



State of New Jersey

DEPARTMENT OF THE TREASURY
CHRIS CHRISTIE
Governor

DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. Box 039
TRENTON, NEW JERSEY 08625-0039

ANDREW P. SIDAMON-ERISTOFF
State Treasurer

KIM GUADAGNO
Lt. Governor

JIGNASA DESAI-MCCLEARY
Director

Telephone (609) 292-4886 / Facsimile (609) 984-2575

May 5, 2014

Via Electronic Mail [Bob.Evans@SterlingHelicopter.com] and USPS Regular Mail

Jason M. Smith
General Manager
Sterling Helicopter
1226 River Road
Croydon, PA 19021

RE: Protest of Notice of Proposal Rejection
RFP #15-X-23524 Maintenance of Aircraft Parts and Service

Dear Mr. Smith:

This letter is in response to your email¹ received May 2, 2014, referencing the subject Request for Proposal (“RFP”) and regarding the proposal submitted by Sterling Helicopter (“Sterling”) to the Division of Purchase and Property (“the Division”). The record of this procurement notes that Sterling’s proposal was rejected for absence of a completed *Disclosure of Investment Activities in Iran* form. In your letter, you acknowledge the omission of an appropriately checked box on the form. However, you request that I reconsider the Division’s rejection of Sterling’s proposal and permit Sterling to complement its proposal by acceptance of the fully completed *Disclosure of Investment Activities in Iran* form included as an attachment to your letter of protest.

I have reviewed the record of this procurement, including the RFP, Sterling’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 Sterling’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*. RFP Section 4.4.1 lists all “forms, registrations and certifications required with proposal,” which includes:

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

4.4.1.2.1 Certification of Non-Involvement in Prohibited Activities in Iran

Pursuant to N.J.S.A. 52:32-58, the bidder must 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 Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither 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.

Pursuant to 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 Section 4.4.1.2.1 listed above, the submission of a completed and signed *Disclosure of Investment Activities in Iran* form as part of a bidder's proposal was required.

In this case, the record indicates that Sterling's proposal submission did not include a completed *Disclosure of Investment Activities in Iran* form. Under Part 1: Certification, the form clearly states: "Bidders must complete Part 1 by checking either box. Failure to check one of the boxes will render the proposal non-responsive." Despite these instructions, neither box was checked.

Notwithstanding Sterling'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 Sterling's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Sterling 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. Thank you for your interest in this procurement and 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
J. Kemery
D. Delaney
D. Rodriguez

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>.