



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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April 5, 2017

Via Electronic Mail [sales@snappygreensolutions.com] and USPS Regular Mail

Maureen Fairlie, President
Snappy Green Solutions, Inc.
P.O. Box 305
Rochelle Park, NJ 07662

RE: Protest of Notice of Proposal Rejection
Bid Solicitation {Request for Proposal} #17DPP00080 – T-0622 Janitorial Chemicals-DSS

Dear Ms. Fairlie:

This letter is in response to your letter of protest dated and received March 10, 2017, on behalf of Snappy Green Solutions, Inc. (Snappy), acknowledging receipt of a Notice of Proposal Rejection (Notice) sent by the Division of Purchase and Property's (Division) Proposal Review Unit. The Notice indicated that Snappy failed to include an *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* with its Quote {Proposal} (proposal). In your letter, you state that NJSTART, the State's new e-procurement portal, "has bugs that need to be fixed" and it is unclear why the system did not accept all of Snappy's submitted documents. You request that Snappy be permitted to either resubmit the missing documents or that the subject solicitation be cancelled and re-bid.

I have reviewed the record of this procurement, including the Bid Solicitation ({Request for Proposal} (RFP)), Snappy's proposal, and the 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 Snappy's protest.

By way of background, the subject RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of the Distribution and Support Services (DSS), for Janitorial/Building Chemicals. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award Master Blanket Purchase Orders (Blanket P.Os.) {Contracts} [(hereinafter contract)] to those responsible Vendors {Bidders} whose [proposals], conforming to this [RFP] are most advantageous to the State, price and other factors considered." *Ibid*. The Bureau intended to make one award for each of the two price lines. RFP § 7.2 *Final Blanket P.O. {Contract} Award*.

On March 1, 2017, the Proposal Review Unit opened the proposals received by the submission deadline of 2:00 p.m. After conducting a review of the proposals submitted, the Proposal Review Unit found that Snappy failed to submit an *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* with its proposal. Accordingly, the Proposal Review Unit issued a Rejection Notice.

On April 5, 2017, the Hearing Unit was advised that the Bureau has canceled the subject RFP as it relates to Price Line 1.¹ The Bureau will issue a resolicitation through NJSTART. As Snappy only bid on Price Line 1, this renders Snappy's protest moot; nonetheless I address the substance of Snappy's protest below.

The above-referenced solicitation was comprised of the RFP and other documents, including the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form*. The requirement to disclose ownership information and investment activities in Iran at the time of proposal submission is dictated by statute. As noted in the RFP:

4.4.1.2.1 Ownership Disclosure Form

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or sole proprietorship, 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 \(www.njstart.gov\)](#).

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4.4.1.2.2 Disclosure Of Investment Activities In Iran Form

Pursuant to N.J.S.A. 52:32-58, the Vendor {Bidder} must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Vendor {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 Vendor {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 Vendor {Bidder} is unable to so certify, the Vendor {Bidder} shall provide a detailed and precise description of such activities as directed on the form. 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}.

¹ Snappy submitted a Price Sheet with its proposal; the price sheet showed a bid on Price Line 1 only.

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 Disclosure of Investment Activities in Iran form. Vendors {Bidders} not using *NJSTART* to submit a Quote {Proposal} must complete the full Disclosure of Investment Activities in Iran form located on the [Division’s website](#). The full version of the form is also available in [NJSTART \(www.njstart.gov\)](#).

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However, the record indicates that Snappy’s proposal failed to include these required forms. Snappy asserts that “[its] system downloads [A]dobe pdf files all the time. We have the latest version of Adobe Reader. We were never re-directed to another file. We then used another browser on our computer and we tried accessing the documents on a second computer and got the same message. We then went to the State of NJ site to download the files.”

Concerning the download of forms, as explained in the Frequently Asked Questions portion of the Vendor Reference Guides section of the Division’s website² in response to “I can’t open your forms,” the Division states:

Try Internet Explorer. If you are using Chrome, download the form and save it to your desktop or other folder, then open it from there. All of our forms are available in PDF [online](#).

You can also download many of them from within NJSTART by logging in and using the Reference Guide titled [Vendor Forms](#).

As mentioned in Snappy’s letter, after trying various browsers and computers, it eventually was able to download the files from the Division’s website. While it asserts that “clearly [NJSTART] has bugs that need to be fixed[,]” Snappy was able to download the forms in question. The Division has been advised that certain browser’s built-in pdf viewers are not compatible with NJSTART and is working to resolve this issue. However, once a form is downloaded and completed, as Snappy admits it was able to do, the Division has not been advised of issues concerning NJSTART accepting uploaded forms. Furthermore, NJSTART was functioning during this solicitation period, as the Division did receive complete proposals.

Notwithstanding Snappy’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 Snappy’s proposal under these circumstances would be contrary to the provisions of governing statutes and would provide Snappy with disclamation options not available to those bidders whose proposals were fully responsive.

Concerning the NJSTART procurement system, Snappy also asserts:

- Prior to the start of using NJSTART we made no less than 4 phone calls and sent emails to the NJSTART help desk[;]

² See <http://www.state.nj.us/treasury/purchase/NJStart-FAQ.shtml>.

- [On] Feb 28 while downloading the bid we made a call to the help desk and we were told that the help desk can only answer technology questions and that their assistance was limited in scope.
- One question we asked concerned the online price sheet that requests we enter \$1.00 per item. This did not make sense to us and while we filled out another price sheet for the product we were worried that putting \$1.00 might be misconstrued as [our] pride. NO ONE at NJSTART was able to answer this question.
- When we clicked on the PDF next to the NJSTART buttons to download documents we were given [an error] message[.]

The Division appreciates being made aware of errors encountered by bidders while using the new e-procurement system, NJSTART. Regarding the first two points listed above, the NJSTART help desk is available to assist bidders with technology-related issues, but, as explained in the *Quick Reference Guide: Submit a Quote*, the help desk may not answer specific question about a RFP. This policy is in place to ensure that all bidders are treated fairly and one bidder is not provided with information unavailable to others. However, all solicitations include a question and answer period that permits bidders to submit RFP-specific questions. These questions are then answered and made available to the public via amendment.

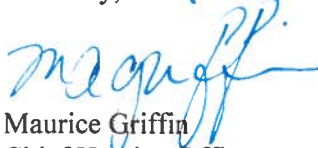
Concerning the Price Sheet, due to system functionality, bidders are asked to submit the State-supplied Price Sheet as an attachment with all proposed pricing and also enter a unit cost of \$1 on the Items Tab in NJSTART. This is explained in the RFP:

4.4.5.1 NJSTART Pricing Submission Instructions

If the Vendor {Bidder} is submitting a *NJSTART* Quote {Proposal}, the Vendor {Bidder} must enter a Unit Cost of \$1.00 for each price line item on the “Items” Tab in *NJSTART*. The Vendor {Bidder} is instructed to do so only as a mechanism to comply with Bid Solicitation {RFP} Section 6.8 and prevent all pricing from being publicly displayed in *NJSTART*.

Please continue to monitor NJSTART and/or the Division’s website for information regarding the resolicitation of this RFP. The Division appreciates Snappy’s attention in this matter and continued interest in doing business with the State of New Jersey.

Sincerely,



Maurice Griffin
Chief Hearing Officer

MAG:DF

c: J. Kerchner
K. Thomas
C. Murphy
A. Nelson