency as long as notice of the disclosure is passed along to the entity receiving the bids, and held that the most commonsensical interpretation of N.J.S.A. 52:25-24.2 requires that the disclosure should be submitted to the entity that is actually running the

¹ "Shall - Denotes that which is a mandatory requirement." Bid Solicitation Section 2.2 *General Definitions*.

bidding. This seemingly clear inference is supported by the policy goals underlying the statute. The judge reasoned that

the identities of shareholders are only meaningful in the context of a specific bid for a specific job at a specific time in a specific locality. Thus, in order to be effective, disclosure must be made to the entity actually making the bidding decision. Disclosure to another entity - be it the DPMC, the SEC, or the Attorney General - does nothing to make the bidding process more transparent or fair. The MCIA and any members of the public following the bidding process gained nothing by knowing that Hunter Roberts had disclosed its ownership to the DPMC a year earlier. This is because the goals of the DPMC's disclosure requirement were not necessarily identical to the goals of disclosure to the MCIA. In other words, each entity was looking for something different. It was also entirely possible that salient facts or circumstances changed in the year between the disclosure to the DPMC and the bid submission to the MCIA. Thus, the MCIA could not simply rely on the fact that the DPMC had examined Hunter Roberts' disclosure.

...

We are satisfied that Judge Bookbinder's comprehensive and thoughtful opinion properly applied the statutory provisions intended to serve this particular public interest.

[*Ernest Bock*, 2010 N.J. Super. Unpub. LEXIS 312, *14-15, 23 *internal quotations omitted*.]

Here, Yank asserts that it submitted the required statutory disclosure to the DORES in connection with its request for certification as a Small Business Enterprise Certification and a Woman Owned Business Enterprise. Yank's January 7, 2021 email. As noted above, the DORES is a government entity separate and apart from the Division.

In requesting that a company provide its ownership information as mandated by N.J.S.A. 52:25-24.1, the Division seeks to:

ensure that all members of a [government entity] and the public be made aware of the real parties in interest with whom they are asked to contract. Thus the public, as well as public officials, can identify any real or potential conflicts of interest arising out of the awarding of public contracts, or can identify those bidders who lack the requisite responsibility. Identity also serves the useful function of permitting the [government entity] to assess the experience, financial ability and moral integrity of the bidders.

[*George Harms, supra*, 161 N.J. Super. at 372, citing, *Assembly Bill 22* (1976), "Statement of Purpose", *Arthur Venneri Co. v. Paterson Housing Auth.*, 29 N.J. 392, 402-403 (1959).]

In contrast, as it relates to an application for certification as a Woman Owned Business Enterprise, DORES requests the ownership information in accordance with its statutory mandate requiring it to:

Screen applicants to insure that businesses seeking certification are not misrepresenting their status as minority businesses or women's businesses, as the case may be, and that the minority or women's business applicants are, in fact, in the control of members of minority groups or women, and are not merely "fronts" for businesses controlled by persons other than minorities or women.

[N.J.S.A. 52:27H-21.20(d).]

In reviewing the information supplied, what is important to the DORES' review is whether the company is owned and controlled by a women or a minority.

With respect to an application for certification as a Small Business Enterprise, the DORES' review of the ownership information submitted is to ensure that the company is "independently owned and operated, as evidenced by its management being responsible for both its daily and long term operation, and its management owning at least 51 percent interest in the business." N.J.A.C. 17:13-2.1(a)(1). Further, while the uniform application requires a listing of all principals with an ownership interest, it does not require the continuing disclosure sought by the N.J.S.A. 52:25-24.1.

As recognized by the Court in *Ernest Bock*, "in order to be effective, disclosure must be made to the entity actually making the bidding decision." 2010 N.J. Super. Unpub. LEXIS 312, *14-15. Here, Yank's disclosure was to the DORES, not the Division. Further exacerbating the concern is that DORES need for the ownership information does not align with the Division's need for the information. As such, the Division cannot rely upon the disclosure made to the DORES. *Ibid*.

Turning now to Yank's statement that it provided an ownership statement in connection with the extension of the current contract in December 2020. In Ms. Yank's January 8, 2021, email to Mr. Schwartz, submitted in connection with the request for reconsideration, Ms. Yank states:

I have attached a copy of my extension form for the current contract dated 12/22/20. On that form, I had to "certify that there have been no changes to the information originally reported in the Disclosure Forms submitted by my company" under the current blanket contract under which we are operating and " I have verified all required certifications are active /approved and will continue through the end of the extension period of 10/31/21. This extension form was signed and emailed to Rachel Bowen, Procurement Specialist, NJ Department of Treasury on 12/21/20.

So having declared on 12/22/20 that there have been no changes in the information originally reported in the Disclosure Forms submits by my company and having verified all required certifications are active/approved and will continue through the end of the current contract (or until 10/31/21) how can they say that the Ownership has not been disclosed?

