



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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January 8, 2014

Via Electronic Mail [greg@fdsnj.com] and USPS Regular Mail

Martin Resnick  
Owner, Secretary  
Flemington Department Store  
151 Route 31  
Flemington, NJ 08822

RE: Protest of Notice of Proposal Rejection  
RFP #14-X-23208 Uniforms — Class "A", "B" and Security Officer, and Shoes Class  
"A" — NJSP

Dear Mr. Resnick:

This letter is in response to your letter received December 31, 2013, referencing the subject Request for Proposal ("RFP") and regarding the proposal submitted by Flemington Department Store ("FDS") to the Division of Purchase and Property ("the Division"). The record of this procurement notes that FDS's proposal was rejected for absence of a signed *Ownership Disclosure Form*. In your letter, you acknowledge that "page 2 was erroneously omitted"; however, you contend this form was submitted to the Division several years ago. In addition, you request that I reconsider the rejection of FDS's proposal and permit FDS to complement its proposal by acceptance of the missing page, included as an attachment to your letter of protest.

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

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

These forms are addressed in RFP Section 4.0, *Proposal Preparation and Submission*. The relevant text reads 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) will not suffice as a signature on these two forms. A signed RFP Signatory Page is also not an acceptable substitute for signature on these two forms.

**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.

[(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 4.4.1.2 and 4.4.1.2.1 above, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal was required.

In this case, the record indicates that FDS's proposal submission did not include a completed *Ownership Disclosure Form*. Furthermore, the *Ownership Disclosure Form* previously on file with the Division was received as part of FDS's successful proposal for a contract awarded on

April 25, 2012, more than six months prior to the submission deadline of the subject RFP on December 6, 2013. Therefore, in accordance with RFP Section 4.4.1.2.1, that document is rendered unacceptable as a timely submitted *Ownership Disclosure Form*.

Notwithstanding FDS'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 certifications 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 certifications were provided as required. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of FDS's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide FDS 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.

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. I look forward to your company's continuing interest in doing business with the State of New Jersey.

Sincerely



Ronald G. Wengerd  
Chief Hearing Officer

RGW:DF

c: L. DuBois  
R. Sharbaugh  
J. Signoretta  
V. Ewen  
D. Rodriguez