



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR

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December 27, 2018

Via Electronic Mail [rswier@Asplundh.com] and USPS Regular Mail

Ryan Swier, Region Manager  
Asplundh Tree Expert, LLC  
Arborchem Products Division  
708 Blair Mill Road  
Willow Grove, PA 19090

Re: I/M/O Bid Solicitation #: 17DPP00078 Asplundh Tree Expert, LLC  
Protest of Notice of Proposal Rejection  
Bid Solicitation Title: T0465 – Tree Trimming, Pruning, and Removal Services - Statewide

Dear Mr. Swier:

This letter is in response to your emails dated April 9, 2018, and May 15, 2018, on behalf of Asplundh Tree Expert, LLC - Arborchem Products Division (“Asplundh”) protesting the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #17DPP00078 – T0465 Tree Trimming, Pruning, and Removal Services – Statewide (“Bid Solicitation”). The protest emails were received by the Division of Purchase and Property’s (“Division”) Procurement Bureau (Bureau) on December 21, 2018, after the Notice of Intent to Award was issued. The Bureau forwarded these emails to the Division’s Hearing Unit on that same date. Upon receipt of Asplundh’s December 21, 2018 email, the Hearing Unit undertook a review of the emails received on April 9, 2018 and May 15, 2018, to the DPP.Protest@treas.nj.gov mailbox. No emails were received from Asplundh on either date. Additionally, on December 24, 2018, the Division of Revenue & Enterprise Services conducted an independent search of all emails received on April 9, 2018 and May 15, 2018, to the DPP.Protest@treas.nj.gov mailbox and confirmed that no emails were received from Asplundh on either date. Asplundh’s December 21, 2018 email, protesting the Notice of Proposal Rejection, was received by the Division’s Hearing Unit well beyond the permitted timeframe for submitting the protest as set forth in the Division’s governing regulations at N.J.A.C. 17:12-3.3. Nonetheless, because Asplundh states that the emails were forwarded to the Division within the permitted timeframe, Asplundh’s protest will be addressed below.

By way of background, on January 30, 2018, the Bureau issued the Bid Solicitation on behalf of the State of New Jersey and Cooperative Purchasing Program Participants to solicit Quotes from qualified Vendors {Bidders} to provide tree trimming, pruning, and removal services throughout the State. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award up to five (5) Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)<sup>1</sup> per Region to those responsible Vendors {Bidders} whose

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<sup>1</sup> For consistency, this final agency decision uses terminology employed by the State of New Jersey’s **NJSTART** eProcurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

Quotes, conforming to this Bid Solicitation, are most advantageous to the State, price and other factors considered. Ibid.

A number of Bid Amendments {Addenda} were issued following the posting of the Bid Solicitation. On February 26, 2018, the Bureau posted Bid Amendment {Addendum} #1, providing answers to questions received and posting a revised Bid Solicitation. On March 2, 2018, the Bureau posted Bid Amendment {Addendum} #2, postponing the Quote Submission Due Date from March 9, 2018 to March 23, 2018. On March 8, 2019, the Bureau posted Bid Amendment {Addendum} #3, posting additional answers to questions received along with a revised Bid Solicitation. Finally, on March 16, 2018, the Bureau Bid Amendment {Addendum} #4, answering the final question received, posting a revised State-supplied Price Sheet/Schedule, and revising the Quote Submission Due Date to April 3, 2018 by 2:00 p.m.

On April 3, 2018, the Division’s Proposal Review Unit opened the Quotes submitted through the State’s **NJSTART** eProcurement system and the hardcopy Quotes received by the submission deadline of 2:00 p.m. eastern time. Asplundh’s submitted Quote included the following documents:

- Asplundh Exceptions
- Asplundh Pricing
- Asplundh Licensing
- Asplundh Financials

After conducting an initial review of the Quotes received, the Division’s Proposal Review Unit issued a Notice of Proposal Rejection to Asplundh advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, Asplundh’s Quote was missing a completed *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form*.

Purportedly, on April 9, 2018, in response to the Notice of Proposal Rejection, Asplundh sent the Division an email, protesting the Notice of Proposal Rejection, stating in part:

I would like to protest the rejection of the bid for Asplundh Tree Expert, LLC. The attached documents were submitted to Douglas Albin for our current contract. We mistakenly did not upload them due to this. We perform a significant amount work for the State of New Jersey and would request to reconsider this rejection letter.

