



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

CHRIS CHRISTIE
Governor

FORD M. SCUDDER
State Treasurer

KIM GUADAGNO
Lt. Governor

MAURICE A. GRIFFIN
Acting Director

August 8, 2017

Via Electronic Mail [Nathan.Teodoro@gamberjohnson.com] and USPS Regular Mail

Nathan Teodoro, Northeast Sales Manager – Public Sector
Gamber-Johnson, LLC
3001 Borham Avenue
Steven Point, WI 54481

Re: Protest of Notice of Proposal Rejection
Solicitation #17DPP00046: Law Enforcement Firearms, Equipment and Supplies

Dear Mr. Teodoro:

This letter is in response to your email of August 4, 2017, on behalf of Gamber-Johnson, LLC, Inc. hereinafter “Gamber”) which was received by the Division of Purchase and Property’s (hereinafter “Division”) Hearing Unit. In that correspondence, Gamber protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Solicitation #17DPP00046: Law Enforcement Firearms, Equipment and Supplies. The record of this procurement reveals that Gamber’s Quote {Proposal} (hereinafter “Proposal”) was rejected because Gamber did not submit a signed *Ownership Disclosure Form* with its Proposal submission.

In consideration of Gamber’s protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter “RFP”), Gamber’s Proposal, 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.

By way of background, on February 7, 2017, the Division’s Procurement Bureau (hereinafter “Bureau”) issued the above referenced RFP on behalf of State Using Agencies and Cooperative Purchasing Partners, to solicit Proposals for law enforcement equipment and supplies. RFP § 1.1 *Purpose and Intent*. RFP § 3.1 *Law Enforcement Equipment and Supplies Categories* identified the following sixteen categories of items sought by the RFP:

- Category 1 – Ammunition;
- Category 2 - Firearms & Firearm Repair Parts;
- Category 3 – Firearm Accessories;
- Category 4 – Non-Lethal Weapons/Riot Control Equipment, Parts & Accessories;
- Category 5 – Laser/Radar Guns;
- Category 6 – Leather/Nylon Goods & Tactical Gear;
- Category 7 – Body Armor, Bomb Suits & Accessories;

- Category 8 – Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) Detection, Mitigation & Personal Protective Equipment, Parts & Accessories;
- Category 9 – Search & Rescue Equipment;
- Category 10 – Marine and Scuba Equipment, Supplies, Parts & Accessories;
- Category 11 – Area Security Equipment;
- Category 12 – Vehicle Siren Systems & Vehicle Light Systems and Associated Accessories;
Category 12A - Vehicle Siren Systems & Vehicle Light Systems Installation and Repair Rate;
- Category 13 – Police In-Car Video Solution;
Category 13A - Installation, Consulting Services, Hardware /Software Configuration, Training and Repair Services – Police In-Car Video Solution;
- Category 14 – Police Body Camera Solution;
Category 14A - Installation, Consulting Services, Hardware/Software Configuration, Training and Repair Services – Police Body Camera Solution;
- Category 15 - Interview Room Camera Solution;
Category 15A - Installation, Consulting Services, Hardware/Software Configuration, Training and Repair Services – Interview Room Camera Solution;
- Category 16 - Automatic License Plate Recognition Surveillance Solution;
Category 16A - Installation, Consulting Services, Hardware/Software Configuration, Training and Repair Services - Automatic License Plate Recognition Surveillance Solution.

The State intends to make two (2) statewide awards, one primary and one secondary, for each price line listed in Categories 1 through 11 and up to five (5) statewide awards for each price line listed in Categories 12 through 16. RFP § 1.1 *Purpose and Intent*.

On April 20, 2017, the Proposal Review Unit opened the 102 Proposals received by the submission deadline of 2:00 p.m. After conducting a review of the Proposal submitted by Gamber, the Proposal Review Unit found that while Gamber's Proposal did include an *Ownership Disclosure Form*, the form was not signed. Accordingly, on July 20, 2017, the Proposal Review Unit issued a Notice of Proposal Rejection. On August 4, 2017, Gamber wrote to the Division stating “[i]n reference to your letter of rejection of our bid for the DPP Solicitation 17DPP00046, we would like to protest and submit an amended Ownership Disclosure for your review. We are sorry for the omission of the signature on the original document and appreciate your consideration of our corrected form”. With the protest, Gamber submitted a completed and signed *Ownership Disclosure Form*.

