



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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August 18, 2014

Via Electronic Mail [Michal.Kunz@nyumc.org] and USPS Regular Mail

Michal Kunz, M.D.  
Michal Kunz, M.D. PC  
1473 Whitehill Road  
Yorktown Heights, NY 10598

RE: Protest of Proposal Rejection  
RFP #15-X-23096 - Temporary Staffing for Health and Medical Services

Dear Dr. Kunz:

This letter is in response to your emailed letter dated and received August 13, 2014, referencing the subject Request for Proposal (“RFP”) and regarding the proposal submitted by Michal Kunz, M.D. PC (“Kunz”) to the Division of Purchase and Property (“the Division”). Responding to a Notice of Proposal Rejection sent to you by the Division’s Proposal Review Unit indicating that the Kunz proposal was rejected due to a missing *Signatory Page*, your letter explains that you inadvertently uploaded a different form in lieu of the RFP-required Signatory Page as you were preparing your proposal for electronic submission to the Division. Seeking to remedy the deficiency, you include, with your letter, a copy of a signed *Signatory Page*.

Your communication is accepted as a formal protest of the Division’s rejection of the Kunz proposal.<sup>1</sup> In regard to the issue at hand, I have reviewed the record of this procurement, including the RFP, its addenda, and the electronically submitted Kunz proposal relative to the RFP requirements, 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 Kunz’s protest.

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<sup>1</sup> Such challenges are adjudicated in accord with the provisions of the Division’s regulations set forth as New Jersey Administrative Code (N.J.A.C.) 17:12-3.3, which can be viewed at the following website:  
<http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

The above-referenced solicitation was comprised of the RFP and other documents. Within RFP Section 4.0, *Proposal Preparation and Submission*, and RFP Subsection 4.4.1, *Forms, Registrations and Certifications Required with Bid Proposal*, Paragraph 4.4.1.1, *Signatory Page*, stipulates the following:

The bidder shall complete, including signature of an authorized representative of the bidder, and submit the Signatory Page accompanying this RFP. If the bidder is a limited partnership, the Signatory Page must be signed by a general partner. If the bidder is a joint venture, the Signatory Page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the proposal.

**Note: A bidder's written signature on the Signatory Page, or entry of a Personal Identification Number (PIN) if using the eBid system, shall not serve as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document. (See 4.4.1.2)**

[Emphasis in original.]

Pursuant to N.J.A.C. 17:12-2.2, 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 Paragraph 4.4.1.1, a bidder's failure to complete and submit the *Signatory Page* "will result in rejection of the proposal."

In this case, a review of the Division's eBid system's record, as set forth in the attached spreadsheet depiction, reveals that, although the title of one document within Kunz's proposal referred to a signatory page, i.e., "Kunz 15-X-23096 SignatoryPage.pdf", the form uploaded with that title was a duplicate *Disclosure of Investment Activities in Iran* certification form that Kunz properly uploaded as part of its "Kunz StandardDocumentsV33 si.pdf" document. A review of the other 12 of 14 documents comprising the Kunz proposal conducted to determine if the required signatory page had been included elsewhere within the four corners of the proposal proved unsuccessful.

Notwithstanding Kunz's interest in securing an award of contract and the Division's ever-present objective to secure the benefits of enhanced competition, it would not be in the State's best interest to allow a bidder, even one participating in the Division's competitive procurement process for the first time, who did not timely provide essential information attained by completion and submission of the signatory page to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the Division received responsive proposals containing all mandated, material documents and information as expressly required by the RFP. As affirmed by New Jersey courts, the deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of Kunz's proposal under these circumstances would be contrary to the RFP's provisions and would provide Kunz with disclamation options not available to those bidders whose proposals are fully responsive. In

light of the findings set forth above, I must deny your evident 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 Kunz applied in preparing and submitting its proposal. Anticipating continued interest in doing business with the State of New Jersey, I invite you to take this opportunity to register your business entity with *NJ START* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system, which is scheduled to go live this fall and will provide a "one-stop shop" for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,  


Ronald G. Wengerd  
Chief Hearing Officer

Attachment

c: L. DuBois  
E. Mackay  
J. Kemery  
D. Rodriguez