



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 17, 2015

Via Electronic [julia@amtexsys.com] and USPS Regular Mail

Julia Weber, Vice President Sales and Marketing
American Textile Systems
13151 Midway Place
Cerritos, CA 90703

Re: Protest of Notice of Proposal Rejection
RFP 16-X-23929: Sheets and Pillowcases for Distribution and Support Services (DSS)

Dear Ms. Weber:

This letter is in response to your June 29, 2015, email to DPP Protest, attaching a letter of protest addressed to the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division) on behalf of American Textile Systems (American), in which American protests the Proposal Review Unit's Notice of Proposal Rejection for Solicitation # 16-X-23929: Sheets and Pillowcases for Distribution and Support Services. The record of this procurement reveals that American's proposal was rejected for failing to include a *Disclosure of Investment Activities in Iran* form. In the protest letter American asserts:

We uploaded all forms and e-bid this proposal online. The forms we submitted for ownership disclosure, disclosure of investigations, were all on the same PDF as the disclosure of investment activities in Iran. I had never separated them, they came to me that way and I sent them back completed. If these other forms were received, pages 1-4, I am not sure how page 5 of the document could have been removed.

[American's June 29, 2015, protest letter.]

With its protest, American submitted copies of the completed and signed *Ownership Disclosure Form*, *Disclosure of Investigations and Other Actions Involving Bidder Form* and the *Disclosure of Investment Activities in Iran* form and requests that the Division review and accept the properly completed forms as a complement to its proposal.

By way of background, the Bureau issued the subject Request for Proposal (RFP) on behalf of Distribution and Support Services (DSS) to solicit proposals for sheets and pillowcases. It is the intent of the Bureau to award a contract to the responsible bidder whose proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*). On June 18, 2015, the Division opened the ten (10) proposals received by the submission deadline of 2:00 p.m. American was among those companies submitting a proposal in response to the RFP. Upon review of

American's proposal, the Proposal Review Unit concluded that American failed to submit the required RFP forms.

In consideration of American's protest, I have reviewed the record of this procurement, including the RFP, American's proposal (both the eBid and hard copy submitted), the 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 final agency decision on the merits of the protest. I set forth herein my Final Agency Decision.

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

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 Person 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 in 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 non-responsive and preclude the award of a contract to said bidder.**

[Third emphasis added.]

Pursuant to N.J.A.C. 17:12-2.2, a bidder's proposal must "contain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set forth in RFP Sections 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.

The record of this procurement indicates that American submitted a proposal through the Division's eBid system by the proposal submission deadline. American contends that it uploaded a completed and signed *Disclosure of Investment Activities in Iran* form to the eBid system along with the *Ownership Disclosure Form* and *Disclosure of Investigations and Other Actions Involving Bidder Form* as part of the same PDF file. However, review of the eBid submission reveals that American did not upload any of the Standard RFP Forms. Rather, American uploaded the Bidder Data sheet twice.¹ The eBid system accepts any document a bidder uploads in a required document field; it cannot differentiate what documents are uploaded. The responsibility for the contents of the proposal or submittal necessarily and appropriately rests with the bidder.

I note that American's proposal was not rejected by the Proposal Review Unit for failing to submit an *Ownership Disclosure Form* as American had submitted a proposal to the Bureau on April 1, 2015, for RFP# 16-X-23795. That proposal submission included a completed and signed *Ownership Disclosure Form*. If 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" then a bidder's failure to submit a completed and signed form with its current proposal will not result in a rejection of the proposal as non-responsive. (RFP § 4.4.1.2.1 *Ownership Disclosure Form*)². Unlike the

¹ In addition, I note that American did submit a hard copy of its proposal to the Bureau. However, that submission only included copies of the pricing pages and bidder data sheet.

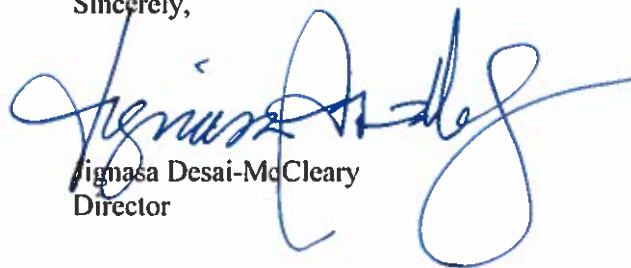
² "No corporation or partnership shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State...unless **prior to the receipt of the bid or accompanying the bid**, of said corporation or said partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock, of any class or of all individual partners in the partnership who own a 10% or greater interest therein, as the case may be." N.J.S.A. 52:25-24.2 (emphasis added).

Ownership Disclosure Form, the submission of the *Disclosure of Investment Activities in Iran* form in connection with a previous proposal cannot be accepted. "A State agency shall require a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract to certify, at the time the bid is submitted or the contract is renewed, that the person or entity is not identified on a list created pursuant to [N.J.S.A. 52:32-57(3)(b)] of this act as a person or entity engaging in investment activities in Iran described in [N.J.S.A. 52:32-57(2)(f)] of this act." N.J.S.A. 52:32-58(a) (emphasis added). Thus, the Division is precluded from accepting previously submitted *Disclosure of Investment Activities in Iran* form.

This is an unfortunate situation; however, it would not be in the State's best interest to allow a bidder who did not provide the required information to be eligible to participate in the procurement process. Such acceptance would unlevel the bidder's playing field as the State received responsive proposals in which all necessary documents and information were provide as required. The deficiency at issue cannot be remedied after the proposal submission deadline as acceptance of American's proposal under these circumstances would be contrary to the provisions of the governing statutes. In light of the finding 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.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with *NJ START* at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: D. Reinert
J. Kemery
K. Popso
A. Nelson
D. Rodriguez