With that April 9, 2018 protest email, Asplundh included the December 8, 2017 email to the Bureau, which included the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form*.

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<b>NJSTART Term</b>	<b>Statutory, Regulatory and/or Legacy Term</b>
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

In consideration of Asplundh's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Asplundh's Quote and protest, the relevant statutes, regulations, and case law. This review of the record 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 the Division's Final Agency Decision.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall<sup>2</sup> conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added*.]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms, which were specifically addressed in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission*, which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

Among those forms required to be submitted with the Quote are the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* discussed in Bid Solicitation Section 4.4.1.2.1 and 4.4.1.2.2 respectively.

### **1. Ownership Disclosure Form**

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any [Blanket P.O.] nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies,

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<sup>2</sup> "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted 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, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

With respect to the submission of the *Ownership Disclosure Form* prior to the Quote opening date, New Jersey case law has determined that a submitted *Ownership Disclosure Form*, or ownership information, can be no older than six (6) months. See, Bid Solicitation § 4.4.1.2.1 *Ownership Disclosure Form*; In the Matter of Protest of Scheduled Award of Term Contract T2813 RFP 12-X-22361 Laboratory Testing Service, Equine Drug Testing, Lexis 1698, at \*25 (App. Div. July 10, 2013). Accordingly, Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or limited liability company, 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 P.O. {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}.

On December 8, 2017, Asplundh emailed the Bureau indicating its agreement to extend the then current contract for Tree Trimming, Pruning, and Removal Services – Statewide. With that email, Asplundh included a completed, signed and dated *Ownership Disclosure Form*. The submission of this form was less than six months prior to the Quote opening date and therefore can be accepted by the Bureau as evidence of Asplundh's corporate ownership as required by N.J.S.A. 52:25-24.2.

## 2. Disclosure of Investment Activities in Iran Form

With respect to the submission of the *Disclosure of Investment Activities in Iran Form*, the New Jersey Legislature has mandated that “[a] State agency shall require a person or entity that submits a bid or Quote, or otherwise proposes to enter into or renew a [Blanket P.O.] to certify, at the time the bid is submitted, or the [Blanket P.O.] is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 [C.52:32-57] of this act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 [C.52:32-56] of this act.” N.J.S.A. 52:32-58(a), emphasis added.

The *Disclosure of Investment Activities in Iran Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.2 *Disclosure of Investment Activities in Iran Form* which states:

Pursuant to N.J.S.A. 52:32-58, the Vendor {Bidder} must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Vendor {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 Vendor {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 Vendor {Bidder} is unable to so certify, the Vendor {Bidder} shall provide a detailed and precise description of such activities as directed on the form. 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 P.O. {Contract} to said Vendor {Bidder}.

Vendors {Bidders} using **NJSTART** to submit a Quote {Proposal} shall make the appropriate certification on the “Maintain Terms and Categories” Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Disclosure of Investment Activities in Iran form. Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal} must complete the full Disclosure of Investment Activities in Iran form located on the [Division’s website](#). The full version of the form is also available in [NJSTART \(www.njstart.gov\)](#).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community a *Disclosure of Investment Activities in Iran Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Disclosure of Investment Activities in Iran Form*, as noted in Bid Solicitation Section 4.4.1.2.2 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding investment activities in Iran on the “Maintain Terms and Categories” Tab within its profile. As shown in the screenshot below, Asplundh did not complete the Disclosure of Investment Activities in Iran category.

Vendor Profile - Arborchem Products Division of Asplundh Tree Expert LLC

Organization Information Users Address Commodity Codes and Services Regions **Terms & Categories** Attachments Vendor Performance

### Terms and Categories Information

#### Terms

Payment Terms:  
Freight Terms:  
Shipping Method:  
Shipping Terms:

#### Categories & Certifications

Category: 1. Primary Business Function - (MANDATORY FIELD)

Provides Any Other Types of Goods

Category: 3. Business Formation (MANDATORY FIELD)

Corporation including Professional Corporation/Government Entity

Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)

Description: I certify that I am an appointed agent of the vendor referenced and that I hereby authorize the State of NJ to initiate payments to the bank acct and bank named in the electronic funds transfer (if and when the information is provided). This authority is to remain in full force and effect until the State of NJ receives notification of any changes, and in such a manner as to afford the State of NJ a reasonable opportunity to Act.

