



## State of New Jersey

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

33 WEST STATE STREET  
P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039

<https://www.njstart.gov>

Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

MAURICE A. GRIFFIN  
*Acting Director*

December 4, 2019

Via Electronic Mail [atlaselevatorinc@comcast.net] and USPS Regular Mail

Melissa Zaun  
Atlas Elevator Inc.  
529 Route 9 North  
Barnegat, NJ 08006

Re: I/M/O Bid Solicitation #19DPP00440 Atlas Elevator Inc.  
Protest of Notice of Proposal Rejection  
T-2946 Elevator Maintenance, Repair, Testing, and Inspection Services

Dear Ms. Zaun:

This letter is in response to your email of November 18, 2019, on behalf of Atlas Elevator Inc. ("Atlas") which was received by the Division of Purchase and Property's ("Division") Hearing Unit. In that email, Atlas protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit on, 2019, for Bid Solicitation #19DPP00440– T-2946 Elevator Maintenance, Repair, Testing, and Inspection Services ("Bid Solicitation"). The record of this procurement reveals that Atlas's Quote was rejected for failing to submit the *Disclosure of Investment Activities in Iran Form* and the *Ownership Disclosure Form* with its submitted Quote.

By way of background, on October 4, 2019, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of the State of New Jersey. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of this Bid Solicitation is to solicit Quotes for maintenance, repair, testing, and inspection services for vertical transportation equipment in all State owned buildings and the New Jersey Department of Transportation's moveable bridge elevators. *Ibid*.

On November 15, 2019, 2019, the Division's Proposal Review Unit opened Quotes that were 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 Atlas for failing to submit the *Disclosure of Investment Activities in Iran Form* and the *Ownership Disclosure Form* with its submitted Quote.

In response to the Notice of Proposal Rejection, on November 18, 2019, Atlas sent an email to the Division's Hearing Unit stating:

Good afternoon. I just received an email stating that 2 requirements were missing in the above mentioned BID. I apologize, I was not aware of these

items as there were not listed on NJ Start with the actual BID. I have attached the required paperwork to this email today.

We currently have been servicing the elevator equipment under the current State Contract since the start of the contract and would love the opportunity to continue to do so.

In consideration of Atlas's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Atlas's proposal 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>1</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:

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 as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation Forms Required With The Quote.*]

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 which states in part:

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 (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed

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<sup>1</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.*

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 (1) 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 will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. to said Vendor {Bidder}.

Vendors {Bidders} using **NJSTART** to submit a Quote 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 must complete the full Disclosure of Investment Activities in Iran form located on the [Division's website](#).

In order to make this process of complying with the legislative requirement easier, the Division provides the bidding community with a one page document entitled the *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, Atlas did not complete the Disclosure of Investment in Iran category.

Vendor Profile - Atlas Elevator Inc

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 authorized 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 intend to enter the data for EFT payment and agree with the statement above. To enter banking data, you must log in after the initial registration process has been completed, add or edit a Remit address, and check the EFT Enabled box.

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: NJ/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

000004707 EXPIRES ON 05-15-2025

Close Window

Because Atlas 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 show in the screenshot below, Atlas did not attach the *Disclosure of Investment Activities in Iran Form* to its **NJSTART** profile.



Nor did it submit the form with its Quote.



A second form required to be submitted with the Quote is the *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.

The *Ownership Disclosure Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form*, which 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. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. 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 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.

In the alternative, to comply with this section, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or 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 filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

Vendors {Bidders} using ***NJSTART*** to submit a Quote 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 Ownership Disclosure Form. Vendors {Bidders} not using ***NJSTART*** to submit a Quote must complete the full Ownership Disclosure Form located on the Division's website.

Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation through **NJSTART**. Vendors {Bidders} may also refer to the QRG “Vendor Categories and Certifications” for additional instructions on completing shortened versions of required forms by completing certifications on the “Maintain Terms and Categories” Tab within its profile in **NJSTART**. QRGs are located on the **[NJSTART Vendor Support Page](#)**.

As is shown in the screenshots above, Atlas also did not complete the Ownership Disclosure category, however, Atlas was required to complete and submit the *Ownership Disclosure Form* either with its Quote or attach the form to its Vendor Profile within **NJSTART**. Again, the screenshots above show that Atlas also did not upload the *Ownership Disclosure Form* to its profile, nor did it submit the form with its Quote.

In reviewing a Quote submitted in response to a Bid Solicitation, 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, Atlas did not comply with any of the options available to it for the submission of ownership information. Accordingly, Atlas’s Quote was properly rejected by the Division’s Proposal Review Unit for failure to submit both the mandatory *Disclosure of Investment Activities in Iran Form* and the mandatory *Ownership Disclosure Form* with its Quote.

If the requirements of **N.J.A.C. 17:12-2.2** are not met, a Quote must be rejected. The Division’s governing 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*. I encourage you to review the Quick Reference Guide (QRG), located at <https://www.state.nj.us/treasury/purchase/vendor.shtml>, to ensure that, in the future, you are uploading the correct documents.

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 Bid Solicitation. 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,



Maurice A. Griffin  
Acting Director

MAG: TCR

c: N. Ghorbani  
K. Popso  
R. Regan  
M. Dunn  
D. Rodriguez  
A. Nelson