



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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November 1, 2016

Via Electronic Mail [ochrist@arielpartners.com] and USPS Regular Mail

Oliver Christ, Director, Business Development and Strategy
Savant Financial Technologies, Inc. d/b/a Ariel Partners
1501 Broadway, 12th Floor
New York, NY 10036

RE: Protest of Notice of Proposal Rejection
Bid Solicitation {RFP} # 16DPP00021 *Scheduling and Timekeeping System for Multi-Shift Operations*

Dear Mr. Christ:

This correspondence is in response to your email dated October 13, 2016, accepted as a timely letter of protest, referencing the subject Bid Solicitation {RFP} (RFP) and regarding the proposal submitted by Savant Financial Technologies, Inc. d/b/a Ariel Partners (Ariel) to the Division of Purchase and Property (Division). The record of this procurement notes that Ariel's proposal was rejected for a missing *Ownership Disclosure Form*. In your letter, you apologize for "misunderstanding the requirement to upload the form to NJSTART," but request the State consider Ariel's previously submitted *Ownership Disclosure Form* to fulfill the ownership disclosure requirement.

I have reviewed the record of this procurement, including the RFP, Ariel's quote {proposal} (proposal), 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 Ariel's protest.

By way of background, the subject RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of the Department of Human Services to solicit proposals "for an automated scheduling and timekeeping solution for its multi-shift hospitals and developmental centers." RFP § 1.1 *Purpose and Intent*. The intent of the RFP "is to award a Master Blanket Purchase Order (Blanket PO) {Contract} to that responsible Vendor {Bidder} whose [proposal], conforming to this [RFP] is most advantageous to the State, price and other factors considered." Ibid.

On September 16, 2016, the Division's Proposal Review Unit opened the proposals received by the submission deadline of 2:00 p.m. After conducting a review of the proposals submitted, the Proposal Review Unit found that Ariel's proposal did not contain an *Ownership Disclosure Form* and that an *Ownership Disclosure Form* had not been filed within six months prior to the proposal opening. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection.

In Ariel's letter of protest in response to the Notice of Proposal Rejection, it does not dispute that it failed to submit an *Ownership Disclosure Form* with its proposal response. Rather, it points to N.J.S.A. 52:25-24.2, which states that a bidder, as a corporation, partnership, or limited liability company, must submit, "prior to the receipt of the bid or accompanying the bid," a "statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein" Ariel asserts that, although it did not submit an *Ownership Disclosure Form* accompanying its proposal in response to the subject solicitation, it submitted a completed form in response to a prior solicitation, RFP #14-X-23116, and therefore it fulfilled the statutory requirements.

The above-referenced solicitation was comprised of the RFP and other documents, one of which was the *Ownership Disclosure Form*. This form is addressed in RFP Section 4.0. The RFP provides the following:

4.4.1.2.1 OWNERSHIP DISCLOSURE FORM

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or sole proprietorship, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted quote {proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its quote {proposal} will result in the rejection of the quote {proposal} as non-responsive and preclude the award of a Blanket PO {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the quote {proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the quote {proposal}.

[(Emphasis added.)]

Furthermore, the New Jersey courts have held that the Division's policy to accept a completed *Ownership Disclosure Form* within the previous six months to be "consistent with the requirement of N.J.S.A. 52:25-24.2["] In re Scheduled Award of Term Contract T2813 RFP 12-X-22361 Lab. Testing Serv., No. A-1336-12 (App. Div. July 10, 2013) (slip op. at 30).

Pursuant to N.J.A.C. 17:12-2.2,¹ 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, and as noted above, the submission of a completed *Ownership Disclosure Form* as part of a bidder's proposal, or dated and received within six months prior to the submission deadline, was required.

A review of the record shows that Ariel failed to complete and attach an *Ownership Disclosure Form* as part of its NJSTART proposal submission. The record also shows that Ariel did submit a valid *Ownership Disclosure Form* in response to a prior solicitation. However, that form was received on June 16, 2014. As noted above, the Division requires and case law supports that, in order for a form submitted prior

¹ 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>.

to a solicitation to be considered valid, it must be “dated and received no more than six (6) months prior” to the current solicitation’s submission deadline. Therefore, the Division cannot accept Ariel’s form submitted over two years prior, in response to RFP # 14-X-23166. In light of these findings, Ariel is not eligible to participate in the competition for the subject contract. This is my final agency decision.

This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort put forth in preparing and submitted Ariel’s proposal. Thank you for your company’s continuing interest in doing business with the State of New Jersey.

Sincerely,


Maurice Griffin
Chief Hearing Officer

MG:DF

c: P. MacMeekin
J. Strype
A. Nelson