



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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January 14, 2015

Via Electronic Mail [Keldou@aol.com] and USPS Regular Mail

Kelly Herlihy, President-Owner  
Herlihy Helicopters, Inc.  
60 Fostertown Road  
Medford, NJ 08055

RE: Protest of Proposal Rejection - RFP #15-X-23699  
*Contract T3017 – Pilot and Technician Training for Rotary and Fixed Wing Aircraft*

Dear Ms. Herlihy:

This letter is in response to your email<sup>1</sup> dated and received January 7, 2015, referencing the subject Request for Proposal (“RFP”) and regarding the proposal electronically submitted by Herlihy Helicopters, Inc. (“HHI”) to the Division of Purchase and Property (“the Division”) via the Division’s eBid system. The record of this contract procurement indicates that HHI’s proposal was rejected because it did not include mandatory, material documents, namely, a completed and signed *Ownership Disclosure Form* (“ODF”) and *Disclosure of Investment Activities in Iran* form (“Iran form”). In your emailed memorandum, you acknowledge that these two documents may not have been included as part of HHI’s proposal as intended, and ask that the Division accept hard copies of these forms included with your email and reconsider the rejection of HHI’s proposal.

In regard to the issue before me, I have reviewed the record of this procurement, including the RFP and its three addenda, HHI’s electronically submitted proposal relative to 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 HHI’s request for rescission of the notice of proposal rejection.

The above-referenced RFP was comprised of the following documents, which were listed as follows when a bidder accessed the subject solicitation from the *Current Bidding Opportunities* segment of the Division’s website’s homepage:

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<sup>1</sup> Your email correspondence is accepted as a letter of protest.

Download All Documents

- NJ Standard Terms and Conditions Adobe PDF (93 kb)
- RFP TEXT Adobe PDF (555 kb)
- Attachment # 2 - Sub Contracting form Adobe PDF (359 kb)
- NJ Standard RFP Forms Adobe PDF (1 mb)
- Bidder Data Packet Adobe PDF (51 kb)
- Cooperative Purchase Form Adobe PDF (1 mb)
- Source Disclosure Certification Adobe PDF (399 kb)
- Signatory Page Adobe PDF (53 kb)
- Price Sheet Adobe PDF (62 kb)
- Addendum # 1 - Responses to Electronic Questions Adobe PDF (126 kb)
- Addendum # 2 - Revised Bid Opening Date Adobe PDF (16 kb)
- Addendum # 3 - Responses to Electronic Questions Adobe PDF (35 kb)

The subject two forms, i.e., the ODF and the Iran form, were accessible to all bidders who clicked on the fourth item listed above, NJ Standard RFP Forms. The required submission of the ODF and the Iran form with a bidder's proposal is set forth in RFP Section 4.0, *Bid 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.

**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,<sup>2</sup> 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, 4.4.1.2.1, and 4.4.1.2.2, the submission of a completed and signed ODF prior to or as part of the proposal and a completed and signed Iran form as part of a bidder's proposal was required.

In this case, a review of the record of HHI's electronically submitted proposal reveals that HHI timely submitted the following documents as its proposal:

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- **NJ Standard Terms and Conditions**
  - Source Disclosure Certification
  - NJ Standard Terms and Conditions
  - Signatory Page
  - Price Sheet
  - Bidder Data Sheet
  - Cooperative Purchase form

As apparent in the attached copy of the Division's eBid system's record of HHI's submissions in response to RFP 15-X-23699, instead of submitting completed and signed ODF and Iran form documents as part of the NJ Standard RFP Forms packet, HHI uploaded two identical NJ Standard Terms and Conditions documents. The Division's eBid system does not distinguish or control which documents bidders are submitting and thus accepts any document or form the bidder uploads in a required document field. As is necessary and appropriate, the responsibility for the contents of a submitted proposal rests solely with the bidder.

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<sup>2</sup> 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>.

Notwithstanding HHI's interest in securing an award of the subject contract and the Division's ever-present objective to secure the benefits of enhanced competition, it would not be in the State's best interests to allow a bidder, even one who may be participating in the Division's competitive procurement process for the first time and who did not timely provide the statutorily required information, to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the Division received responsive proposals containing all mandated, material documents and information as expressly required by the RFP. As affirmed and reaffirmed by New Jersey courts, the deficiencies at issue cannot be remedied after the proposal submission deadline, as acceptance of HHI's proposal under these circumstances would be contrary to the provisions of the governing statutes and would provide HHI with disclamation options not available to those bidders whose proposals are 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 the Division encourages competition and appreciates the time and effort HHI took to prepare and submit 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](http://www.njstart.gov), the State of New Jersey's new eProcurement system, which will soon go live and 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

Attachment

c: M. Griffin  
J. Kemery  
D. Delaney  
D. Rodriguez/A. Nelson