



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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April 25, 2018

Via Electronic Mail [[info@aspen-tree.com](mailto:info@aspen-tree.com)] and USPS Regular Mail

Laura Chisholm  
Secretary/Treasurer  
Aspen Tree Expert Co., Inc.  
481 Wright Debow Rd.  
Jackson, NJ 08527

Re: I/M/O Bid Solicitation #: 17DPP00078 Aspen Tree Expert Co., Inc.  
Protest of Notice of Proposal Rejection  
Bid Solicitation Title: T0465 – Tree Trimming, Pruning, and Removal Services - Statewide

Dear Ms. Chisholm:

This letter is in response to your email of April 13, 2018, on behalf of Aspen Tree Expert Co., Inc. (“Aspen Tree”) to the Division of Purchase and Property’s (“Division”) Hearing Unit. The correspondence was accepted as a protest of the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #17DPP00078 – T0465 Tree Trimming, Pruning, and Removal Services – Statewide (“Bid Solicitation”). The record of this procurement reveals that Aspen Tree’s Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

By way of background, on January 30, 2018, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the State of New Jersey and Cooperative Purchasing Program Participants to solicit Quotes from qualified Vendors {Bidders} to provide tree trimming, pruning, and removal services throughout the State. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award up to five (5) Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)<sup>1</sup> per Region to those responsible Vendors

<sup>1</sup> For consistency, this final agency decision uses terminology employed by the State of New Jersey’s *NJSTART* eProcurement system. For ease of reference, the following is a table which references the *NJSTART* term and the statutory, regulatory and/or legacy term.

<i>NJSTART</i> Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

{Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

A number of Bid Amendments {Addenda} were issued following the posting of the Bid Solicitation. On February 26, 2018, the Bureau posted Bid Amendment {Addendum} #1, providing answers to questions received and posting a revised Bid Solicitation. On March 2, 2018, the Bureau posted Bid Amendment {Addendum} #2, postponing the Quote Submission Due Date from March 9, 2018 to March 23, 2018. On March 8, 2019, the Bureau posted Bid Amendment {Addendum} #3 posting additional answers to questions received along with a revised Bid Solicitation. Finally, on March 16, 2018, the Bureau Bid Amendment {Addendum} #4, answering the final question received, posting a revised State-supplied Price Sheet/Schedule, and revising the Quote Submission Due Date to April 3, 2018 by 2:00 p.m.

On April 3, 2018, the Division's Proposal Review Unit opened seven Quotes submitted through the State's *NJSTART* eProcurement system and three hardcopy Quotes received by the submission deadline of 2:00 p.m. eastern time. Aspen Tree submitted a Quote via *NJSTART* at 3:24:29 p.m. on April 2, 2018, which included the following documents:

- Proof of Business Registration,
- Proof of Public Works Contractor Registration,
- A February 7, 2018 letter from the Department of Transportation verifying EEO/Affirmation Action Program/EEO Policy Statement and Sexual Harassment Policy review and acceptance,
- A Certificate of Employee Information Report,
- A Certificate of Liability Insurance,
- Aspen Tree Expert Company, Inc. Proof of Registration with the State of New Jersey, Board of Tree Experts,
- Laura Chisholm Licensed Tree Expert certificate from the State of New Jersey, Board of Tree Experts,
- A blank *Disclosure of Investigations and Other Actions Involving the Vendor/Bidder Form*,
- A blank *Disclosure of Investment Activities in Iran Form*,
- A blank *Source Disclosure Form*,
- An *Offer and Acceptance* page,
- A *Vendor {Bidder} Quote {Proposal} Overview* form,
- Copies of Bid Amendments {Addenda} #1, 2, 3, and 4, and
- A State-supplied Price Sheet/Schedule.

After review, the Division issued Aspen Tree a Notice of Proposal Rejection on April 9, 2018, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, Aspen Tree's Quote was missing a completed *Ownership Disclosure Form*.

On April 13, 2018, in response to the Notice of Proposal Rejection, Aspen Tree sent the Division an email, protesting the rejection, requesting a hearing, and providing a completed *Disclosure of Investigations and Other Actions Involving the Vendor/Bidder Form*, a *Disclosure of Investment Activities in Iran Form*, a *Source Disclosure Form*, and an *Offer and Acceptance* page, all dated April 13, 2018.

With respect to Aspen Tree's request for an in-person hearing regarding the issues raised in its protest, I note that pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protestor is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). In consideration of Aspen Tree's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Aspen Tree's Quote and protest, the relevant

statutes, regulations, and case law. The issues raised in Aspen Tree's protest with respect to the conformity of Aspen Tree's Quote to the Bid Solicitation are sufficiently clear on the written record such that review of the written record 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.

