



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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*Director*

September 21, 2016

Via Electronic [daviddlm@msn.com] and USPS Regular Mail

Christine Olszewski  
David Land Management  
P.O. Box 9544  
Trenton, NJ 08650

Re: Protest of Notice of Proposal Rejection  
RFP # 17-X-24266: Snow Removal and Salting Services - Statewide

Dear Ms. Olszewski:

This letter is in response to your correspondence dated September 19, 2016, to the Hearing Unit of the Division of Purchase and Property (Division) on behalf of David Land Management (DLM), in which you request permission to participate in the solicitation despite the Division's Proposal Review Unit's Notice of Proposal Rejection. The record of this procurement reveals that DLM's proposal was rejected for failing to sign the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form. The Division accepts your letter as a protest of the rejection notice. In the letter, DLM acknowledges that the forms were not signed, states that it was an oversight and was unintentional. With the protest letter you submitted completed and signed forms.

In consideration of DLM's protest, I have reviewed the record of this procurement, including the Request for Proposal (RFP), DLM's proposal, and 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, the Division's Procurement Bureau (Bureau) issued the subject RFP on behalf of various State agencies to solicit proposals from qualified bidders to provide snow removal and salting services. RFP § 1.1 *Purpose and Intent*. The intent of the RFP "is to award one (1) contract for each location group identified within this RFP to those responsible Bidders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered."<sup>1</sup> *Ibid.* On September 1, 2016, the Proposal Review Unit opened proposals received by the submission deadline of 2:00 p.m.

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

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<sup>1</sup> This is a re-procurement of similar services to those provided under T-2724, which expired on April 30, 2016.

*Disclosure Form and the Disclosure of Investment Activities in Iran form.* These forms are addressed in RFP Section 4.0, *Proposal Preparation and Submission*, which provides in pertinent part:

#### **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 must 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 the 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 Person 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 in 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 non-responsive and preclude the award of a contract to said bidder.

[*Emphasis in the 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:

**N.J. Department of the Treasury  
Division of Purchase and Property  
PROPOSAL CHECKLIST**

**Solicitation Number:** 17-X-24266    **Solicitation Title:** Snow Removal and Salting Services - Statewide

This checklist was created as a guide to assist bidders in preparing a complete and responsive proposal. It is only advisory in nature. It is the bidder's responsibility to ensure that all requirements of the RFP have been met.

**FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:**

<input type="checkbox"/>	RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
<input type="checkbox"/>	Completed Price Sheets as instructed in Section 4.4.5 of the RFP
<input type="checkbox"/>	Completed and signed Ownership Disclosure Form*
<input type="checkbox"/>	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). The forms are found in the Standard RFP Forms Packet, which can be downloaded at: <http://www.state.nj.us/treasury/purchase/forms/StandardRFPForms.pdf>

Bidders must ensure that all requirements of the RFP have been met as the RFP language **supersedes** this advisory checklist in the event of an error or omission.

Pursuant to N.J.A.C. 17:12-2.2, a bidder's proposal must "contain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set forth in RFP §§ 4.4.1.2, 4.4.1.2.1 and 4.4.1.2.2, the submission of the completed and signed the *Ownership Disclosure Form* prior to or as part of the proposal and a completed and signed *Disclosure of Investment Activities in Iran* form as part of the proposal was required.

The record of this procurement reveals that DLM submitted its proposal through the Division's eBid system by the proposal submission date of September 1, 2016. With its submission, DLM included a copy of the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran* form, both of which are filled out; however, neither document contains either a physical or typed signature; DLM has acknowledged this fact. 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, unfortunately, the signature lines on the submitted forms were left blank.

N.J.S.A. 52:25-24.2 addresses when ownership must be disclosed and states in pertinent part that:

No corporation or partnership 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 or said partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock, of any class or of all individual partners in the partnership who own a 10% or greater interest therein, as the case may be. If one or more such stockholder or partner is itself a corporation or partnership, the stockholders holding 10% or more of that corporation's stock, or the individual partners owning 10% or greater interest in that partnership, 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, exceeding the 10% ownership criteria established in this act, has been listed.

With this backdrop, 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.

By requiring the identity disclosure statement to be submitted with the bid (or prior thereto) the Legislature evinced an intention that any bid not containing such a statement would not be a valid bid. No bidder submitting such an invalid bid is eligible to be awarded the public contract. Any other interpretation of the statute would render nugatory the meaning of the clear language used. The character of the legislation and a reading thereof in context justifies a mandatory, imperative construction.

...

There is no provision in the statute permitting a [government entity] to waive the requirement of disclosure or to allow a bidder additional time following the acceptance of bids to cure an invalid bid...The policy of the State is to guard against favoritism and unfair competition by demanding integrity of the bidding process through strict construction of bidding standards...The policy of the State is to guard against favoritism and unfair competition by demanding integrity of the bidding process through strict construction of bidding standards...

Strict construction is essential if integrity of bidding is to be achieved. The action by the [government entity] in waiving noncompliance with the identity disclosure state has created precisely the type of result which the Legislature sought to avoid in enacting a statute designed to preserve fair competition through conformance with an established framework for public contract bidding.

[George Harms Constr. Co. v. Lincoln Park, 161 N.J. Super. 367, 372-74 (Law Div. 1978); citing, Assembly Bill 22 (1976), "Statement of Assembly Municipal Government Committee"; Assembly Bill 22 (1976), "Statement of Senate State Government, Federal and Interstate Relations and Veterans Affairs Committee."]

Further, the requirement to certify that a bidder is not engaged in certain prohibited activities in Iran is set forth in N.J.S.A. 52:32-58. The New Jersey Legislature, in implementing N.J.S.A. 52:32-58, mandated requirements that a bidder must comply with in order to enter into a contract with the State. N.J.S.A. 52:32-58 states:

A State agency shall require a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract to certify, at the time the bid is submitted or contract is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 of the act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 of this act.

[(Emphasis added.)]

In reviewing proposals submitted in response to an RFP, the Division does not have the power to waive this legislative requirement, as only the New Jersey Legislature can change a requirement it has mandated. In order to make this process or certifying easier, the Division provides to the bidding community an *Ownership Disclosure Form* and a *Disclosure of Investment Activities in Iran* form to be completed in order for bidders to comply with the statutory requirements. Here, because DLM submitted its proposal without either the *Ownership Disclosure Form* or the *Disclosure of Investment Activities in Iran* form being signed, it was not in compliance with the Legislative requirement that mandates that a bidder certify at the time of bid submission that it is not engaged in investment activities in Iran.

Notwithstanding DLM's interest in competing for this procurement, to allow a bidder who did not appropriately complete, sign and submit all of the required forms with its proposal as required by the RFP to be eligible to participate in the procurement process would un-level the bidder's playing field, as the State received responsive proposals in which all necessary documents and information were provide as required. The deficiency at issue cannot be remedied after the proposal submission deadline as acceptance of DLM's proposal under these circumstances would be contrary to the provisions of the governing statute and provide DLM with disclamation options not available to those bidders whose proposals were fully responsive. In light of the finding 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.

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 DLM's proposal. Thank you for your interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system, which went live on June 20, 2016.

Sincerely,



Mauricio A. Griffin  
Chief Hearing Officer

MAG: RUD

c: G. Olivera  
K. Woolford  
B. Gallagher  
A. Nelson  
D. Rodriguez