



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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October 16, 2014

Via Facsimile (201-440-4335) and USPS Regular Mail

Dennis Francis, Esq.
Law Offices of Dennis J. Francis, Esq.
37 Liberty St., Suite 1
Little Ferry, NJ 07643

RE: Protest of Notice of Proposal Rejection
RFP #15-X-23440 Maintenance and Repair Services for Heavy Duty Vehicles (Class 5 or Higher,
Over 15,000 lb. CVWR) (T-2108)

Dear Mr. Francis:

This letter is in response to your fax received October 8, 2014, and letter received October 14, 2014, referencing the subject Request for Proposal ("RFP") and regarding the proposal submitted by Zoland Corp. dba Aamco Transmissions ("Zoland") to the Division of Purchase and Property ("the Division"). The record of this procurement notes that Zoland's proposal was rejected for failing to include an *Ownership Disclosure Form*, a *Disclosure of Investment Activities in Iran* form, a *Signatory Page*, and *Pricing Information*. You include with your letter of protest an Affidavit from Louis Fizzarotti, president of Zoland, which asserts Zoland's proposal was not deficient. You also attached a printout of Zoland's eBid Proposal Status from the Division's website from October 7, 2014.¹

I have reviewed the record of this procurement, including the RFP, Zoland'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 Zoland's protest.

The above-referenced solicitation was comprised of the RFP and other documents that outlined the proposal submission process and explained all required documentation. Under RFP Section 4.4.1 *Forms, Registrations and Certifications Required with Proposal*, the RFP included the follow subsections: *Signatory Page*, *MacBride Principles Certifications*, *No Subcontractor Certification*, *Non-Collusion*, *New Jersey Business Ethics Guide Certification*, *NJ Standard RFP Forms*, *Ownership Disclosure Form*, *Disclosure of Investment Activities in Iran Form*, *Bid Security*, and *Pricing*. By signing and submitting a *Signatory Page*, a vendor fulfilled the *MacBride Principles Certifications*, *No Subcontractor Certification*, *Non-Collusion*, and *New Jersey Business Ethics Guide Certification* requirements.

¹ Your letter also references an attached Notice of Proposal Rejection; however, this form was not included with the fax or hardcopy.

The three-part document titled *NJ Standard RFP Forms* is comprised of three expandable forms, namely an *Ownership Disclosure Form*, a *Disclosure of Investigations and Other Actions Involving Bidder Form*, and a *Disclosure of Investment Activities in Iran form*. The relevant text of these subsections read as follows:

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.

4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

Pursuant to N.J.S.A. 52:32-58, the bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities as directed on the form. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as nonresponsive and preclude the award of a contract to said bidder.

[(Emphasis in original.)]

Furthermore, as a courtesy to all bidders, the Division provided a Proposal Checklist as an accompaniment to the RFP. The Checklist provided 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 Section 4.0 *Proposal Preparation and Submission*, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal, and a completed and signed *Disclosure of Investment Activities in Iran* form, *Signatory Page*, and *Pricing Information* as part of a bidder's proposal were required.

The record of this procurement reveals that Zoland submitted a proposal through the Division's eBid system by the RFP submission deadline of October 3, 2014. However, Zoland's electronic proposal included only three documents: a certificate of liability insurance, a business entity annual statement, and a business registration certificate. (See attachment.) Despite Mr. Fizzarotti's statement that Zoland's proposal was not missing any required documents, the eBid system cannot differentiate what documents are uploaded. Rather, it accepts any document the bidder uploads in a required document field. The responsibility for the contents of the proposal or submittal necessarily and appropriately rests solely with the bidder.

In response to your statement that Mr. Fizzarotti did not receive notice of his proposal rejection and the deficiencies at issue until after the proposal was opened, this is standard Division practice. Pursuant to N.J.A.C. 17:12-2.6(a) and (b), "[p]roposals must be received before the publicly announced deadline at the place designated for proposal submission. . . . Promptly after the deadline for submission of proposals, the opening and reading of proposals shall be conducted." Therefore, all proposals, either in hard copy or electronic format, are sealed until the proposal opening date and time. The Division's Proposal Review Unit cannot and will not evaluate a proposal until after the specified time on the RFP.

Notwithstanding Zoland'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 Zoland's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Zoland 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.

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>.

This is an unfortunate situation for the State, as the Division encourages competition. 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, the State of New Jersey's new eProcurement system.

Sincerely,



Ronald G. Wengerd
Chief Hearing Officer

RGW:DF

Attachment

c: L. DuBois
R. Sharbaugh
K. Thomas
V. Bequer
D. Rodriguez



Purchase & Property > Purchase Bureau > eBid Openings > Submitted eBids > 10_3_2014 > 15-X-23440 > Submitted > ZOLAND CORP

Submitted eBids

eBids submitted

New		Upload	Actions	View: All Documents										
A	Name	Modified	Solicitation Number	Vendor Name	Created	eBid Document Name	Bid File Opened On	eBid Document Type						
	141044_Insurance_Certificate.pdf	10/3/2014 02:02 PM	15-X-23440	ZOLAND CORP	10/3/2014 02:02 PM		10/3/2014 02:02 PM	Attachment						
	141045_2013_Zoland_Form_BE.pdf	10/3/2014 02:02 PM	15-X-23440	ZOLAND CORP	10/3/2014 02:02 PM		10/3/2014 02:02 PM	Attachment						
	141042_BRC STATE OF NEWJERSEY.pdf	10/3/2014 02:02 PM	15-X-23440	ZOLAND CORP	10/3/2014 02:02 PM		10/3/2014 02:02 PM	Attachment						

For assistance with Access Web Datasheet, see [Help](#).