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 provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall<sup>2</sup> 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*.]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

Among those forms required to be submitted with the Quote are the *Ownership Disclosure Form* discussed in Bid Solicitation Section 4.4.1.2.1.

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. 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 [Blanket P.O.] 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

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<sup>2</sup> "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

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.

The *Ownership Disclosure Form* is specifically addressed in Bid Solicitation 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, partnership or limited liability company, 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}.

In the alternative, to comply with this section, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

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](http://www.njstart.gov)).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using *NJSTART* to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab within its profile. As shown in the screenshot below, Aspen Tree completed the Ownership Disclosure category, and was directed to complete a full *Ownership Disclosure Form* and attach it to its Vendor Profile or include it with its Quote:

The screenshot displays the 'Vendor Profile - Aspen Tree Expert Company Inc.' interface. At the top, a navigation bar includes tabs for 'Organization Information', 'Users', 'Address', 'Commodity Codes and Services', 'Regions', 'Terms & Categories' (which is selected and highlighted), 'Attachments', and 'Vendor Performance'. Below the navigation bar, the 'Terms and Categories Information' section is visible. It contains sub-sections for 'Terms' (listing 'Payment Terms:', 'Freight Terms:', 'Shipping Method:', and 'Shipping Terms:') and 'Categories & Certifications'. Under 'Categories & Certifications', there is a 'Category: 1. Primary Business Function - (MANDATORY FIELD)' section. Below this, there is a 'Notes' section with a text area containing the text: 'Tree removal, pruning, stump grinding and plant health care for residential, commercial and utility rights of way.'

**Category: 3. Business Formation (MANDATORY FIELD)**

Corporation including Professional Corporation/Government Entity

**Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)**

Description: I certify that I am an appointed agent of the vendor referenced and that I hereby authorize the State of NJ to initiate payments to the bank acct and bank named in the electronic funds transfer (if and when the information is provided). This authority is to remain in full force and effect until the State of NJ receives notification of any changes, and in such a manner as to afford the State of NJ a reasonable opportunity to Act.

Select if you intend to enter the data for EFT payment and agree with the statement above. To enter banking data, you must log in after the initial registration process has been completed, add or edit a Remit address, and check the EFT Enabled box.

**Category: 5. Tax ID Certification (Substitute W9) (MANDATORY FIELD)**

Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for federal tax purposes.

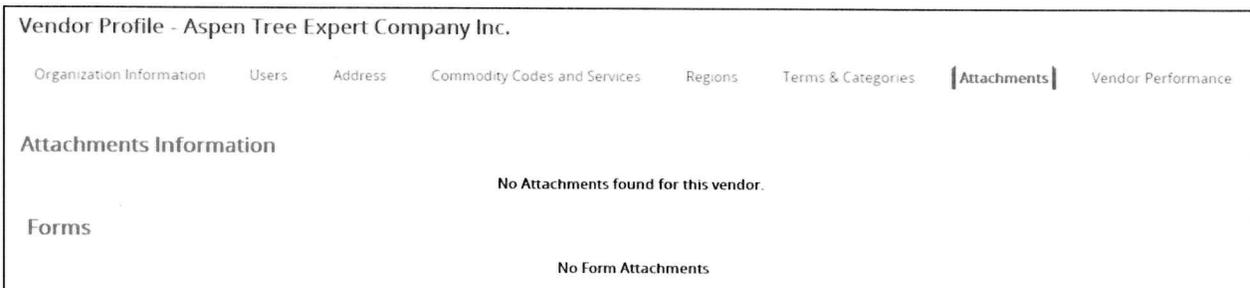
Select if you agree with the statement above.

**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 or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

Because Aspen Tree could not complete the Ownership Disclosure category within *NJSTART*, it was required to submit the form with its Quote, or attach the form to its Vendor Profile within *NJSTART*. As shown in the screenshot below, Aspen Tree did not upload the *Ownership Disclosure Form* to its profile.



Similarly, as outlined above, Aspen Tree did not submit an *Ownership Disclosure Form* with its Quote.

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, Aspen Tree did not comply with any of the options available to it for the submission of ownership information. Accordingly, Aspen Tree's Quote was properly rejected by the

Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

If the requirements of N.J.S.A. 52:25-24.2 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These statutes and regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. The *NJSTART* system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.

Here, unfortunately, Aspen Tree submitted a Quote without the *Ownership Disclosure Form* attached and the Division is prohibited from accepting them after the Quote submission deadline. Notwithstanding Aspen Tree's interest in competing for this procurement, to allow Aspen Tree to submit the completed and signed *Ownership Disclosure Form* after bid opening would violate the Legislative requirements outlined in N.J.S.A. 52:25-24.2, requirements that the 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 company's continuing interest in doing business with the State of New Jersey and for registering your business with *NJSTART* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG:REG

c: A. Davis  
K. Anderson-Thomas  
P. Slack