



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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*Acting Director*

January 8, 2019

Via Electronic Mail [msteindler@23automall.com] and USPS Regular Mail

Mark Steindler, Parts & Service Director  
Route 23 Automall  
1301 Route 23  
Butler, N.J. 07405

Re: I/M/O Bid Solicitation #19DPP00280 Route 23 Automall  
Protest of Notice of Proposal Rejection  
T2760 OEM Automotive Parts and Accessories for Light Duty Vehicles - Rebid

Dear Mr. Steindler:

This letter is in response to your email of December 27, 2018, on behalf of Route 23 Automall (“Route 23”) which was received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that email, Route 23 protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #19DPP00280 – T2760 OEM Automotive Parts and Accessories for Light Duty Vehicles – Rebid (“Bid Solicitation”). The record of this procurement reveals that Route 23’s Quote was rejected for failing to submit the *Ownership Disclosure Form*, the *Disclosure of Investment Activities in Iran Form* or pricing information with its Quote.

By way of background, on November 9, 2018, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the New Jersey Department of the Treasury, Bureau of Transportation Services, to solicit Quotes from qualified Vendors {Bidders} to provide OEM Automotive Parts and Accessories for Light Duty Vehicles. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)<sup>1</sup> to those responsible Vendors

<sup>1</sup> This decision uses terminology employed by the State of New Jersey’s *NJSTART* eProcurement system. The following table cross 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 December 19, 2018, the Division's Proposal Review Unit opened the Quotes received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Route 23 for failure to submit the *Ownership Disclosure Form*, the *Disclosure of Investment Activities in Iran Form* or pricing information with its Quote.

In response to the Notice of Proposal Rejection, on December 27, 2018, Route 23 sent an email to the Division's Hearing Unit stating in part:

I am emailing a request for a hearing on my rejected Bid. I received [the] attached letter from the State of New Jersey telling me that there was missing information on my Bid. This was the first time I uploaded a Bid so when I went and looked at the Bid I sent, I found that somehow the information on the sheets were garbled, almost like the scanner was skipping over the information. This was unintentional and I was hoping you would reconsider with the correctly scanned pages.

With that protest email, Route 23 attached the following items:

- Bid Solicitation Cover Page (page 1)
- *Ownership Disclosure Form* (pages 2-3)
- *Disclosure of Investment Activities in Iran Form* (page 4)
- Cooperative Purchasing Form (page 5)
- Bidder Data Sheet (pages 6-8)
- State-Supplied Price Sheet (page 9)
- Bid Solicitation Check List (page 10)
- Offer & Acceptance Letter – T2924 (page 11)

With respect to Route 23's request for an in-person presentation to challenge the intended contract award, I note that pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). In consideration of Route 23's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Route 23's proposal and protest, the relevant statutes, regulations, and case law. The issue(s) raised in Route 23's protest letters are sufficiently clear such that a review of the record of this procurement 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 submitted by Route 23 on the written record. Route 23's request for an in person presentation is therefore denied. I set forth herein my 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:

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- (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 Preparation and Submission* which states in pertinent part:

The Quote should contain the State-Supplied Price Sheet and all forms/documents required by the Bid Solicitation. The Vendor {Bidder} is cautioned to carefully read the Bid Solicitation to ensure that all required forms are completed, signed and submitted with the Vendor's {Bidder's} Quote. **NOTE: Failure to submit required forms/documents may result in the Vendor's {Bidder's} Quote being deemed non-responsive.**

[Bid Solicitation § 4.4 *Quote Content*, *emphasis in the original*.]

Among those forms/documents required to be submitted with the Quote are the *Ownership Disclosure Form*, the *Disclosure of Investment Activities in Iran Form*, and the State-Supplied Price Sheet, discussed in Bid Solicitation Section 4.4.1.2.1, 4.4.1.2.2, and 4.4.5 respectively.

A review of Route 23's submitted Quote reveals that Route 23 did upload the following documents as part of an eleven page attachment:

- Bid Solicitation Cover Page (page 1)
- *Ownership Disclosure Form* (pages 2-3)
- *Disclosure of Investment Activities in Iran Form* (page 4)
- Cooperative Purchasing Form (page 5)
- Bidder Data Sheet (pages 6-8)
- State-Supplied Price Sheet (page 9)
- Bid Solicitation Check List (page 10)
- Offer & Acceptance Letter – T2924 (page 11)

However, each of the documents is partially illegible. Route 23 recognizes and acknowledges the same in its protest and requests that it be permitted to provide each of the completed documents after the Quote opening date.