Select if you prefer a paper check instead and do not want to receive payment via EFT. (Any banking information entered as part of your remittance address will be disregarded and remain inactive.)

Category: 5. Tax ID Certification (Substitute W9) (MANDATORY FIELD)

Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for federal tax purposes.

Select if you agree with the statement above.

Category: Certification: Business Registration

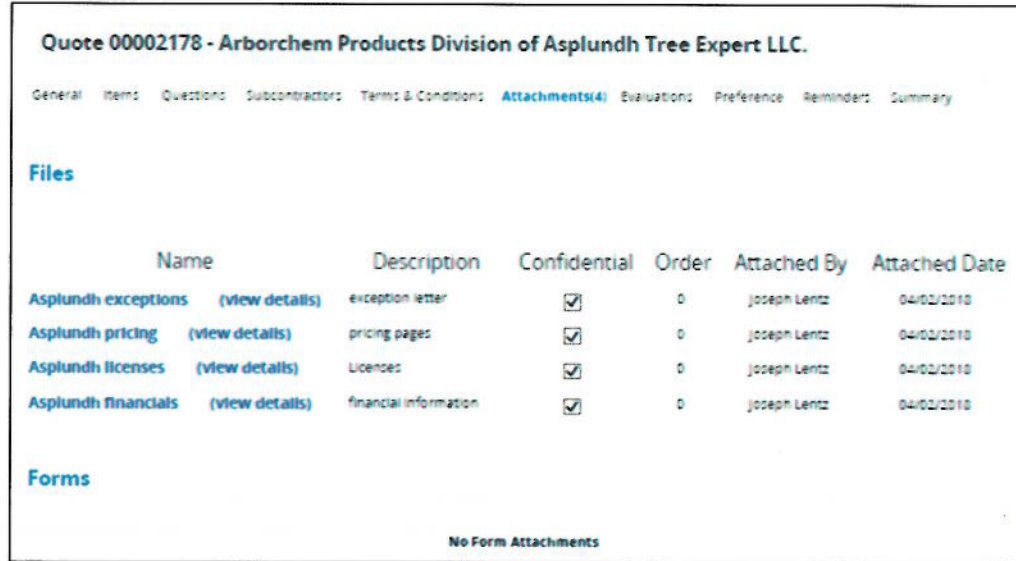
Description: This Certification status is updated daily. If your business is not registered, or if your registration is not active, please see the following link:

Active

Because Asplundh did not complete the Disclosure of Investment Activities in Iran category within **NJSTART**, it was required to submit the *Disclosure of Investment Activities in Iran Form* with its Quote, or attach the form to its Vendor Profile within **NJSTART**. As shown in the screenshot below, Asplundh did not attach the *Disclosure of Investment Activities in Iran Form* to its **NJSTART** Vendor Profile.



Nor was the form included with Asplundh’s Quote as shown in the screenshot below.



The Division does not have the power to waive the legislative requirement that a Vendor {Bidder} certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. Accordingly, Asplundh’s Quote was properly rejected by the Division’s Proposal Review Unit for failure to submit the mandatory *Disclosure of Investment Activities in Iran Form* with its Quote.

If the requirements of N.J.S.A. 52:32-58 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. The statute and regulation mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State’s bidding process. The **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals are uploaded into **NJSTART** necessarily and appropriately, rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.

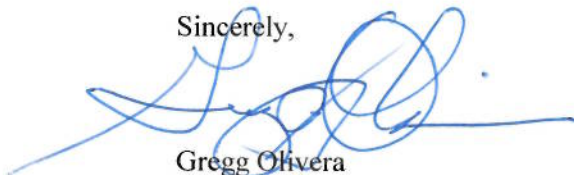
Here, unfortunately, Asplundh submitted a Quote without the required *Disclosure of Investment Activities in Iran Form* attached. Notwithstanding Asplundh’s interest in competing for this procurement, the Division cannot rely upon Asplundh’s previously submitted *Investment Activities in Iran Form* as doing

so would violate the Legislative requirements outlined in N.J.S.A. 52:32-58, requirements that the Division is not authorized to waive.

This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote. However, in light of the findings set forth above, I have no choice but to 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 business with [NJSTART](http://www.njstart.gov) at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Gregg Olivera  
Deputy Director

GO: RUD

c: A. Davis  
R. Regan  
D. Albin