The Division acknowledges that on December 22, 2020, Yank submitted a signed extension to the Bureau, and as shown on the screenshot below, indicated that there had not been any change to the ownership information originally reported in the Disclosure Forms submitted by the company.

YANK MARINE SERVICES LLC
PO BOX 271
TUCKAHOE, NJ 08250
Fax: (865)785-1110
Via email: yankmarineserv@comcast.net

Re: T #0969, Contract # 86337
Description: MARINE CRAFT: BOAT, MOTORS, TRAILER
(PARTS/REPAIRS/ACCESSORIES & PURCHASES)

Extension period: **nine (9) months, commencing on January 31, 2021 and expiring on October 31, 2021.**

Should the State decide to extend this contract:

I agree to extend the contract under Section 5.3 of the State of New Jersey Standard Terms and Conditions and in accordance with the terms and conditions of the current contract, including price.

I agree to extend the current contract under Section 5.3 of the State of New Jersey Standard Terms and Conditions and in accordance with the terms and conditions of the current contract with the exception of price. During the term of the extension, **I agree to reduce** the price(s) as follows:

I do not agree to extend the current contract.

I certify that there have been no changes to the information originally reported in the Disclosure Forms submitted by my Company. I have verified all required certifications are active/approved and will continue through the end of the extension period.

There have been changes in the information originally reported in the Disclosure Forms. Updated Disclosure Forms, as applicable, are attached.

Signature: Betty Jean Yank Date: 12/22/20

Print Name and Title: Betty Jean Yank
Managing Member

A review of the Division's records reveals that in February 2014, Yank submitted a Quote in response to Request for Proposals #14-X-23348, the precursor of this Bid Solicitation. With that Quote, Yank submitted the *Ownership Disclosure Form*. As shown on the screenshots below, that form indicated that in 2014, Yank was owned by three individuals having a 10% or greater interest in Yank.

**STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY
 OWNERSHIP DISCLOSURE FORM**

Solicitation Number: 14-X-23348 Bidder/Offeror: Yank Marine Services LLC

PART 1: PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR "NO" BOX.
ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S.A. 52:25-24.2
PLEASE NOTE: IF THE BIDDER/OFFEROR IS A NON-PROFIT, THIS FORM IS NOT REQUIRED. PLEASE COMPLETE THE SEPARATE DISCLOSURE OF INVESTIGATIONS FORM.

- | | | |
|--|-------------------------------------|--------------------------|
| | YES | NO |
| 1. Are there any individuals, corporations or partnerships owning a 10% or greater interest in the bidder/offeror? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
- IF THE ANSWER TO QUESTION 1 IS NO, PLEASE SIGN AND DATE THE FORM. YOU DO NOT HAVE TO COMPLETE ANY MORE QUESTIONS ON THIS FORM. IF THE ANSWER TO QUESTION 1 IS YES, PLEASE ANSWER QUESTIONS 2-4 BELOW.**
- | | | |
|--|-------------------------------------|-------------------------------------|
| 2. Of those parties owning a 10% or greater interest in the bidder/offeror, are any of those parties individuals? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Of those parties owning a 10% or greater interest in the bidder/offeror, are any of those parties corporations or partnerships? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. If your answer to Question 3 is "YES", are there any parties owning a 10% or greater interest in the corporation or partnership referenced in Question 3? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

IF ANY OF THE ANSWERS TO QUESTIONS 2-4 ARE YES, PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2-4 ANSWERED AS "YES".
 For Questions 2-4 answered "YES", you must disclose identifying information related to the individuals, partnerships and/or corporations owning a 10% or greater interest in the bidder/offeror. Further, if one or more of these entities is itself a corporation or partnership, you must also disclose all parties that own a 10% or greater interest in that corporation or partnership. This information is required by statute.


TO COMPLETE PART 2, PLEASE PROVIDE THE REQUESTED INFORMATION PERTAINING TO EITHER INDIVIDUALS OR PARTNERSHIPS/CORPORATIONS HAVING A 10% OR GREATER INTEREST IN THE BIDDER/OFFEROR. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ENTRY" BUTTON IN THE APPROPRIATE ENTITY TYPE.

Individuals	
Name: <u>Bette Jean Yank</u>	Date of Birth: <u>2/17/1955</u>
Office Held: <u>Managing Member</u>	Ownership Interest: <u>51</u> %
Home Address: <u>302 Marshallville Road</u>	
City: <u>Tuckahoe</u> State: <u>NJ</u> Zip Code: <u>08250</u>	<input type="button" value="Delete Entry"/>
Are there additional entities holding 10% or greater ownership interest in the bidder/offeror and its parent corporation/partnership?	
<input checked="" type="checkbox"/> Yes or <input type="checkbox"/> No	

