



State of New Jersey

DEPARTMENT OF THE TREASURY
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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JIGNASA DESAI-MCCLEARY
Director

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

August 20, 2014

Via Electronic Mail [cyrus@kamalileather.com] and USPS Regular Mail

Cyrus Elian, Partner
Kamali Leather, LLC
44 Hillside Avenue
Manhasset, NY 11030

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

Dear Mr. Elian:

This letter is in response to your email¹ dated and received August 15, 2014, referencing the subject Request for Proposal (“RFP”) and regarding the proposal electronically submitted by Kamali Leather, LLC (“Kamali”) 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 Kamali was advised that its proposal was rejected promptly after the formal opening of timely submitted proposals on August 6, 2014, because neither the *Ownership Disclosure Form* nor the *Disclosure of Investment Activities in Iran* form included in Kamali’s proposal were signed, Kamali requests that it be provided an opportunity to sign both forms.

In regard to the issue before me, I have reviewed the record of this procurement, including the RFP and Kamali’s electronically submitted 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 Kamali’s protest.

The required submission of a completed and signed *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran* form is 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:

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

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.

4.4.1.2.2 Disclosure of Investment Activities in Iran Form

Pursuant to N.J.S.A. 52:32-58, the bidder must utilize this Disclosure of Investment Activities in Iran form to 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 the 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 bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities as directed on the form. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as nonresponsive and preclude the award of a contract to said bidder.

[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

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>.

required” or “be subject to automatic rejection.” As set forth in RFP segments 4.4.1.2, 4.4.1.2.1, and 4.4.1.2.2, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal and a completed and signed *Disclosure of Investment Activities in Iran* form as part of a bidder’s proposal was required.

My review of the record of electronically submitted proposals confirms that Kamali’s electronic submission contained a completed but unsigned *Ownership Disclosure Form* and a completed but unsigned *Disclosure of Investment Activities in Iran* form. Because a certifying signature on each of these forms is essential to meet statutory, regulatory and RFP requirements for such certifications, the rejection of Kamali’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 Kamali’s proposal under these circumstances would be contrary to the provisions of the governing statutes and would provide Kamali 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 deficiencies. 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 Kamali applied in preparing and submitting its proposal. Thank you in anticipation of your continuing interest in doing business with the State of New Jersey. With that in mind, I invite you to take this opportunity to register your business with **NJ START** at www.njstart.gov, the State of New Jersey’s new eProcurement system, which is scheduled to go live this fall and will provide a “one-stop shop” for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,



Ronald G. Wengerd
Chief Hearing Officer

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