



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 20, 2014

Via Electronic Mail [fox363@msn.com] and USPS Regular Mail

Tony Fox, President
Z & T Sales, LLC
85 Foxey Lane
Buena Vista, VA 24416

RE: Protest of Proposal Rejection
RFP #15-X-23567 – Shoe Components, including Upper Leather
State Use Industries (NJDOC) – T1714

Dear Mr. Fox:

This letter is in response to your email¹ dated and received August 14, 2014, referencing the subject Request for Proposal (“RFP”) and regarding the hardcopy proposal timely submitted by Z & T Sales, LLC (“Z&T”) to the Division of Purchase and Property (“the Division”). Responding to a Notice of Proposal Rejection issued by the Division’s Proposal Review Unit, by which Z&T was advised that its proposal was rejected promptly after the formal opening of submitted proposals on August 6, 2014, because the partially completed *Ownership Disclosure Form* (“ODF”) included in Z&T’s proposal was not signed, Z&T explains that it overlooked the form and believed the ODF was required only for co-owned companies. As an incumbent T1714 contractor, Z&T requests reconsideration of the rejection and an opportunity for an in-person presentation.

In regard to the issue before me, I have reviewed the record of this procurement, including the RFP and Z&T’s proposal, with consideration of 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 Z&T’s protest. As a result, there is no need for, and no benefit to be derived from, an in-person presentation.

¹ Your email correspondence is accepted as a letter of protest.

The mandated submission of a completed and signed *ODF* was set forth in RFP Section 4.0, *Bid Proposal Preparation and Submission*, and specifically, within RFP Paragraph 4.4.1, *Forms, Registrations and Certifications Required with Proposal*. 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) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document. 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 the Division's regulations, specifically 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 segments 4.4.1.2 and 4.4.1.2.1, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal was required.

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>.

My review of Z&T's hardcopy proposal confirmed the accuracy of the Proposal Review Unit's discovery that the proposal contained a partially completed but unsigned *ODF*. Unfortunately, additional efforts undertaken to determine if Z&T had submitted a completed and signed *ODF* in the last six months, i.e., after the one on file dated August 18, 2011, or if any other factors or circumstances would allow Z&T's proposal to be deemed responsive to the subject statutory requirement were not fruitful.

Because a certifying signature on each of these forms is essential to meet statutory, regulatory and RFP requirements for such certifications, the rejection of Z&T's proposal by the Division's Proposal Review Unit was proper and necessary. As affirmed by New Jersey courts, the deficiencies at issue cannot be remedied after the proposal submission deadline. Allowing the acceptance of Z&T's proposal under these circumstances would be contrary to the provisions of the governing statutes and would provide Z&T with disclamation options not available to those bidders whose proposals are fully responsive, thereby disturbing the equal footing standard of public bidding. In light of the findings, I must deny your request for an opportunity to remedy the signatory deficiency. 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 Z&T applied in preparing and submitting its proposal. Thank you in anticipation of your 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

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