Pursuant to the Division's governing regulations, a Proposal must “[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required”, (here at the time of bid submission or not more than six (6) months earlier) or “be subject to automatic rejection.” N.J.A.C. 17:12-2.2 (*Emphasis added.*). To assist Vendors {Bidders} (hereinafter “Bidders”) in preparing and submitting a Proposal, the RFP advises Bidders to visit the [NJSTART Vendor Support Page](#) and to utilize the available Quick Reference Guides. Specifically, RFP § 1.33 [NJSTART](#) states in pertinent part:

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of [NJSTART](#) terms, and helpdesk contact information.

The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote {Proposal} using the [NJSTART](#) process. It is the Vendor's {Bidder's} responsibility to ensure that the [NJSTART](#) Quote {Proposal} and attachments have been properly submitted.

The *Ownership Disclosure Form* is a statutorily required document that must be submitted with the Bidder's Proposal. The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated the requirements that a bidder must comply with in order to enter into a contract with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any contract 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 or 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 forth 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. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, 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 addressed in RFP Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

Vendors {Bidders} using [NJSTART](#) to submit a Quote {Proposal} shall make the appropriate certification on the “Maintain Terms and Categories” Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using [NJSTART](#) to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the [Division’s website](#). This form is also available in [NJSTART \(www.njstart.gov\)](#).

Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation {RFP} through [NJSTART](#). Vendors {Bidders} may also refer to the QRG “Vendor Categories and Certifications” for additional instructions on completing shortened versions of required forms by completing certifications on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} utilizing [NJSTART](#) should designate one (1) version of the Ownership Disclosure Form as the Primary Form. In the event that a Vendor {Bidder} fails to attach an Ownership Disclosure Form, or the attached Ownership Disclosure Form is deemed deficient, the Division may access the Primary Form and consider it as part of the Quote {Proposal}. Note: The Primary Form must have a Date Created within six (6) months of the Quote {Proposal} submission deadline to be considered valid.

[*Emphasis added.*]

In reviewing a proposal submitted in response to an RFP, the Division does not have the power to waive the legislative requirement that a Bidder provide its ownership information prior to or accompanying the Proposal submission. [N.J.S.A. 52:25-24.2](#). Only the New Jersey Legislature can change a requirement it has mandated. Accordingly, in order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community an *Ownership Disclosure Form* to be completed and submitted with the proposal.

In this case, the record indicates that Gamber did not submit the signed *Ownership Disclosure Form* with the proposal, nor was a signed form contained within Gamber’s [NJSTART](#) Vendor Profile, or previously submitted within six (6) months prior to the Proposal opening deadline. As noted above, Bidders using [NJSTART](#) to submit a Proposal shall make the appropriate certification on the “Maintain Terms and Categories” Tab within its profile by checking the applicable box. The available selections are:

- The bidder is a non-profit entity and is exempt from the ownership disclosure requirement. See Disclosure of Non-Profit Officer and Directors below.
- There are no individuals, partnerships or corporations with a 0% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement.
- Neither statement is appropriate. 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.

Sample Ownership Disclosure Category Options:

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.	
Please select at least one category value	
Search:	
<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.
<input checked="" 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.
<input type="checkbox"/>	Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been read or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.
Notes:	

In making its selection for Ownership Disclosure Category, as shown below, Gamber selected the third option:

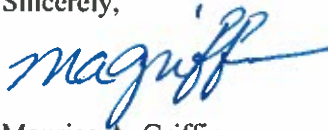
Vendor Profile - Gamber-Johnson, LLC	
Organization Information Users Address Commodity Codes and Services Regions Terms & Categories Attachments Vendor Performance	
Terms and Categories Information	
Terms	
Payment Terms: Not Applicable	
Freight Terms:	
Shipping Method:	
Shipping Terms: F O B Destination	
Categories & Certifications	
...	
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.	
Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been read or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.	

Based upon the selection made, Gamber was required to submit a signed *Ownership Disclosure Form* with its proposal, have one on file with the Division within the six (6) month window prior to the Proposal opening deadline, or attach the form to its Vendor Profile within **NJSTART**. RFP Section 4.4.1.2.1 *Ownership Disclosure Form*. Unfortunately, Gamber did not comply with any of these options.

Notwithstanding Gamber's interest in competing for this procurement, to allow Gamber to submit a completed and signed *Ownership Disclosure Form* after bid 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 Proposal. However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision on this matter.

Thank you for your interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink that reads "magriff". The signature is written in a cursive, flowing style.

Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
J. Karamali
A. Nelson
D. Rodriguez