Individuals	
Name: <u>John C. Yank Jr.</u>	Date of Birth: <u>10/20/1939</u>
Office Held: <u>Member</u>	Ownership Interest: <u>39</u> %
Home Address: <u>302 Marshallville Road</u>	
City: <u>Tuckahoe</u> State: <u>NJ</u> Zip Code: <u>08250</u>	<input type="button" value="Delete Entry"/>
Are there additional entities holding 10% or greater ownership interest in the bidder/offeror and its parent corporation/partnership?	
<input checked="" type="checkbox"/> Yes or <input type="checkbox"/> No	
Name: <u>Michael S. Tilsner</u>	Date of Birth: <u>1/4/1982</u>
Office Held: <u>Member</u>	Ownership Interest: <u>10</u> %
Home Address: <u>302 Teal Road</u>	
City: <u>Rio Grande</u> State: <u>NJ</u> Zip Code: <u>08242</u>	<input type="button" value="Delete Entry"/>
Are there additional entities holding 10% or greater ownership interest in the bidder/offeror and its parent corporation/partnership?	
<input type="checkbox"/> Yes or <input checked="" type="checkbox"/> No	
<input type="button" value="Add An Additional Individuals Entry"/>	

Between the time that the Yank submitted the *Ownership Disclosure Form* in 2014 and the December 2020 extension letter, Yank did not provide any other statement of ownership to the Division.

However, in connection with the January 7, 2021, protest, Yank included the completed *Ownership Disclosure Form*. That form however indicated that Yank is owned by only two individuals having a 10% or greater interest in Yank.

	STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF PURCHASE AND PROPERTY 33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230		
	OWNERSHIP DISCLOSURE FORM		
BID SOLICITATION #: 19DPP00372		VENDOR (BIDDER): Yank Marine Services LLC	
ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE THE INFORMATION REQUESTED PURSUANT TO N.J.S.A. 52:25-24.2. PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.			
PART 1			
Are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor (Bidder)?		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein.			
NAME ADDRESS 1 ADDRESS 2 CITY	Bette Jean Yank 302 Marshallville Road Tuckahoe STATE NJ ZIP 08250		
NAME ADDRESS 1 ADDRESS 2 CITY	John C. Yank Jr. 302 Marshallville Road Tuckahoe STATE NJ ZIP 08250		
NAME ADDRESS 1 ADDRESS 2 CITY	 STATE ZIP		

Therefore, it appears that Yank's December 22, 2020 signed extension letter submitted to the Bureau, certifying that there had not been any change to the ownership information originally reported in the Disclosure Forms submitted by Yank was in error.²

The New Jersey Courts have consistently held that strict compliance with the ownership disclosure requirements of N.J.S.A. 52:25-24.2 is necessary. As such, a Quote is properly rejected where it contains inaccurate or incomplete ownership information. See, *Impac, Inc. v. City of Paterson*, 178 N.J. Super. 195, 200-01 (App. Div. 1981); *Muirfield Const. Co., Inc. v. Essex County Imp. Authority*, 336 N.J. Super. 126 (App. Div. 2000); *In the Matter of Protest of Scheduled Award of Term Contract T2813 RFP 12-X-22361 Laboratory Testing Service, Equine Drug Testing*, Lexis 1698, at *25 (App. Div. July 10, 2013).

² In connection with this request for reconsideration, the Division did contact DORES regarding Yank's application for certification as an SBE and WBE. The information provided by DORES indicates in December 2019, Michael Tilsner, a then 10% owner of Yank, sold his interest in Yank to Bette Jean Yank and John Yank. At the close of 2019, it appears that Ms. Yank and Mr. Yank's interests in the company were 56% and 44% respectively each having been allocated 5% of Mr. Tilsner's ownership. Thereafter, in February 2020, Yank amended the Operating Agreement to indicate Ms. Yank and Mr. Yank's interests in the company were 51% and 49% respectively.

The *NJSTART* system does not prevent a Vendor {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 Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, Yank submitted a Quote without a completed *Ownership Disclosure Form* attached. Notwithstanding Yank's interest in competing for this procurement, for the reasons set forth above, the Division is unable to rely upon Yank's statement of ownership submitted either prior to or after the Quote opening date.

Finally, in the January 13, 2021, request for reconsideration, Yank asserts that that other bidders do not have the facilities or capability to make repairs which may be required under this contract. I note that it is the responsibility of the Bureau to review and evaluate the Quotes received in response to the Bid Solicitation. The Bureau will then issue the Notice of Intent to Award advising all Vendors {Bidders} of the State's intent to award Blanket P.O.s to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. Bid Solicitation §1.1 *Purpose and Intent*. The Hearing Unit will not pre-judge any Quote submitted, nor any Vendor's {Bidder's} ability to provide marine craft and related products and services sought by the Bid Solicitation.

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.

Sincerely,



Rachel Doobrajh
Acting Chief Hearing Officer

- c. Bette Jean Yank
- J. Kerchner
- K. Thomas
- C. Murphy
- R. Bowen
- A. Nelson
- D. Rodriguez