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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 responsibility for ensuring that all necessary forms and other submittals are properly completed and uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}; as such the Bid Solicitation advised:

The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote {Proposal} in response to this Bid Solicitation {RFP}. No special consideration will be given after Quotes {Proposals} are opened because of a Vendor's {Bidder's} failure to be knowledgeable as to all of the requirements of this Bid Solicitation {RFP}.

[Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility.*]

To assist Vendors {Bidders} in completing and uploading Quotes, as well as to ensure that Quotes have been properly submitted, the Division provides Quick Reference Guides on its website (<https://www.state.nj.us/treasury/purchase/njstart/vendor.shtml#tabs-3>.) One of those guides is entitled "How to Review a Submitted Quote," and provides Vendors {Bidders} with step-by-step instructions and screenshots, on how to review those documents uploaded and submitted as part of a Quote. Because the **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents completed and attached as mandated by the specifications, it is incumbent upon the Vendors {Bidders} to ensure that all forms and documents have been properly completed and attached.

The New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey's statutory procurement scheme is "to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." Barrick v. State of New Jersey, 218 N.J. 247, 258. (2014); citing, Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985). The Division's overriding mission in conducting sealed, advertised bidding is to "encourage free and open competition." N.J.A.C. 17:12-2.1. It is only through maintaining a level playing field for all potential Vendors {Bidders} that the public policy of "thwarting favoritism, improvidence, extravagance, and corruption" underlying the public bidding process can be realized. Barrick, supra, 218 N.J. at 258-59 (2014).

Recognizing that Route 23 uploaded the required documents, the question then is whether the missing information results in a material deviation. "It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. The New Jersey courts have developed a two-prong test to consider "whether a specific noncompliance constitutes a substantial and hence non-waivable irregularity." Twp. of River Vale v. R. J. Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974). The two-prong test requires a determination of

first, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 315 (1994) (internal quotations omitted) (affirming the two-prong test established in River Vale, supra, 127 N.J. Super. at 216).]

The “distinction between conditions that may or may not be waived stems from a recognition that there are certain requirements often incorporated in bidding specifications which by their nature may be relinquished without there being any possible frustration of the policies underlying competitive bidding.” Terminal Constr. Corp. v. Atlantic County Sewerage Authority, 67 N.J. 403, 412 (1975).

### **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, 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 its submitted Quote Route 23 did upload the *Ownership Disclosure Form*; however, as shown in the screen shot below the form was partially illegible:

*ORIGINAL COPY*

STATE OF NEW JERSEY

**QUESTION 4**  
 PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2 - 4 ANSWERED AS FOLLOWS:

If you answered "YES" for questions 2, 3, or 4, you must disclose identifying information related to the individual, corp interests, partnerships, and/or limited liability companies owning a 10% or greater interest in the Vendor (Bidder). Further, if one or more of these entities is itself a corporation, partnership, or limited liability company, you must also disclose all parties that own a 10% or greater interest in that corporation, partnership, or limited liability company. This information is required by state law.

**INDIVIDUALS**

NAME: Scott Bama  
 ADDRESS 1: 22 Cooper Hill Pike  
 ADDRESS 2: \_\_\_\_\_  
 CITY: Ringwood STATE: N.J. ZIP: 07456

NAME: \_\_\_\_\_  
 ADDRESS 1: \_\_\_\_\_  
 ADDRESS 2: \_\_\_\_\_  
 CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

NAME: \_\_\_\_\_  
 ADDRESS 1: \_\_\_\_\_  
 ADDRESS 2: \_\_\_\_\_  
 CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

Attach Additional Sheets if Necessary.

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and Exchange Commission of the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the Federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filing that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:35-24.2.

**CERTIFICATION**

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor (Bidder), that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor (Bidder) is under a continuing obligation from the date of this certification through the completion of any contract with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

Signature (Do not use vendor ID as a signature): [Signature] Date: 11/23/18  
 Mark Stamler, P.E. & Services Director  
 Post Name and Title: \_\_\_\_\_  
 22-37508  
 11/23/18

Neither the questions regarding the company’s ownership, nor the list of any corporations, partnerships or limited liability companies which own 10% or more of the Vendor {Bidder} is visible. The Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, Route 23 did not upload a copy of the *Ownership Disclosure Form* to its *NJSTART* Vendor Profile, complete the certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab as noted in Bid Solicitation Section 4.4.1.2.1, or have a completed form on file within the prior six months. Accordingly, Route 23’s Quote was properly rejected by the Division’s Proposal Review.

