



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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April 23, 2018

Via Electronic Mail [dvstruck@yahoo.com] and USPS Regular Mail

Dean Severino
DVS Trucking Co.
58 Borough Street
Rutherford NJ, 07070

Re: I/M/O Bid Solicitation #: 18DPP00205 DVS Trucking Co.
Protest of Notice of Proposal Rejection
Bid Solicitation Title: T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Severino:

This letter is in response to your email and fax of April 17, 2018, on behalf of DVS Trucking Co. Inc. (“DVS Trucking”) to the Division of Purchase and Property’s (“Division”) Hearing Unit. In those communications, DVS Trucking protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (“Bid Solicitation”). The record of this procurement reveals that DVS Trucking’s Quote was rejected for failing to submit the *Disclosure of Investment Activities in Iran Form* with its Quote.

By way of background, on January 30, 2018, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)¹ to those responsible Vendors

¹ 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.

<i>NJSTART</i> Term	Statutory, Regulatory and/or Legacy Term
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

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

On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On March 16, 2018, the Division's Proposal Review Unit opened 136 Quotes submitted through the State's *NJSTART* eProcurement system and 41 Quotes received in hardcopy format by the submission deadline of 2:00 pm eastern time. A review of the Quotes submitted by the submission deadline reveals DVS Trucking uploaded its Quotes via *NJSTART* at 7:53:24 p.m. on March 15, 2018, which included the following documents:

- *Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions Form;*
- *Disclosure of Investigations and Other Actions Involving the Vendor/Bidder Form;*
- *A AA302 Employee Information Report Form;*
- *An Ownership Disclosure Form;*
- *An Offer and Acceptance Page;*
- *Attachment 1 & 2;* and
- *State-supplied price sheet/schedule excerpts.*

On April 17, 2018 the Division issued DVS Trucking a Notice of Proposal Rejection, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, DVS Trucking's Quote was missing a completed *Disclosure of Investment Activities in Iran Form*.

In response to the Notice of Proposal Rejection, on April 18, 2018, DVS Trucking sent the Division a completed *Disclosure of Investment Activities in Iran Form* dated April 18, 2018. The Division accepted DVS Trucking's correspondence as a protest of the Notice of Proposal Rejection.

In consideration of DVS Trucking's protest, I have reviewed the record of this procurement, including the Bid Solicitation, DVS Trucking's 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 shall² 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

² "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*.

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 is the *Disclosure of Investment Activities in Iran Form* discussed in Bid Solicitation Section 4.4.1.2.2.

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).

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, DVS Trucking did not complete the Disclosure of Investment Activities in Iran category.

Vendor Profile - dvs trucking co

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 Type of Services

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

Category: Certification: AA/EEOC Compliance

Description: This Certification status is updated daily. If your business does not have a certification, or if your certification has expired, please see the following link:

Yes

Notes

0000049780 EXPIRES ON 11-15-2019

Because DVS Trucking 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**. The record indicates that DVS Trucking's Quote did not include a completed and signed *Disclosure of Investment Activities in Iran Form*, nor was the form contained within DVS Trucking's **NJSTART** Vendor Profile:

Vendor Profile - dvs trucking co

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

Attachments Information

No Attachments found for this vendor.

Forms

No Form Attachments

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, DVS Trucking'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. These statutes and regulations 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, DVS Trucking submitted a Quote without the *Disclosure of Investment Activities in Iran Form* attached and the Division is prohibited from accepting it after the Quote submission deadline. Notwithstanding DVS Trucking's interest in competing for this procurement, to allow DVS Trucking to submit the completed and signed *Disclosure of Investment Activities in Iran Form* after bid opening 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 Proposal. 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** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: REG

c: P. Michaels
L. Spildener
M. Groninger