**2. Disclosure of Investment Activities in Iran Form**

Similarly, 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).

Again, with its submitted Quote Route 23 did upload the *Disclosure of Investment Activities in Iran Form*; however, as shown in the screen shot below a portion of the form was illegible:

The screenshot shows a portion of a form titled "STATE OF NEW JERSEY". The form contains a section for providing details about investment activities in Iran. Below this section is a "CERTIFICATION" section. The certification text reads: "I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein, that I am aware that it is a criminal offense to make a false statement or misrepresentation of this certification. If I do so, I will be subject to criminal prosecution under the law and it will constitute a material breach of my contract(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable." The certification is signed by "Meadowbrook" on "11/23/18". The form footer includes "DPP Rev. 6.19.17" and "Page 1 of 1".

However, considering Route 23's Quote through the lens of the River Vale criteria and I find that Route 23's submission of *Disclosure of Investment Activities in Iran* form with the scanning error does not rise to the level of a material deviation. A permissible inference regarding Route 23's intent to check the first box on the *Disclosure of Investment Activities in Iran* form can be made due to its non-inclusion of a description of investment activities in Iran for itself or its parents, subsidiaries, or affiliates, which would have been required if the second box was checked. I have also reviewed the Chapter 25 List and there is no evidence that either Route 23, or one of its parents, subsidiaries or affiliates, is on the list or engaged in investment activities in Iran that would qualify for Chapter 25 listing. I find that a clarification would be appropriate to remedy the ambiguity in Route 23's *Disclosure of Investment Activities in Iran* form.<sup>3</sup> Permitting this clarification does not deprive the State of "its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements" and does not place Route 23 "in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition." Meadowbrook, *supra*, 138 N.J. at 315. Therefore, the Division could accept the *Disclosure of Investment Activities in Iran* submitted with the protest as a clarification, which affirms that neither Route 23 nor any of its parents, subsidiaries, or affiliates is on the Chapter 25 List.

<sup>3</sup> New Jersey Courts have held that "[i]n clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP." In re Protest of the Award of the On-Line Games Prod. & Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995)

### 3. Quote Pricing

Finally, as noted above, Route 23 did submit a price sheet with its Quote, however a portion of the price sheet is illegible.

6	Toyota						
7	Nissan						
8	Isuzu						
9	Honda						

Note: *BATTERIES, OIL, LUBES, TRANSMISSION & FLUIDS AT LIST - 22%*

1. Vendors (Bidders) shall enter an "X" in the "Region Served" column under the subheadings "North", "Central" or "South", to indicate which region(s) the percentage discount or markup applies. If a Vendor (Bidder) is bidding for all three regions, North, Central and South, the Vendor (Bidder) shall insert an "X" in the North, Central and South columns on the State-Supplied Price Sheet. If the Vendor (Bidder) does not insert an "X" in any of the North, Central or South columns, the Quote may be deemed non-responsive for that price line item.

2. Vendors (Bidders) must provide a percentage discount or markup based on the brand manufacturer's latest retail price list. The State will not accept any other price list types, such as wholesale, jobbar, invoice, etc. A Vendor's (Bidder's) offering of a manufacturer's price list other than the manufacturer's latest retail price list on any given price line item will render its Quote non-responsive for that price line item.

Reviewing Route 23's price sheet through the lens of the River Vale criteria I find that Route 23's price sheet contains a material deviation. Here, without the complete price sheet, the State has no information from which it can determine which price line(s) Route 23 sought to submit a Quote for. There is no information provided on the submitted price sheet regarding the manufacturer/brand of truck parts to be provided, the % Discount/Markup<sup>4</sup>, the region to be served or the delivery days. Permitting Route 23 to submit the required information after the Quote opening date would place Route 23 in a position of advantage over other Vendors {Bidders} who submitted all of the required information with the Quote. Accordingly, Route 23's Quote was properly rejected by the Division's Proposal Review.

<sup>4</sup> A review of the price sheet submitted with Route 23's protest reveals that contrary to the requirements of the Bid Solicitation Route 23 sought to charge the State a range of discounts based upon the part ordered. See, Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions* stating "[m]ultiple or series or range of discounts or fixed price (firm dollar amount) on any price line will not be acceptable, and will result in rejection of the Quote for that price line only."



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 interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's eProcurement system.

Sincerely,



Rachel U. Doobraj  
Acting Chief Hearing Officer

- c: J. Kerchner  
K. Thomas  
B. Birchmeier  
D. Rodriguez  
A. Nelson